ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 28, NUMBER 5
THURSDAY, NOVEMBER 1, 2001

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MEETING NOTICE
The Administrative Regulation Review Subcommittee is tentatively scheduled to meet on November 13, 2001, at 10 a.m. in Room 149 of the Capitol Annex. See tentative agenda on pages 1059-1062 of this Administrative Register.
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KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

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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 This Statement shall not be published in the Administrative Register.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 working (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.
NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS 
RECEIVED AS OF NOON, OCTOBER 15, 2001

September 24, 2001
(1) 11 KAR 12:010, Definitions for 11 KAR Chapter 12.
(2) The Kentucky Educational Savings Plan Trust intends to promulgate an administrative regulation governing the subject matter listed above, particularly, an amendment to the existing administrative regulation to correct statutory references throughout the regulation.
(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 2001, at 10 a.m., at 1050 U.S. 127 South, 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 days prior to November 21, 2001, the public hearing will be cancelled.
(5) Persons wishing to request a public hearing should mail their written request to the following address: Attn: Richard Casey, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, Fax: 696-7293.
(6) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority 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 this administrative regulation is KRS 164A.325(9). The KRS 164A.305(7). The Kentucky Educational Savings Plan Trust intends to amend 11 KAR 12:010 as follows:
   (1) The increase or decrease of the cost of doing business;
   (2) The increase or decrease in the cost of living;
   (3) The value of the expected benefits;
   (4) The method of tiering that the administrative body could apply to reduce the impact on an entity that does not contribute significantly to the problem that the proposed administrative regulation will address;
   (5) Alternative ways of dealing with the special problems; and
   (6) Classes that will be disproportionately impacted.
(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Attn: Richard Casey, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, Fax: 696-7293.
(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."
(c) 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 Kentucky Higher Education Assistance Authority 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 this administrative regulation is KRS 164A.325(9).
(b) The administrative regulation that the Kentucky Educational Savings Plan Trust intends to promulgate will amend 11 KAR 12:040, as follows:
(c) The necessity and function of the proposed administrative regulation is as follows: The amendments to 11 KAR 12:040 are necessary to
(d) The benefits expected from the administrative regulation are: The benefits expected from the amendment to 11 KAR 12:040 are expected to
(e) The special problems faced by individuals and small businesses in complying with the administrative regulation;
(f) Alternative ways of dealing with the special problems; and
(g) Classes that will be disproportionately impacted.

September 24, 2001
(1) 11 KAR 12:050, Substitution of a beneficiary.
(2) The Kentucky Educational Savings Plan Trust intends to promulgate an administrative regulation governing the subject matter listed above. Particularly, the administrative regulation will be amended to correct statutory references.
(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 2001, at 10 a.m., at 1050 U.S. 127 South, 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) A request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 21, 2001, the public hearing will be cancelled.
(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Attn: Richard Casey, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, Facsimile number 696-7293.
(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."
(c) 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 Kentucky Higher Education Assistance Authority 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 this administrative regulation is KRS 164A.325(9).
(b) The administrative regulation that the Kentucky Educational Savings Plan Trust intends to promulgate will amend 11 KAR 12:050, as follows:
(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164A.325(9) authorizes the board to promulgate administrative regulations for the administration of the Kentucky Educational Savings Plan Trust. The amendment to 11 KAR 12:050 is necessary to
(d) The benefits expected from the administrative regulation are: The benefits expected from the amendment to the administrative regulation are correct statutory references and conformity with the authorizing and other related statutes.
(e) The administrative regulation will be implemented as follows: References to KRS 164A.325(9) will be changed to KRS 164A.325(4). References to KRS 164A.325(9) will be changed to KRS 164A.330(5).
(f) Request to affected individuals: Affected individuals, businesses and other entities are requested to submit written comments that identify the anticipated effects of the proposed administrative regulation, including:
(a) The increase or decrease in the cost of doing business;
(b) The increase or decrease in the cost of living;
(c) The value of the expected benefits;
(d) The method of tiering that the administrative body could apply to reduce the impact on an entity that does not contribute significantly to the problem that the proposed administrative regulation will address;
(e) The special problems faced by individuals and small businesses in complying with the administrative regulation;
(f) Alternative ways of dealing with the special problems; and
(g) Classes that will be disproportionately impacted.

September 24, 2001
(1) 11 KAR 12:060, Cancellation and payment of refund.
(2) The Kentucky Educational Savings Plan Trust intends to promulgate an administrative regulation governing the subject matter listed above. Particularly, the Trust intends to amend the administrative regulation to correct a statutory reference and to reduce the penalty charged for refunding money contributed to the Kentucky Educational Savings Plan Trust.
(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Wednesday, November 21, 2001, at 10 a.m., at 1050 U.S. 127 South, 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 days prior to November 21, 2001, the public hearing will be cancelled.
(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Attn: Richard Casey, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 693-8211, Facsimile number 696-7293.
(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.

October 15, 2001
(1) 103 KAR 1:050, Forms manual.
(2) The Revenue Cabinet 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 November 30, 2001 at 2 p.m. at 200 Fair Oaks Lane, Third Floor, Training Room A, 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 November 30, 2001, the public hearing will be cancelled.
(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Edward A. Mattingly, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40620, phone (502) 564-6843, ext. 4431, fax: (502) 564-9665, e-mail: eddie.mattingly@mail.state.ky.us.
(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 administra-
tive 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 Revenue Cabinet 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 forms is KRS 131.130.

(b) The administrative regulation that the Revenue Cabinet intends to promulgate will amend 103 KAR 1:050. The proposed amendment will prescribe forms not prescribed by the existing regulation, prescribe changes in existing forms and remove from the regulation forms no longer in use.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation is specifically required by KRS 131.130(3) which authorizes the Revenue Cabinet to prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation pursuant to KRS Chapter 13A incorporating the forms by reference.

(d) The benefits expected from the administrative regulation are:

1. Incorporation by reference of all forms prescribed by the Revenue Cabinet pursuant to KRS Chapter 13A.
2. Accumulation in one source and location of all forms prescribed by the Revenue Cabinet.
3. Periodic updating of regulation referencing prescribed forms.

(e) The administrative regulation will be implemented as follows: The Revenue Cabinet will maintain the forms manual in the Department of Law. The Department of Law will be responsible for periodic updating of the regulation and manual.

KENTUCKY STATE BOARD OF ACCOUNTANCY

October 1, 2001

(1) 201 KAR 1:100. Continuing professional education requirements.
(2) The Kentucky State Board of Accountancy 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 November 26, 2001 at 10 a.m. at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.
(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, agrees, 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 November 26, 2001, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Susan G. Stopher, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Phone: (502) 595-3037 or FAX: (502) 595-4500.

(b) On the 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 Kentucky State Board of Accountancy at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority of the promulgation of an administrative regulation relating to continuing professional education is KRS 325.330(4) and (7) and 325.240.

(b) The administrative regulation that the Kentucky State Board of Accountancy intends to promulgate will amend 201 KAR 1:100, Continuing professional education requirements. It will clarify waiver requirements, eliminate continuing professional education sponsorship registration, and eliminate duplicative continuing professional education requirements for CPAs licensed in a home jurisdiction.

(c) The necessity and function of the proposed administrative regulation is as follows: To clarify and simplify the continuing education reporting requirements.

(d) The benefits expected from administrative regulation are: Increasing fairness and clearness of regulation, compliance will be increased.

(e) The administrative regulation will be implemented as follows: The board and board staff will implement these procedures.

October 1, 2001

(1) 201 KAR 1:140. Procedures for reinstatement of a certificate and permit to practice public accounting.
(2) The Kentucky State Board of Accountancy 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 November 26, 2001 at 10 a.m. at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.
(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, agrees, 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 November 26, 2001, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Susan G. Stopher, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Phone: (502) 595-3037 or FAX: (502) 595-4500.

(b) On the 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 Kentucky State Board of Accountancy at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority of the promulgation of an administrative regulation relating to reinstatement of a certificate is KRS 325.330(6).

(b) The administrative regulation that the Kentucky State Board of Accountancy intends to promulgate will amend 201 KAR 1:140, Procedures for reinstatement of a certificate and permit to practice public accounting. It will clarify the reinstatement requirements for those CPAs who fail to
(c) The necessity and function of the proposed administrative regulation is as follows: It will detail the license renewal penalties and reinstatement procedures.

(d) The benefits expected from administrative regulation are: It will help to insure that all CPAs renew their license on a timely basis.

(e) The administrative regulation will be implemented as follows: The board staff will publish information and send individual letters.

October 1, 2001
(1) 201 KAR 1:160. To set forth practice and procedures for hearings held before the Kentucky State Board of Accountancy.

(2) The Kentucky State Board of Accountancy 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 November 26, 2001 at 10 a.m. at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

(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, agrees, 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 November 26, 2001, the public hearing will be cancelled.

(a) Persons wishing to request a public hearing should mail their written request to the following address: Susan G. Stopher, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Phone: (502) 595-3037 or FAX: (502) 595-4500.

(b) On the 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."

(c) 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.

(d) Persons who wish to file this request may obtain a request form from the Kentucky State Board of Accountancy at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority of the promulgation of an administrative regulation relating to hearings before the board is KRS 325.390.

(b) The administrative regulation that the Kentucky State Board of Accountancy intends to promulgate will amend 201 KAR 1:150 to set forth practice and procedures for hearings held before the Kentucky State Board of Accountancy. It will clarify discovery requests.

(c) The necessity and function of the proposed administrative regulation is as follows: This sets forth the procedures in administrative hearings before the board.

(d) The benefits expected from administrative regulation are: It details for all parties the procedures used in administrative hearings.

(e) The administrative regulation will be implemented as follows: It will be available to hearing officers and parties to an administrative hearing.

October 1, 2001
(1) 201 KAR 1:180. Safe harbor language for non-licensee to use in connection with a compilation of financial information.

(2) The Kentucky State Board of Accountancy 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 November 26, 2001 at 10 a.m. at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

(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, agrees, 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 November 26, 2001, the public hearing will be cancelled.

(a) Persons wishing to request a public hearing should mail their written request to the following address: Susan G. Stopher, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Phone: (502) 595-3037 or FAX: (502) 595-4500.

(b) On the 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."

(c) 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.

(d) Persons who wish to file this request may obtain a request form from the Kentucky State Board of Accountancy at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority of the promulgation of an administrative regulation relating to safe harbor language is KRS 352.380(4) and 325.240.

(b) The administrative regulation that the Kentucky State Board of Accountancy intends to promulgate will not amend an existing regulation. It will provide nonlicensees with appropriate language to use in connection with the compilation of financial information.

(c) The necessity and function of the proposed administrative regulation is as follows: It will make financial statement users aware that a licensed certified public accountant did not prepare the report.

(d) The benefits expected from administrative regulation are: It will help insure that financial statements are not improperly interpreted.

(e) The administrative regulation will be implemented as follows: The regulation will be given to non-CPAs upon request.

October 1, 2001
(1) 201 KAR 1:300. Rules of professional conduct.

(2) The Kentucky State Board of Accountancy 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 November 26, 2001 at 10 a.m. at 332 W. Broadway, Suite 310, Louisville, Kentucky 40202.

(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, agrees, 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 November 26, 2001, the public hearing will be cancelled.

(a) Persons wishing to request a public hearing should mail their written request to the following address: Susan G. Stopher, Kentucky State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Phone: (502) 595-3037 or FAX: (502) 595-4500.
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State Board of Accountancy, 332 W. Broadway, Suite 310, Louisville, Kentucky 40202, Phone: (502) 595-3037 or FAX: (502) 595-4500.

(b) On the 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 Kentucky State Board of Accountancy at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority of the promulgation of an administrative regulation relating to rules of professional conduct is KRS 325.240 and 325.340.

(b) The administrative regulation that the Kentucky State Board of Accountancy intends to promulgate will amend 201 KAR 1:300, Rules of professional conduct. It will update the standards of practice to the current national standards.

(c) The necessity and function of the proposed administrative regulation is as follows: To insure that all public accounting work is performed in accordance with current standards.

(d) The benefits expected from administrative regulation are: To insure that the performance of public accounting services is done with current standards.

(e) The administrative regulation will be implemented as follows: All CPAs will be notified of the changes.

BOARD OF PHYSICAL THERAPY

September 21, 2001

(1) 201 KAR 22:110, Renewal of assistant’s certification.

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

(3)(a) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 2001 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 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 November 21, 2000, the public hearing will be canceled.

(c)(a) Persons wishing to request a public hearing should mail their written request to the following address: Rebecca Klusch Hughes, Executive Director, Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222, phone: (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."

(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 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 22:110, 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 renewal of assistant’s certification which will lend 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.

KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES

October 10, 2001

(1) 202 KAR 7:010. Provides a definitional section for emergency medical technician regulations.

(2) The Kentucky Board Of Emergency Medical Services intends to establish the administrative regulation governing the subject matter listed above.

(3)(a) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 2001, at 9 a.m., at Cabinet for Health Services Auditorium.

(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 November 30, 2001, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Patricia T. Bausch, c/o Kentucky Board of Emergency Medical Services, 275 East Main Street, 75HS1E-F, Frankfort, Kentucky 40621-0001, phone (502) 564-8963; Fax (502) 564-6533.

(b) On a request for public hearing, a person shall state:
1. "I will 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 Kentucky Board of Emergency Medical Services at the above address listed above.

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(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 311.6523 and 311.6541.
   (b) The administrative regulation that the Kentucky Board of Emergency Medical Services intends to promulgate will provide a definitional section for emergency medical technician regulations.
   (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Provide a definitional section for EMT regulations.
   (d) The benefits expected from administrative regulation are: Prohibited definitions for terms contained in the emergency medical technician regulations.
   (e) The administrative regulation will be implemented as follows: The regulation will be implemented by Kentucky Board of Emergency Medical Services.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources

September 26, 2001

(1) 301 KAR 3:026. Access to wildlife management areas for mobility-impaired individuals.
(2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.
   (a) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 26, 2001 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, 5 miles west of Frankfort on U.S. 60.
   (b) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 26, 2001, the public hearing will be cancelled.

   (5)(a) Persons wishing to request a public hearing should mail their written request to Ellen F. Benzing, Attorney, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Phone (502) 564-3400, Fax (502) 564-0506.
   (b) On the 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 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 department at the address listed above.
   (c) The statutory authority for the promulgation of an administrative regulation governing the management of wildlife management areas is KRS 150.025(1) and 150.620.
   (d) The administrative regulation that the department intends to promulgate amends an existing administrative regulation.
   (e) The necessity and function of the proposed administrative regulation is to establish more equal access to wildlife management areas by those with mobility-impairments.
   (f) The benefits expected from the administrative regulation are to ensure a more equal opportunity for mobility-impaired individuals to participate in wildlife recreation activities.

   (g) The administrative regulation will be implemented as follows: Its provisions will be publicized through departmental publications and mass media outlets; and it will be enforced by the department’s Division of Law Enforcement.

DEPARTMENT OF AGRICULTURE

October 8, 2001

(1) 302 KAR 20:240. Mycobacterium paratuberculosis (Johnne's).
(2) The Kentucky Department of Agriculture intends to promulgate an administrative regulation governing the above subject matter.
   (a) A public hearing to receive oral and written comments has been scheduled for Wednesday, November 21, 2001, at 9 a.m. in the Conference Room, Department of Agriculture, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
   (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 a person who desires to be informed of the intent of an administrative body to promulgate an 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 Kentucky Department of Agriculture at the address listed above.
   (c) The statutory authority for the promulgation of an administrative regulation relating to Mycobacterium paratuberculosis (Johnne's) is KRS 257.030(3), (4) and 275.110.
   (d) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will amend 302 KAR 20:240, Mycobacterium paratuberculosis (Johnne's). It will establish a means of tamper-resistant identification for Johnne's positive animals and identify procedures to be followed in handling animals testing positive for Johnne's.

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(c) The necessity and function of the proposed administrative regulation is as follows: Same as (b).
(d) The benefits expected from the proposed administrative regulation are: To prevent the spread of Johne's by establishing procedures to be followed in handling Johne's positive animals.
(e) The administrative regulation will be implemented as follows: Sets forth a means of identification of Johne's positive animals and procedures to be used to ensure control of Johne's in livestock.

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

September 18, 2001

(1) 401 KAR 51:201. Repeal of 401 KAR 51:200. The subject matter of this administrative regulation is the repeal of 401 KAR 51:200, Regional NOx emission requirements.
(2) The Division for Air Quality intends to promulgate a new 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 November 29, 2001, 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 November 29, 2001, 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 November 29, 2001, 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 this administrative regulation is KRS 224.10-100, 224.20-100, 224.20-110, 42 USC 7410, 7511a.
(b) The administrative regulation that the Division for Air Quality intends to promulgate will repeal 401 KAR 51:200, Regional NOx emission requirements. This repeal is necessary because the more stringent provisions mandated under the federal NOx SIP Call are promulgated in 401 KAR 51:160, NOx requirements for large utility and industrial boilers.
(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 promulgate administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation repeals 401 KAR 51:200, which establishes general provisions for electric generating units to reduce NOx emissions that contribute to the formation of ground-level ozone in Kentucky counties that do not meet the 1-hour National Ambient Air Quality Standard (NAAQS) for ozone. 401 KAR 51:200 is no longer needed because utilities located in Kentucky are subject to the more stringent federal NOx requirements, recently promulgated by the cabinet in 401 KAR 51:160, effective August 15, 2001.
(d) The expected benefit from the proposed administrative regulation is that 401 KAR 51:200 will be repealed and affected sources will be subject to 401 KAR 51:160.
(e) The proposed administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation which repeals 401 KAR 51:200, owners and operators of NOx sources shall comply with the provisions of newly-promulgated 401 KAR 51:160 as part of the existing regulatory program.

KENTUCKY BOARD OF EDUCATION

October 8, 2001

(1) 702 KAR 3:090, Depository bond, penal sum.
(2) The Kentucky Board of Education 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 November 26, 2001, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.
(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 26, 2001, the public hearing will be canceled.
(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.
(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 that persons who desire to be informed of the intent of an administrative body to promulgate an administra-
live 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 Department of Education at the address listed above.
(7) Information relating to the proposed administrative regulation.
(a) The statutory authority is KRS 156.070 and 160.570.
(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 702 KAR 3:090.
(c) The necessity, function, and conformity of the proposed administrative regulation is KRS 160.570 requires each local board of education designated depository funds to execute bonds for the faithful performance of its duties, and the bond shall be approved by the local board and the Commissioner of Education. KRS 160.570 also defines the nature and qualifying duties for the bond and requires the state board to regulate the penal sum of the bond. This administrative regulation establishes standards for bonds of depository.
(d) The benefits expected from this administrative regulation amendment are clarification of the methodology and monitoring the reduction of collateral of a bond.
(e) The administrative regulation amendment will be implemented as follows: The amendment will require districts to request approval for reduction of collateral of bonds.

October 8, 2001
(1) 704 KAR 3:325, Effective Instructional Leadership Act.
(2) The Kentucky Board of Education 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 November 26, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza, 500 Mero Street, Frankfort, Kentucky 40601.
(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 26, 2001, the public hearing will be canceled.
(5)(a) Persons wishing to request a public hearing shall mail their written request to: Mr. Kevin Noland, Deputy Commissioner, Operations and Support, Kentucky Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.
(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 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 Department of Education at the address listed above.
(7) Information relating to the proposed administrative regulation.
(a) The statutory authority is KRS 156.420.
(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 704 KAR 3:325.
(c) The necessity, function, and conformity of the proposed administrative regulation is that KRS 156.101 amendments since the enactment of 704 KAR 3:325 require the proposed amendments to conform to statute.
(d) The benefits expected from this administrative regulation are clarification as to the implementation of the Effective Instructional Leadership Act.
(e) The administrative regulation will be implemented as follows: The regulation is being amended. Information will be disseminated to local school district superintendents, professional development coordinators, and other interested parties.

October 8, 2001
(1) 704 KAR 7:120, Home/hospital instruction.
(2) The Kentucky Board of Education 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 November 26, 2001, 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
(4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 26, 2001, the public hearing will be canceled.
(5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 504-4474, fax (502) 564-3231.
(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 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 Department of Education at the address listed above.
(7) Information relating to the proposed administrative regulation.
(a) The statutory authority is KRS 159.030, 156.160, 157.220.
(b) The administrative regulation that the Kentucky Board of Education intends to promulgate is 704 KAR 7:120.
(c) The necessity and function of the proposed administrative regulation is that KRS 159.030 requires, as amended by the 1998 and 2000 General Assembly, to provide exemption from compulsory school attendance after the board of education has received satisfactory evidence, in the form of a signed statement by a licensed physician, advanced registered nurse practitioner, psychologist, psychiatrist, chiropractor or public health officer, that the condition of the child prevents or renders inadvisable attendance at school. This amendment is proposed to conform to the statutory amendments.
(d) The benefits expected from this administrative regulation are to allow advanced registered nurse practitioners and chiropractors, within their scope of practice, to sign applications for students to be considered for home/hospital placement.
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(e) The administrative regulation will be implemented as follows: Information about the provisions of the amended regulation will be distributed to each local school district.

WORKFORCE DEVELOPMENT CABINET
Department for Employment Services

October 11, 2001
(2) The Cabinet for Workforce Development, Department for Employment Services, Division of Unemployment Insurance, 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 November 27, 2001, at 9 a.m., in Conference Room A of the Commissioner’s Office, 2nd Floor, 275 East Main Street, 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 days prior to November 27, 2001, the public hearing will be canceled.
(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: James Thompson, Commissioner, Department for Employment Services, Cabinet for Workforce Development, 275 East Main Street, 2 West, Frankfort, Kentucky 40601, Phone: (502) 564-5331, Fax: (502) 564-7452.
(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 amend 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 40621.
(7) Information relating to the proposed administrative regulation:
(a) The statutory authority for the amendment of an administrative regulation relating to contract construction rates is KRS 151B.020 and 341.115.
(b) The administrative regulation that the Department for Employment Services intends to amend is 787 KAR 1:290, Contract construction rates. This administrative regulation is being amended to replace the reference to the Standard Industrial Code with the North American Industry Classification for purposes of assigning specific employment classification codes for unemployment insurance tax rate assignments. This change will correspond with the Bureau for Labor Statistics transition from SIC to NAIC.
(c) The necessity, function, and conformity of the regulation to be amended is as follows: This administrative regulation defines contract construction for the purposes of rate assignment under KRS 341.272.
(d) The benefit expected from this administrative regulation is allow Kentucky to conform with the directives of the Bureau for Labor Statistics Industrial classifications.
(e) The administrative regulation will be implemented by: This regulation will affect a very minute number of employers who previously have been considered as part of the construction trade and therefore subject to a higher unemployment insurance tax rate, and who will no longer be classified as part of the construction trade under the NAICS. These employers will be notified of the change in their tax rate when tax rate notices are mailed out at the beginning of the calendar year following codification of this regulation. Due to the extremely few number of affected employment classifications, there will be little or no impact on the trust fund.

LABOR CABINET
Department of Workplace Standards
Division of Employment Standards, Apprenticeship and Training

October 15, 2001
(1) 803 KAR 1:100. Child labor.
(2) The Secretary of Labor and Acting Commissioner of the Department of Workplace Standards, Labor Cabinet, intends to amend the 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 November 28, 2001, at 10 a.m. (ET), in the Ray 3 Conference Room at 1047 U.S. 127 South, 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, or 1 person representing the administrative body or association, agrees 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 November 28, 2001, the public hearing will be canceled.
(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mr. Larry L. Roberts, Director, Division of Employment Standards, Apprenticeship and Training, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, phone (502) 564-3070, or fax (502) 564-5484.
(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 Labor Cabinet 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 child labor is KRS Chapter 339.
(b) The administrative regulation that the Secretary of Labor and Acting Commissioner of the Department of Workplace Standards, Labor
Cabinet, will amend 803 KAR 1:100, as follows: Section 1, Definitions, will be amended to include minors who are not enrolled in school and have not achieved the required credits for graduation as set forth by the local school district authorities. Section 2, Employment of minors between 14 and 16 years of age, will be amended to change "week" to "work week"; to add in subsection (2)(e), that minors may not be employed more than 8 hours on any 1 nonschool day when school is in session; and to update the reference to federal authority for school supervised and administered work or career programs in subsection (3). Section 3, Employment of minors between 16 and 18 years of age, will be amended at subsection (2)(a) to reduce the maximum number of hours per work week minors may work while school is in session from 40 to 30, except that a minor may work a maximum of 40 hours per work week if he or she obtains written permission from a parent or legal guardian along with school certification that the student maintained a minimum of a 2.0 grade point average in the most recent grading period; at subsection (2)(b), to clarify the language; and at subsection (2)(c), to change the hour preceding a school day by which minors must cease working from 11:30 p.m. to 10 p.m. Other, non-substantive changes will be made to clarify language and to comply with KRS Chapter 13A drafting requirements.

(c) The necessity and function of the proposed administrative regulation is: KRS 339.230(3) authorizes the Commissioner of the Department of Workplace Standards to promulgate administrative regulations to protect the life, health, safety, or welfare of minors. The function of this administrative regulation is to set standards for the employment of minors. This administrative regulation and KRS Chapter 339 will guide employers and personnel in the Division of Employment Standards, Apprenticeship and Training in applying child labor restrictions.

(d) The benefits expected from the proposed amendment to the administrative regulation are: This administrative regulation has not been updated in several years. The revisions will clarify the requirements and increase protection for minors.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of Employment Standards, Apprenticeship and Training through education and enforcement activities.

CABINET FOR HEALTH SERVICES
Department for Public Health

October 15, 2001
(1) 902 KAR 10:085. On-site sewage disposal system.
(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 November 30, 2001, 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 November 30, 2001, 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 Brown, 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."

(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 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 (VTDD).

(7) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation of an administrative regulation relating to 902 KAR 100:085 are KRS 211, 350.
(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 902 KAR 10:085.
(c) The necessity, function and conformity of the proposed administrative regulation is as follows: Set requirements of onsite sewage disposal system.

(d) The benefits expected from administrative regulation are: The Cabinet for Health Services, Division of Public Health Protection and Safety, is responsible for the administration of the On-Site Sewage Disposal Systems Program. Environmental health personnel within local health departments provide surveillance and inspectional services for the program.

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

October 15, 2001
(1) 902 KAR 100:021. Disposal of radioactive material.
(2) Cabinet for Health Services, Department for Public Health intends to promulgate an administrative regulation governing the submitted matter listed above.
(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 30, 2001 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 November 30, 2001, 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 Brown, 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."

(b) 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 (VTDD).

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the disposal of radioactive material is KRS 211.842 and 211.844.

(b) The administrative regulation that the Department for Public Health intends to promulgate will amend 906 KAR 100:021. The U.S. Nuclear Regulatory Commission has amended their regulations in 10 CFR Part 20, Appendix G relating to requirements for a shipping manifest. Kentucky is an agreement state. The Department for Public Health must amend 902 KAR 100:021 to meet U.S. Nuclear Regulatory Commission requirements for compatibility as mandated by Section 274 of the Atomic Energy Act, as amended. This amendment establishes the requirements for transfer of low-level radioactive waste intended for disposal at a licensed land disposal facility and establishes manifest requirements for shipping to a processor of low-level radioactive waste.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 211.842 and 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 waste disposal limitations for radioactive material, and applies to a person disposing of radioactive material or waste.

(d) The benefits expected from this administrative regulation are: The amendments will provide a mechanism for the cabinet to ensure the proper disposition of radioactive waste from a licensed waste generator to a processor and a disposal site. The amendment requires specific documentation to ensure disposal of low-level waste and shipment of low-level radioactive waste to a processor.

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

Office of Inspector General

October 15, 2001

(1) 906 KAR 1:120. Informal dispute resolution.

(2) The Office of Inspector General 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 November 30, 2001 at 9 a.m. in the Cabinet for 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 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 November 30, 2001, 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 Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 5W-D, Frankfort, Kentucky 40621, phone: (502) 564-7905, Fax: (502) 564-7573.

(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."

(c) 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: Administrative Regulation Coordinator, Office of Inspector General, 275 East Main Street, 5E-A, 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 administrative regulations relating to health facilities and health services is KRS 194A.050 and 42 CFR 488.331

(b) The cabinet intends to amend 906 KAR 1:120 to establish formats for the informal dispute resolution process and define the role of the informal dispute resolution coordinator. Other amendments will comply with drafting requirements of KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: 42 CFR 488.331 requires the cabinet to establish an informal dispute resolution process to be used by a provider to informally dispute a finding of deficiency at a nursing facility or skilled nursing facility. This administrative regulation establishes the informal dispute resolution process and expands the process to all long term care facilities.

(d) The benefits expected from these proposed amendments are that they will allow long term care providers an opportunity to informally dispute cited deficiencies and scope and severity assessments that constitute findings of substandard quality of care or immediate jeopardy.

(e) The administrative regulation will be implemented as follows: By the Office of Inspector General, Cabinet for Health Services.

October 15, 2001

(1) 907 KAR 1:019, Outpatient Pharmacy Program.

(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 November 30, 2001, 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 November 30, 2001, 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 Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 5W-D, Frankfort, Kentucky 40621, phone: (502) 564-7905, Fax: (502) 564-7573.
(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 rule 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 an outpatient pharmacy program are KRS 19A.030(3), 19A.050(1), 205.520(3), 205.561, 205.563(2), 205.5634(2), and 205.5639(2).
(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:019, Outpatient Pharmacy Program, to revise the criteria used to review medications to be placed on the drug formulary, to describe drugs that may be on the drug formulary, to define the role and responsibilities of the Pharmacy and Therapeutics Advisory Committee, and to revise the prior authorization process and accompanying forms.
(c) The necessity, function and conformity of the proposed administrative regulation is as follows: The amendments to this administrative regulation are necessary to revise and improve the clinical review process for new drugs and comparable drug reviews, to describe drugs that may be on the drug formulary, to define the role and responsibilities of the Pharmacy and Therapeutics Advisory Committee, and to revise the prior authorization process and accompanying forms.
(d) The benefits expected from this administrative regulation are: The amendments to this administrative regulation implement a better review process for new drug reviews and comparable drug reviews and revise the drug prior authorization process all of which would reduce the inappropriate financial burden placed on the Department for Medicaid Services due to escalating drug costs.
(e) The administrative regulation will be implemented as follows: By the Division of Physical Health, Department for Medicaid Services, Cabinet for Health Services.

October 15, 2001
(1) 907 KAR 1:021, Reimbursement for drugs.
(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 November 30, 2001, 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 November 30, 2001, 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 Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 5W-D, Frankfort, Kentucky 40621, phone: (502) 564-7905, Fax: (502) 564-7573.
(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 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 reimbursement for drugs are KRS 19A.030(3), 19A.050(1), 205.520(3), 205.560, and 205.561.
(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:019, Reimbursement for drugs, to maintain its mandatory consistency with its companion administrative regulation, 907 KAR 1:019, which is currently being amended.
(c) The necessity, function and conformity of the proposed administrative regulation is as follows: The amendments to this administrative regulation are necessary to maintain its mandatory consistency with its companion administrative regulation, 907 KAR 1:019, which is currently being amended.
(d) The benefits expected from this administrative regulation are: The amendments to this administrative regulation will maintain mandatory consistency between this administrative regulation and its companion administrative regulation, 907 KAR 1:019, which is currently being amended.
(e) The administrative regulation will be implemented as follows: By the Division of Physical Health, Department for Medicaid Services, Cabinet for Health Services.
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September 18, 2001
(1) 907 KAR 1:145, Supports for community living services for an individual with mental retardation or a developmental disability.

(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 November 30, 2001 at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(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 November 30, 2001, the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, 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."

(6) 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, CHR 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 1:145, Supports for community living services for an individual with mental retardation or a developmental disability are KRS 194A.030(3), 194A.050(1), and 205.6317.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:145, Supports for community living services for an individual with mental retardation or a developmental disability; to: revise the personnel qualifications for a provider's executive director position with the addition of 1 year of administrative responsibility in an organization with served individuals with mental retardation or a developmental disability; revise the language to allow a qualified mental retardation professional (QMRP) to sign the Application for Supports for Community Living MR/DD Services (MAP-620) which will allow easier recipient access to the Supports for Community Living Waiver Program; implement a mandatory incident reporting process for the supports for community living providers; establish a new supports for community living waiting list process to comply with KRS 205.6317; make minor policy clarifications; and, make technical and formatting changes required by KRS Chapter 13A.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes the coverage provisions relating to the adequacy and quality of services provided to an individual with mental retardation or a developmental disability as an alternative to placement in an intermediate care facility for an individual with mental retardation or a developmental disability.

(d) The benefits expected from this administrative regulation are:
1. Ensure the safety and welfare of all SCL recipients; and
2. Ensure that SCL waiver providers employ executive directors whom have had administrative responsibility within an organization that served individuals with mental retardation or a developmental disability.

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

October 15, 2001
(1) 907 KAR 1:340, Payment for hospice 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 November 30, 2001 at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(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 November 30, 2001, the public hearing will be canceled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, 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."

(6) 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, CHR 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) Statutory authority for the promulgation of an administrative regulation relating to payments for hospice services are KRS 194A.030(3), 194A.050(1), 205.520(3), and 42 USC 1396 a-d.
(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:340, Payments for hospice services, to establish an overall aggregate payment that is subject to a capped amount and establish a limitation regarding the number of inpatient days per recipient. This amendment will ensure conformity with the Medicare regulation.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to establish the hospice service reimbursement methodology. The amendments to this administrative regulation are necessary to implement a reimbursement methodology that establishes an aggregate payment that is subject to a capped amount and establish a limitation regarding the number of inpatient days per recipient. These amendments will ensure conformity with the Medicare regulation.

(d) The benefits expected from this administrative regulation are: The expected benefit from this administrative regulation is the establishment of the hospice service reimbursement methodology. By implementing this amendment to the reimbursement methodology the Department for Medicaid Services will be able to expand capacity to provide services to terminally ill recipients.

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

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

October 15, 2001
(1) 921 KAR 3:030. Application process.
(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 November 30, 2001, at 9 a.m., in the Department for 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 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 November 30, 2001, the public hearing will be canceled.

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

(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, CHF 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 (V/TTY).

(7) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation of an administrative regulation relating to 921 KAR 3:030 are KRS 116.048, 194B.050(1), 7 USC 2020(e)(2)(B)(i), (iii), (iv).
(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a proposed amendment to administrative regulation, 921 KAR 3:030, Application process. The proposed administrative regulation is necessary to:
1. Revise material incorporated by reference regarding the Food Stamp Application form;
2. Allow for additional updates to other material incorporated by reference as determined necessary by the cabinet to administer the provisions of the Food Stamp Program;
3. Allow for additional clarifications, if needed, regarding the application process; and
4. Make necessary corrections to comply with KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: 921 KAR 3:030 sets forth the application process used by the cabinet in the administration of the Food Stamp Program.

(d) The benefits expected from this administrative regulation are:
1. The material incorporated by reference will be updated to comply with a federal mandate pertaining to the application process; and
2. The revisions to incorporated material will prevent the loss of federal funds.

(e) The administrative regulation will be implemented as follows: This administrative regulation will be administered by the Department for Community Based Services, Division of Policy Development.

October 15, 2001
(1) 922 KAR 1:320, Fair hearing.
(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 November 30, 2001, at 9 a.m., in the Department for 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 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 November 30, 2001, the public hearing will be canceled.

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

(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 Administrative Regulation Coordinator, Department for Community Based Services, Division of Policy Development, Third Floor West, CHR 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 (V/TTY).

(7) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation of an administrative regulation relating to 922 KAR 1:320 are KRS Chapter 138, 1948.050(1), 45 CFR 1355.21(b), 1355.30(p), 42 USC 5105a.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a proposed amendment to administrative regulation, 922 KAR 1:320. The proposed administrative regulation is necessary to:
1. Clarify and streamline the process by which persons aggrieved by an action of the cabinet may obtain administrative review.
2. Update material incorporated by reference, as needed.
3. Make necessary corrections to comply with KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Under Titles IV-A, IV-B, IV-E, and XX of the Social Security Act, the single state agency responsible for the program shall be required by federal regulation, 45 CFR 205.10, to provide a hearing to an applicant or recipient who is unsatisfied with an agency action resulting in denial, suspension, reduction, discrimination, exclusion or termination of services.

(d) The benefits expected from this administrative regulation are: The amendments to this regulation clarify the rights and responsibilities of the public and the cabinet in service appeals.

(e) The administrative regulation will be implemented as follows: This administrative regulation will be administered by the Cabinet for Families and Children.

October 15, 2001

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

(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 November 30, 2001, at 9 a.m., in the Department for 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 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 November 30, 2001, 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, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9126 (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."

(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, CHR 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 (V/TTY).

(7) Information relating to the proposed administrative regulation.
(a) The statutory authority for the promulgation of an administrative regulation relating to 922 KAR 1:360 is KRS 1948.050(1) and 199.641.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a proposed amendment to administrative regulation, 922 KAR 1:360. The proposed administrative regulation is necessary to:
1. Classify and amend the levels of care rates for private child-care facilities and foster care, based on the time study and cost report, as required in KRS 199.641(3). The department shall use the model program cost analysis as a basis for cost estimates for the development of the department's biennial budget request, to the extent funds are available;
2. Revise forms incorporated by reference if needed;
3. Make other policy changes necessary for administration of the administrative regulation;
4. Make corrections to comply with KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 199.641 authorizes the Cabinet for Families and Children to establish rates for payments for private child-caring and child-placing agencies to ensure:
1. Each private child-caring facility or child-placing agency receives payment consistent with the level of care assigned to each child who is placed by the cabinet in the facility or placed by a child-caring agency in out-of-home care; and
2. Each child under the custody of the cabinet shall be placed in a type of placement that best suits the child's needs.

(d) The benefits expected from this administrative regulation are: This administrative regulation deals with:
1. Payment methodology for private child care facilities;
2. A five level reimbursement system based on the needs of the child and the custody of the cabinet; set emergency shelter care;
3. A basic rate for a child-placing agency providing foster care services;
4. The responsibilities of the gatekeeper in regard to assessment and evaluation of care; and
5. The levels of care rates for private child-caring facilities and foster care, based on the time study and cost report, as required in KRS 199.641(3). The department shall use the model program cost analysis as a basis for cost estimates for the development of the department's biennial budget request, to the extent funds are available.

(e) The administrative regulation will be implemented as follows: This administrative regulation will be administered by the Department for Community Based Services, Division of Policy Development.
KENTUCKY BOARD OF EMERGENCY MEDICAL SERVICES
(New Emergency Administrative Regulation)

202 KAR 7:010E. Definitions.

RELATES TO: KRS 311.6523, 311.6541
STATUTORY AUTHORITY: KRS 311.6523, 311.6541
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.6541
Authorizes the Kentucky Board of Emergency Medical Services to promulgate administrative regulations relating to emergency medical technicians (EMTs). This administrative regulation establishes definitions that are used in 202 KAR Chapter 7 relating to EMTs.

Section 1. Definitions. (1) "Adjunct faculty" means a person other than regular or regularly assigned instructional faculty of an EMS educational institution who may be called upon, due to their unique qualifications, to teach a lesson in an EMT training course. (2) "Board" means the Kentucky Board of Emergency Medical Services (KBEMS). (3) "Cabinet" means the Cabinet for Health Services. (4) "Certificate" means the certificate issued by the board to an individual qualified to perform the duties of an EMT. (5) "Certified" means a person who holds a certificate issued as a result of fulfilling the requirements of 202 KAR 7:050, 202 KAR 7:060 and 202 KAR 7:092. (6) "Conviction" means the result of a court hearing or criminal trial which ends in a final judgment or sentence that the accused is guilty of the charged offense or a lesser included offense. A finding of guilty shall also include a plea of guilty, or a plea of nolo contendere. A conviction shall be considered a final judgment until it has been expunged by pardon, reversal, set aside, or otherwise rendered nugatory. (7) "Employee" means a person who is employed full time, part time, paid or volunteer. (8) "EMS educational institution" means a public or private organization approved by the board to conduct, supervise and coordinate an EMT training course for initial certification. (9) "EMS testing agency" means a public or private organization approved by the board to administer a Kentucky EMT certification examination. (10) "Emergency medical technician" (EMT) means the following levels of EMT certification: (a) EMT-Basic; (b) EMT-Basic Instructor; (c) EMT-instructor trainer; (d) EMT-first responder; and (e) EMT-first responder instructor. (11) "EMT-Basic" (EMT-B) means an individual certified by the board as an EMT-B who is trained to provide immediate emergency medical care and intervention to stabilize a patient’s condition at the scene of an emergency and en route to definitive medical care. (12) "EMT-B instructor" means a person certified by the board to teach EMT-B and EMT-first responder courses. (13) "EMT-B instructor candidate" means a certified EMT-B who has completed initial training as an EMT-B instructor and is performing a student teaching internship and evaluation for eligibility to become certified as an EMT-B instructor while under the supervision of a certified EMT-B instructor. (14) "EMT-first responder" (EMT-FR) means an individual certified by the board to perform basic level of patient care skills in order to stabilize a patient’s condition until an EMT-B or other higher level of certified or licensed emergency medical services (EMS) personnel arrives. (15) "EMT-first responder instructor" (EMT-FR instructor) means a person, other than an EMT-B instructor, who is approved by the board to teach an EMT-first responder course. (16) "EMT instructor trainer" (EMT-IT) means a certified EMT-B instructor appointed by the board to teach EMT-B instructor courses and evaluate EMT-B instructor candidates. (17) "Interfacility" means a situation in which a licensed ambulance is utilized to transport a person from a licensed health care facility or a physician’s office to another licensed health care facility. (18) "Lead instructor" means an instructor appointed by a program coordinator to assume primary responsibility for teaching and overseeing an EMT course. (19) "Medical director" means: (a) A physician licensed by the (KBEMS); (b) Who has presented evidence to be on file with the Kentucky Board of Emergency Medical Services to verify that the qualifications of the medical director have been met; (c) Is a physician who holds certification in advanced cardiac life support (ACLS) or is in the process of completing ALS; (d) Participates and ensures quality assurance of runs, training and practice of BLS or ALS skills; and (e) Assumes other responsibilities as agreed upon between the medical director and the director of the ambulance service. (20) "The National Registry of Emergency Medical Technicians" (NREMT) means the national professional organization that specializes in practical skills and written examination materials used in evaluation of prehospital personnel. Their services may be utilized for implementing the EMT-B, EMT-FR, and paramedic practical skills and written examinations in the EMS personnel certification or licensing process for participating states. The individual prehospital personnel who meet the NREMT minimum examination requirements are eligible for NREMT registration. (21) "NREMT-B" means an EMT-basic established in subsection (11) of this section who has met the requirements for NREMT registration. (22) "NREMT-FR" means an EMT-first responder established in subsection (14) of this section, who has met the requirements for NREMT registration. (23) "Paramedic" means an individual licensed by the board who is trained to provide immediate emergency medical care and intervention, consistent with authorized procedures described in 202 KAR 7:426, in order to stabilize a patient’s condition at the scene of an emergency and en route to definitive medical care. (24) "Pilot program" means a program approved by the board to permit an EMS educational institution, ambulance service to educate, train and authorize selected EMT students or employees to utilize a specialized procedure, for a specified time period, that has not been previously approved by administrative regulation. (25) "Preestablished I.V." means an intravenous solution that has been established on a person prior to the arrival of emergency medical service personnel at the scene or facility.

MARK K. BAILEY, Chairperson
APPROVED BY AGENCY: October 3, 2001
FILED WITH LRC: October 11, 2001 at 2 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Patricia T. Bausch, Sturgill, Turner, Barker & Mologny, PLLC, 155 East Main Street, Suite 400, Lexington, Kentucky 40507, Telephone: (859) 255-3581

1. Provide a brief summary of:
(a) What this administrative regulation does: Provides the definitions for the EMT regulations.
(b) The necessity of this administrative regulation: Establishes meaning of terms for EMT regulations.
(c) How this administrative regulation conforms to the content of the authorizing statutes: allows for understanding of terms contained in EMT regulations.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It establishes the definitions for terms in EMT regulations.

- 1081 -
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: N/A
(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 effective administration of the statute;
(d) How the amendment will assist in the effective administration of the statute;
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 10,671 EMT’s and 2,729 EMT first responders.
(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: Establishes definitions for terms in EMT regulations.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: N/A
(b) On a continuing basis: N/A
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A
(9) TIERING: Is tiering applied? No. This regulation defines terms contained in the EMT regulations.

STATEMENT OF EMERGENCY
301 KAR 3:026E

This emergency administrative regulation establishes the procedure for obtaining a method exemption and special use permit for a mobility-impaired individual who wishes to use wildlife management areas maintained by the Department of Fish and Wildlife Resources. In light of the recent Supreme Court case, P.G.A. Tour, Inc. v. Martin, 121 S.Ct. 1879, and the nearing 2001 deer hunting season, which includes participants who are mobility-impaired, this administrative regulation is necessary to more easily facilitate the participation of mobility-impaired individuals in hunting and wildlife recreation activities on wildlife management areas maintained by the Department of Fish and Wildlife Resources. This administrative regulation is necessary to improve access for mobility-impaired individuals. An ordinary administrative regulation will not become effective in time for the 2001 deer season and mobility-impaired individuals will not have improved access or use. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The notice of intent was filed with the Regulations Compiler on September 2, 2001.

G. THOMAS BENNETT, Commissioner
PAUL E. PATTON, Governor

TOURISM DEVELOPMENT CABINET
Department of Fish Wildlife Resources

(Emergency Amendment)

301 KAR 3:026E. Access to wildlife management areas for mobility-impaired individuals.

RELATES TO: KRS 150.025(1), 150.170, 150.175, 150.620
STATUTORY AUTHORITY: KRS 150.025(1), 150.620
EFFECTIVE: September 28, 2001
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish hunting seasons and to regulate bag and possession limits for, and methods of taking and the devices used [use] to take, wildlife. In addition, KRS 150.620 authorizes [allows] the department to regulate the use of its wildlife management areas. This administrative regulation simplifies [will simplify] the process for obtaining [hunting] method exemptions and special use permits for mobility-impaired individuals and promotes nature-related recreational [will also increase] access to department-managed lands [and hunting opportunities for mobility-impaired individuals].

Section 1. Definitions. (1) "ATV" is [means-all-terrain vehicle-as] defined in KRS 189.010(24)
(2) "Department" is defined in KRS 150.010(8) [means the Kentucky Department of Fish and Wildlife Resources].
(3) "Mobility-impared individual" means an individual who meets the requirements of Section 2(1) of this administrative regulation [with a permanent physical impairment as follows:
(a) Has permanent paralysis of at least one (1) leg;
(b) Has at least one (1) foot amputated;
(c) Is permanently confined to a wheelchair or must use crutches, or a walker as a means of support to pursue daily activities;
(d) Is restricted by a lung disease to such an extent that the person's forced (respiratory) expiratory volume for one (1) second, when measured by spirometry, is less than one (1) liter, or the arterial oxygen tension is less than sixty (60) mm/Hg on room air at rest;
(e) Requires portable oxygen;
(f) Has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class 3 or Class 4 according to standards set by the American Heart Association; or
(g) Has a diagnosed disease which creates a severe mobility impairment].
(5) "Motor vehicle" is [means-any-vehicle-as] defined in KRS 189.010(19b).
(5) "Qualified assistant" means an individual who is [legally participating in the activity with the mobility-impaired individual and designated by the mobility-impaired individual].
(6) [Watercraft] means any vessel as defined by KRS 335.010.
(7) "WMA" means a wildlife management area [Area] owned or operated by the department.

Section 2. Mobility-impaired Access Permit. (1) If a person meets one (1) of the following requirements, he shall qualify for a mobility-impaired access permit application from the department:
(a) Has permanent paralysis of at least one (1) leg;
(b) Has at least one (1) foot amputated;
(c) Is permanently confined to a wheelchair or must use crutches, or a walker as a means of support to pursue daily activities;
(d) Is restricted by a lung disease to such an extent that the person's forced respiratory expiratory volume for one (1) second, when measured by spirometry, is less than one (1) liter, or the arterial oxygen tension is less than sixty (60) mm/Hg on room air at rest;
(e) Requires portable oxygen;
(f) Has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class 3 or Class 4 according to standards set by the American Heart Association; or
(g) Has a diagnosed disease which creates a severe mobility impairment.
(2) The mobility-impaired access permit shall allow the following activities by a mobility-impaired individual: [The department shall issue to qualified individuals a mobility-impaired access permit that allows the following activities by the mobility-impaired individual:]
(a) Discharge of a firearm or other legal hunting device from a motor vehicle [or watercraft] when the vehicle is motionless and has its engine turned off. The motor vehicle shall [may only] be used as a place to wait or watch for game and shall not be used to chase, pursue, or drive game.
(b) May operate electric wheelchairs, ATVs, and other passenger vehicles on or off gated or ungated or open-gated roads otherwise closed to vehicular traffic but only on designated tracts of designated WMAs.
1. The roads may be accessed March 1 through the third Friday in August. [Those WMAs with designated tracts where this rule applies shall be designated in the "Kentucky's Accessible Public Fishing, Hunting, and Wildlife Viewing Sites.
2. Tracts designated as mobility-impaired access areas shall [will] be posted with signs.
3. [This access rule does not permit] Vehicular access shall not be permitted on fields, openings, roads [read], paths, or trails planted with annual grains [to wildlife food, cover] or agricultural crops.
4. It shall be permissible to access areas which are not roads the
third Saturday of August until the end of February.
5. ATV users shall adhere to manufacturer recommendations including wearing a helmet, wearing safety glasses, and restricting riding to one (1) person, while using ATVs on WMAs.

Section 3. (1) A mobility-impaired individual [ei] may designate one (1) qualified assistant. The qualified assistant may:
(a) Track and dispatch a wounded animal;
(b) [Revised by LRC 906:250]
(c) Render other assistance in accordance with [the administrative regulation.] KRS Chapter 150 and 301 KAR Chapters 2 and 3 [any administrative regulation promulgated thereunder]. The qualified assistant shall not use any vehicle as a blind, unless such person meets the requirements of this administrative regulation.
(2) A qualified assistant shall not:
(a) Operate his or her own ATV;
(b) Hunt or shoot from an ATV.
(3) Applicants for a mobility-impaired access permit shall,
(a) Fill out the required information on the Mobility Impaired Access Permit Application; and
(b) Obtain the attestation and signature from a licensed physician describing the mobility impairment. [Applicants for a mobility-impaired access permit shall obtain from the department a form that provides the following information:
(a) Applicants name, ID number, mailing address, and phone number; and
(b) A statement from a Kentucky licensed physician which includes the physician’s name, address, description of impairment, and signature, attesting that the applicant is a mobility impaired individual as defined in Section 1 of this administrative regulation.]
(4) [Revised by LRC 906:250] In order to participate in activities authorized [allowed] by Section 2(2) of this administrative regulation, a mobility-impaired individual shall have a completed mobility-impaired access application [permit] on his person at all times while participating in such activities.

Section 4. All method exemption cards and letters issued prior to the effective date of this administrative regulation are void.

Section 5. Incorporation by Reference. (1) "Mobility-Impaired Access Permit", revised August 2001, is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Fish and Wildlife Resources, 1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
DR. JAMES RICH, Chairman
APPROVED BY AGENCY: December 2000
FILED WITH LRC: September 28, 2001 at 4 p.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Ellen Benzing
(1) Provide a brief summary of: This administrative regulation simplifies the process for obtaining method exemptions and special use permits for mobility-impaired individuals and promotes nature related recreational access to department managed lands.
(a) What the administrative regulation does: This administrative regulation allows mobility-impaired individuals to use ATVs on wildlife management areas.
(b) The necessity of the administrative regulation: The necessity of this administrative regulation is to provide equal access and recreational use to those with a mobility impairment.
(c) How does this administrative regulation conforms with the authorizing statute: KRS 150.025 authorizes the department to establish the methods of taking and the devices used to take wildlife.
(d) How will this administrative regulation assist in the effective administration of the statutes: This administrative regulation will promote more equal nature related recreational access to department managed lands.
(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 allows the use of ATVs on department wildlife management areas ("WMAs"). Previously ATVs were not allowed on WMAs.
(b) The necessity of the amendment to this administrative regulation: The necessity of the amendment is to promote more equal access to department wildlife management areas.
(c) How does the amendment conform to the authorizing statute: KRS 150.620 authorizes the department to regulate the use of its wildlife management areas.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statute by providing more equal access and use for mobility-impaired individuals.
(3) List the type and number of individuals, businesses, organizations, or state and local governments that will be affected: Disabled individual will be affected in that they may now use ATVs for access and mobility on wildlife management areas.
(4) Provide an assessment of how the above groups will be impacted by either the implementation of this administrative regulation, if new, or, by the change if it is an amendment: Mobility-impaired individuals will be impacted in a positive way in that they may now access WMAs for recreational purposes by the use of an ATV which will assist their mobility.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no cost.
(b) On a continuing basis: There will be no continuing cost.
(6) What is the source of funding to be used for implementation and enforcement of this administrative regulation: Current Division of Law Enforcement funds already fund the enforcement of administrative regulations and statutes or the WMAs.
(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 a need to increase funding to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees directly or indirectly: There are no fees established directly or indirectly. The use of WMAs is free.

TIERING: Is tiering applied? Tiering was not used because there is only one group of people this administrative regulation applies to, the mobility impaired.

STATEMENT OF EMERGENCY
906 KAR 1:120E

This emergency administrative regulation amends 906 KAR 1:120 to extend the informal dispute resolution process to licensure deficiencies and expand the informal dispute resolution process to all long-term care providers. Three (3) Informal dispute resolution formats are being established to allow long-term care providers disputing deficiencies an ample opportunity to provide evidence and documentation supporting their dispute. This administrative regulation must be enacted on an emergency basis in order to prevent long-term care providers from losing Medicare/Medicaid reimbursement and other funding. Establishing a more thorough informal dispute resolution process and expanding the process to all long-term care providers will likely result in fewer monetary penalties being levied against long-term care providers. The emergency administrative regulation shall be replaced by a primary administrative regulation. The notice of intent to promulgate an administrative regulation will be filed with the Regulations Compiler at the same time as the emergency administrative regulation is filed.

PAUL E. PATTON, Governor
MARCIA R. MORGAN, Secretary

CABINET FOR HEALTH SERVICES
Office of Inspector General
(Emergency Amendment)

906 KAR 1:120E. Informal dispute resolution.
RELATES TO: 42 CFR 488.301, 488.331
STATUTORY AUTHORITY: KRS 194.030(11)(b). 42 CFR
Section 1. Definitions. (1) "Deficiency" means a failure to meet either a state licensure requirement or a federal requirement for participation in the Medicare or Medicaid Program.

(2) "Enforcement action" means a remedy applied to effect prompt compliance by a provider with program requirements.

(3) "IDR coordinator" means a CMS-certified surveyor employed by the Office of Inspector General, Division of Long Term Care designated by the Director of the Division of Long Term Care to serve as the IRS coordinator.

(4) "Imminent jeopardy" means as defined in 42 CFR 488.301.

(5) [44] "Plan of correction" means a description of actions by a provider to correct a deficiency.

(6) [63] "Provider" means a long-term care facility defined in KRS 216.510 [nursing facility or skilled nursing facility subject to the requirements of 42 CFR 488-489].

(7) "Scope and severity assessment" means the letter designation assigned to a federal deficiency to represent the level of:

(a) Actual or potential harm to residents; and
(b) Number of residents affected.

(8) [62] "Regional program manager" means the regional program manager responsible for the survey and survey team, or his designee.

(9) "Statement of deficiencies" means the written notification to the provider describing how the provider fails to meet participation requirements.

(10) [63] "Substandard quality of care" means as defined in 42 CFR 488.301.

Section 2. Request for Informal Dispute Resolution. (1) A provider shall have one (1) informal opportunity to dispute a cited deficiency or scope and severity assessment that constitutes substandard quality of care or imminent jeopardy.

(2) The provider requesting an informal dispute resolution shall select the appropriate format for the informal dispute resolution, either:

(a) A desk review which shall be available for a cited deficiency; or
(b) A telephone conference review which shall be available for a cited deficiency or;
(c) A panel review which shall be available for:

2. A cited deficiency with a scope and severity assessment that constitutes a substandard quality of care;
3. A cited deficiency that results in an enforcement action by the Cabinet for Health Services;
4. A federal deficiency cited at the condition level;
5. A provider may request informal dispute resolution upon receipt of the statement of deficiencies.

(3) [44] A request shall be in writing and shall:

(a) Specify the deficiency in dispute;
(b) Explain the dispute and provide a detailed basis for the dispute; and
(c) Specify the format desired. [If desired, request a face-to-face meeting between the provider and the survey agency.]

(4) [44] Documentation in support of the provider's position shall be attached to the request.

(5) [63] The request and attachments shall be delivered to the IDR coordinator at the following address: Office of Inspector General, Division of Long Term Care, CHR Building, 275 East Main Street, SE-A, Frankfort, Kentucky 40621 [regional program manager] or before the mandated return date for the plan of correction.

(6) [63] A request for informal dispute resolution shall not delay an enforcement action.

Section 3. Review Process. (1) The IDR coordinator shall:

(a) Receive and review the requests for an informal dispute resolution and either:

(b) Conduct a desk review of informal dispute resolution if requested by the provider;
(c) Schedule a telephone conference IDR if appropriate and requested by the provider; or
(d) Schedule a panel review of informal dispute resolution if appropriate and requested by the provider. [The survey agency review team shall:

(a) Make the determination regarding the resolution of the dispute; and
(b) Include:

1. The regional program manager, or his designee; and
2. A certified surveyor who did not participate in;
   a. The original survey; or
   b. The decision to issue the deficiency.

(2) If a desk review is conducted the IDR coordinator shall:

(a) Review all documentation submitted by the provider; and
(b) Make the determination either:

1. Uphold the cited deficiency.
2. Modify the cited deficiency by deleting a finding.
3. Modify the cited deficiency by lowering the scope and severity determination;
4. Delete the cited deficiency. [If requested under Section 2(3)(c) of this administrative regulation, a face-to-face meeting shall be conducted by the survey agency.]

(3) If a telephone conference is conducted the IDR coordinator shall:

(a) Review all documentation submitted by the provider;
(b) Conduct a telephone conference call with the provider to:
   1. Receive verbal comments relating to the disputed deficiency;
   2. Seek answers to questions relating to the disputed deficiency;
   3. Make the determination either:

1. Uphold the cited deficiency.
2. Modify the cited deficiency by deleting a finding;
3. Modify the cited deficiency by lowering the scope and severity determination;
4. Delete the cited deficiency.

(4) If a panel review is conducted:

(a) The panel shall consist of:
1. The IDR coordinator who shall:
   a. Serve as the moderator of the panel;
   b. Not have a vote in the decision of the panel;
   c. Two (2) HCFA certified surveyors that;
      a. Are employed by the Office of Inspector General, Division of Long Term Care; and
      b. Were not responsible for citing the deficiency in dispute;
2. A person affiliated with the long-term care industry;
3. The members of the panel shall review all documentation submitted by the provider prior to the panel review meeting.

(c) The panel review meeting shall not exceed one (1) hour.

(d) The facility shall be allowed to present additional information related to the disputed deficiency.

(e) A member of the survey team that was responsible for citing the disputed deficiency shall be allowed to respond to the information presented by the provider.

(f) A panel member may ask questions of either the provider or the survey team member.

(g) The provider shall be allowed to present a summary of their response to a disputed deficiency.

(h) After the panel review meeting has concluded the panel shall review all of the information presented related to the disputed deficiency.

(i) The voting members of the panel shall make the determination to either:

1. Uphold the cited deficiency.
2. Modify the cited deficiency by deleting the finding;
3. Modify the cited deficiency by lowering the scope and severity determination;
4. Delete the cited deficiency.

(5) A determination made as a result of the desk review informal
dispute resolution, telephone conference review informal dispute resolution, or panel review informal dispute resolution shall be made and the provider shall be notified by mail of the determination within thirty (30) days of receipt of a request for informal dispute resolution.

(6) If a cited deficiency was modified as a result of the informal dispute resolution process the provider may request the Office of Inspector General, Division of Long Term Care to provide:
(a) A copy of the statement of deficiencies indicating where the disputed deficiency was modified by:
1. Striking through deleted language; and
2. Underlining new language; or
(b) A new statement of deficiencies containing the modified deficiency. If a new statement of deficiencies is issued the provider will be required to complete a new plan of correction.
(7) If a cited deficiency was deleted the provider may request the Office of Inspector General, Division of Long Term Care to provide:
(a) A copy of the statement of deficiencies indicating where the disputed deficiency was deleted; or
(b) A new statement of deficiencies absent the deleted deficiency. If the new statement of deficiencies contains other cited deficiencies that were not deleted the provider shall be required to complete a new plan of correction. [The provider shall be advised verbally of the determination, with written confirmation to follow.]
(4) The determination shall be made within thirty (30) days of receipt of a request for informal dispute resolution.

PAMELA J. MURPHY, Inspector General
MARIA R. MORGAN, Secretary
APPROVED BY AGENCY: October 10, 2001
FILED WITH LRC: October 15, 2001 at 11 a.m.

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 the process for long-term care providers to informally dispute federal deficiencies cited by the Office of Inspector General at nursing facilities and skilled nursing facilities subject to the requirements of 42 CFR 488.331.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with a federal Medicare and Medicaid requirement that the state survey agency provide long-term care providers, subject to the requirements of 42 CFR 488.331, an opportunity to informally dispute cited deficiencies.
(c) How this administrative regulation conforms to the content of the authorizing statutes: 42 CFR 488.331 requires the cabinet to establish an informal dispute resolution process to be used by a provider to informally dispute a finding of deficiency at a nursing facility or skilled nursing facility. This administrative regulation establishes the informal dispute resolution process.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statute: This administrative regulation allows a long-term care provider that receives a deficiency the opportunity to informally dispute the deficiency as required by 42 CFR 488.331.
(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 regulation will establish 3 formats for the informal dispute resolution process. The amended regulation will allow providers to informally dispute licensure deficiencies. The informal dispute resolution process will be expanded to allow all long-term care providers an opportunity to dispute cited deficiencies.
(b) The necessity of the amendment to this administrative regulation: The amended regulation is necessary to provide all long-term care providers the opportunity to informally dispute cited deficiencies and to provide informal dispute resolution formats that allow for a more equitable decisions in the informal dispute resolution process.
(c) How the amendment conforms to the content of the authorizing statutes: This administrative regulation is necessary to comply with a federal Medicare and Medicaid requirement that the state survey agency provide long-term care providers an opportunity to informally dispute cited deficiencies. This regulation is also required to allow an informal process for long-term care providers to informally dispute licensure deficiencies cited by the Office of Inspector General.
(d) How the amendment will assist in the effective administration of the statutes: The amended regulation will allow all long-term care providers the opportunity to informally dispute cited deficiencies.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, there are 313 nursing facilities and skilled nursing facilities subject to the provisions of this administrative regulation. The amended regulation will expand the informal dispute resolution process to all long-term care providers with a total number of 649 facilities.
(f) Provide an assessment of how the above groups or groups will be affected by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amended regulation will allow all long-term care providers an opportunity to informally dispute cited deficiencies. The new formats established will enhance the long-term care providers ability to present documentation relating to disputed deficiencies.
(g) Provide an estimate of how much it will cost to implement this administrative regulation: Initially: At this time we are unable to predict the cost to implement the amended regulation, as we are unable to determine how much the changed process will be utilized.
(h) On a continuing basis: At this time we are unable to predict the ongoing cost to administer the amended regulation, as we are unable to determine how much the changed process will be utilized.
(i) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds.
(j) 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 amended regulation will not result in an increase to any fees.
(k) State whether or not this administrative regulation establishes an fees or directly or indirectly increases any fees: This regulation does not establish any fees either directly or indirectly.
(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" clause 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 regulations constituting the mandate: 42 CFR 488.331.
2. State compliance standards: This amended regulation establishes an informal dispute resolution process to be used by all long-term care providers to informally dispute a state licensure deficiency or a federal deficiency.
3. The federal mandate requires the cabinet to establish an informal dispute resolution process to be used by a nursing facility provider or skilled nursing facility provider to informally dispute a federal deficiency.
4. This regulation will not impose a stricter standard than the federal regulation. This regulation differs from the federal regulation by allowing all long-term care providers to informally dispute both federal deficiencies and state licensure deficiencies.

STATEMENT OF EMERGENCY

107-1R3 1:9BE

This emergency administrative regulation is being promulgated to revise the Department for Medicaid Services (DMS) drug prior authorization process and clinical review process for new drug reviews and comparable drug reviews and to define the role and responsibilities of the Pharmacy and Therapeutics Advisory Committee. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety, or welfare of Medicaid recipients because the current drug prior authorization and clinical
review processes threaten to jeopardize the availability of funding necessary to ensure the continued operation of the Medicaid Program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
MARCIA R. MORGAN, Secretary

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Physical Health
(Emergency Amendment)

907 KAR 1:091E. Outpatient Pharmacy Program [Pharmacy services].

RELATES TO: KRS Chapter 13B, 205.510, 205.560, 205.561 [61,605—through 61,650—205.620], 205.563, 205.6316, 205.8451, 217.015, 217.822, [314,660, 314.680, 314.814, 314.042, 314.080—314.300, 42 CFR 430.10, 440.120, 447.331, 447.332, 447.333, 447.334, 42 USC 1396a, b, c, d, r-8

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.561, 205.5632(2), (4)(a), 205.5634(2), 205.5639(2)

EFFECTIVE: October 15, 2001

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. KRS 205.560 provides that the scope of medical care for which Medicaid shall pay is determined by the Cabinet for Health Services by administrative regulations promulgated by the cabinet. This administrative regulation establishes the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program, relating to pharmacy services for which payment shall be made by the Medicaid Program on behalf of all the categorically needy and medically needy.

Section 1. Definitions, (1) "Brand name drug" means the registered trade name of a drug which was originally marketed under an original new drug application approved by the Food and Drug Administration.

(2) "Brand name drug override" means an approval by the department for the dispensing of a brand name drug instead of an available generic form of the brand name drug.

(3) "Commissioner" means the Commissioner of the Department for Medicaid Services.

(4) "Covered drug" means a drug for which the Department for Medicaid Services provides coverage in accordance with Sections 2 and 3 of this administrative regulation.

(5) "Department" means the Department for Medicaid Services or its designated agent.

(6) "Department's Internet web site" or "web site" means the Internet web site maintained by the Department for Medicaid Services and accessible at http://chs.state.ky.us/dmr.

(7) "Dosage form" means the type of physical formulation used to deliver a drug to the intended site of action, including a tablet, an extended release tablet, a capsule, an elixir, a solution, a powder, a spray, a cream, an ointment, or any other distinct physical formulation recognized as a dosage form by the Food and Drug Administration.

(8) "Drug formulary" means the list of drugs and drug categories published by the Department for Medicaid Services' list which specifies noncovered drugs and drug categories and covered drugs requiring prior authorization or dispensing restrictions or noncovered medical uses. The drug formulary may also include information about other drugs or drug categories and dispensing and prescribing information.

(9) "Drug Management Review Advisory Board" or "DMRB" means the board established pursuant to KRS 205.5636.

(10) "Food and Drug Administration" means the Food and Drug Administration of the United States Department of Health and Human Services.

(11) "Generic drug" or "generic form of a brand name drug" means a drug which contains identical amounts of the same active drug ingredients in the same dosage form and which meets official compendia or other applicable standards of strength, quality, purity and identity in comparison with the brand name drug.

(12) "Inappropriate financial burden" means that:
(a) The cost to the department for a drug is greater than the cost of an alternative drug that is clinically appropriate based on generally accepted standards of good medical practice; and
(b) The additional cost of the drug is not outweighed by substantial clinically-meaningful therapeutic advantages in terms of safety, effectiveness, or clinical outcomes.

(13) "Legend drug" means a drug so defined by the Food and Drug Administration and required to bear the statement: "Caution: Federal law prohibits dispensing without prescription."

(14) "Manufacturer" is defined in 42 USC 1396r-8(k)(5).

(15) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(16) "Official compendia" is defined in 42 USC 1396r-8(k)(1)(B)(i).

(17) "Over-the-counter drug" or "OTC drug" means a drug approved by the Food and Drug Administration to be sold without bearing the statement: "Caution: Federal law prohibits dispensing without prescription."

(18) "Pharmacy and Therapeutics Advisory Committee" or "Committee" or "P&T Committee" means the pharmacy advisory committee appointed by the Governor.

(19) "Prescriber" means a health care professional who, within the scope of practice under Kentucky licensing laws, has the legal authority to write or order a prescription for the drug as prescribed.

(20) "Recipient" means an individual eligible for and participating in a medical assistance program in the Department for Medicaid Services.

(21) "Secretary" means the Secretary of the Cabinet for Health Services.

(22) "Significant safety issue" means that, based on a review of scientifically-significant adverse side effects, drug interactions, contraindications, precautions and warnings, administration and dosage, and an assessment of the likelihood of significant abuse of the drug, the risk to safety posed by the drug is so great that it substantially outweighs the clinical advantage of having the drug available without prior authorization.

Section 2. Covered Benefits and Drug Formulary. (1) A drug covered through the Outpatient Pharmacy Program shall be:

(a) Medically necessary;

(b) Approved by the Food and Drug Administration; and

(c) Prescribed for an indication that has been approved by the Food and Drug Administration or for which there is documentation in the official compendia or peer-reviewed medical literature supporting its medical use.

(22) The department shall have a drug formulary which:

(a) Lists noncovered drugs and drug categories and, if applicable, noncovered medical uses for covered drugs;

(b) Specifies those covered drugs requiring prior authorization or having special prescribing or dispensing restrictions;

(c) Specifies those covered drugs for which there are three (3) month supply or 180 units, whichever is greater, may be dispersed;

(d) Lists covered over-the-counter drugs;

(e) Specifies those legend drugs which are permissible restrictions under 42 USC 1396r-8(d), but for which the department makes reimbursement;

(f) Specifies covered vaccines;

(g) May include a preferred drug list of selected drugs having a more favorable cost profile to the department than those covered;

(h) Is updated at least monthly by the department; and

(i) Is accessible for review on the department's Internet web site.

(3) The department may implement drug treatment protocols which shall require the use of clinically-appropriate drugs which are available without prior authorization before the use of drugs which require prior authorization unless documentation is provided by the prescriber for a specific recipient that drugs available without prior authorization:

(a) Were used and were not effective or lost their therapeutic effectiveness;

(b) Are reasonably expected to be therapeutically ineffective;
Section 3, Exclusions and Limitations. (1) The following drugs shall be excluded from coverage: 
(a) A drug:
   1. For which the Food and Drug Administration has published a
      notice of opportunity for a hearing concerning its proposal to withdraw
      approval of the drug for marketing and which, after publication of the
      notice, is referred to as a less-than-effective drug; or
   2. A drug which the Food and Drug Administration considers to be
      identical, related, or similar to the less-than-effective drug;
   (b) A drug or its medical use in one of the following categories
      unless the drug or its medical use is designated as covered in the drug
      formulary:
      1. A drug if used for anorexia, weight loss, or weight gain;
      2. A drug if used to promote fertility;
      3. A drug if used for cosmetic purposes or hair growth;
      4. A drug if used for the symptomatic relief of cough and colds;
      5. A drug if used to promote smoking cessation;
      6. Vitamin or mineral products other than prenatal vitamins and
         fluoride preparations;
      7. An over-the-counter drug;
      8. A barbiturate;
      9. A benzodiazepine; or
      10. A drug which the manufacturer seeks to require as a condition
          of sale that associated tests or monitoring services be purchased
          exclusively from the manufacturer or its designee;
   (c) A drug for which the manufacturer has not entered into or
      complied with a rebate agreement in accordance with 42 USC 1398tt-
      8(a), unless there has been a review and determination by the
      department that it is in the best interest of recipients for the department
      to make payment for the drug;
   (d) Except in accordance with section 3(6) of this administrative
      regulation, a drug dispensed as part of, or incident to and in the same
      setting as, an inpatient hospital service, an outpatient hospital service,
      or an ambulatory surgical center service;
   (e) A drug dispensed to a recipient who is participating in a hospi-
      tals program if the drug is billable by the hospital in accordance with
      907 KAR 1:340;
   (f) A drug for which the department requests prior authorization if
      prior authorization has not been approved; and
   (g) A drug that has reached the manufacturer’s termination date,
      indicating that the drug may no longer be dispensed by a pharmacy.
   (2) The department may designate specific drugs or drug classes
      which shall not be exempted through use of a Kentucky Medicaid
      Program Request Form for Drugs Prior-authorized for Nursing Facility
      Residents by specifying the drugs or drug classes in the department’s
      drug formulary. A brand name drug override for a nursing facility resi-
      dent shall be obtained in accordance with section 4(2) and section
      4(3) of this administrative regulation.
   (3) If authorized by the prescriber, a prescription may be refilled
      up to five (5) times within a six (6) month period from the date the
      prescription was written or ordered, at which time a new prescription
      shall be required.
   (4) For each initial filling or refill of a prescription, a pharmacist
      shall dispense the drug in the quantity prescribed not to exceed a
      thirty-two (32) day supply unless:
      (a) The drug is designated in the department’s drug formulary as a
          drug for which the pharmacist shall dispense the quantity prescribed
          not to exceed a three (3) month supply or 100 units, whichever is
          greater or
      (b) Prior authorization has been obtained from the department to
          dispense a greater days’ quantity, which shall not exceed a three (3)
          month supply or 100 units, whichever is greater, to a recipient who
          is to be traveling or temporarily visiting outside Kentucky and is
          expected to run out of medically-necessary drugs before returning
          home;
      2. Has a medical condition that for practical purposes makes the
         recipient homebound and results in a significant hardship if the recipi-
         ent has to leave home to obtain medically-necessary drugs; or
      3. Lacks available and accessible transportation and has signifi-
         cant difficulty traveling to a pharmacy to obtain medically-necessary
         drugs;
   (d) A prescription for which the prescriber has authorized refill
      and has prescribed at least a thirty (30) day supply shall not be refilled
      less than twenty-three (23) days from the last date the drug was dis-
      pensed unless prior authorization has been obtained from the depart-
      ment.
   (5) The department may require prior authorization for a com-
      pounded drug that requires preparation by mixing two or more individ-
      ual drugs; however, the department may exempt a compounded drug
      or an compounded drug category from prior authorization if there has
      been a review and determination by the department that it is in the
      best interest of recipients for the department to make payment for the
      compounded drug or compounded drug category.
   (7) An identification number shall be made available by a pre-
      scriber and shall be recorded on the pharmacy claim in accordance
      with the following:
      (a) The medical license number of a physician for the state in
          which the physician practices or, for a physician who is enrolled in an
          approved graduate medical education program, the medical license
          number of the supervising physician;
      (b) The license number, including applicable alpha characters, of
          a dentist, optometrist, or podiatrist for the state in which the individ-
          ual practices;
      (c) The registration number, including applicable alpha characters,
          of an advanced registered nurse practitioner registered in Kentucky or
          the registration number or license number, including applicable alpha
          characters, of an out-of-state advanced registered nurse practitioner
          for the state in which the individual practices; or
      (d) The certification number, including applicable alpha charac-
          ters, of a physician assistant for the state in which the individual
          practices.
   (8) If it is determined by the department to be in the best interest
      of recipients, the department may designate a legend drug that may
      be provided through prior authorization to a recipient in an inpatient
      facility that does not bill patients, Medicaid, or other third-party payers
      for health care services.
   (9) A recipient who has been restricted to a single pharmacy in
      accordance with 907 KAR 1:677 shall be required to obtain nonemer-
      gency pharmacy services from the pharmacy to which the recipient
      has been restricted. A recipient who has been restricted to a single
      physician in accordance with 907 KAR 1:677 shall be required to ob-
      tain nonemergency pharmacy services which are prescribed by:
      (a) The physician to which the recipient has been restricted; or
      (b) A physician authorized by the physician to which the recipient
          has been restricted.

Section 4, Prior Authorization Process. (1) Except as specified in
subsection (3) of this section, a request for prior authorization of a
drug shall be submitted in accordance with the following: The pre-
scriber, the prescriber’s designee, or a pharmacist shall:
   (a) Fax or mail a completed Kentucky Medicaid Assistance Pro-
      gram Drug Prior Authorization/Authorization to Bill Form to the de-
      partment;
   (b) Request prior authorization by a telephone call to the depart-
      ment Monday through Friday (except holidays) and shall provide the
      information required on the prior authorization form specified in sub-
      paragraph 1 of this paragraph.
   (2) Except as specified in subsection (3) of this section, to obtain a
      brand name drug override, the prescriber shall certify that the specific
      brand is medically necessary for a specific recipient in accordance
      with the following:
      (a) The prescriber shall provide a handwritten certification which
          contains the phrase “brand medically necessary” or “brand necessary”
          directly on:
          1. The prescription;
          2. The nursing facility order sheet; or
          3. A separate sheet of paper which shall:
             a. Be attached to the original prescription or nursing facility order
                sheet; and
b. Include the name of the recipient and the brand name of the requested drug; and

(b) If more than one (1) drug is written on the prescription or numbered order sheet, the prescriber shall provide a separate certification for each drug requested.

(3) Effective December 1, 2001, the department may require all requests for prior authorization of a drug to be submitted in accordance with the following:

(a) For a request for prior authorization, other than a brand name drug override as specified in paragraph (b) of this subsection, the prescriber or pharmacist shall complete a Drug Prior Authorization Request Form and shall fax it to the department (or send it by secure electronic means, if such has been approved by the department). If drug therapy needs to be started on an urgent basis, based on the clinical judgement of the prescriber or pharmacist, to avoid jeopardizing the health of the recipient or to avoid causing substantial pain and suffering, the prescriber or pharmacist shall fax the completed Drug Prior Authorization Request Form to the department's urgent fax number (or send it by secure electronic means, if such has been approved by the department, to the department's urgent request site).

(b) Except as specified in paragraph (c) and paragraph (d) of this subsection, to request a brand name drug override, if there is a generic drug which contains identical amounts of the same active drug ingredients in the same dosage form and which meets official compendial or other applicable standards of strength, quality, purity, and identity in combination with the brand name drug, the prescriber shall:

1. Complete a Brand Name Drug Override Request Form and shall fax it to the department. If drug therapy needs to be started on an urgent basis, based on the clinical judgement of the prescriber, to avoid jeopardizing the health of the recipient or to avoid causing substantial pain and suffering, the prescriber may fax the completed form to the department's urgent fax number;

2. Indicate on the Brand Name Drug Override Request Form the handwritten phrase "brand medically necessary" for the specific drug requested;

3. Indicate on the Brand Name Drug Override Request Form:
   a. Whether the recipient has received treatment with available generic forms of the brand name drug and the length of therapy;
   b. If applicable, whether the recipient has had an allergic reaction to excipients, coloring agents, or other inactive ingredients used in the formulation of the brand name drug; and
   c. Justification why the recipient's medical condition is unable to be adequately treated with the generic forms of the drug.

4. Certify on the prescription, order sheet, or an attachment that the brand name is medically necessary in accordance with subsection (2) or this section;

(c) For a drug that otherwise would require a brand name drug override, in accordance with paragraph (b) of this subsection, a Brand Name Drug Override Request Form shall not be required for the recipient to obtain the remaining refills, up to a maximum of five (5) of a prescription that was initially filled prior to the date of implementation of subsection (3) of this section by the department, provided that:

1. The prescriber certified that the brand name was medically necessary in accordance with subsection (2) or this section;

2. The lesser of five (5) refills or the number of refills authorized by the prescriber has not already been dispensed to the recipient; and

3. The remaining authorized refills are dispensed within six (6) months from the date the prescription was written or ordered.

(d) If it is determined by the department to be in the best interest of the patient and in accordance with the department's substitution policy, a generic equivalent to the brand name drug for which completion of a Brand Name Drug Override Request Form shall not be required, in which case the prescriber shall be required to certify that the brand name is medically necessary in accordance with subsection (2) or this section,

(e) To obtain prior authorization for an override involving dispensing an amount in excess of the maximum days' quantity established by the department in replacement of a lost, stolen, or destroyed prescription, a duplicate prescription, or a refilling of a prescription, the pharmacist shall submit the request in accordance with paragraph (1) of this subsection, unless the department has designated the specific override as one (1) which may be obtained through the electronic claims processing system.

4. If a recipient presents a prescription to a pharmacist for a drug which requires prior authorization, the pharmacist shall:

(a) Submit a request for prior authorization in accordance with subsection (1) of this section;

(b) Notify the prescriber or the prescriber's authorized representative that the drug requires prior authorization from the department in accordance with the following:

1. If the prescriber indicates that a formulary alternative available without prior authorization is acceptable and provides a new prescription, the pharmacist shall dispense the formulary alternative;

2. If the prescriber indicates that formulary alternatives available without prior authorization have been tried and failed or are clinically inappropriate or if the prescriber is unwilling to consider formulary alternatives, the pharmacist shall:
   a. Request that the prescriber obtain prior authorization from the department;
   b. Submit a prior authorization request in accordance with subsection (1) of this section;

(c) If the approval or denial of prior authorization shall be made in accordance with the following:

(a) If a prior authorization request is approved, notification of the approval shall be provided by telephone or fax (or by secure electronic means if such has been approved by the department) to the party requesting the prior authorization and, if known, to the pharmacist;

(b) If a prior authorization request is denied:
   1. The department shall provide a denial notice;
   a. By mail to the recipient;
   b. By fax, telephone, or email (or by secure electronic means if such has been approved by the department) to the party who requested the prior authorization;

2. The recipient shall have the right to appeal in accordance with Section 8(1) of this administrative regulation; and

3. The prescriber or pharmacy may, in the manner specified in subsection (1) of this section, submit the completed Kentucky Medical Assistance Program Drug Prior Authorization/Bill Form along with additional medical information to support the medical necessity of the requested drug therapy. The request shall be reviewed and notification provided in accordance with subsection (5) of this section,

(b) The department may grant approval of a prior authorization request for a drug for a specific recipient for a period of time not to exceed 365 days. Approval of a new prior authorization request shall be required for continuation of therapy subsequent to the expiration of a previously approved prior authorization request.

Section 5. Placement of Drugs on Prior Authorization. (1) The department may prior authorize a drug if it is determined by the department to pose a significant safety issue or an inappropriate financial burden to the department. Under this administrative regulation, a new drug, as specified in KRS 205.5631, shall be eligible for coverage for the first twelve (12) months on the market without prior authorization unless there has been a determination by the department that the drug poses a significant safety issue or an inappropriate financial burden to the department.

(2) A drug manufacturer that seeks to have a new drug covered for the first twelve (12) months on the market without prior authorization, in accordance with KRS 205.5631, shall:

(a) Submit a letter to the department requesting coverage for the drug without prior authorization; and

(b) Provide the department with the following information:
   1. The manufacturer's name, address, telephone number, fax number, and the name of a contact person;
   2. Information about the drug including the name of the drug, the National Drug Code number, the average wholesale price, and the estimated cost per day of therapy;

3. The date the drug became available on the market;

4. Whether the drug is one for which the manufacturer has entered into a rebate agreement in accordance with 42 USC 1366(b)(g);

5. Drug package insert information; and

6. Statement regarding how the drug is:
   a. A new chemical or molecular entity;
   b. A new type of physical formulation used to deliver an existing chemical or molecular entity to the intended site of action;
   c. A combination of existing chemical or molecular entities created...
for a distinct therapeutic purpose; or

d. An existing chemical or molecular entity which has a new indication approved by the Food and Drug Administration.

(2) The drug review process to determine if a drug poses a significant safety issue or an inappropriate financial burden to the department shall be in accordance with the following:

(a) The determination as to whether a drug is in an excludable category specified in Section 3(1) of this administrative regulation or whether a drug meets the definition of a new drug, as specified in KRS 205.5631, shall be made by the department.

1. If a drug which has been determined to require prior authorization becomes available on the market in a new strength, package size, or other form that does not meet the definition of a new drug, as specified in KRS 205.5631, the new strength, package size, or other form shall immediately be deemed to require prior authorization.

2. A brand name drug for which there is a generic form that contains identical amounts of the same active ingredients in the same dosage form and that meets compendial or other applicable standards of strength, quality, purity, and identity in comparison with the brand name drug may be deemed to have been determined by the department to be an inappropriate financial burden to the department and, if so deemed, shall require prior approval in accordance with, and upon implementation of, Section 4(1)(b) of this administrative regulation, unless there has been a review and determination by the department that it is in the best interest of recipients for the department to cover the drug without prior authorization.

(b) Routine review of drugs, The Pharmacy and Therapeutics Advisory Committee shall make a recommendation to the department regarding whether a drug poses:

1. A significant safety issue based on:
   a. A review of clinically-significant adverse side effects, drug interactions, contraindications, precautions and warnings, and administration and dosage; and
   b. An assessment of the likelihood of significant abuse of the drug; and

2. An inappropriate financial burden to the department based on a review of:
   a. The cost of the drug compared to other drugs used for the same therapeutic indication;
   b. The cost of the drug compared to other drugs of comparable efficacy and safety used for the same therapeutic indication; and
   c. Whether the drug offers a substantial clinically-meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication.

(c) Final review and determination. The secretary, in consultation with the commissioner and the department's medical director, shall:

1. Review the recommendations of the Pharmacy and Therapeutics Advisory Committee regarding:
   a. The likelihood of a significant safety issue; and
   b. The financial burden posed by the drug to the department;

2. Make the final determination that a drug poses a significant safety issue or an inappropriate financial burden to the department that warrants prior authorization; and

3. If the recommendation of the Pharmacy and Therapeutics Advisory Committee is not accepted, present the basis for the final determination in accordance with Section 7(3) of this administrative regulation.

(4) Comparable drug review process. Except as excluded by Section 3(1) of this administrative regulation, a legend drug that is in the same pharmacological category and that is of comparable clinical application, efficacy, and safety, and comparable cost to a drug that the department has exempted from prior authorization shall also be covered without prior authorization. The drug review shall include the following:

(a) The Pharmacy and Therapeutics Advisory Committee shall:

1. Review information from official compendia or other generally-accepted pharmacy reference texts regarding whether a drug is in the same pharmacological category and is of comparable clinical application and efficacy and shall make a recommendation to the department;

2. Make a recommendation to the department regarding whether the drug is of comparable safety based on:
   a. A review of clinically-significant adverse side effects, drug interactions, contraindications, precautions and warnings, and administration and dosage; and
   b. An assessment of the likelihood of significant abuse of the drug; and

3. Make a recommendation to the department regarding whether the drug is of comparable cost based on a review of the following:
   a. The cost of the drug per unit and, if applicable, per day of therapy or per unit dose of the drug; and
   b. Whether the cost of the drug is greater than 105 percent of the cost of the drug that the department has exempted from prior authorization.

(b) The secretary, in consultation with the commissioner and the department's medical director, shall:

1. Review the recommendations of the Pharmacy and Therapeutics Advisory Committee regarding:
   a. Comparable clinical application and efficacy;
   b. Comparable safety; and
   c. Comparable cost.

2. Make the final determination that a drug is in the same pharmacological category and is of comparable clinical application, efficacy, and safety, and comparable cost to a drug that the department has exempted from prior authorization and shall be covered without prior authorization; and

3. If the recommendation of the Pharmacy and Therapeutics Advisory Committee is not accepted, present the basis for the final determination in accordance with Section 7(3) of this administrative regulation.

(5) The department may exclude from coverage or require prior authorization for a drug which is a permissible restriction in accordance with 42 USC 15898(b)(6), as amended.

Section 6. Drug Management Review Advisory Board Meeting Procedures and Appeals. (1) A person may address the DMRAB if:

(a) The presentation is directly related to an agenda item; and

(b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting;

(2) The DMRAB may establish time limits for presentations.

(3) The proposed agenda shall be posted on the department's Internet web site at least five (5) days prior to meeting.

(4) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205.5639(5).

The appeal request shall:

(a) Be in writing;

(b) State the specific reasons the manufacturer believes the final decision to be incorrect;

(c) Provide any supporting documentation; and

(d) Be received by the department within thirty (30) days of the manufacturer's actual notice of the final decision.

Section 7. Pharmacy and Therapeutics Advisory Committee Meeting Procedures. (1) Public notice of the agenda for a meeting of the Pharmacy and Therapeutics Advisory Committee shall be posted on the department's Internet web site:

(a) At least fourteen (14) days prior to the date of a regularly-scheduled meeting; or

(b) As soon as practicable prior to a specially-called meeting.

(2) An individual shall be permitted to make a brief presentation or provide comments to the Pharmacy and Therapeutics Advisory Committee in accordance with the following:

(a) The presentation or comments shall be limited to an agenda item;

(b) A request to make a presentation or provide comments shall be submitted in writing to the chair or vice chair of the committee at least seventy-two (72) hours prior to the meeting; and

(c) The time limit for a presentation or comments shall be established by the committee, but shall not exceed fifteen (15) minutes or the maximum time established by the committee, whichever is lesser, provided that presentations or comments by two (2) or more individuals representing the same organization or drug manufacturer shall not in aggregate exceed fifteen (15) minutes or the maximum time established by the committee, whichever is lesser.

(3) If the secretary makes a final determination by exception and does not accept a recommendation of the Pharmacy and Therapeutics Advisory Committee which was made in accordance with Section 5(3) or (4) of this administrative regulation, the secretary shall present the
basis for the final determination by exception at the next scheduled
meeting of the committee.
(4) A determination to place a drug on prior authorization shall be
posted on the department’s internet web site. Placement of a drug on
prior authorization may be appealed by the manufacturer of the drug in
accordance with KRS Chapter 138. The appeal request shall:
(a) Be in writing;
(b) State the specific reasons the manufacturer believes the final
determination is incorrect;
(c) Provide any supporting documentation; and
(d) Be received by the department within thirty (30) calendar days
of the date the department provides notice of the decision.
(5) A drug manufacturer may request that its name be placed on
the department’s distribution list for agendas of Pharmacy and Tera-
pediatrics Advisory Committee meetings. Placement of a drug manufac-
turer’s name on the distribution list shall be valid through December 31
of each year, at which time the drug manufacturer shall be required to
again request placement on the distribution list. To request placement
of the drug manufacturer’s name on the distribution list, the drug
manufacturer shall submit the request in writing to the Commissioner
of the Department for Medicaid Services and shall provide the follow-
ing information about the drug manufacturer:
(a) Manufacturer’s name;
(b) Mailing address;
(c) Telephone number;
(d) Fax number;
(e) E-mail address; and
(f) Name of a contact person.
Section 8. Appeal Rights. (1) An appeal of a negative action taken
by the department regarding a Medicaid recipient shall be in accor-
dance with KAR 907 1:560.
(2) An appeal of a negative action taken by the department re-
garding 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 re-
garding a Medicaid provider shall be in accordance with 907 KAR
1:671.
Section 9. Incorporation by Reference. (1) The following material
is incorporated by reference:
(a) “MAP-82001 Drug Prior Authorization Request Form, October
2001 edition”;
(b) “MAP-82101 Brand Name Drug Override Request Form, Oc-
tober 2001 edition”;
(c) “MAP-573 Kentucky Medicaid Program Request Form for
Drugs Prior Authorized for Nursing Facility Residents, December 1995
edition”; and
(d) “MAP-122 Drug Prior Authorization/Authorization to Bill, April
1997 edition”.
(2) This material may be inspected, copied, or obtained, subject to
applicable copyright law, at the Department for Medicaid Services, 275
East Main Street, Frankfort, Kentucky 40621, Monday through Friday,
8 a.m. to 4:30 p.m. [Communications is defined in KRS 205.563(2).]
(3) “Department” means the Department of Medicaid-Services of
its designated agent.
(4) “DMRAB” means the Drug Management Review Advisory
Board.
(5) “Dosage-form” means a tablet, capsule, elixir, cream, or other
distinct physical formulation of a drug.
(6) “Drug-class” means a designation which indicates the ther-
apeutic properties of a drug.
(7) “Drug-file” means the Kentucky Medicaid Program—drug-file
consisting of every drug that may be eligible for reimbursement under
the Medicaid Program—drug file—requiring or not
required prior authorization.
(8) “FDA” means Food and Drug Administration.
(9) “Manufacturer” is defined in KRS 315.010(12).
(10) “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, disabil-
ity, 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 con-
venience of the member, caregiver or the provider;
(e) Provided in the most appropriate location, with regard to gen-
erally 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(r) and 42 CFR Part 441 Subpart B for Medicaid-eligible
recipients under twenty-one (21) years of age.
(10) “Official Compendia” is defined in KRS 217.015(31).
(11) “Orphan drug” means a drug or biological product for use in a
rare disease or condition that has been designated an orphan drug by
the Food and Drug Administration.
(12) “Outpatient drug program” means the program of drug serv-
ces provided directly by a pharmacist to a Medicaid recipient, includ-
ing both the drug product and dispensing of the drug.
(13) “Pharmaceutical category” is defined in KRS 205.563(2)(b).
(14) “Prescription drug” means a legend drug as defined in KRS
217.015(28).
(15) “Termination date” means the last date, as established by a
manufacturer, that the drug may be dispensed by a provider.
Section 2. Covered Benefits and Limitations Regarding the Out-
patient Drug Program. A drug prescribed by a physician, osteopath,
dentist, optometrist, advanced registered nurse-practitioner, physician
assistant, or podiatrist shall be provided in accordance with this ad-
iministrative regulation.
(1) The drug file shall be maintained in an electronic format and
shall be accessed through the department’s electronic web site, which may be accessed at:
The prior authorization status shall be specified in an electronic format with the drug file. The drug file shall be updated from a national phar-
my pricing service. A copy of the current drug file shall be filed with the Regulations Compilation and shall be available to the public in accor-
dance with Section 11(2) of this administrative regulation. A new drug shall be covered as specified in KRS 205.563(3) that the drug poses a
significant safety issue or imposes an inappropriate financial burden
upon the Medicaid Program.
(2) The Outpatient Drug Program shall not make payment for:
(a) A drug for which the FDA has issued a less-than-effective
(LTE) rating in accordance with 42 USC 1396d-8(k)(2)(A)(ii)(III) and
21 CFR 310.6(b)(1); (b) A drug which the FDA has determined is identical, related, or similar to an LTE drug in accordance with 42
USC 1396d-8(k)(2)(A)(ii)(III) and 21 CFR 310.6(b)(1); (c) A drug for which the drug manufacturer has not entered into or
complied with a rebate agreement in accordance with 42 USC 1396d-
8(a), unless there has been a review and determination by the de-
partment that it shall be in the best interest of Medicaid recipients for
the department to make payment for the nonrebated drug;
d) A drug that has reached the termination date established by
the drug manufacturer;
(e) Nursing facility items as follows:
1. Ace bandage;
2. Alka-seltzer;
3. Antiemetic; hose;
4. Bedding;
5. Beverages;
6. Blankets;
7. Chlorophyll;
8. Cleansing agents;
9. Colostomy supplies;
10. Cough drape;
11. Dental rinses;
12. Diabetic supplies;
13. Drawers;
14. Food supplements and supplies related to their administration;
The certification shall be written in the prescriber's handwriting.

b. The certification shall be written directly on a prescription blank, nursing facility order sheet, or a separate sheet.

c. The certification document shall be attached to the original prescription or order sheet.

d. If the certification has been written on a separate sheet, the name of the recipient and the specific medication shall also appear on the sheet.

e. If more than one (1) drug is written on the prescription blank, the certification shall be written for each drug requested; and

f. The certification shall contain the phrase "brand medically necessary" or "brand necessary".

(g) For a telephone prescription, the pharmacist shall enter on the prescription form the name of the prescriber and the initials of the pharmacist.

(h) If a prescriber indicates that a specific brand is medically necessary, the pharmacy shall inform the prescriber of the need for a handwritten certification.

(i) The certification shall be delivered to the pharmacy by the recipient upon receipt of the prescription or mailed to the pharmacist by the prescriber.

(j) The pharmacist shall obtain the prescriber's certification no later than forty-five (45) days from the date the prescription is transmitted by telephone.

(k) A prescriber's identification number shall be made available by a prescriber in writing or orally and shall be recorded by the pharmacist prior to dispensing, to identify a prescriber as follows:

A five (5)-digit Kentucky license number for a physician licensed in Kentucky or the state license number that authorizes prescriptive privileges for a physician who practices in another state.

2. A Kentucky license number, including applicable alpha characters for a dentist, optometrist, or podiatrist licensed in Kentucky or the state license number that authorizes prescriptive privileges for a dentist, optometrist, or podiatrist who practices in another state.

3. A Kentucky registration number, including applicable alpha characters for an advanced registered nurse practitioner (ARNP), who is registered and designated to engage in advanced registered nurse practice in accordance with KRS 314.042 or the state registration number or unique personal identification number that authorizes prescriptive privileges for an advanced registered nurse practitioner who practices in another state.

4. A Kentucky certification number, including applicable alpha characters for a physician assistant certified in Kentucky or the state certification number or unique personal identification number that authorizes prescriptive privileges for a physician assistant who practices in another state.

5. The license number of the physician who supervises a physician who does not have a Kentucky state license number on file and who is enrolled in a graduate medical education program.

(d) Quantity requirements. Except as provided in subparagraphs (a), (b), and (c) of this paragraph, a prescription shall be limited to a maximum of thirty (30) day supply.

1. A refill of a maintenance prescription shall not occur less than twenty-three (23) days from the last date the medication was dispensed unless a pharmacist receives a maintenance exception from the department. The pharmacist shall request an exception by completing and submitting a Prior Authorization Request Form, MAP-122 or calling the department's prior authorization telephone number.

2. A prescriber or pharmacist may request an exception to the thirty (30) day maximum supply in accordance with the following:

a. The prescriber shall call one (1) of the toll free prior authorization lines and make the request. The fiscal agent shall then notify the dispensing pharmacy of the approval for the exception to the thirty (30) day maximum supply requirement;

b. The pharmacist shall call one (1) of the toll free prior authorization lines and make the request for the exception.

3. An approval for a thirty (30) day supply exception shall be applicable for a maximum period of six (6) months.

(d) A recipient, not in a nursing home or personal care facility, or his designee shall sign for receipt of dispensed medication.
pursuant to the procedures established in this section.

Section 4—Drug Status Review Process for the First Twelve (12) Months: (1) Except as provided by this section or as excluded by Section 2(2) of this administrative regulation, a drug shall be covered for the first twelve (12) months on the market without prior authorization.

(2) The factors established in subsections (3) and (4) of this section shall be considered by the department in determining whether prior authorization shall be required for a drug during the first twelve (12) months on the drug is on the market.

(3) A determination shall be made whether the drug—expense would favorably offset another patient care cost, including:

(a) A hospitalization;
(b) An emergency room visit;
(c) A physician visit;
(d) Costs associated with diminished quality of life.

(4) A drug shall require prior authorization if the department has determined that evidence—cost of the drug—would be covered by the drug—benefit to the Medicaid recipient that would be gained by retaining the drug on the nonprior authorized drug file.

(a) The following criteria shall be used to screen a drug that may result in an undesirable cost profile:
1. In any six (6) month period, the total cost of the prescriptions for the drug to the department ranks in the top fifty (50) of drugs reimbursed by Medicaid.
2. The cost per prescription exceeds twice the average cost of drugs within its therapeutic class.
3. The combination of cost per prescription and volume results in an increased program expense that places the drug in the top fifty (50) of drugs reimbursed by Medicaid.
4. The drug is partially or completely reimbursed by Medicare or another payment system.
5. A generic drug within the same therapeutic class shall not be compared to a brand-name drug. Available utilization data shall be used.

(b) The following criteria shall be used to screen a drug that may result in an undesirable safety profile:
1. The drug has been documented to have potential for recipient abuse as defined in KRS 205.845(10).
2. The drug's use requires unusually complex administration techniques, procedures, or monitoring that make it undesirable for common ambulatory self-administration, in accordance with official compendia and the drug package insert.
3. Experience with the product, when used alone or in combination with other products, has resulted in the reporting of:
   a. Significant adverse events that were not previously known or
   b. Significant morbidity or mortality.
4. Upon request by the department, the manufacturer shall provide the following information within ten (10) working days. The manufacturer may provide the requested information on form DMRAB-001:
   a. Company name;
   b. Brand product name;
   c. Generic name;
   d. FDA approval date;
   e. Date introduced into United States market;
   f. American Hospital Formulary Service therapeutic class and code;
   g. FDA approval class, P, S, and orphan drugs;
   h. FDA Approved Drug Products therapeutic equivalence code. A copy of the respective page of the Supplement shall be provided;
   i. Patent expiration date;
   j. HCFA rebate drug designation;
   k. FDA approved indication;
   l. Side effects or toxicity;
   m. Name, strength, dosage form, usual daily dose and cost of treatment per day of comparable drugs on drug file.

(5) Specific—advantages compared to other available drugs do not require prior authorization but state of why the drug should not require prior authorization.

(c) Most-used indications, strength, dosage form, package size, NTEs (Drug Code number), average wholesale price, usual daily dosage, cost of treatment per day, average length of therapy;

(d) Name, address, FAX number, telephone number, and e-mail.
Section 5. Drug Status-Review Process: After the First Twelve (12) Months—(1) After a drug has been on the market for twelve (12) months, the department may conduct an evaluation due to concerns regarding cost or safety.
(2) The factors established in subsections (3) and (4) of this section shall be considered in determining whether prior authorization shall be required for a drug after it has been on the market for twelve (12) months.
(3) A determination shall be made whether the drug expense would favorably offset another-patient care cost, including:
   (a) A hospitalization;
   (b) An emergency room visit;
   (c) A physician visit;
   (d) Costs associated with diminished quality of life.
(4) A drug shall require prior authorization if the department has documented evidence that cost or safety concerns outweigh the benefit to a Medicaid recipient that would be gained by retaining the drug on the nonprior authorized drug file.
(a) The following criteria shall be used to screen for a drug that may result in an undesirable cost profile:
   1. In any six (6) month period, the total cost of prescriptions for the drug to the department ranks in the top fifty (50) of drugs reimbursed by Medicaid;
   2. The cost per prescription exceeds twice the average cost of drugs within its therapeutic class;
   3. The combination of cost per prescription and volume results in an increased program expenses that places the drug in the top fifty (50) of drugs reimbursed by Medicaid;
   4. The drug is partially or completely reimbursed by Medicare or another payment system;
   5. A generic drug shall be compared to a brand name drug to ensure a complete review of the drug class.
(b) The following criteria shall be used to screen for a drug that may result in an undesirable safety profile:
   1. The drug has been documented to have a potential for recipient abuse as defined in KRS 205.8454(10);
   2. The drug's use requires unusually complex administration techniques, procedures, or monitoring that make it undesirable for common ambulatory self-administration in accordance with the official compendia and the drug package insert; and
   3. Experience with the product, when used alone or in combination with other products, has resulted in the reporting of:
      a. Significant adverse events that were not previously known or
      b. Significant morbidity or mortality.
(5) Upon request by the department, the manufacturer shall provide the requested information identified in Section 4(6) of this administrative regulation.
(6) Once requested information is received and evaluated, a written decision containing an explanation of the reasons for the decision shall be made by the department within thirty (30) calendar days.
(7) A copy of the written final disposition taken by the department shall be:
   1. Forwarded to:
      a. Appropriate participating providers;
   2. DMRA;
   3. Manufacturer;
   4. Legislative Research Commission to be distributed to appropriate committees; and
(8) Information concerning Kentucky Medicaid's drug prior authorization process shall be placed on the following web site at: http://www.uky.edu/OtherOrgs/KyMedicaidDrug/
Section 6. Comparable Drug Review. (1) Prescription drugs on the prior-authorized drug file shall be placed on the nonprior-authorized drug file if the comparable drug criteria of subsections (3) and (4) of this section are met.
(2) A comparable drug review shall be performed by a health care practitioner, pharmacist, physician, or faculty member of a health science school in a university medical center within Kentucky. Health science schools shall include pharmacy, medicine, dentistry, nursing, public health, and allied health.
(3) Based on review of official compendia and peer-reviewed medical literature, the drug shall:
   (a) Be within the same pharmacological category;
   (b) Have comparable efficacy;
   (c) Have a comparable clinical application; and
   (d) Have comparable safety standards and lack the undesirable safety profile specified in Section 4(6)(b) of this administrative regulation.
(4) Based on the average wholesale price, the drug shall have comparable cost determined by a review of:
   (a) Cost per day of drug therapy;
   (b) A complete period of therapy; and
   (c) The diagnosis for which the drug is approved.
(5) A drug removed from prior authorization in accordance with the comparable drug criteria of subsections (3) and (4) of this section shall be placed on prior authorization if the comparable drug subsequently becomes prior authorized in accordance with Sections 4, 5, or 7 of this administrative regulation.
(6) Upon request by the department, the manufacturer shall provide the requested information identified in Section 4(6) of this administrative regulation.
(7) If the department determines that a drug shall remain on prior authorization:
   (a) The department shall notify the manufacturer of the drug in writing that the drug shall remain on prior authorization;
   (b) The notification shall include the reasons for the determination that the drug shall remain on prior authorization; and
   (c) The determination by the department shall be placed on the DMRAB meeting for informational purposes.
(8) A copy of the written notification regarding final disposition taken by the department shall be posted to the Internet web site specified in Section 4(7) of this administrative regulation.
(9) Information concerning Kentucky Medicaid's drug prior authorization process shall be placed on the following web site at: http://www.uky.edu/OtherOrgs/KyMedicaidDrug/
1. A unique therapeutic indication; or
2. Fewer or less clinically-significant adverse side effects or drug interactions.

(5) The department shall determine if a review of a drug product shall be conducted.
(a) A review shall be conducted by a health care practitioner, pharmacist, or a professional or faculty member of a health science school in a university medical center within Kentucky. Health science schools shall include pharmacy, medicine, dentistry, nursing, public health, and allied health.
(b) A review shall include the following:
1. Comparison to other products on the drug file, including cost;
2. Primary indication for use and therapeutic classification;
3. Prominent advantages and disadvantages of the product;
4. A recommendation regarding prior authorization status of a drug;
5. Discussion of applicable studies from the medical literature; and
6. Discussion of applicable pharmacoeconomic studies.
(c) The department shall present drug review recommendations to the Drug List/Prior Authorization Subcommittee.
(d) A person may address the Drug List/Prior Authorization Subcommittee if the request is directly related to an agenda item.
(e) The Subcommittee recommendation shall be sent to the DMAB for review.
(f) The recommendation from the DMAB, available pursuant to KRS 61.805 through 61.850, shall be sent to the commissioner of the department for his approval or denial.

(7) The department may seek additional documented information from another clinical source regarding a recommendation made by the DMAB.
(b) Once requested information is received and evaluated, a written decision containing an explanation of the reasons for the decision shall be made by the department within thirty (30) calendar days regarding the acceptance or rejection of the recommendation of the DMAB.
(c) Subsequent to the decision, if new evidence including safety, efficacy, or cost becomes available from another source, the department may direct that the issue be re-reviewed by the DMAB.
(d) A copy of the written final disposition taken by the department shall be:
1. Forwarded to the:
   a. Appropriate participating providers;
   b. DMAB;
   c. Manufacturer;
   d. Legislative Research Commission to be distributed to appropriate committees; and
2. Posted to the Internet web site specified in Section 4(7) of this administrative regulation.

(8) Information concerning Kentucky Medicaid's drug prior authorization process shall be placed on the following web site at: http://www.uky.edu/OH/OtherOrgs/KyMedicaidDrugs

Section 8. DMAB Open Meeting Procedures. (1) A person may address the DMAB if:
(a) The presentation is directly related to an agenda item; and
(b) Written notice has been given to the chairperson at least twenty-four (24) hours prior to the meeting.
(2) The DMAB may establish time limits for presentations.
(3) The proposed agenda shall be placed on the Internet web site specified in Section 4(7) of this administrative regulation at least five (5) calendar days prior to the meeting.

Section 9. Appeals Involving Placement of Drugs on Prior Authorization. (1) The commissioner shall enter the final decision on a recommendation of the DMAB in accordance with KRS 205.563(3).
(2) An appeal of a final decision by the commissioner by a manufacturer of a product shall be in accordance with KRS 205.563(5).
(3) The appeal request shall:
(a) Be in writing;
(b) State the specific reasons the manufacturer believes the final decision is incorrect;
(c) Be received by the department within thirty (30) days of the manufacturer's actual notice of the final decision.

(4) The appeal shall be conducted in accordance with KRS Chapter 138.

Section 10. Appeal Rights. (1) An appeal of a negative action taken by the department regarding a Medicaid recipient shall be in accordance with 907 KAR 1.663.
(a) An appeal of a negative action taken by the department regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1.660.
(b) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1.671.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) Form MAP-122, Drug Prior Authorization/Authorization to Bill, 10/98 edition, Department for Medicaid Services;
(b) Form MAP-573, Drug Prior Authorization/Authorization to Bill, 10/98 edition, Department for Medicaid Services;
(c) DMAB-001, Drug Product Information Form, Kentucky Outpatient Drug List, 4/99 edition, Department for Medicaid Services.
(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.

ELLEN M. HESEN, Interim Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: October 11, 2001
FILED WITH LRC: October 15, 2001 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Wanda Fowler or Teresa Goodrich
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists and will continue to assist in the effective administration of the authorizing statutes by establishing the provisions for coverage of drugs through the Medicaid Outpatient Pharmacy Program.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation revise the clinical review process for new drug reviews and comparable drug reviews, describe the drugs that may be on the drug formulary, define the role and responsibilities of the Pharmacy and Therapeutics Advisory Committee, and revise the prior authorization process and accompanying forms.
(b) The necessity of the amendment to this administrative regulation: The amendments to this administrative regulation are necessary in order to revise the clinical review process for new drug reviews and comparable drug reviews, describe the drugs that may be on the drug formulary, define the role and responsibilities of the Pharmacy and Therapeutics Advisory Committee, and revise the prior authorization process and accompanying forms.
(c) How the amendment conforms to the content of the authorizing statutes: The amendments to this administrative regulation conform to the content of the authorizing statutes by revising the clinical review process for new drug reviews and comparable drug reviews, describing the drugs that may be on the drug formulary, defining the role and responsibilities of the Pharmacy and Therapeutics Advisory Commit-
VOLUME 28, NUMBER 5 – NOVEMBER 1, 2001

CABINET FOR HEALTH SERVICES
DEPARTMENT FOR MEDICAID SERVICES
DIVISION OF PHYSICAL HEALTH
(Emergency Amendment)

907 KAR 1:021E. Reimbursement for drugs [Amounts payable for drugs].

RELATES TO: KRS 205.560, 205.561, 205.5631, 205.5632, 205.5634, 205.5636, 205.5639, 205.569, 217.015, 311.550, 311.560, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 256b, 1396a-d
STATUTORY AUTHORITY: KRS 194.030(3), 194.050, 205.520(3), 205.560, 205.561
EFFECTIVE: October 15, 2001

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.560(3) [205.560] 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 citizen. This administrative regulation establishes the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program. [amounts payable by the Department for Drugs.]

Section 1. Definitions. (1) "Average wholesale price" or "AWP" means the published average wholesale price for a drug obtained from a nationally-recognized comprehensive drug data file designated by the Department.

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

(3) "Dispensing fee" means a professional fee paid to reimburse a pharmacy for costs associated with the dispensing of a prescribed drug.

(4) [46] "Nonsolid dosage form" means a covered drug item other than an oral tablet, oral capsule, or inhaler.

Section 2. Reimbursement Limits. (1) Reimbursement to a participating provider shall be comprised of a dispensing fee and the cost of the drug product.

(2) Reimbursement to a pharmacy participating in the Medicaid Program for a drug listed in [contained on] the Kentucky Medicaid outpatient drug formulary [Program drug file], established in 907 KAR 1:019E, and provided to an eligible recipient shall be determined in accordance with the following requirements:

(a) An appropriate rebate agreement shall be signed by the drug manufacturer or the drug shall be provided based on a prior authorization exemption from the rebate requirement in accordance with 907 KAR 1:019E.

(b) Drug costs shall be determined in the pharmacy program using drug pricing and coding information obtained from a nationally-recognized comprehensive drug data file [a computerized price listing service] with pricing based on the actual package size utilized.

(c) Except as provided in paragraph (d) of this subsection, reimbursement for a drug cost shall be the lesser of:

1. The federal maximum allowable cost (FMAC) plus a dispensing fee and unit dose add-on as appropriate;

2. The estimated acquisition cost (EAC) which shall equal the average wholesale price (AWP) minus ten (10) percent plus a dispensing fee and unit dose add-on as appropriate; or

3. The usual and customary billed charge.

(d) If a prescriber has hand-written "brand medically necessary" or "brand necessary" on the prescription or prior authorization form, as applicable in accordance with 907 KAR 1:019E, to obtain a brand name drug for which one (1) or more generic forms of the drug is available, the reimbursement shall be the lesser of:

1. The estimated acquisition cost (EAC) which shall equal the average wholesale price (AWP) minus ten (10) percent plus a dispensing fee and unit dose add-on as appropriate; or

2. The usual and customary billed charge.

(e) Reimbursement shall be denied if:

1. The recipient is ineligible on the date of service;

2. The drug is excluded from coverage in accordance with 907 KAR 1:019E, Section 3 (National Drug Code (NDC) number meets the...
criteria established in 907-KAR 1:010, Section 2(2)); or
3. Prior authorization is required by the department, and prior authorization has been denied or has not been requested. [The prior authorization is denied.]
(1) For a nursing facility resident meeting Medicaid patient status criteria in accordance with 907 KAR 1:022, there shall not be more than:

1. One (1) dispensing fee allowed per drug within a calendar month for a drug classified by the Medicaid Program as a maintenance drug unless the prescribed dosage has been changed;
2. Except as specified in subparagraphs 1 and 3 of this paragraph, two (2) dispensing fees allowed per drug within a calendar month for other drugs; and
3. For (4) dispensing fees per drug within a calendar month for a nonsolid dosage form, a Schedule II, III or IV controlled substance or a legend intravenous drug.

(g) For a nursing facility resident meeting Medicaid patient status criteria and if appropriate and in accordance with 201 KAR 2:190 and 902 KAR 55:065, an unused drug, paid for by Medicaid, shall be returned to the originating pharmacy and the department shall be credited for the cost of the drug and the unit dose packaging cost.
(h) An item not billable through the pharmacy program, in accordance with 907 KAR 1:010, Section 2(2)(e) shall, if otherwise allowed in accordance with 907 KAR 1:025, considered a routine cost to the nursing facility. A pharmacy may bill a nursing facility for a drug not billable through the Pharmacy Program and the nursing facility may include the cost of the item as a routine cost on its cost report.
(i) For an outpatient or personal care recipient there shall not be more than:

1. One (1) dispensing fee allowed per drug per calendar month for a drug classified by the Medicaid Program as a maintenance drug unless there is an exception described in subparagraph 3 of this paragraph;
2. Four (4) dispensing fees allowed per drug within a calendar month for a legend intravenous drug or a schedule II, III or IV controlled substance;
3. a. Two (2) dispensing fees allowed per drug within a six (6) month period for a refill of a maintenance prescription requested less than twenty-three (23) days from the last date the medication was dispensed;
   b. Four (4) dispensing fees allowed per maintenance drug in one (1) month if a prescriber requests to prescribe less than a thirty (30) day supply based on a medical specialty, best practice standards, and appropriate treatment of care.

(j) Reimbursement shall not be made for more than one (1) prescription to the same recipient on the same date for a drug with the same:
1. National Drug Code (NDC) [NDC]; or
2. Generic name, strength, and dosage form.

(3) For a Medicaid recipient participating in a hospice program, payment for a drug shall be in accordance with 907 KAR 1:340.
(4) Reimbursement to a hospital for a drug provided to an eligible recipient shall be on the basis of reasonable cost pursuant to 907 KAR 1:013.

(5) A pharmacy shall meet the point of sale (POS) requirements for services in accordance with 907 KAR 1:673.
(6) Each time a payment is made for a drug [prescription-refill] for which there is no authorization as required in accordance with 907 KAR 1:019E, the provider shall reimburse the department.
(7) A timely claim payment shall be processed in accordance with 42 CFR 447.45.
(8) A claim in which retroactive eligibility is established shall be submitted up to twelve (12) months from the issue date noted on the Medicaid recipient’s medical assistance identification card. If the date of service is less than twelve (12) months old, the claim shall be submitted as a paper claim with a copy of the retroactive medical assistance identification card attached.
(9) Pursuant to KRS 205.622 [205.662], prior to billing the department, a provider shall submit a bill to Medicare if the provider has knowledge that Medicare may be liable for payment.
(b) Adherence to the provision established in paragraph (a) of this subsection shall be monitored through an on-site audit, postpayment audit or postpayment review of the claim.

(9)(a) The Medicaid recipient has additional insurance, the provider may submit a bill to the third party or the department.
(b) A provider who is aware that a recipient has other insurance, but no insurance is indicated on the medical assistance identification card shall submit a Third-party Liability Form to the department's fiscal agent.
(10) Adherence to the requirements established in this section shall be monitored through an on-site audit, postpayment review of the claim, a computer audit or an edit of the claim.

Section 3. Dispensing Fees. (1) Except as provided in subsection (2) of this section, based on the conclusion of the dispensing fee study of the annual report conducted in accordance with KRS 205.561, the dispensing fee shall be four (4) dollars and fifty-one (51) cents per prescription for a drug reimbursed through the outpatient drug program if dispensed to an eligible recipient, including an eligible recipient in a nursing facility meeting the appropriate patient status criteria requirements established in 907 KAR 1:022.
(2)(a) For a recipient in a nursing facility meeting the appropriate patient status criteria requirements established in 907 KAR 1:022, a unit dose addition to the usual dispensing fee shall be made for a drug dispensed through the pharmacy outpatient drug program in the amount of:
1. Two (2) cents per unit dose for a unit dose drug packaged in unit dose form by the manufacturer; and
2. Four (4) cents per unit dose for a unit dose drug packaged in unit dose form by the pharmacist.
(b) The unit dose dispensing fee amount shall be paid, as appropriate, even though the usual dispensing fee of four (4) dollars and fifty-one (51) cents is not paid due to monthly limits on dispensing fees.

Section 4. Reimbursement to Dispensing Physicians. A participating dispensing physician who practices in a county where a pharmacy is not located shall be reimbursed for the cost of the drug, with the cost computed:

(1) As the lesser of:
   (a) The maximum allowable cost or estimated acquisition cost established in Section 2(2) of this administrative regulation; or
   (b) The physician's usual and customary charge to the general public for the drug;
(2) In accordance with 907 KAR 3:010 [for a free immunization through the Vaccines for Children [Vaccine-for-Children's] Program.

Section 5. This administrative regulation shall expire on adjournment of the next regular session of the General Assembly.

ELLEN M. HESEN, Interim Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: October 11, 2001
FILED WITH LRC: October 15, 2001 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Wanda Fowler or Teresa Goodrich
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program and
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists and will continue to assist in the effective administration of the authorizing statutes by establishing the method for determining reimbursement for drugs through the Medicaid Outpatient Pharmacy Program.

- 1096 -
(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.
(e) On a continuing basis: SFY 2003 and beyond cost is indeterminable.
(f) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation.
(g) What impact will this administrative regulation have on individuals.
(h) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation.
(i) Statement whether or not this administrative regulation establishes any fee or fee increase.
(j) "Behavior intervention committee" means a group of individuals, one (1) of which shall have expertise in behavior intervention and shall not be the behavior specialist who wrote the behavior intervention plan.
(k) "Behavior specialist" means an individual who has a master's degree in behavioral science and one (1) year of experience in behavioral programming.
(l) "DCBS" means the Department for Community Based Services.
(m) "DMHR" means the Department for Mental Health and Mental Retardation.
(n) "Human rights committee" means a group of individuals established to protect the rights and welfare of an SCL recipient.
(o) "ICF/MR/DD" means an intermediate care facility for individuals with mental retardation or a developmental disability.
(p) "Individual support plan" or "ISP" means a written individualized plan developed by an SCL recipient.
(q) "SCL" means a state certification living.

907 KAR 1:145E. Supports for community living services for an individual [individuals] with mental retardation or a developmental disability [disabilities]

RELATES TO: KRS 205.520, 42 CFR 441 [44], Subpart G, 42 USC 1396a, b, d, n
STATUTORY AUTHORITY: KRS 194A,190(1)(a)(1), 205.520(3), 205.6317 [194A,050, EO 96-862]
EFFECTIVE: October 10, 2001 at 8 a.m.
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any [a] requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizens. This administrative regulation establishes the coverage provisions relating to home and community-based services provided to an individual with mental retardation or a developmental disability [disabilities] as an alternative to placement in an intermediate care facility for an individual with mental retardation or a developmental disability [services for the mentally retarded].

Section 1. Definitions. (1) "Behavior intervention committee" or "BIC" means a group of individuals, one (1) of which shall have expertise in behavior intervention and shall not be the behavior specialist who wrote the behavior intervention plan. This group is established to evaluate the technical adequacy of proposed behavior intervention of an SCL recipient.
(2) "Behavior specialist" means an individual who has a master's degree in behavioral science and one (1) year of experience in behavioral programming.
(3) "DCBS" means the Department for Community Based Services.
(4) "Department" means the Department for Medicaid Services or its designee.
(5) "DMHR" means the Department for Mental Health and Mental Retardation.
(6) "Human rights committee" means a group of individuals established to protect the rights and welfare of an SCL recipient.
(7) "ICF/MR/DD" means an intermediate care facility for individuals with mental retardation or a developmental disability.
(8) "Individual support plan" or "ISP" means a written individualized plan developed by an SCL recipient, or an SCL recipient's legal
(10) "Psychologist" means an individual who is licensed in accordance with KRS 319.050.
(11) "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.
(12) "Qualified mental retardation professional" or "QMRP" means an individual who has at least a bachelor's degree in a human services field and at least one (1) year of experience working with individuals with mental retardation or other developmental disabilities.
(13) "SCL recipient" means an individual who:
(a) Meets the criteria for a recipient as defined in KRS 205.68451; and
(b) Meets the ICF/MR/DD level of care requirements as defined in 907 KAR 1:022; and
(c) Meets the eligibility criteria for SCL waiver services established in Section 4 of this administrative regulation.
(14) "Specialized medical equipment and supplies" means devices, controls or appliances to promote the independence of an SCL recipient.
(15) "Speech pathologist" means an individual who is licensed in accordance with KRS 334A.030.
(16) "Support coordinator" means an individual who has a bachelor's degree in human services, is supervised by a QMRP, and works closely with an SCL recipient to ensure his ongoing satisfaction with the process and outcomes of the supports, services and available resources.
(17) "Supports for community living" or "SCL" means home and community-based waiver services for an individual with mental retardation or developmental disability. Supports for community living (SCL) means community-based waiver services for an individual with mental retardation or developmental disabilities.
(18) "Wellness monitoring" means a process in which a registered nurse:
(a) Evaluates the level of wellness of a recipient to determine if:
1. The recipient is properly using the medical health services being provided; and
2. The health of the recipient is sufficient to maintain him in his place of residence without frequent skilled nursing intervention; and
(b) Does not provide direct treatment to the recipient.

Section 2. Provider Participation. (1) In order to provide an SCL waiver service, pursuant to Section 5 of this administrative regulation, an SCL waiver provider shall be certified prior to the initiation of services and annually thereafter by the department and shall have a main office within the Commonwealth of Kentucky.
(2) An SCL waiver provider shall:
(a) Be licensed with the department (KAR 1:571, 907 KAR 1:672, 907 KAR 1:673 and 902 KAR 20:078);
(b) Have a governing body which shall be a legal entity in the Commonwealth of Kentucky and be responsible for the overall operation of the organization;
(c) Not enroll an SCL recipient for whom they cannot meet the support needs;
(d) Have the freedom to accept or deny an SCL recipient; and
(e) Document a denial and identify resources necessary to successfully support the denied SCL recipient in the community.
(3) An SCL waiver provider shall maintain fiscal and service records and incident reports regarding SCL waiver services provided for a period of at least five (5) years from the date that a covered service is provided.
(a) Upon request, an SCL waiver provider shall make information available regarding fiscal and service records to the following:
(i) The department;
(ii) The Commonwealth of Kentucky, Cabinet for Health Services, DMH/DRS or its designee;
(iii) The Commonwealth of Kentucky, Cabinet for Health Services, Office of Inspector General or its designee;
(iv) The United States General Accounting Office or its designee;
(v) The Commonwealth of Kentucky, Office of the Auditor of Public Accounts or its designee; and
(f) The Commonwealth of Kentucky, Office of the Attorney General or its designee; and
(g) The Commonwealth of Kentucky, Cabinet for Families and Children or its designee.
(5) An SCL waiver provider shall:
(a) Establish and follow written guidelines for communication and interaction of staff with an SCL recipient's family or legal representative;
(b) Not allow an employee who has contracted a communicable disease to provide a service to an SCL recipient until the condition is determined not to be contagious;
(c) Maintain documentation of the results of a tuberculosis test for each staff member;
(d) Have written personnel guidelines for each employee;
(e) For a potential employee, obtain state police or Administrative Office of the Courts criminal record checks:
1. Prior to employment and annually thereafter if the individual is hired;
2. For each state resident in the previous year; and
3. For utilization of the results in determining employment suitability;
(f) Not employ an individual with a prior conviction of an offense delineated in KRS 17.165(1)-(3) or prior felony conviction;
(g) Ensure that the following personnel qualifications shall be met through the employment of:
1. An executive director by the governing body who shall be qualified with a bachelor's degree in administration or a human services field and one (1) year of administrative responsibility in an organization which served individuals with mental retardation or developmental disability;
2. A program director who shall be a QMRP and have one (1) year of supervisory responsibility in an organization supporting individuals diagnosed with mental retardation or a developmental disability who may also serve as an executive director if he meets qualifications for both positions;
3. Adequate direct-contact staff based on the needs of an SCL recipient supported. Direct contact staff shall be eighteen (18) years or older with a high school diploma or GED or be twenty-one (21) years old and have effective communication skills; and
4. Adequate supervisory staff based on the needs of an SCL recipient. Supervisory staff shall be eighteen (18) years or older with a high school diploma or GED or be twenty-one (21) years old and have one (1) year experience in providing services to individuals with mental retardation or a developmental disability;
(h) Establish and follow written guidelines which address maintenance of sanitary conditions for SCL recipients and ensure each site operated by the organization is equipped with the following:
1. Operational smoke detectors placed in strategic locations in each service site; and
2. A minimum of two (2) fire extinguishers in each service site:
   (a) Which shall be correctly charged; and
   (b) Which shall be placed in strategic locations; and
   (c) One (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;
(i) Establish and follow written guidelines for handling an emergency or a disaster;
(j) Ensure that the nutritional needs of an SCL recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;
(k) Ensure that staff administering medication:
   1. Have specific training on cause and effect and proper administration and storage of medication;
   2. Document all medication administered on a medication log and ensure medications shall:
      a. Be kept in a locked container;
      b. Accompany and be administered to an SCL recipient at a program site other than his residence if necessary; and
      c. Be documented on a medication administration form and properly disposed of, if discontinued;
(l) If operating a residence:
   1. Have a separate sleeping room for SCL recipients who are:
      a. Of the opposite sex; or
      b. Under the age of eighteen (18) if a roommate would have an
ace variance of more than five (5) years or present a threat; and
2. Have a separate bed for each SCL recipient which shall be equipped with substantial springs, a clean and comfortable mattress, and clean bed linens;
3. Ensure the provision of Phase I and Phase II, and continuing in-service training of all staff as established in the "Supports for Community Living Manual" and defined by DMH/MR.
4. (a) Offer behavioral support:
   1. Establish and follow written guidelines developed by a behavior specialist which shall define the behavior support techniques and procedures used, include the hierarchy of interventions ranging from least to most restrictive, and reflect the use of positive approaches; and
   2. Prohibit the use of corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requires sleep, shelter, bedding, food, drink, or use of bathroom facilities;
   (b) If offering support coordination:
      1. Be responsible for documentation and communication of the SCL recipient's individual record containing:
         a. Social history;
         b. Psychological evaluation;
         c. Annual physical examination;
         d. Original, current and previous ICF/MR/DD level of care determinations;
         e. Current ISP documentation of services available to an SCL recipient for a program funded under 20 USC Chapter 33;
         f. Financial records;
         g. MAP-552 or MAP-105;
         h. MAP-350; and
         i. A monthly summary note documenting the monitoring of ISP outcomes;
      2. Establish and follow guidelines to ensure timely distribution of the ISP to all SCL waiver providers who are providing services to an SCL recipient;
      3. Work in conjunction with SCL waiver providers selected by an SCL recipient to develop a crisis prevention plan which shall be individual-specific, annually reviewed, and updated as changes occur;
      4. Furnish an SCL recipient and legal representative or advocate written information describing the services of all available SCL waiver providers in the service area;
      5. Ensure questions related to service options are addressed;
      6. Maintain written documentation of informed choice, signed by the SCL recipient or legal representative, of a change to the selection of providers and the reason for the change;
      7. Upon termination of services to an SCL recipient, be responsible, in conjunction with the terminating provider for:
         a. Documentation of efforts to meet an SCL recipient's needs and events which resulted in the termination decision;
         b. Notification to the SCL recipient, legal representative, and the DMH/MR in writing at least twenty (20) days prior to the date services will stop;
         c. Offering hearing and appeal rights, based on the provider's policy;
         d. Offering a listing of all current SCL waiver providers in the state including addresses and phone numbers;
         e. Providing assistance in making contact with a chosen provider;
         f. Arranging transportation for a requested visit to a new provider site;
         g. Providing a copy of all assessments and other pertinent information to the SCL recipient or legal representative;
         h. Ensuring the health, safety, and welfare of the SCL recipient until an appropriate placement is secured; and
         i. Providing additional information to a new provider which will enhance a safe and effective service transition;
   (p) If offering a residential service, meet the following requirements:
      1. The residential service shall include:
         a. Physical assistance;
         b. Residential training to facilitate the acquisition of communication skills, sensorimotor skills, daily living, and self-help;
         c. Emotional support, advice, and assistance to aid the SCL recipient in resolving problems;
         d. Communication with the assigned support coordinator on a regularly-scheduled basis or as needed;
         e. Provision of transportation to services, activities, and medical appointments as the SCL recipient chooses;
         f. Active participation in medical appointments and follow-up care as directed by the medical staff;
         g. Cooperation with monitoring;
   2. Maintain monthly detailed staff notes which shall document services provided and ISP outcomes;
   (a) Upon offering community living supports, respite, community habilitation, supported employment, or precarvocational services, be responsible for documenting time and attendance and keeping monthly detailed staff notes; and
   (b) Upon offering occupational, physical, or speech therapy, meet the following requirements:
      1. A therapeutic support shall assist the SCL recipient in obtaining the highest level of functioning and not include maintenance or prevention of regression;
      2. A therapeutic provider shall train appropriate staff to maintain the level of functioning and prevent regression;
      3. A therapeutic provider shall maintain detailed staff notes, which shall include beginning and ending times. [General Coverage Provisions (1) Except as provided in subsection (2) of this section; SCL services shall be provided to an individual eligible for Medicaid:]
   (a) Who meets patient status criteria for intermediate care for the mentally retarded in accordance with 507-KAR 1:02(2);
   (b) Who is in a community residence living situation; and
   (c) For whom SCL services are an appropriate alternative to institutionalization;
      2. SCL services shall not be provided to an individual who:
         a. Is an inmate of a hospital;
         b. Is a resident of a nursing facility; or
         c. Is an inmate of a facility for the mentally retarded;
      3. An individual eligible for Medicaid who is an inmate or resident of a facility identified in subsection (2) of this section:
         a. May apply for an SCL service while the individual is an inmate or resident of the identified facility; and
         b. Shall not receive the service while the individual is an inmate or resident of the identified facility;
      4. The department may exclude from coverage an individual for whom the cost of SCL services exceed the cost of the appropriate level of institutional care. If aggregate expenditures for the program are exceeded, the department shall reduce the institutional cost of comparable services, as provided for in 42 USC 1396n(4)(3).
   (5) The SCL service agency shall provide one (1) or more of the services as outlined in Section 4 of this administrative regulation.
   (6) The federally-designated Peer Review Organization (PRO) shall make the level of care determination as the agent of the department.

Section 3. Incident Reporting Process. (1) An incident shall be documented on an incident report form; and
(2) There shall be three (3) classes of incidents including:
   (a) A Class I incident which shall:
      1. Be minor in nature;
      2. Not require an investigation by the provider agency;
      3. Be reported to the support coordination provider within twenty-four (24) hours; and
      4. Be retained on file at the provider and support coordination agency;
   (b) A Class II incident which shall:
      1. Be serious in nature;
      2. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery and shall involve the support coordinator;
      3. Be reported to the following by the provider agency:
         a. The support coordinator within twenty-four (24) hours of discovery;
         b. The guardian within twenty-four (24) hours of discovery; and
         c. The Assistant Director of the Division of Mental Retardation, DMH/MR or its designee within ten (10) calendar days of discovery and shall include a complete written report of the incident investigation and follow-up; and
   (c) A Class III incident which shall:
      1. Be grave in nature;
      2. Be immediately investigated by the provider agency, and the
investigation shall involve the support coordinator; and
3. Be reported to the following by the provider agency:
   a. The support coordinator within eight (8) hours of discovery;
   b. The guardian within eight (8) hours of discovery;
   c. DCBS within eight (8) hours of discovery; and
4. The Assistant Director of the Division of Mental Retardation,
   DMR or its designee within eight (8) hours of discovery and shall
   include a complete written report of incident investigation and follow-
   up within seven (7) calendar days of discovery. [Provider Participation.
   (1) A participating SCL service provider shall meet the applicable ser-
   tification requirements for providing community-based waiver services
   in accordance with 907 KAR 1:671, 907 KAR 1:672 and 907 KAR 1:673.
   (2) Group homes shall be licensed by the Commonwealth of
   Kentucky in accordance with 902 KAR 20:078.]

Section 4. SCL Recipient Eligibility Determination and Redetermi-
nation. (1) An SCL waiver service shall be provided to an SCL recipi-
tent who is determined by the department to meet ICF/MR/DD level of
care requirements established in 907 KAR 1:022.
(2) An ICF/MR/DD level of care determination regarding an SCL
recipient shall be performed by the department at least once every
twelve (12) months.
(3) An SCL waiver service shall not be provided to an SCL recipi-
tent who is receiving a service in another Medicaid waiver program or
is an inpatient of an ICF/MR/DD or other facility.
(4) An SCL waiver provider shall effectively inform an SCL recipi-

tent and the individual's legal representative of the choice of SCL waiver
services or institutional services and require an SCL recipient to sign a
MAP-350 to document the informed choice.
(5) An SCL waiver provider shall notify the local DCBS office and
the department on a MAP-24 form:
   a. To initiate SCL waiver services; and
   b. If an SCL recipient is:
      1. Terminated from the SCL Waiver Program;
      2. Admitted to an ICF/MR/DD facility; or
      3. Transferred to another waiver program.
(6) An eligible SCL recipient or legal guardian shall have freedom
of choice of participating SCL waiver providers.
(7) The department may exclude from receiving SCL waiver serv-
ices an individual for whom the aggregate cost of SCL waiver services
would reasonably be expected to exceed the cost of ICF/MR/DD
services.
(8) The criteria for voluntary and involuntary termination and loss
of an SCL Waiver Program placement shall include:
   a. The SCL recipient's failure to access SCL waiver services
   within sixty (60) days of allocation of funding without good cause

   shown;
   b. The SCL recipient's or legal representative's failure to access
   required services as outlined in the ISP for a period greater than
   ninety (90) consecutive days unless good cause can be shown; the
   burden of which shall be borne by the SCL recipient;
   c. The SCL recipient's death;
   d. The SCL recipient's chance of residence outside the Com-
   monwealth of Kentucky;
   e. The SCL recipient's election to leave the SCL program volun-
   tarily as expressed by a written notice of intent to discontinue
   service which shall be given to the service provider and to the DMR.
   No action to terminate services shall be initiated until thirty (30)
   calendar days from the date of the notice has passed in which the SCL
   recipient may reconsider and revoke the notice; or
   f. The denial of level of care of the SCL recipient.
(9) SCL termination procedures shall include:
   a. Compliance with 907 KAR 1:563 if the department initiates the
   involuntary termination from the SCL Waiver Program;
   b. Simultaneous notice to the SCL recipient or legal representa-
   tive and the support coordinator of involuntary termination or intention
   to reallocate placement at least ten (10) days prior to the effective
date of the action. The notice shall include:
   1. A statement of the action taken;
   2. The basis for the intended action;
   3. The authority by which the action is taken; and
   4. The SCL recipient's right to appeal the determination through
   the provider's appeal or grievance process.
   (c) Submission of a DMR-001 to the DMR at least twenty (20)
days prior to the effective date of the termination. If termination is initi-
ated by an SCL service provider, [Covered Services. (1) The following
shall be covered SCL services:
   a. Residential support services provided to an individual residing
   in an alternative living arrangement, which shall be as:
   1. Group home;
   2. Staffed residence; or
   3. Family home;
   (b) Support coordination as follows:
   1. Initiation and ongoing monitoring of assessment, assessment and
eligibility processes;
   2. Development and monitoring of an individual support plan;
   3. Ensuring access to and freedom of choice of SCL providers;
   4. Monitoring of the health, safety and welfare of the individual by a
   support coordinator;
   5. Ensuring the availability of a waiver service;
   6. Providing pertinent information to an individual, parent or legal
   representative;
   7. Establishing and overseeing a human rights committee for the
   review of overall service plans and individual behavior plans;
   8. Acting on behalf of the individual to assist in gaining access to
   and receiving services from qualified SCL providers;
   9. Providing assistance to the individual, his family or legal repre-
   sentative in accessing another service as needed;
   (c) Community living supports provided to an individual in the
   individual's home and not in an alternative living arrangement as iden-
   tified in paragraph (a) of this subsection, to assist, train or support in
   activities including:
   1. Laundry services;
   2. Meal preparation;
   3. Household care or maintenance;
   4. Daily living skills;
   5. Socialization;
   6. Relationship building;
   7. Leisure choices; or
   8. Participation in community activities;
   (d) Behavioral support;
   (e) Psychological services;
   (f) Occupational therapy;
   (g) Physical therapy;
   (h) Speech therapy;
   (i) Community habilitation services to provide nonresidential sup-
   port training and intervention in activities that include:
   1. Self-care;
   2. Daily living skills;
   3. Communication;
   4. Behavioral support;
   5. Community living;
   6. Social skills;
   7. Participation in community activities;
   8. Utilization of community resources; or
   9. Vocational training;
   (j) Supported employment for a participating individual if the serv-
   ices are not otherwise available under a program funded by 29 USC
   701 et seq. or PL 94-142;
   (k) Respite care provided for the temporary relief of the staff or
   family or for the safety of the individual;
   (l) Wellness monitoring services one (1) visit per month by a
   registered nurse to:
   1. Evaluate the condition of an individual at risk of medical compli-
   cations; or
   2. Refer the individual to the appropriate medical services;
   (m) Specialized medical equipment and supplies;
   (n) Personal emergency response systems.
(2) Room and board shall be excluded from coverage.
(3) Special education and related services that are required to be
provided by the public school system under 20 USC 1400 et seq. shall be
excluded from coverage.]

Section 5. Covered Services. (1) An SCL waiver service shall:
   a. Be prior authorized by the department;
   b. Be provided pursuant to the ISP; and
   c. Not be provided to a minor child by a parent or step-parent or
to an adult by that individual's spouse.
(2) The following services provided to an SCL recipient by an SCL waiver provider who meets the requirements in Section 2 of this administrative regulation shall be covered by the department:
(a) Support coordination which shall include coordinating, planning, and monitoring supports for an SCL recipient and be provided by a support coordinator who shall:
1. Have monthly, face-to-face contact with an SCL recipient to arrange activities;
2. Initiate, coordinate, implement, and monitor the assessment, evaluation, intake and eligibility process;
3. Assist an SCL recipient in the identifying, coordinating, updating, and monitoring of the ISP;
4. Develop, coordinate, update, and monitor the ISP;
5. Assist an SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referrals and information;
6. Provide an SCL recipient and chosen SCL waiver providers twenty-four (24) hour telephone access to a support coordination staff person;
7. Support an SCL recipient in assuming greater responsibility for the coordination of services;
8. Establish a human rights committee which shall include a minimum of three (3) individuals that shall include an:
   a. SCL recipient;
   b. Individual not affiliated with the SCL waiver provider; and
   c. Individual who has knowledge and experience in rights issues.
9. Establish a BIC;
(b) A community habilitation service which shall be furnished in the community or a nonresidential setting and enable an SCL recipient to:
1. Participate in a community project as a volunteer in a typically unaided position;
2. Access and utilize community resources; and
3. Utilize a variety of assistance and training to interact with the environment through expressive services which shall be based on goals and be therapeutic rather than diversional;
(c) A supported employment service which shall be intensive, ongoing support for an SCL recipient to maintain paid employment in an environment in which individuals without disabilities are employed and shall:
1. Not be available under a program funded by either the Rehabilitation Act of 1973 or PL 99-457 proof of which shall be documented in the individual's file; and
2. Not include work performed directly for the supported employment provider;
(d) Vocational service aimed at preparing an SCL recipient for paid or unpaid employment;
1. Be twenty-four (24) hour support promoting integration into the community for an SCL recipient residing in alternative living arrangements and shall include:
   a. A staffed residence which shall be in a home rented or owned by the provider agency;
   b. A group home which shall be licensed in accordance with 902 KAR 1:076;
   c. A family home which shall not have greater than three (3) individuals who are not family members living in the home; or
   d. An adult foster care home which shall not have greater than three (3) individuals age eighteen (18) and over who are not family members living in the home; and
2. Provide everyday supports which shall include:
   a. Assistance;
b. Promoting;
c. Observing or guiding;
d. Activity planning;
e. Laundry;
f. Routine household care and maintenance;
g. Activities of daily living:
   h. Shopping;
   i. Money management;
j. Medication management;
k. Socialization;
l. Relationship building;
m. Leisure choices; and
n. Participation in generic community activities;
(f) A community living supports service which shall:
1. Facilitate independence and promote integration into the community for an SCL recipient residing in his home;
2. Provide supports which shall not be di
tensional in nature and shall include:
a. Assistance;
b. Activity training;
c. Laundry;
d. Routine household care and maintenance;
e. Activities of daily living;
f. Personal hygiene;
g. Shopping;
h. Use of money;
i. Socialization;
 j. Relationship building;
k. Leisure choices; and
l. Participation in generic community activities; and therapeutic goals; and
3. Not be a substitute for twenty-four (24) hour care;
(a) A behavior support which shall include systematic application of techniques and methods to influence or change a behavior in a desired way and shall:
1. Include an evaluation of an SCL recipient's behavior to develop a plan by a behavior specialist;
2. Be implemented by the provider staff in other program areas that include relevant environments and activities; and
3. Be monitored and revised as necessary to ensure desired outcomes;
(h) A psychological service which shall:
1. Include psychological testing administered by a psychologist for dually-diagnosed SCL recipients to coordinate treatment for mental illness and psychological conditions in which behavior modification is not sufficient to meet the need of an SCL recipient; and
2. Be incorporated into the ISP with input from a psychologist for the development of program-wide support and may be administered on site;
(i) Occupational therapy which shall provide assistance to the physician in the evaluation of an SCL recipient's level of functioning and be provided by an occupational therapist;
(j) Physical therapy which shall be assistance to the physician in the evaluation of an SCL recipient by a physical therapist applying muscle, joint, and functional ability tests and treating an SCL recipient to relieve pain, develop or restore function, and maintain maximum physical performance and utilize physical means;
(k) Speech therapy which shall include an evaluation, determination, and recommendation of appropriate supports for an SCL recipient with a speech or language disorder by a speech therapist;
(l) A respite service which shall be furnished in a variety of settings on a short-term basis due to absence or need for relief of those individuals providing care to an SCL recipient unable to administer self-care that resides in a family home, adult foster care home, or their own home and shall be limited to 1440 hours per calendar year; and
(m) Specialized medical equipment and supplies which shall:
1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies which shall enable an SCL recipient to increase ability to perform daily living activities, perceive, control or communicate with the environment;
2. Be ordered by a physician and submitted on a MAP-95;
3. Be equipment necessary to the proper functioning of specialized items;
4. Not be available through the department's durable medical equipment, vision, hearing, or dental programs; and
5. Meet applicable standards of manufacture, design and installation.
[Prior Authorization for Services (1) The department shall prior authorize an SCL service to ensure that:
(a) Client status is met;
(b) There are adequate services for the needs of the individual; and
(c) The services do not exceed the cost of the appropriate level of institutional care.
(2) An individual who is eligible for SCL services shall be given the choice of SCL services or traditional intermediate care facility services for persons with mental retardation or developmental disabilities.]
Section 6. SCL Waiting List. [Using the procedures established in the Department for Medicaid Services' Support for Community Living Manual, which is incorporated by reference, an individual may be placed on a waiting list maintained by the department. The main components of the SCL waiting list process shall be as follows:]

(1) A statewide waiting list of individuals applying for SCL services shall be maintained by the department for each regional community mental health service area and each geographic area.

(2) [Application.] An individual shall be placed on the SCL waiting list, and allocated funding based upon his region of residence in accordance with KRS 205.631(7)(3) and (4).

(3) In order to be placed on the SCL waiting list, an individual shall submit to the department, a completed MAP-620 Application for Supports for Community Living M/OD Services, including a signature from a physician or a DMSP indicating medical necessity. A resident in an ICF/MR seeking SCL services shall be placed on the SCL waiting list based upon region of origin and be effective on the date of admission to the ICF/MR but not prior to September 22, 1995. Upon receipt of a completed application for supports for community living services,

(4) [SCL waiting list placement.

(2)] The SCL waiting list shall be determined chronologically by date of receipt of the application by the department, unless an emergency situation exists and persists through the date of the allocation of the SCL funding, which meets specified criteria as follows:

(a) Death of the historic primary care provider that threatens the health, safety, and welfare of the individual;
(b) Verifiable loss of the historic primary care provider due to incapacitation or abandonment that threatens the health, safety, and welfare of the individual;
(c) attainment of the age of twenty (20) years and six (6) months, and in the custody of the DCBS, [1-Death or loss of the immediate care provider; 2. Emergency hospitalization of the immediate care provider; or 3. Other circumstances relating to the situation of the individual or carer to be considered by the department on a case-by-case basis.]

(5) [If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list.]

(6) [If a written notification of the date and placement on the SCL waiting list shall be mailed to the individual or his legal representative and support coordinator or other representative if identified.]

(7) [Maintenance of the SCL waiting list. The department shall, at least annually, update the SCL waiting list. An [The] individual on the SCL waiting list or his legal representative and his [the] support coordinator shall be contacted in writing to verify the accuracy of his [the] data on the SCL waiting list and to verify his [the] continued desire to pursue placement in the SCL Program. The requested data shall be received by the department within thirty (30) days from the date of the letter, excluding holidays and weekends.]

(8) [Criteria for removal from the SCL waiting list. The removal of an individual from the SCL waiting list shall not prevent the submittal of a new application at a later date for the individual.

(a) The criteria for removal from the SCL waiting list shall be:
1. After a documented attempt, the department is unable to locate the individual or his legal representative;
2. SCL placement for services is offered and the individual or his legal representative refuses the offer of placement or does not, without good cause, complete the application process with the department within sixty (60) days of the placement allocation date; or
3. The individual is deceased.
(b) If an [The] individual is removed from the SCL waiting list, written notification shall be mailed by the department to the individual or his legal representative and the SCL coordinator provider.]

Section 7. 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 1:566.

(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:567. [A decision to terminate an individual or to reallocate placement subject to appeal shall not be final until an order is issued in accordance with 907 KAR 1:563.]


(2) This material [list of referenced source] 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.

ELLEN M. HESEN, Interim Commissioner MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY; September 27, 2001 FILED WITH LRC: October 10, 2001 at 8 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Warda Fowler or Teresa Goodrich
(1) Provide a brief summary of: 907 KAR 1:145E (a) What this administrative regulation does: This administrative regulation establishes supports for community living (SCL) covered services, coverage provisions, and provider qualifications.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to define SCL covered services, recipient criteria, and provider qualifications.
(c) How this administrative regulation conforms to the content of the authorizing statutes: Establishing covered SCL services, coverage provisions, and provider qualifications falls within the jurisdiction of KRS 194A.020 and 194A.053 which grant the Department for Medicaid Services (DMS) and the Cabinet for Health Services the authority to promulgate administrative regulations on the subject of SCL services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will, in accordance with the authorizing statutes, establish SCL covered services, coverage provisions, and provider qualifications.
(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 revises the personnel qualifications of an SCL provider's executive director position with the addition of one year of administrative responsibility in an organization which served individuals with mental retardation or a developmental disability.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation will ensure the continued safety and welfare of the SCL recipients through the assurance that the executive director of the provider agency shall be have administrative experience with an organization that served individuals with mental retardation or a developmental disability.
(c) How the amendment conforms to the content of the authorizing statutes: The amendments to the administrative regulation revise the personnel qualifications of an SCL waiver provider's executive director position.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will ensure that an agency's executive director has the appropriate administrative experience to manage a provider agency participating in the SCL Waiver program.
(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendments to this administrative regulation will affect all SCL waiver providers and SCL recipients.
(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 that SCL recipients will be beneficially impacted by the implementation of this administrative regulation because the revised personnel qualifications of an SCL waiver provider's executive director position will ensure their safety and welfare. The impact will benefit SCL waiver providers through increased quality assurance in providing services to
the SCL recipients.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: This administrative regulation only establishes provisions related to SCL service coverage rather than SCL reimbursement. SCL reimbursement is established in 907 KAR 1:155E. Implementing this administrative regulation will have no fiscal impact on 907 KAR 1:155E for SFY 2003.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation only establishes provisions related to SCL service coverage rather than SCL reimbursement. SCL reimbursement is established in 907 KAR 1:155E. 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 907 KAR 1:155E.

(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 only establishes provisions related to SCL service coverage rather than SCL reimbursement. SCL reimbursement is established in 907 KAR 1:155E. There will be no increase in fees or funding necessary to implement 907 KAR 1:155E as a result of any amendments to this administrative regulation as funding was included in the enacted budget.

(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 directly increase any fee.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. 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.
ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

EARLY CHILDHOOD DEVELOPMENT AUTHORITY  
(As Amended at ARRS, October 3, 2001)


STATUTORY AUTHORITY: KRS 200.703(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 200.703(5) requires the Early Childhood Development Authority to promulgate administrative regulations to coordinate and improve early childhood development services, outcomes and policies; establish procedures that relate to its governance; designate services areas of the Commonwealth where the community early childhood councils may be established to identify and address the early childhood development needs of young children and their families for the communities that they serve; establish procedures for the monitoring of grants, services, and activities of the community early childhood councils and their governance; establish procedures for accountability and measurement of success of programs that receive funds from the authority; and establish standards for the payment of funds to a designated service provider and grantee of a community early childhood council. This administrative regulation establishes procedures for the governance of the Early Childhood Development Authority and procedures for disbursement of funds to permit the authority to disburse monies in accordance with KRS 200.700(1) from the Early Childhood Development Fund to programs that support and promote early childhood development.

Section 1. Definition. “Authority” means the Early Childhood Development Authority.

Section 2. Duties of the Authority. The authority shall:
(1) Fulfill the requirements of KRS 200.700 and 200.703;
(2) Disburse funds to a community early childhood council established by KRS 200.151, to programs that support and promote early childhood development;
(3) Collect and request information from the following agencies for the purpose of monitoring services that improve, enhance, or promote early childhood development:
(a) Cabinet for Families and Children;
(b) Cabinet for Health Services;
(c) Education, Arts, and Humanities Cabinet;
(d) Finance and Administration Cabinet; and
(e) Any other agency that contracts with the authority to provide services; and
(4) Collect the following reports:
(a) An annual report from the Cabinet for Families and Children pursuant to KRS 199.8996(2) and (3);
(b) Ad hoc reports from the Early Childhood Business Council pursuant to KRS 200.700(6) and (7);
(c) Ad hoc reports from the Early Childhood Professional Development Council pursuant to KRS 200.711(3).

Section 3. Governance. (1) Each meeting of the authority shall:
(a) Be announced and open to the general public;
(b) Be conducted according to Robert’s Rules of Order; and
(c) Meet pursuant to KRS 200.700(5).
(2) A quorum:
(a) Of seven (7) members at a meeting of the authority shall be required for the authority to take action; and
(b) Shall exclude a representative who attends an authority meeting on behalf of a member.

Section 4. Service Areas and Community Early Childhood Councils. (1) A service area required by KRS 200.703(5) shall be no smaller than a county.
(2) More than one (1) county may form a partnership for the purpose of creating a community early childhood council.
(3) [Formation of] A community early childhood council shall be formed in accordance with KRS 200.707(1) to (3).

Section 5. Eligibility Requirements for Receipt of Funding by a Community Early Childhood Council. (1) A community early childhood council that applies for funds disbursed by the authority shall submit a proposal that complies with KRS 200.707(5) and includes the following:
(a) Service area assessment that describes the area’s:
1. Existing resources; and
2. Child care service needs;
(b) Project overview that describes how a council intends to address the needs of the area served by the council;
(c) Work plan that identifies:
1. Each activity that contributes to successful implementation of the project overview;
2. Individual or group responsible for each activity; and
3. Timeframe for completion of each activity;
(d) Budget and budget justification that demonstrates how the requested funds shall be used to support the proposal; and
(e) Anticipated outcomes that may include:
1. Maintaining or increasing the number of licensed child care centers or certified family child care home providers that provide safe, stable, and nurturing learning environments for children who reside in a service area covered by the community early childhood council;
2. Maintaining or increasing the number of child care providers that promote healthy child development;
3. Providing support to families through partnerships with child care providers; and
4. Maintaining or increasing affordable child care options.
(2) A review team established by the authority shall:
(a) Prioritize each grant proposal; and
(b) Recommend to the authority:
1. Which grant proposals shall be funded; and
2. The amount of each award;
(3) The authority shall [reserves the right to]:
(a) Make the final funding determination; or
(b) Refer a grant proposal for further review during subsequent meetings;
(4) A community early childhood council that receives funds from the Early Childhood Development Authority shall:
(a) Comply with the reporting requirements specified in KRS 200.707(6);
(b) Submit a roster of council members that includes:
1. The geographic area represented by each member;
2. Place of employment of each member; and
3. Each member’s term limit on the council; and
(c) Submit minutes of each council meeting to the authority.

Section 6. Accountability. (1) The authority shall use the Management Accounting Reporting System for the purpose of measuring accountability and the success of a program that receives early childhood development funds.
(2) The authority may take adverse action, as described in KRS 200.703(6), if a recipient of early childhood development funds fails to meet the authority’s requirements for grant participation.
(3) Appeal of an adverse action may be made to the authority in accordance with the procedures established in KRS Chapter 13B.
KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(As Amended at ARRS, October 9, 2001)

11 KAR 6:010. KHEAA Work-Study Program.

RELATES TO: KRS 164.744(2), 164.748(4), 164.753(6)
STATUTORY AUTHORITY: KRS 164.744(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4)

requires the authority to promulgate administrative regulations governing work-study payments. This administrative regulation establishes the KHEAA Work-Study Program.

Section 1. Definitions. (1) "Administrative cost allowance" means a payment negotiated between the authority and a participating institution for annual costs directly related to the administration of the KWS program, not to exceed eight (8) percent of the gross wages earned, the amount requested by the institution, or $15,000 annually, whichever is least.

(2) "Alternate work plan" means a work-study arrangement in which a participating student alternates a school term with a work term.

(3) "Authority" is defined in KRS 164.740(1).

(4) "Business school" is defined in KRS 164.740(3).

(5) "Career-related work experience" means a job which has a correlation with the participating student's career direction determined by the participating institution and evidenced by the student's major course of study.

(6) "College" is defined in KRS 164.740(4).

(7) "Cost of education" means the total expenses commonly related to obtaining an education at the participating institution, including tuition, fees, books, supplies, and other direct expenses incurred by the student.

(8) "Eligible program of study" means a program not leading to a bachelor's degree.

(9) "Financial need" means the total cost of education less financial assistance received from all sources, other than KWS employment, including grants, loans, and scholarships.

(10) "Full-time" means the number of credit hours determined by the participating institution to constitute full-time enrollment, which:

(a) is generally twelve (12) semester hours, twenty-four (24) clock hours, or six (6) summer school hours; and

(b) is not limited to academic credit earned from KWS employment.

(11) "KWS" means the KHEAA work-study program.

(12) "Prevailing wage rate" means the base rate of pay per hour for work performed by a participating student who is or would be performing equal job tasks as another employee, plus benefits to another employee having the same status as the KWS employee.

(13) "Private employer" means an employer in the private sector, other than the institution that the participating student is attending.

(14) "School of nursing" is defined in KRS 164.744(30).

(15) "Semester" means a period of not less than fifteen (15) weeks, within which the student may receive credit for a minimum of five (5) semester credit hours.

(16) "Work study" is defined in KRS 164.740(3).

Section 2. Alternate Work Plan. A participating student shall be considered a participant under an alternate work plan if the student:

(1) Attends school full time one (1) school term;

(2) Works full time the next school term, including a summer, for a participating employer;

(3) Is not enrolled at least half-time during the term of employment; and

(4) Returns to school full time the following school term.

Section 3. Institutional Eligibility. To participate in the KWS program, an educational institution shall:

(1) Be a college, business school, vocational school, school of nursing, located within Kentucky;

(2) Offer an eligible program of study;

(3) Have in force an administrative agreement with the authority pursuant to 11 KAR 4:040;

(4) Submit a request for funding; and

(5) Execute a supplemental contractual arrangement with the authority and a participating employer.

Section 4. Funding Allocation Process. Each year, the authority shall invite an eligible institution to submit a proposal for funding and shall provide instructions for submitting the proposal. The authority shall consider a proposal properly submitted by an eligible institution for the next fiscal year, subject to the authority's determination of the request.

(1) The authority shall award an administrative cost allowance, if the institution demonstrates need, to administer the KWS program for one (1) year. At least seventy-five (75) percent of wage reimbursement dollars shall be utilized with private employers.

(2) The authority shall consider the institution's request for funding and its past performance in the KWS program in the determination of approval for funding and the funding level. The authority shall evaluate the institution's past performance in participating in and administration of other programs of student financial assistance funded or administered by the authority and the institutions' ability to:

(a) Comply with this administrative regulation and contractual obligations under the KWS program;

(b) Administer the program cost-effectively with the greatest results for students, evidenced by previous years' program records;

(c) Utilize the wage-reimbursement dollars allocated, evidenced by previous years' program records;

(d) Avoid using KWS dollars to supplant existing work-related programs for students; and

(e) Adequately monitor program activities, including eligibility determination of students and employers, continued eligibility of students and employers, and actual program activities as they relate to students' career-related work experience.

(3)(a) At least ninety (90) percent of the available funds that do not exceed the appropriation for the preceding fiscal year shall be awarded to eligible institutions that participated and expended all or the major portion of their wage reimbursement allotment during the prior year.

(b) If available funds do not exceed the appropriation for the preceding fiscal year, the authority shall not award more than ten (10) percent of available funds to eligible institutions that did not participate or had minimal participation in the KWS program during the preceding fiscal year.

(c) Allocation by the authority of available funds that exceed the appropriation for the preceding fiscal year shall be constrained by the authority's level of participation by an eligible institution during the prior year.

(d) If available funds are not sufficient to award each institution the amount requested, the authority shall allocate funds to some or all of the eligible institutions that submit requests for funding, taking into consideration the institution's past performance and level of funding under the KWS program, and the institution's level of participation and demonstrated capability to administer other programs of student financial assistance funded or administered by the authority.

Section 5. Employer Eligibility. To participate in the KWS program, an employer shall:

(1) Provide a bona fide career related work experience for a participating student as determined by the participating institution in which the student is enrolled and submit a descriptive position analysis to the participating institution;

(2) If the employer is not a participating institution, execute a KWS employer agreement with each participating institution from which a participating student is hired; or
(b) If the employer is a participating institution, agree with the authority to be bound by the terms of a KWSP employer agreement;
(3) Provide a Kentucky work site for a participating student employed by the employer;
(4) Not be a business entity formed substantially for the purpose or intention of participating in the KWSP; and
(5) Not utilize a participating student in a work environment that is sectarian in nature or that involves political activity.

Section 6. Student Eligibility. To participate in the KWSP, a student shall:

(1) Be a citizen of the United States;
(2) Be a Kentucky resident, as determined by the participating institution, in accordance with 13 KAR 2:045;
(3) Be enrolled or accepted for enrollment on at least a half-time basis at a participating institution;
(4) Demonstrate financial need;
(5) Be in good standing and making satisfactory academic progress toward completion of his educational program, as determined by the participating institution, and have a cumulative grade point average of not less than the equivalent of a "C" (inclusive of all postsecondary courses attempted for a postsecondary student or secondary school grade point average for an entering freshman);
(6) Not be participating in another work program administered by the participating institution;
(7) Not be enrolled in a major course of study in religion, theology, or divinity;
(8) Submit a completed Work-study Program Student Application to the participating institution, properly completed in accordance with the instructions, and be approved for participation by the participating institution;
(9) Not be in default on a financial obligation to the authority under a program administered by the authority pursuant to KRS 164.740 through 164.785, except that ineligibility for this reason may be waived by the executive director of the authority, at the recommendation of a designated staff review committee, for cause; and
(10) Execute an employment agreement required by the participating institution.

Section 7. Employer Responsibilities. To receive wage reimbursement, a participating employer shall:

(1) Immediately notify the participating institution in writing if a participating student's employment is terminated, stating the reason for and effective date of termination;
(2) Report promptly to the participating institution a significant change of the position analysis or the student's work assignment;
(3) Submit to the participating institution on a regular basis a certified, accurate proof of wages paid to a participating student;
(4) Pay a participating student the prevailing wage rate, which shall not be less than the federal minimum wage;
(5) Comply with all federal and state employment, safety and civil rights laws applicable to the position filled;
(6) Not, without prior consent of the participating institution, permit or require a participating student to work in excess of:
   (a) Thirty (30) hours per week for a student currently enrolled less than full time;
   (b) Twenty (20) hours per week for a student currently enrolled full time; and
   (c) Forty (40) hours per week for a student employed under an alternate work plan;
(7) Permit on-site inspection and review of records by a representative of the participating institution and the authority during normal business hours; and
(8) Ensure that a regular employee is not displaced by a KWSP participating student.

Section 8. Student Responsibilities. A participating student shall:

(1) Participate in all screening or preplacement activities required by the participating institution;
(2) Maintain eligibility pursuant to Section 6 [8] of this administrative regulation, and immediately notify the participating institution in writing of a change that affects the student's continued eligibility;
(3) Be available for a job interview if requested by a participating employer; and
(4) Perform all reasonable employment obligations and comply with all reasonable policies and requirements of the participating employer.

Section 9. (1) An appeal regarding student or employer participation shall be directed to the participating institution and shall be reviewed, settled or determined by an appeal committee consisting of no fewer than three (3) individuals.
(2) An appeal regarding institutional eligibility or participation shall be determined by the authority in accordance with 11 KAR 4:020.

Section 10. Incorporation by Reference. (1) "KHEAA Work-Study Program Student Application" form, November, 1997, is incorporated by reference.
(2) This material [10] may be inspected, copied, or obtained, subject to applicable copyright law; at:
   (a) The Kentucky Higher Education Assistance Authority, 1059 U.S. 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.; or
   (b) A participating institution during that institution's regular [regulation] business hours.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: June 28, 2001
FILED WITH LRC: August 15, 2001 at 11 a.m.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(As Amended at ARRS, October 9, 2001)

11 KAR 14:010. Osteopathic Medicine Scholarship Program application process.

RELATES TO: KRS 164.7891 [1998 Ky. Acts ch. 256 sec. 1-240];

1. Definition. "Authority" is defined in KRS 164.740(1).

Section 1. (1) The school of osteopathic medicine shall send notification to the authority by August [July] 1 of each year of those students eligible to receive the scholarship.
(2) The list submitted by the school of osteopathic medicine shall contain each [the] eligible student's name, address, Social Security number, and academic year for which the promissory note is applicable.

Section 3. Promissory Notes. (1) Following receipt of the list of eligible students required by Section 2 of this administrative regulation, the authority shall deliver to the school of osteopathic medicine a promissory note for signature by each student eligible to receive an osteopathic medicine scholarship.
(2)(a) The promissory note shall be signed by the student in the presence of an official of the school of osteopathic medicine.
(b) The student shall present to the school official adequate identification, including a driver's license, a school identification, or other item of identification satisfactory to the school official, to ensure that the person signing the promissory note is the student named on the promissory note.
(c) After the student has signed the promissory note, a copy shall be retained by the student for his records and the original shall be returned to the school to KHEAA.
(3) The school of osteopathic medicine shall deliver to the authority with the original signed promissory note for a student eligible to receive the scholarship a date sheet containing the following information necessary to process the promissory note for the scholarship:
   (a) Student's complete name;
Section 3. If the scholarship recipient obligated for repayment remits a partial payment, the payment shall first be applied to accrued interest and then to unpaid principal on the earliest unpaid promissory note and on each unpaid promissory note in the order in which the promissory notes were executed.

Section 4. The interest rate applicable to repayment of a promissory note under this program shall be twelve (12) percent per annum.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: June 28, 2001
FILED WITH LRC: August 15, 2001 at 11 a.m.

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(As Amended at ARRS, October 9, 2001)


RELATES TO: KRS 164.7891 [1998-Ky-Acts-ch-256, sec-1]
STATUTORY AUTHORITY: KRS 164.748(4), 164.7891(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7891(9) requires the authority to promulgate administrative regulations for administration of the Osteopathic Medical Scholarship Program. This administrative regulation establishes procedures for the application of payments made under the Osteopathic Medical Scholarship Program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.7401.
(2) "Disbursement" means the date the school indicates on the disbursement roster that funds were either credited to the student's account or disbursed to the student described in 11 KAR 14:030, Section 2.
(3) "Qualified service" is defined in KRS 164.7891(3)(c).
(4) "Full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year" means practicing in a qualified field for at least 2000 hours per calendar year.
(5) "Qualified field" means family practice, general practice, general internal medicine, general pediatrics, general obstetrics or gynecology.
(6) "Qualified service" is defined in KRS 164.7891(3)(c).

Section 2. A scholarship recipient shall notify the authority in writing within thirty (30) days of:
(1) Cessation of full-time enrollment in the osteopathic medicine program;
(2) Commencement or cessation of an internship leading to licensure in the Commonwealth of Kentucky to provide qualified service;
(3) Completion or failure to complete a residency requirement in a qualified field;
(4) Licensure to practice osteopathic medicine in the Commonwealth of Kentucky;
(5) Failure to obtain a license to practice osteopathic medicine in the Commonwealth of Kentucky;
(6) Employment in a qualified service position;
(7) Failure, within 180 days following licensure to practice osteopathic medicine in the Commonwealth of Kentucky, to obtain employment in full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year in a qualified field;
(8) Change of name, permanent home address, or place of employment.

Section 3. The [A] school of osteopathic medicine shall notify the authority in writing within thirty (30) days of learning that an Osteopathic Medicine Scholarship recipient:
1. Ceases [has-ceased] to be enrolled on a full-time basis at the school of osteopathic medicine;
(2) [1] Commences or fails to complete an internship leading to licensure to provide qualified service; or
(3) [2] Commences or fails [or failed] to complete a residency requirement.

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: June 28, 2001
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KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY
Division of Student Services
(As Amended at ARRS, October 9, 2001)


RELATES TO: KRS 164.7891 [1998 Ky. Acts ch. 256, sec. 1]
STATUTORY AUTHORITY: KRS 164.7891[9] [164.748(4), 1998 Ky. Acts ch. 256, sec. 1(9)]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.7891(9) [1998 Ky. Acts ch. 256, sec. 1(9)] requires the authority to promulgate administrative regulations for administration of the Osteopathic Medicine Scholarship Program. This administrative regulation establishes conditions for deferment of the repayment obligation under the Osteopathic Medicine Scholarship Program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.748(1).
(2) "Deferral" means a temporary waiver of the obligation of an osteopathic medicine scholarship recipient to make payments to the authority pursuant to one (1) or more promissory notes, executed between the recipient and the authority, which is granted by the authority, for a specified period of time, upon a showing of cause by the recipient.
(3) "Qualified service" is defined in KRS 164.7891(1).[3][4] (c) (1998 Ky. Acts ch. 256, sec. 1(9))
(4) "Full-time practice in the Commonwealth of Kentucky as a licensed doctor of osteopathy for a majority of the calendar year" means practicing in a qualified field for at least 2000 hours per calendar year.
(5) "Qualified field" means family practice, general practice, general internal medicine, general pediatrics, general ob-gyn-care, or gynecology.
(6) "Qualified service" is defined in KRS 164.7891(3)(c).

Section 2. Request for Deferral. (1) The osteopathic medicine scholarship recipient shall request a deferment in writing by submitting to the authority complete and accurate information verifying the recipient's circumstances that qualify for deferment in accordance with this administrative regulation.
(2) The recipient's submission of a request for deferment shall constitute authorization for the authority to request and receive from a third-party verification [from a third-party] of facts represented by the recipient as may be deemed necessary by the authority.

Section 3. Effect of Repayments. (1) During a deferment:
(a) A principal or interest repayment shall not be required; and
(b) Interest shall continue to accrue on the unpaid balance owed by the recipient during the period specified in Section 4(3)(4) of this administrative regulation.
(2) The authority shall not grant a deferment if a deferment would legally impair the ultimate recovery of the principal and accrued interest otherwise owed by the recipient.
(3) A promissory note for which repayment is deferred in accordance with this administrative regulation shall subsequently be cancelled in accordance with KRS 164.7891(5) [1998 Ky. Acts ch. 256, sec. 1(5)] if the osteopathic medicine scholarship recipient resumes full-time enrollment in an accredited program of study at a school of osteopathic medicine located in the Commonwealth or renders qualified service.

Section 4. Types of Deferments. The authority may grant deferment of repayment for a period of one (1) year, not to exceed an aggregate of thirty-six (36) months, excluding internship and residency deferment, for the following circumstances:
(1) Disability deferment:
(a) A deferment may be granted to an osteopathic medicine scholarship recipient who is:
1. Temporarily totally disabled and, therefore, unable to attend school or perform qualified service; or
2. Unable to attend school or perform qualified service due to the temporary, total disability of the osteopathic medicine scholarship recipient's spouse who requires continuous (twenty-four (24) hour) nursing or similar care by the recipient.
(b) For purposes of this deferment, an osteopathic medicine scholarship recipient, or the spouse of a recipient, shall be considered temporarily totally disabled if he suffers an injury or illness which necessitates an extended or indefinite period of recovery which can be expected to preclude school attendance or employment and, in a case of a recipient's spouse, he is not confined to a hospital, nursing home, intermediate care facility, or similar institution.
(c) The recipient shall provide to the authority a statement from a licensed physician (other than the osteopathic medicine scholarship recipient) certifying that the recipient or spouse is temporarily totally disabled in accordance with the requirements established in paragraph (3) of this subsection. The authority shall be solely responsible for securing the physician's certification and ensuring that it is received by the authority.
(d) This deferment may be granted for a period of less than one (1) year at a time and shall be subject to periodic review of a physician's certification.
(e) After the third year of a recipient's disability deferment, pursuant to this subsection and subsection (2) of this section (paragraph), the authority may cancel the debt if it reasonably appears to the authority based on the certification of a licensed physician other than the scholarship recipient that the scholarship recipient is totally disabled and the disability is expected to be permanent and continue to preclude the scholarship recipient's school attendance and employment for an indefinite time.
(2) Hardship deferment.
(a) If enrollment in an accredited program at a school of osteopathic medicine located in the Commonwealth or performance of qualified service is temporarily interrupted due to circumstances beyond the recipient's control, including natural disaster or death in the family, after which the recipient intends to resume the enrollment or qualified service position, the authority may determine that a hardship exists and may grant a deferment.
(b) This deferment may be granted for a period of less than one (1) year but shall not exceed an aggregate of twelve (12) months, and may be subject to periodic review of documentation.
(3) Internship and residency deferment.
(a) An osteopathic medicine scholarship recipient may receive a deferment during the normal term of service in a single American Osteopathic Association approved rotating internship in osteopathic medicine prior to beginning practice in osteopathic medicine.
(2) An osteopathic medicine scholarship recipient may receive a deferment during the normal term of service in a single American Osteopathic Association approved residency program in a qualified field. (enrollment in a three (3) year postgraduate residency in family practice, general internal medicine, or general pediatrics prior to beginning practice.)
(b) The authority shall submit to the authority verification that he is enrolled in the internship or a residency program, the start date, and anticipated end date of the internship or residency from the hospital, clinic, or other institution where the internship or residency is being performed.
(c) This verification shall contain the following information:
1. The recipient's name, Social Security number, current home address, and telephone number;
2. The name and address of the hospital, clinic, or other institution where the internship or residency is being performed;
3. The name, title, address, telephone number, and signature on a statement of certification or verification of the person supervising the recipient's internship or residency program; and
4. The expected date that the internship or residency program will be completed.
(d) A recipient whose period of obligated service has been de-
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Kentucky Higher Education Assistance Authority
Division of Student Services
(As Amended at ARRS, October 9, 2001)

11 KAR 16:001. Definitions for 11 KAR Chapter 16.

RELATES TO: KRS 164.518
STATUTORY AUTHORITY: KRS 164.518(3), 164.749(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.518(3)
requires the authority to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes definitions applicable to 11 KAR Chapter 16.

Section 1. Definitions. (1) "Academic term" means the fall, spring, or summer semester or its equivalent under a trimester or quarter system at a postsecondary education institution.

(2) "Authority" means (a) KRS 164.749(4), (b) required to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes definitions applicable to 11 KAR Chapter 16.

Section 1. Definitions. (1) "Academic term" means the fall, spring, or summer semester or its equivalent under a trimester or quarter system at a postsecondary education institution.

(2) "Authority" means (a) KRS 164.749(4), (b) required to promulgate administrative regulations for administration of the Early Childhood Development Scholarship Program. This administrative regulation establishes definitions applicable to 11 KAR Chapter 16.

(3) "Award year" means a period that begins July 1 of one (1) calendar year and ends June 30 of the next succeeding calendar year.

(4) "College" is defined in KRS 164.740(4).

(5) "Early childhood facility" means:

(a) A licensed Type I or a Type II day care facility defined in KRES 2.001 that is located in Kentucky;

(b) [Reserved]

(c) An organization approved by the Office of Inspector General of the Cabinet for Health Services to offer training in early childhood development, or an organization approved by the Office of Inspector General of the Cabinet for Health Services to offer the training; and

(d) A developmentally-appropriate preschool program defined in KRES 157.3175.

(6) "ECDA" means Early Childhood Development Authority.

(7) "ECDA-approved early childhood development credential" means the Child Development Associate's credential or a postsecondary, undergraduate degree, certificate or diploma that is:

(a) An associate degree in early childhood education or baccalaureate degree in interdisciplinary early childhood education, early childhood-special education, early childhood development, or a related program [degree] that is approved by [request-to] the Early Childhood Development Authority,

(b) [Reserved]

(c) The Kentucky Early Childhood Development Trainer's Certificate;

(8) "Participating early childhood facility" means an early childhood facility that agrees to provide monetary incentives pursuant to 11 KAR 16:060 to early childhood development scholarship recipients employed by the facility.

(9) "Participating educational institution" means a college or vocational school located in Kentucky that:

(a) Actively participates in the Federal Pell Grant Program;

(b) Offers a scholarship program curriculum;

(c) Has a contract in force with the authority relating to the administration of the Early Childhood Development Scholarship Program and other programs administered by the authority; and

(d) Is publicly operated;

(e) Is licensed by the Commonwealth of Kentucky;

(f) Has operated for at least ten (10) years;

(g) Offers a program of study not comprised solely of sectarian instruction; and

(h) Admits as regular students only:

(i) High school graduates;

(ii) Recipients of a general equivalency diploma;

(iii) Students transferring from another accredited degree granting institution.

(10) "Professional development counselor" means an individual engaged by a regional child-care resource and referral agency with the responsibilities to recruit candidates, process the applications, and follow as indicated the procedures established [defined] in 11 KAR Chapter 16.

(11) "Professional development funds" means state or federal training funds available through the Head Start Program, a public preschool program, or the Kentucky Early Intervention System (First Steps Program).

(12) "Scholarship" means an Early Childhood Development Scholarship.

(13) "Scholarship program curriculum" means an academic course or series of courses that does not lead to a certificate, diploma, or degree in theology, divinity, or religious education offered by a participating educational institution needed to obtain an ECDA-approved early childhood development credential.

(14) "Vocational school" is defined in KRS 164.740(22).

WAYNE STRATTON, Chairman
APPROVED BY AGENCY: June 28, 2001
FILED WITH LRC: August 15, 2001 at 11 a.m.

Kentucky Licensing Board for Specialists in Hearing Instruments
(As Amended at ARRS, October 9, 2001)

201 KAR 7:015. Fees.

RELATES TO: KRS 334.050, 334.080, 334.090, 334.110
STATUTORY AUTHORITY: KRS 334.050, 334.080, 334.090,
334.110, 334.150
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessitated by KRS 334.050, 334.080, 334.090 and 334.110 and sets forth in detail all fees charged by the board.

Section 1. Application Fees Schedule. The following fees shall be paid in connection with all types of hearing instrument specialist applications:

(1) The application fee for an apprentice permit shall be fifty (50) dollars.

(2) The application fee for a license shall be fifty (50) dollars.

Section 2. Examination Fees. The following fees shall be paid in connection with the licensure examinations required by the board:

(1) The fee for the National Institute for Hearing Instrument Studies Examination shall be ninety-five (95) dollars.

(2) The fee for all portions of the state examination shall be seventy-five (75) dollars.

(3) The fee for an individual portion of the state examination shall be fifteen (15) dollars per portion.

Section 3. Original License Fees. The original license fee shall be $150 [140] for an applicant who successfully completes all portions of the examination and application processes.

Section 4. Renewal Fees and Penalties. A [No] person holding a license shall not practice in this state after March 2 of the year in which the license is to be renewed unless the license has been renewed as provided by law and payment of the prescribed fee has been made. A license [All licenses] not renewed by March 2 following the expiration date shall be deemed expired and no person holding an expired license shall not engage in the practice of fitting and selling hearing instruments. The following fees and penalties shall be paid in connection with licensure renewals and penalties:

(1) The renewal fee for licensure shall be $150 [140].

(2) The late renewal fee, including penalty, for the grace period extending from January 31 to March 2 shall be $200 [220].

(3) The renewal fee for renewal of licensure after March 2, includ-
Section 5. Duplicate License Fees. The fee for a duplicate license shall be twenty-five (25) [ten (10)] dollars.

MICHAEL K. STONE, Chair
APPROVED BY AGENCY: August 9, 2001
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KENTUCKY LICENSING BOARD FOR SPECIALISTS IN HEARING INSTRUMENTS
(As Amended at ARRS, October 9, 2001)

201 KAR 7:040. Examinations.
RELATES TO: KRS 334.060(1), 334.070, 334.080, 334.090(4), 334.150(2), (7), (8), (9)
STATUTORY AUTHORITY: KRS 334.150(2), (7), (8), (9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 334.060(1) requires an applicant for licensure to pass a qualifying examination. KRS 334.150(2) requires the board to establish and administer the qualifying examination. KRS 334.070 establishes the content [exam-}duel] of the qualifying examination applicants for licensure are required to pass. This administrative regulation establishes the qualifying examination, passing scores, and the conditions for reexamination.

Section 1. An apprentice shall take the first qualifying examination that is scheduled after the completion of the apprenticeship period.

Section 2. Requirements for Applicants Wishing to Sit for the Examination. An applicant for examination shall furnish:
(1) Two (2) forms of identification, one (1) of which shall contain a picture of the applicant, before being allowed to sit for the examination;
(2) An audiometer capable of air, bone, and speech conduction testing;
(3) Proof of audiometric calibration;
(4) Audiogram to record test results;
(5) Ear mold impression materials;
(6) A human subject to test hearing and demonstrate earmold impression techniques;
(7) Case history sheet; and
(8) Otoscope.

Section 3. Qualifying Examination. (1) An applicant for examination shall furnish two (2) forms of identification, one (1) of which shall contain a picture, before being allowed to sit for the examination.
(2) The qualifying examination shall consist of the following sections:
(1) [(a)] A written examination that tests an applicant’s:
(a) Knowledge and proficiency in the subject matters established by KRS 334.070; and
(b) Qualification to practice the fitting of hearing instruments;
(2) [(b)] A written examination on:
(a) The provisions of KRS Chapter 334 relating to specialists in hearing instruments;
(b) The provisions of administrative regulations governing the practice of specialists in hearing instruments, codified in 201 KAR Chapter 7;
(c) Conduct required or prohibited by KRS 334.120, 334.130, and the code of ethics established by 201 KAR 7:080;
(d) Ear molds; and
(e) Audiology;
(f) Acoustics; and
(2) [(c)] A practical examination on:
(a) Ear Impressions;
(b) Audiometric testing; and
(c) Defective hearing instruments.

Section 4. Scoring of Examination. (2) A passing grade shall consist of a score of seventy (70) percent on each section.
(3) A candidate shall be required to retake the sections of the examination on which he fails to achieve a passing score.
(4) The board shall issue a notification to the applicant of the results of his or her qualifying examination score.

Section 4. An apprentice shall take the first qualifying examination that is scheduled after the completion of the apprenticeship period.

Section 5. Reexamination. (1) An apprentice who fails to pass any written section of the qualifying examination two (2) times shall be allowed to extend his apprenticeship if he or she has:
(a) Met the continuing education requirements established by 201 KAR 7.076; and
(b) Paid the renewal fees required by 201 KAR 7.015.
(2) An apprentice permit may be extended for no longer than two (2) years from the date of the second examination.
(3) An apprentice shall return to and remain in stage two (2) of the apprenticeship period established by KRS 334.090(2)(b) until he or she passes the section of the examination that he or she failed.
(4) An apprentice shall attend and provide documentation of attendance for a program of instruction in the fitting of hearing instruments prior to being scheduled for reexamination.
(5) If an apprentice is unable to pass the examination within two (2) years from the date of the second examination, he shall immediately cease the practice of fitting hearing instruments.

MICHAEL K. STONE, Chair
APPROVED BY AGENCY: August 9, 2001
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KENTUCKY BOARD OF DENTISTRY
(As Amended at ARRS, October 9, 2001)

201 KAR 8:140. Continuing education compliance.
RELATES TO: KRS 214.615(1), 313.080(1), (2), 313.305
STATUTORY AUTHORITY: KRS 214.615(2), 313.080, 313.220(1), (4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.080 and 313.305 requires a dentist or dental hygienist to accumulate continuing education credits as a condition of license renewal. This administrative regulation establishes guidelines and a schedule of points for compliance with the continuing education requirements.

Section 1. (1) A dentist renewing his license by December 31, 1998, shall show proof of having accumulated fifteen (15) points of continuing education by submitting at the time of renewal:
(a) A continuing education credit record; and
(b) Written verification of actual attendance at the courses listed on the credit record.
(2) As a part of the required fifteen (15) points of continuing education, a dentist shall attend and successfully complete a course on acquired immune deficiency syndrome (AIDS) that is approved by the Kentucky Cabinet for Health Services.

Section 2. (1) Of the fifteen (15) points required by Section 1 of this administrative regulation:
(a) Ten (10) points shall be based on the science of dentistry;
(b) Five (5) points may be professional or business-related; and
(c) All points shall have the prior approval of the board.
(2) Points rating:
(a) One (1) continuing education point shall be approved for each hour of a course;
(b) One (1) continuing education point shall be approved for attendance at one (1) of the following types of meetings:
1. Local dental meeting;
2. Regional and national dental meeting;
3. Dental specialty meeting;
4. Study club dental meeting;
5. Hospital staff meeting; and
6. Nursing Home meeting.
(a) Two (2) continuing education points shall be approved for attendance at:
January 1, 2001

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KENTUCKY BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
(As Amended at ARRS, October 9, 2001)

201 KAR 17:030. License fees and requirements for inactive status.

RELATES TO: KRS 334A.150, 334A.170
STATUTORY AUTHORITY: KRS 334A.080(3), (6)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.080(6) requires the board to establish fees for licensure as a speech-language pathologist, speech-language pathology assistant, or audiologist, in accordance with the maximum limits established in KRS 334A.160 and 334A.170. KRS 334A.030(3) requires the board to establish requirements for licensure and renewals. This administrative regulation establishes the required fees and the requirements for inactive status.

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

(1) Application fee for a speech-language pathologist license, fifty (50) [twenty-five (25)] dollars.
(2) Application for an audiologist license, fifty (50) [twenty-five (25)] dollars.
(3) Combined application fee for a speech-language pathologist and audiologist license, $110 [fifty (50) dollars].
(4) Application fee for a speech-language pathology assistant license, fifty (50) [twenty-five (25)] dollars.
(5) Initial speech-language pathologist license fee, $100 [fifty (50) dollars].
(6) Initial audiologist license fee, $100 [fifty (50) dollars].
(7) Combined speech-language pathologist and audiologist license fee, $200 [100].
(8) Initial speech-language pathology assistant license fee, seventy-five (75) [thirty-five (35)] dollars.
(9) Renewal fee for speech-language pathologist license, fifty (50) [thirty-five (35)] dollars.
(10) Renewal fee for audiologist license, fifty (50) [thirty-five (35)] dollars.
(11) Combined renewal fee for speech-language pathologist and audiologist license, $100 [seventy (70)] dollars.
(12) Renewal fee for speech-language pathology assistant, fifty (50) [ten (10)] dollars.
(13) Renewal fee for grace period extending from January 31 to March 2:
   (a) For speech-language pathologist license, ninety (90) [forty-five (45)] dollars.
   (b) For audiologist license, ninety (90) [forty-five (45)] dollars.
   (c) Combined fee for speech-language pathologist and audiologist license, $180 [ninety (90) dollars].
   (d) For speech-language pathology assistant, ninety (90) [fifteen (15)] dollars.
(14) Delinquency renewal after March 2 shall be:
   (a) For speech-language pathologist license, $125 [fifty-five (55)] dollars.
   (b) For audiologist license, $125 [fifty-five (55)] dollars.
   (c) Combined fee for speech pathologist and audiologist license, $250 [100].
(15) Application fee for interim licensure for a speech-language pathologist, fifty (50) [twenty-five (25)] dollars.
(16) Application fee for interim licensure for an audiologist, fifty (50) [twenty-five (25)] dollars.
(17) Combined fee for speech-language pathologist and audiologist interim licensure, $100 [fifty (50) dollars].
(18) There shall not be a renewal fee for interim licensure. The application fee of fifty (50) [twenty-five (25)] dollars for full licensure shall be waived for a person who has been duly licensed as an interim licensee.
(19) Application fee for interim licensure for a speech-language pathology assistant, fifty (50) [twenty-five (25)] dollars.
Section 2. A completed Annual Renewal Application or Renewal Application for Speech-Language Pathology Assistants, whichever is appropriate, shall be submitted if the licensee wants to:

1. Renew his license;
2. Request to return to an active status from an inactive status;
3. Request, or remain on, an inactive status; or
4. Terminate licensure.

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

Section 4. Inactive Licenses. (1) Fees.

(a) The inactive license fee for a speech-language pathologist for a licensing year shall be ten (10) [five (5)] dollars.

(b) The inactive license fee for an audiologist for a licensing year shall be ten (10) [five (5)] dollars.

(c) The combined inactive license fee for a speech-language pathologist and audiologist for a licensing year shall be ten (10) [five (5)] dollars.

(d) The inactive license fee for a speech-language pathology assistant shall be ten (10) dollars.

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

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

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

(c) Compliance with the continuing education requirements established in 201 KAR 17:050, Sections 10 and 11.

(3) Application for an inactive license shall be made to the board prior to March 2 and shall be accompanied by the appropriate fee of ten (10) [five (5)] dollars or twenty (20) [ten (10)] dollars for the licensing year.

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

(a) "Annual Renewal Application", January 2000; and

(b) "Renewal Application for Speech-Language Pathology Assistants", January 2000.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE O. PURVIS, Chair
DIANE SCHULER FLEMING, Assistant Attorney General
APPROVED BY AGENCY:
FILED WITH LRC:

BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
(As Amended at ARRS, October 9, 2001)

201 KAR 18:010. Classes of applicants.

RELATES TO: KRS 322.040, 322.120
STATUTORY AUTHORITY: KRS 322.040, 322.120, 322.290(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.040 establishes the criteria for credentialing persons under the jurisdiction of the board. KRS 322.120 establishes the requirements for licensure by reciprocity. This administrative regulation establishes classes of applicants for professional engineers and land surveyors for convenience in discussing and processing applications for licenses, certification and examination.

Section 1. Classes of Applicants. (1) For convenience in discussing and processing applications for licenses, certification and examination, there are hereby established the following four [4] classes of applicants.

(2) Professional engineer. This class includes those applying for engineering licenses pursuant to KRS 322.040(1), (2) and (4) or 322.120, on the basis of:

(a) KRS 322.040(1)(a). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(b) KRS 322.040(1)(b). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(c) KRS 322.040(1)(c). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(d) KRS 322.040(1)(d). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(e) KRS 322.040(1)(e). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(f) KRS 322.040(1)(f). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(g) KRS 322.040(1)(g). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(h) KRS 322.040(1)(h). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(i) KRS 322.040(1)(i). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(j) KRS 322.040(1)(j). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(k) KRS 322.040(1)(k). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(l) KRS 322.040(1)(l). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(m) KRS 322.040(1)(m). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(n) KRS 322.040(1)(n). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(o) KRS 322.040(1)(o). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(p) KRS 322.040(1)(p). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(q) KRS 322.040(1)(q). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(r) KRS 322.040(1)(r). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(s) KRS 322.040(1)(s). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(t) KRS 322.040(1)(t). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(u) KRS 322.040(1)(u). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(v) KRS 322.040(1)(v). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(w) KRS 322.040(1)(w). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(x) KRS 322.040(1)(x). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(y) KRS 322.040(1)(y). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

(z) KRS 322.040(1)(z). Licensing under this provision may be obtained by:

1. A graduate of an approved program in engineering.

BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
(As Amended at ARRS, October 9, 2001)

201 KAR 18:030. In-training certificates.

RELATES TO: KRS 322.010, 322.040, 322.120
STATUTORY AUTHORITY: KRS 322.010, 322.040, 322.120, 322.290(4)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 322.010 defines engineer in training and land surveyor in training. KRS 322.290(4) provides the board with the authority to promulgate administrative regulations necessary to perform its duties. This administrative regulation outlines the requirements under the certification program for in-training engineers and land surveyors under which the board has provided for early testing of basic sciences and fundamentals of engineering and land surveying.

Section 1. In-training Certificates. To provide an early test of ability and knowledge of the basic sciences and fundamentals of engineering and land surveying the board has established a plan for certification of engineers-in-training and land surveyors-in-training.

FILED WITH LRC: July 31, 2001 at 10 a.m.
Section 2. Examinations are offered in the fundamentals of engineering (FE) and fundamentals of land surveying (FLS) provided by the National Council of Examiners for Engineers and Land Surveyors. (1) An individual is eligible to sit for the FE examination upon completion of 105 hours in a program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology or any engineering program deemed equivalent by the board. 

(2) An individual is eligible for sit for the FLS examination upon proof of one (1) of the following:
(a) Graduation from high school or the equivalent followed by four (4) years of satisfactory land surveying experience under the direct supervision of a professional land surveyor;
(b) Graduation from a board-approved program in land surveying from a college or university;
(c) Graduation from a four (4) year program other than land surveying accredited by one (1) of the Commissions of the Accreditation Board for Engineering and Technology followed by two (2) years of land surveying experience under the direct supervision of a professional land surveyor;
(d) Graduation from a two (2) year board-approved program in land surveying followed by two (2) years land surveying experience under the direct supervision of a professional land surveyor.

Section 3. A qualified applicant who passes (to graduates of an accredited engineering or land surveying curriculum and to nongraduates with at least four (4) years of satisfactory experience.) [Qualified applicants who pass] the examination shall [will] be issued a certificate of recognition as engineer-in-training or land surveyor-in-training. The certificate shall be [valid] valid indefinitely with no renewal fees.

Section 4. The executive director is authorized to approve applications for the FE and FLS examinations.

VALERIE ANNE HUDSON, PE, Chair
APPROVED BY AGENCY: July 20, 2001
FILED WITH LRC: July 31, 2001 at 10 a.m.

BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
(As Amended at ARRS, October 9, 2001)

201 KAR 18:040. Fees.

RELATES TO: KRS 322.060, 322.090, 322.100, 322.110, 322.120, 322.160, 322.170
STATORIAL AUTHORITY: KRS 322.090, 322.100, 322.110, 322.120, 322.290(4)
NEECESSITY, FUNCTION, AND CONFORMITY: KRS 322.100 gives the board the [certain] authority to set license [fee] fees. This administrative regulation establishes fees for application, examination, certification, licensure, reinstatement and renewal fees.

Section 1. Application and Licensure Fees. (1)(a) The total fee for licensure as a professional engineer or professional land surveyor by examination shall be $250.

(b) Fifty (50) dollars of this fee shall accompany the application for examination.

(c) The fee for examination for licensure as a professional engineer or professional land surveyor shall be $200. The fee for examination as a professional engineer in Structural II shall be $200. The fee for license by reciprocity as a professional engineer or professional land surveyor shall be $300. This fee shall accompany the application for licensure.

(3)(a) The fee for application for licensure as a professional land surveyor shall be fifty (50) dollars.

(b) The fee for examination for licensure as a professional land surveyor shall be $250.

(4)(a) The initial application fee for examination as an engineer-in-training or land surveyor-in-training shall be ten (10) dollars and shall include the examination. [This fee includes one (1) examination.] An applicant who does not pass this examination and applies for a subsequent examination shall pay a fee as follows: $110 for an engineer-in-training and $125 for a land surveyor-in-training. [of $110,]

(b) The initial application fee for examination as a land surveyor-in-training shall be ten (10) dollars. Applicant who does not pass this examination and applies for a subsequent examination shall pay a fee of $125. 

Section 2. Renewal, Reinstatement, Reissuance, and Verification Fees. (1) Verification of licensure is ten (10) dollars.

(2) Renewal of an individual’s license is $150.

(3) The fee for reinstatement of an expired license or business entity permit shall be calculated as provided by KRS 322.160(3). If the license or business entity permit has been expired for more than one (1) year, the former licensee or business entity shall [must] file an [a] new application for reinstatement and pay a fee of $500.

(4) Reissuance of a license after loss or destruction is twenty-five (25) dollars.

Section 3. Fees for Examination and Licensure in Additional Disciplines [Branches]. (1) After initial licensure, a licensee may apply for examination in one (1) or more disciplines [branches] of engineering for which he has not been licensed.

(2) For each discipline [branch] of engineering he shall submit an:

(a) Updated application; and
(b) Examination fee as specified in this administrative regulation.

(3) Upon successful completion of an examination he shall submit ten (10) dollars for each addition of a new discipline.

Section 4. BusinessEntities. The fee for a permit to practice engineering or land surveying in this state shall be $100 for either permit. A business entity which [who] applies for a dual permit shall submit $150. These fees shall accompany the application. The annual renewal fee for an individual permit shall be $100. The annual renewal fee for a dual permit shall be $150.

Section 5. Payment of Fees. (1) Fees shall be paid by check or money order made payable to “Kentucky Board of Licensure”.

(2) An examination fee shall be transmitted in sufficient time to be received by the board at least two (2) weeks prior to the examination.

Section 6. Forms. (1) The following forms are incorporated by reference:

(a) “Application for Licensure to Practice Professional Engineering (1999)”;

(b) “Application for Licensure to Practice Professional Land Surveying (2001)”;

(c) “Professional Reference Form (2000)”;

(d) “Report of Professional Experience (2000)”;

(e) “Employment Verification (1999)”; 

(2) These forms may be obtained, inspected, or copied, subject to applicable copyright law, at the Kentucky State Board of Licensure for Professional Engineers and Land Surveyors, Kentucky Engineering Center, 160 Democrat Drive, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday, or by downloading from the board’s web page at http://kyboards.state.ky.us.

VALERIE ANNE HUDSON, PE, Chair
APPROVED BY AGENCY: July 20, 2001
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BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
(As Amended at ARRS, October 9, 2001)

201 KAR 18:050. Disciplines [Branches] of professional engineering for testing.

RELATES TO: KRS 322.020, 322.040(1)(a)3a, 322.080(2)
STATORIAL AUTHORITY: KRS 322.010(4), 322.040(1)(a)3a,
322.080(2), 322.290(4) [2](a)
NEECESSITY, FUNCTION, AND CONFORMITY: KRS 322.040(1)(a)3a [and–3]3[3a] requires a passing score on the Principles and Practice of Engineering Examination (PREE). KRS
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322.080(2) requires the board to prescribe the scope of the examination. Because the PFEES is administered by discipline, it is necessary for the board to establish the disciplines recognized in Kentucky for the examination. This administrative regulation establishes the examination required for all disciplines [branches of engineering for the examination].

Section 1. Disciplines [Branches] of Professional Engineering. The examination required by KRS 322.040(1)(a)(3) shall be administered in Kentucky for all disciplines for which an examination is available from the National Council of Examiners for Engineers and Surveyors, [the following branches of engineering—agricultural, chemical, civil, control systems, electrical, environmental, fire protection, industrial, mechanical, metallurgical, mining, petroleum, ship design, structural, and structural II.]

VALERIE ANNE HUDSON, PE, Chair
APPROVED BY AGENCY: July 20, 2001
FILED WITH LRC: July 31, 2001 at 10 a.m.

KENTUCKY BOARD OF NURSING
(As Amended at ARRS, October 9, 2001)

201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 194A.540, 314.041(1), (2), 314.051(3)
STATUTORY AUTHORITY: KRS 314.041(1), (2), 314.051(3), 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of this Chapter. This administrative regulation establishes the requirements for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination for a Graduate of a Kentucky Program or Other State or Territorial Nursing Program.

1. To be eligible for licensure by examination an applicant shall:
   (a) Submit:
       1. A properly executed application for licensure, as required by 201 KAR 20:370, Section 1(1);
       2. The licensure application fee as established in 201 KAR 20:240; and
   3. One (1) current passport type photograph;
   4. A report from the Kentucky Administrative Office of the Courts, Courtnet Disposition System;
   5. A certified copy of the court record of any misdemeanor or felony conviction; and
   6. A letter of explanation that addresses each conviction.
   (b) Submit a certified copy of the court record of each misdemeanor or felony conviction and a letter of explanation that addresses each conviction;
   (c) Notify the board as soon as a new address is established after submitting the application;
   (d) [Deleted] Submit a copy of a marriage certificate or court order to change the applicant's name, if the applicant's name is changed after the original application is filed;
   (f) [Deleted] When taking the examination, abide by and cooperate with security procedures adopted by the board;
   (g) [Deleted] Apply to take and pass the National Council Licensure Examination; and
   (h) [Deleted] Meet the requirement for completion of an educational course on the human immunodeficiency virus and acquired immunodeficiency syndrome, as required by KRS 214.615 and 902 KAR 2:150.

2. An application for licensure shall be valid for a period of one (1) year from the date the application is filed with the board office. This requirement shall apply to each application received by this board after the effective date of this administrative regulation and each application pending on the effective date.

3. The name of the applicant shall appear on the "Certified List of Program of Nursing Graduates" as established in 201 KAR 50:260 or the applicant shall request that the program submit to the board an official transcript verifying completion of program requirements.

4. The applicant shall complete the three (3) hour continuing education course on domestic violence within three (3) years of licensure as required by KRS 194A.540.

Section 2. Graduates of Foreign Nursing Schools. To be eligible for application for licensure by examination, a graduate of a foreign nursing school shall comply with the provisions of this section.

1. If licensed in another country, or in a jurisdiction of a country or in a jurisdiction of a territory governed by the United States, the applicant shall submit a statement from the licensing authority that the:
   (a) Applicant is a licensee in good standing;
   (b) Licensee has not been revoked, suspended, or probated; and
   (c) Licensee has not been suspended or otherwise disciplined in the licensing country.

2. An applicant shall maintain proof of legal permanent or temporary residency under the laws and regulations of the United States.

3. An applicant shall meet the requirements of Section 1 of this administrative regulation, except for Section 1(3) of this administrative regulation.

4. Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

5. Prior to taking the NCLEX examination, an applicant shall pass:
   (a) The Michigan English Language Assessment Battery (MELAB) with an overall score of at least seventy-nine (79) and a score of at least three plus (3+) on the oral interview component;
   (b) The Test of English as a Foreign Language (TOEFL) with a score of at least 207 (if taken by computer) or 540 (if taken in paper and format) and a score of at least four (4.0) on the Test of Written English (TWE) and the Test of Spoken English (TSE) with a score of at least fifty (50); or
   (c) The Test of English for International Communication (TOEIC) with a score of at least 700 and the Test of Spoken English (TSE) with a score of at least fifty (50).

6. The test shall have been taken within two (2) years of the date of the application for licensure.

7. The provisions of subsection (6) of this section shall not apply to an applicant who was educated in Australia, Canada (all provinces except Quebec), Ireland, New Zealand, or the United Kingdom.

8. Prior to taking the NCLEX examination, an applicant shall apply to the Commission on Graduates of Foreign Nursing Schools (CGFNS), If the CGFNS determines that the applicant:
   (a) Is educationally prepared as a registered nurse, the applicant shall complete the CGFNS Certification Program; or
   (b) Is not eligible for the certification program because of the applicant's educational level, the applicant shall obtain a full education course-by-course report from the CGFNS Credentials Evaluation Service. This report shall indicate that the applicant's educational level is equivalent to a United States practical nursing education program. (An applicant shall complete the Commission on Graduates of Foreign Nursing Schools (CGFNS) Certification Program prior to taking the NCLEX examination.

9. If CGFNS determines that an applicant is not eligible for the certification program because of the applicant's educational level, the applicant shall obtain a full education course-by-course report from the CGFNS Credentials Evaluation Service. This report shall indicate that the applicant's educational level is equivalent to a United States practical nurse education program. Prior to taking the NCLEX examination.

Section 3. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after meeting the requirements of Section 1 of this administrative regulation.

(2) The applicant shall not be eligible to take the examination more often than once every ninety-one (91) days.

Section 4. Release of Examination Scores. The board shall release examination results to:

(1) The candidate;
(2) Other state boards of nursing; 
(3) The National Council of State Boards of Nursing, Inc.; and 
(4) An individual or agency who submits an applicant's or licensee's written authorization for their release.

Section 5. Incorporation By Reference. (1) "Certified List of Program of Nursing Graduates". (296), Kentucky Board of Nursing, is incorporated by reference. 
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whitlington Parkway, Suite 300, Louisville, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

TENA PAYNE, President
APPROVED BY AGENCY: April 20, 2001
FILED WITH LRC: July 17, 2001 at 11 a.m.

KENTUCKY BOARD OF NURSING
(As Amended at ARRS, October 9, 2001)

201 KAR 20:225. Reinstatement of license.

RELATES TO: KRS 314.041(8), 314.042(6), 314.051(8), 314.071, 314.073, 314.091
STATUTORY AUTHORITY: KRS 314.131(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(8), 314.042(6), and 314.051(6) allow a person whose license has lapsed due to failure to renew to be able to reinstate the license. KRS 314.091 authorizes the board to discipline a licensee for a violation of the statutes or administrative regulations. This administrative regulation provides procedures for reinstatement of a license that has lapsed or has been subject to disciplinary action.

Section 1. Reinstatement of Lapsed License. (1) A license is lapsed if it has expired because of the licensee's failure to: 
(a) Submit a completed and timely application for renewal; 
(b) Submit data required to enable the board to complete the processing of an application; 
(c) Submit the current application fee; or 
(d) Meet all requirements for renewal of a license. 
(2) A lapsed license may be reinstated by: 
(a) Submitting a completed application form; 
(b) Paying the current application fee; and 
(c) Meeting all other requirements of this section. 
(3) In the case of an application for reinstatement of a lapsed license to active status, the applicant shall complete fifteen (15) contact hours of continuing education for each year since the date of last active licensure, with a minimum of thirty (30) contact hours to a maximum of 150 contact hours. 
(a) For an application completed prior to July 1 of the second year of the licensure period for the license requested, thirty (30) hours of continuing education shall have been earned no earlier than November 1 of the earning period corresponding with the current licensure period. 
(b) For an application completed after July 1 of the second year of the licensure period for the license requested, thirty (30) hours of continuing education shall have been earned no earlier than November 1 of the current licensure period. 
(c) Continuing education earned more than ten (10) years preceding the date of application shall not be counted toward meeting this requirement. 
(d) An individual who was exempt from the contact hour earning requirement pursuant to KRS 314.073(1) and who applies for reinstatement of a lapsed license within one (1) year from the date of lapse shall earn fifteen (15) contact hours. 
(4) If the applicant has been currently licensed and actively engaged in nursing practice in another jurisdiction for at least 500 hours during the preceding five (5) years, the requirements of subsection 3 of this section shall not apply. The applicant shall submit evidence to verify the current licensure and active practice. 
(5) An applicant may apply for reinstatement of a lapsed license on inactive status. The applicant shall meet the requirements of subsection (2)(a) and (b) of this section.

Section 2. Reinstatement of License Subject to Disciplinary Action. (1) If a license has been revoked, an individual may apply for reinstatement by: 
(a) Completing the appropriate application; 
(b) Paying the current application fee; 
(c) Meeting the terms of the disciplinary order; and 
(d) (e) Retaking the licensure examination and achieving a passing score. 
(2) A hearing shall be held to determine if the issuance of a license would no longer be a threat to public safety and health. 
(3)(a) If a license has been suspended or voluntarily surrendered, an individual may apply for reinstatement by: 
1. Completing an application; 
2. Paying the required fee; and 
3. Notifying the board, in writing, that the requirements of the decision or agreed order have been met. 
(b) If the decision or agreed order requires that a hearing be held, the individual shall notify the board, in writing, to request that a hearing be scheduled. 
(4) An individual whose license has been suspended or voluntarily surrendered shall be required to comply with the continuing education requirements of KRS 314.073 for the period during which the license was suspended or surrendered. 
(5) If a license has been probated and the individual has allowed the license to expire prior to the end of the probationary period, and the individual later applies for reinstatement, then the license shall be reinstated subject to the remaining probationary period. The individual shall comply with all requirements for reinstatement.

Section 3. Miscellaneous Requirements. (1) For an individual who reinstates a license during the last ten (10) months of a biennial continuing education contact hour earning period, contact hour earning which meets or exceeds the contact hour requirement for the upcoming licensure renewal may be accepted as evidence of earning for both current and upcoming licensure periods. 
(2)(a) A copy of an official name change document shall be submitted by the applicant when making application, if applicable. 
(b) Verification of the name change shall be made by submitting a copy of a: 
1. Court order; 
2. Marriage certificate; or 
3. Divorce decree. 
(3)(a) An individual who was licensed on or after July 15, 1996, and who reinstates a lapsed license shall provide evidence of having earned three (3) hours of continuing education in domestic violence as required by KRS 194A.540. 
(b) This requirement shall apply to an individual one (1) time only. 
(c) Once earned, it shall not apply to any subsequent reinstatement. 
(4) An individual who holds a nursing license that was revoked by disciplinary order of the board prior to December 31, 1987 shall [null] meet all requirements of Section 2 of this administrative regulation except Section 2(1)(d) of this administrative regulation.

MARcia HOBBS, President
APPROVED BY AGENCY: August 13, 2001
FILED WITH LRC: August 14, 2001

KENTUCKY BOARD OF NURSING
(As Amended at ARRS, October 9, 2001)

201 KAR 20:470. Dialysis technician credentialing requirements and training program standards.

RELATES TO: KRS 314.035, 314.133
STATUTORY AUTHORITY: KRS 314.131(1), 314.137
NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.137 requires the board to promulgate administrative regulations to regulate dialysis technicians. This administrative regulation establishes the requirements for dialysis technician training programs and for credentialing dialysis technicians.

Section 1. Definitions. (1) "Approved dialysis technician training
program" means a program to train dialysis technicians that is approved by the board.

(2) "Central venous catheter" means a catheter that is inserted in such a manner that the distal tip is located in the superior vena cava.

Section 2. Requirements for Dialysis Technician Credential. (1) An individual who is employed as a dialysis technician as of June 21, 2001 shall file with the board, as soon as possible but not later than July 31, 2001:
(a) The "Application for Dialysis Technician Credential"; and
(b) The "Checklist for Dialysis Technician Competency Validation", which shall be signed by the dialysis technician's immediate supervisor.

(2) An individual who is employed as a dialysis technician and who is in dialysis technician training or is in orientation before March 1, 2002, shall, upon completion of training or orientation, file with the board:
(a) The "Application for Dialysis Technician Credential"; and
(b) The "Checklist for Dialysis Technician Competency Validation", which shall be signed by the dialysis technician's immediate supervisor.

(3) An individual who is employed as a dialysis technician after June 21, 2001 but before March 1, 2002 and who is not in dialysis technician training shall, upon employment, file with the board:
(a) The "Application for Dialysis Technician Credential"; and
(b) The "Checklist for Dialysis Technician Competency Validation", which shall be signed by the dialysis technician's immediate supervisor.

(4) On or after March 1, 2002, an individual who applies to be credentialed as a dialysis technician in order to engage in dialysis care shall:
1. File with the board the "Application for Dialysis Technician Credential"; and
2. Have completed a board approved dialysis technician training program.

(b) If the individual has completed an out-of-state dialysis technician training program, the board or its designee shall evaluate the applicant's training program to determine its comparability with the standards as stated in Section 7 of this administrative regulation. The board or its designee shall advise an applicant if the training program is not comparable and specify what additional components shall be completed to meet the requirements of Section 7 of this administrative regulation.

(5) An individual shall be exempt from the credentialing requirement while enrolled in an approved dialysis technician training program. The individual shall use the title dialysis technician trainee.

(b) An individual who is employed as a dialysis technician and who is in dialysis technician training or is in orientation before March 1, 2002 shall be exempt from the credentialing requirement while in training or orientation. The individual shall use the title dialysis technician trainee.

(6) An applicant for the dialysis technician credential shall:
(a) Pay the fee established in Section 12 of this administrative regulation;
(b) Provide to the board a certified copy of the court record of any misdemeanor or felony conviction; and
(c) Provide to the board a letter of explanation that addresses each conviction.

(7) Upon approval of the application, the board shall initially issue the dialysis technician credential for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialed period.

(8) An applicant for a dialysis technician credential may engage in dialysis care as a dialysis technician applicant upon:
1. Receipt by the board of the "Application for Dialysis Technician Credential"; and
2. Meeting the requirements of subsection (6) of this section.

(b) The dialysis technician applicant shall only practice dialysis care as an applicant until:
1. The credential is issued; or
2. The application is denied by the board.

(9) An "Application for Dialysis Technician Credential" shall be valid for six (6) months from the date of receipt by the board.

(a) The application shall be processed with no further action; and
(b) The application shall be processed only after:
1. The applicant has entered into an agreed order with the board with terms and conditions as agreed by the parties; or
2. If the parties are unable to agree on terms and conditions, a hearing is held and a final decision is entered by the board; or
3. A notice to deny credential shall be issued. A notice to deny credential shall inform the applicant that he may request a hearing. The request shall be in writing.

Section 3. Renewal. (1) To be eligible for renewal of the credential, the dialysis technician shall submit, no later than one (1) month prior to the expiration date of the credential:
(a) The "Application for Renewal of the Dialysis Technician Credential"; and
(b) The fee established in Section 12 of this administrative regulation.

(2) Upon approval of the application, the credential shall be renewed for twenty-four (24) months. The credential shall lapse on the last day of the credentialed period.

Section 4. Reinstatement. (1) If the dialysis technician credential has lapsed for a period of less than one (1) credentialing period, the individual may reinstate the credential by:
(a) Submitting the "Application for Dialysis Technician Credential"; and
(b) Paying the fee established in Section 12 of this administrative regulation.

(2) If the dialysis technician credential has lapsed for more than one (1) credentialing period, the dialysis technician may reinstate the credential by:
(a) Submitting the "Application for Dialysis Technician Credential";
(b) Paying the fee established in Section 12 of this administrative regulation; and
(c) Submitting the "Checklist for Dialysis Technician Competency Validation" signed by a board-approved dialysis technician training program administrator.

(3) An "Application for Dialysis Technician Credential" shall be valid for one (1) year from the date of receipt by the board.

(4) Upon approval of the application, the credential shall be reinstated for twenty-four (24) months following the month of issuance. The credential shall lapse on the last day of the credentialed period.

Section 5. Scope of Practice. (1) The scope of practice of a dialysis technician shall include the following and shall be performed under the direct, on-site supervision of a registered nurse or a physician:
(a) Preparation and cannulation of peripheral access sites (arteriovenous fistula and arteriovenous grafts);
(b) Initiating, delivering or discontinuing dialysis care;
(c) Administration of the following medications only:
1. Heparin 1:1000 units or less in concentration either to prime the pump, initiate treatment, or for administration throughout the treatment, in an amount prescribed by a physician, physician's assistant or advanced registered nurse practitioner. The dialysis technician shall not administer heparin in concentrations greater than 1:1000 units;
2. Normal saline via the dialysis machine to correct dialysis-induced hypotension based on the facility's medical protocol. Amounts beyond that established in the facility's medical protocol shall not be administered without direction from a registered nurse or a physician.
3. Intradermal lidocaine, in an amount prescribed by a physician, physician's assistant, or advanced registered nurse practitioner;
(d) Assistance to the registered nurse in data collection;
(e) Obtaining a blood specimen via a dialysis line or a peripheral access site;
(f) Responding to complications that arise in conjunction with dialysis care, and
(g) Performance of other acts as delegated by the registered nurse pursuant to 201 KAR 20:400.

(2) The scope of practice of a dialysis technician shall not include:
(a) Dialysis care for acutely ill, unstable patients;
(b) The connection and disconnection of patients from, and the site care of, percutaneously or surgically inserted central venous catheters; and
Section 6. Discipline of a Dialysis Technician. (1) A dialysis technician, an employer of dialysis technicians, or any person having knowledge of facts shall report to the board a dialysis technician who may have violated any provision of this administrative regulation.

(b) The board shall have the authority to discipline a dialysis technician for:

(a) Failure to safely and competently perform the duties of a dialysis technician as stated in Section 5 of this administrative regulation;

(b) Practicing beyond the scope of practice as stated in Section 5 of this administrative regulation;

(c) Conviction of a misdemeanor or felony which involved fraud, deceit, breach of trust, or physical harm or endangerment to others, or acts that bear directly on the qualifications or ability of the dialysis technician to practice dialysis care;

(d) Obtaining or attempting to obtain a qualification by fraud or deceit;

(e) Abusing controlled substances, prescription medications, or alcohol;

(f) Misuse or misappropriation of any drug placed in the custody of the dialysis technician for administration, or for use of others;

(g) Falsified or in a negligent manner made incorrect entries or failed to make essential entries on essential records;

(h) Having a dialysis technician credential disciplined by another jurisdiction on grounds sufficient to cause a credential to be disciplined in this Commonwealth;

(i) Practicing without filing an "Application for Dialysis Technician Credential" or without holding a dialysis technician credential;

(j) Abuse of a patient;

(k) Theft of facility or patient property;

(l) Having disciplinary action on a professional or business license;

(m) Violating any lawful order or directive previously entered by the board;

(n) Violating any administrative regulation promulgated by the board;

(o) Having been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property.

(3) The discipline may include the following:

(a) Immediate temporary suspension of the credential, following the procedure set out in KRS 314.088;

(b) Reprimaed of the credential;

(c) Probation of the credential for a specified period of time, with or without limitations and conditions;

(d) Suspension of the credential for a specified period of time; or

(e) Permanent revocation of the credential.

(4) The board shall follow the procedures set out in and have the authority set forth in KRS 314.091, 201 KAR 20:161 and 201 KAR 20:162 for management and resolution of complaints filed against a dialysis technician.

(5) In addition to the provisions of subsection (3) of this section, the board may impose a civil penalty of up to $10,000.

Section 7. Dialysis Technician Training Program Standards. (1) Program administrator. A registered nurse, holding a current, active Kentucky license, with at least one (1) year of experience in dialysis care shall be administratively responsible for planning, development, implementation, and evaluation of the dialysis technician training program. The name, title, and credentials identifying the educational and professional qualifications of the program administrator shall be provided to the board. A change in the program administrator shall be reported to the board within thirty (30) days of the change.

(2) Faculty qualifications. The dialysis technician training program shall be taught by multidisciplinary faculty with expertise in the subject matter. The name, title, and credentials identifying the educational and professional qualifications of each instructor shall be provided to the board. A change in faculty shall be reported to the board within thirty (30) days of the change.

(3) The dialysis technician training program shall be based upon the "Dialysis Technician Training Program Guide".

(4) The dialysis technician training program shall include:

(a) Prerequisites for admission to the program.

(b) Program outcomes. The outcomes shall provide statements of measurable competencies to be demonstrated by the learner.

(c) Objectives. Objectives shall be stated in behavioral terms with supportive content identified.

(d) Content. The content shall be described in outline format with corresponding time frame and testing schedules.

(e) Teaching methods. The activities of both instructor and learner shall be specified. These activities shall be congruent with stated objectives and content, and reflect application of adult learning principles.

(f) Instructional or reference materials. All required instructional reference materials shall be identified.

(g) Evaluation. There shall be clearly defined criteria for evaluating the learner's achievement of program outcomes. There shall also be a process for annual program evaluation by trainees, program providers, faculty administration, and employers.

(5) Trainee clinical practice requirements. The dialysis technician trainee enrolled in a dialysis technician training program shall practice dialysis care incidental to the training program only under the supervision of a faculty member, or his designee.

(6) The dialysis technician training program shall be at least ten (10) weeks in length. A minimum of 200 hours shall be didactic.

(7) Completion requirements. Requirements for successful completion of the dialysis technician training program shall be clearly specified. The requirements shall include demonstration of clinical competency and successful completion of a comprehensive, written final examination. There shall be a statement of policy regarding a trainee who fails to successfully complete the training program. The statement of policy adopted by the training program shall include requirements that a person:

(a) Shall not be enrolled in a training program more than two (2) times.

(b) Shall show continuing progress toward completion of the program; and

(c) Who fails to successfully complete the program within sixteen (16) weeks shall cease functioning as a trainee until that person is reenrolled in a subsequent training program if that opportunity still exists pursuant to paragraph (a) of this subsection.

(8) At a minimum, the following records shall be maintained by the program:

(a) Provider name, date and site of the training program;

(b) The program code number issued by the board; and

(c) Trainee roster, with a minimum of name, date of birth, Social Security number, and program completion date.

(9) An individual who successfully completes the training program shall receive a certificate of completion that documents the following:

(a) Name of individual;

(b) Title of training program; date of completion, and location;

(c) Provider's name;

(d) The program code number issued by the board; and

(e) Name and signature of program administrator.

(10) The program shall submit the "List of Dialysis Technician Training Program Graduates" within three (3) days of the program completion date.

Section 8. Dialysis Technician Training Program Initial Approval. (1) To receive initial approval, a dialysis technician training program shall:

(a) File an "Application for Dialysis Technician Training Program Approval"; and

(b) Pay the fee established in Section 12 of this administrative regulation.

(2) Board approval for a dialysis technician training program that meets the requirements of this administrative regulation shall be granted for a two (2) year period from the date of approval.

(3) Upon approval, the board shall issue a program code number.

Section 9. Continued Board Approval of a Dialysis Technician Training Program. (1) To receive continued approval, a dialysis technician training program shall:

(a) File an "Application for Dialysis Technician Training Program Approval"; and

(b) Pay the fee established in Section 12 of this administrative regulation.

(2) The application shall be submitted at least two (2) months prior
to the end of the current approval period.

(3) Continued approval shall be based on compliance with the standards set out in Section 7 of this administrative regulation.

(4) Continued approval shall be granted for a two (2) year period.

(5) If a program fails to maintain continued approval, the approval shall lapse.

Section 10. Reinstatement of Dialysis Technician Training Programs. A program whose approval has lapsed and that seeks to reinstate that approval shall:

(1) File an "Application for Dialysis Technician Training Program Approval"; and

(2) Pay the fee established in Section 12 of this administrative regulation.

Section 11. Board Actions on Dialysis Technician Training Programs. (1) The board may deny, limit, revoke or suspend the approval status of a dialysis technician training program for violation of the standards set out in this administrative regulation.

(2) A dialysis technician training program administrator may appeal a board decision concerning approval using the following procedure:

(a) A written request for the review shall be filed with the board within thirty (30) days after the date of notification of the board action which the dialysis technician training program administrator contests.

(b) The board, or its designee, shall conduct a review. The dialysis technician training program administrator may appear in person to present reasons why the board's decision should be set aside or modified.

(c) The dialysis technician training program administrator shall be notified of the board's decision.

Section 12. Fees. (1) The application fee for the initial credential shall be sixty (60) dollars.

(2) The credential renewal fee shall be sixty (60) dollars.

(3) The credential reinstatement fee shall be sixty (60) dollars.

(4) The dialysis technician training program initial approval fee shall be $500.

(5) The dialysis technician training program continued approval fee shall be $800.

(6) The dialysis technician training program reinstatement fee shall be $500.

(7) An additional fee of twenty-five (25) dollars shall be charged for an application for renewal of the credential that is filed after the deadline for filing.

(8) An additional fee of $150 shall be charged for an application for continued dialysis technician training program approval that is filed after the deadline for filing.

(9) A fee of thirty-five (35) dollars shall be charged for issuing a duplicate of the credential.

(10) A check submitted to the board for payment of a fee which is returned by the bank for nonpayment shall be assessed a return check fee of twenty-five (25) dollars.

(11) A fee of thirty-five (35) dollars shall be charged for verification of a dialysis technician credential.

(12) A fee of twenty-five (25) dollars shall be charged for a duplicate application form which is issued due to the failure to maintain a current mailing address as required by Section 13 of this administrative regulation.

(13) All fees are nonrefundable.

Section 13. Miscellaneous Requirements. (1) Any person creden-
tiali zed by the board as a dialysis technician shall maintain a current mailing address with the board and immediately notify the board in writing of a change of mailing address.

(2) As a condition of holding a credential from the board, a dialysis technician is deemed to have consented to service of notices or orders of the board at the mailing address on file with the board. Any notice or order of the board mailed or delivered to the mailing address on file with the board constitutes valid service of the notice or order.

(3) Any dialysis technician credentialed by the board shall, within thirty (30) days of entry of the final judgment, notify the board in writing of any misdemeanor or felony conviction in this or any other jurisdiction. Upon learning of any failure to notify the board under this provi-
sion, the board may initiate an action for immediate temporary sus-
pension until the person submits the required notification.

(4) Any dialysis technician credentialed by the board shall imme-
diately notify the board in writing in any professional or business li-
ence that is issued to the person by any agency of the Common-
wealth or any other jurisdiction is surrendered or terminated under threat of disciplinary action or is refused, limited, suspended, or re-
voked, or if renewal of continuation is denied.

(5) If the board has reasonable cause to believe that any dialysis technician is unable to practice with reasonable skill and safety or has abused alcohol or drugs, it may require the person to submit to a mental or physical examination by a physician or psychologist it designates. Upon failure of the person to submit to a mental or physical examination, unless due to circumstances beyond the person's control, the board may initiate an action for immediate temporary suspension pursuant to KRS 314.089 or deny an application until the person submits to the required examination.

(6) Every dialysis technician shall be deemed to have given con-
sent to submit to a mental or physical examination when so directed in writing by the board. The direction to submit to an examination shall contain the basis of the board's reasonable cause to believe that the person is unable to practice with reasonable skill and safety, or has abused alcohol or drugs. The person shall be deemed to have waived all objections to the admissibility of the examining physician's or psychologist's testimony or examination reports on the ground of privileged communication.

(7) The dialysis technician shall bear the cost of any mental or physical examination ordered by the board.

Section 14. Incorporation by Reference. (1) The following mater-
ials are incorporated by reference:

(a) "Application for Dialysis Technician Training Program Approval" (6/2001), Kentucky Board of Nursing;

(b) "Application for Dialysis Technician Credential" (6/2001), Kentucky Board of Nursing;

(c) "Application for Renewal of Dialysis Technician Credential" (6/2001), Kentucky Board of Nursing;

(d) "Checklist for Dialysis Technician Competency Validation" (6/2001), Kentucky Board of Nursing;

(e) "Dialysis Technician Training Program Guide" (6/2001), Kentucky Board of Nursing; and

(f) "List of Dialysis Technician Training Program Graduates" (6/2001), Kentucky Board of Nursing.

(2) This material may be inspected, copied, or obtained, 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.

MARCIA HOBBS, President
APPROVED BY AGENCY: August 13, 2001
FILED WITH LRC: August 14, 2001 at 1 p.m.

JUSTICE CABINET
Department of Criminal Justice Training
(As Amended at ARRS, October 9, 2001)


RELATES TO: KRS 15.530-15.580 [15.565, 15.566(11)]
STATUTORY AUTHORITY: KRS 15.590

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.590 requires the Commissioner of the Department of Criminal Justice Training to promulgate administrative regulations regarding telecommunications practices. This administrative regulation establishes the course and graduation requirements of the Telecommunications Academy - non-CJIS.

Section 1. Definitions. (1) [Definition.] "Academy" means the 120 hour Telecommunications Academy course conducted by the department that does not include training on the Criminal Justice Information System (CJIS).

(2) "KLEC" means the Kentucky Law Enforcement Council.
Section 2. Academy Content. The academy shall consist of the following four (4) areas:

(1) Basic telecommunications;
(2) Emergency medical dispatch and cardiopulmonary resuscitation (CPR);
(3) Family violence; and
(4) Crisis negotiations.

Section 3. Academy Graduation Requirements. (1) To graduate from the academy, a trainee shall:

(a) Successfully complete a minimum of 120 hours of KLEC-approved training;
(b) Attain a passing score on all examinations for which a numerical score is assigned, as follows:

1. Eighty (80) percent on the emergency medical dispatch written examination; and
2. Seventy (70) percent on all other examinations for which a numerical score is assigned; [j]
(c) Pass all examinations for which a pass or fail designation is assigned; and
(d) Successfully complete all other assignments, exercises, and projects included in the academy. After-hours assignments may be required, and if required, they shall be successfully completed in order to pass the training area for which they were assigned.

(2) A trainee shall be considered to have failed the academy if the trainee does not meet the requirements established in subsection (1) of this section.

Section 4. Reexaminations. (1) A trainee shall be permitted one (1) reexamination.

(2) A trainee who fails an examination shall not be reexamined:

(a) Earlier than forty-eight (48) hours from the original examination; or
(b) Later than the last scheduled day of the telecommunication academy.

(3) A trainee shall be considered to have failed the academy if the trainee fails a reexamination.

Section 5. Failure and Repetition of Academy. (1) A trainee who has failed an academy shall be permitted to repeat one (1) academy in its entirety during the following twelve (12) months.

(2) The trainee or his agency shall pay all fees for the repeated academy.

Section 6. Absence. (1) A trainee may have excused absences from the academy with approval of the in-service training branch manager or telecommunications training section supervisor.

(2) If an excused absence causes a trainee to miss any of the 120 hours of the academy, the training shall be made up through an additional training assignment. An excused absence from the academy which causes a trainee to miss any of the 120 hours of training shall be made up through an additional training assignment.

Section 7. Circumstances Preventing Completion of the Telecommunications Academy. If a trainee is prevented from completing the telecommunications academy due to extenuating circumstances beyond the control of the trainee, including injury, illness, personal tragedy, or agency emergency, he shall be permitted to complete the unfinished areas of the academy within 180 days immediately following the termination of the extenuating circumstance, if the:

(1) Extenuating circumstance preventing completion of the academy does not last for a period of longer than one (1) year; and
(2) Failure to complete is not caused by a preexisting physical injury or preexisting physiological condition.

Section 8. Termination of Employment While Enrolled. (1) Notwithstanding subsection (2) of this section, if, while enrolled in the telecommunications academy, a trainee’s employment as a telecommunicator is terminated by resignation or dismissal and he is unable to complete the academy, he may complete the remaining training within one (1) year of reemployment as a telecommunicator.

(2) The trainee shall repeat the telecommunications academy in its entirety if

(a) The break in employment exceeds one (1) year; or
(b) The termination of employment is a result, directly or indirectly, of disciplinary action taken by the department against the trainee while enrolled in the telecommunications academy.

Section 9. Maintenance of Records. All training records shall be:

(1) Available to the KLEC and the Secretary of the Justice Cabinet (counsel and the secretary) for inspection or other appropriate purposes; and
(2) Maintained in accordance with [applicable standards in] KRS Chapter 171.

JOHN W. BIZZACK, Ph.D., Commissioner
APPROVED BY AGENCY: August 15, 2001
FILED WITH LRC: August 15, 2001 at 11 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(As Amended at ARRS, October 9, 2001)

601 KAR 1:018. Special overweight or overdimensional permits.

RELATES TO: KRS 189.221, 189.222, 189.270, 189.2715, 189.2717, 23 CFR 658.17, 49 CFR 393.11

STATUTORY AUTHORITY: KRS [174-090], 189.270(6), 189.271(9), 189.2715(1), 189.2717(1)

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 189.270 allows for certain overweight or overdimensional permits to be issued by the Transportation Cabinet] KRS 189.270(1) to (5), 189.271(9), 189.2715(1), and 189.2717(1) authorize [authorizes] the Secretary of the Kentucky Transportation Cabinet to issue permits for the movement of motor vehicles with divisible or nondivisible loads exceeding legal weights or dimensions. This administrative regulation establishes the procedures and requirements [necessary in the interest of highway safety] for the issuance of an overweight or overdimensional permit. It [further] exempts certain farm implement movements from the requirements of obtaining an overdimensional permit, but retains the associated safety requirements [for the movement of these overdimensional vehicles].

Section 1. Definitions. (1) "Boat" means a vehicle used for movement on the water and the trailer on which it is placed for transporting the vehicle on the highway.

(2) "Daylight hours" means the period of a day from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset, excluding those times [However, it shall not include any time] when heavy rain, snow, sleet, fog, or other atmospheric conditions render visibility lower than is ordinarily the case during that period of the day.

(3) "Divisible load" means a load which when reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or overdimensional.

(4) "Dual-wheel axle" means one (1) axle with two (2) wheels on each side of the axle.

(5) "Farm implement or equipment" means machinery, equipment or vehicle used exclusively in a farm or agriculture operation including those items which are not required by KRS Chapter 186 to be registered.

(6) "Fully-controlled access highway" means a highway which:

(a) Gives preference to through traffic;
(b) Has [which shall have] access only at selected public roads or streets; and
(c) Has [which shall have] no highway grade crossing or intersection.

(7) "National holiday" means:

(a) New Year’s Day;
(b) Memorial Day (as observed on the last Monday in May);
(c) Independence Day;
(d) Labor Day;
(e) Thanksgiving Day; and
(f) Christmas Day.

(8) "Nondivisible load" means a load or vehicle, which if separated into smaller loads would:...
(a) Compromise the intended use of the vehicle, making it unable to perform the function for which it was intended;
(b) Destroy the value of the load or vehicle, making it unusable for its intended purpose; or
(c) Require more than eight (8) work hours to dismantle using appropriate equipment.

(9) "Oversized" means the vehicle exceeds the dimension limits set forth in 390 KAR 5:070.

(10) "Overweight" means the vehicle exceeds:
(a) The gross weight limit established in 603 KAR 5:066 [for a highway segment in 603 KAR 5:300];
(b) The axle weight limit established in 603 KAR 5:066;
(c) The gross weight limits established by KRS 177.9771 for a motor vehicle transporting coal or coal by-products;
(d) The bridge weight limit established by 603 KAR 5:066; or
(e) The gross weight limit posted at a bridge or other structure.

(11) "Permit fee" means the fee set forth in KRS 189.270, 189.2715, or 189.2717 (charged) for the issuance of an overweight or oversize trip or annual permit, to cover [.The fee covers the] cost of processing the permit application, including:
(a) A qualification check of the applicant;
(b) A statutory compliance check; and
(c) An initial bridge and weight analysis.

(12) "Pole trailer" means a vehicle which is:
(a) Designed to be drawn by a motor vehicle and attached to the towing motor vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing motor vehicle; and
(b) Used for transporting long or irregularly shaped loads such as poles, pipes, or structural members which generally are capable of sustaining themselves as beams between the supporting connections.

(13) "Single-wheel axle" means a steering axle with one (1) wheel on each side of the axle.

(14) "Toll road" means any project constructed under the provisions of KRS Chapter 175 or KRS 177.390 through 177.570 on which a toll is collected or was in the past collected by the Transportation Cabinet.

(15) "Utility equipment" means the specialized equipment, including earth-moving equipment, necessary for the installation or operation of utility poles or pipes, or transformers, regulators, or other utility electrical field equipment. It shall not include any equipment necessary for the construction or operation of a power generation station.

Section 2. Permit Application. (1) An applicant application form TC 05-25, rev. 7/98] for an overweight or oversize annual or [and] trip permit shall submit to the Division of Motor Carriers a completed Application for Annual Overweight/Oversize Permit, TC 95-25 [which must be completed on forms provided by the Kentucky Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Carriers, 604 High Street, Frankfort, Kentucky 40622]. The permit application shall contain the following:
(a) A detailed description of the equipment or load to be moved;
(b) A description and vehicle identification number of the power unit moving the equipment;
(c) Registration weight and license plate number of the power unit;
(d) Equipment operator’s name, telephone number and address;
(e) Routes requested for travel;
(f) Period of time:
   1. Single trip shall be [not-to-exceed] ten (10) days or less;
   2. Annual permit shall be 365 days from date of issue.
(2) A single trip permit application or request shall specify the following:
(a) The year and make of the towing vehicle;
(b) The towing vehicle’s license plate number;
(c) The maximum weight for which the vehicle is registered;
(d) The state of registration of the vehicle;
(e) Name and address of the owner;
(f) The dates of travel;
(g) The serial number of the manufactured home [or hull identification number of the boat]; and
(h) The specific routes of travel requested.
(3) If the towing vehicle for which a single trip permit is being requested [applied] is registered in a state other than Kentucky, the vehicle shall be either:
(a) Apportioned registered to operate in Kentucky; or
(b) In compliance with KRS 281.752.
(4) An annual permit application or request shall [in writing] specify the following information relating to the motor vehicle:
(a) Year and make;
(b) Vehicle identification number;
(c) License plate number;
(d) The maximum weight for which it is registered;
(e) The state of apportioned registration, if not registered in Kentucky;
(f) Name and address of the motor carrier or owner of the towing vehicle; and
(g) Whether the motor carrier operating the towing vehicle is a for hire or private carrier.
(5) If the towing vehicle issued an annual permit is registered in a state other than Kentucky, the vehicle shall be apportioned registered to operate in Kentucky.
(6) The application for an annual permit shall contain a certification by the applicant that he is aware of the safety requirements in the movement of overweight/oversize loads [load] and shall at all times comply with them.
(7) Special annual or trip permits to allow the movement of motor vehicles with gross weights or gross dimensions in excess of the weights and dimensions specified by statute and administrative regulation [statutes and administrative regulations] shall be issued by the Department of Vehicle Regulation, Division of Motor Carriers when, in the discretion of the department, this movement is necessary to provide transportation for specific cargo in the interest of the health, welfare and economy of the people.
(8) Each trip or annual permit issued shall be limited to designated portions of the state primary road system and stated periods of time.
(9) A separate permit shall be required for each vehicle involved in a movement.
(10) A permit shall not be issued for a divisible load which when reasonably divided, dismantled, disassembled or rearranged would no longer be overweight or oversize except [feet] as provided by KRS 189.2715 or 189.2717.
(11) An overweight permit shall not be issued to the following:
(a) A Kentucky licensed vehicle, for a gross weight exceeding that for which the truck is registered, unless registered for 80,000 pounds (36,287.46 kilograms);
(b) A vehicle not registered in Kentucky, unless it has [which has not] met one (1) of the following conditions:
   1. Has been apportioned registered by another jurisdiction to operate in Kentucky at 80,000 pounds (36,287.36 kilograms); or
   2. Has met the provisions of KRS 281.752;
(c) A vehicle whose axle weight would exceed the product of 700 pounds (317.51 kilograms) times the aggregate width in inches established from the manufacturer’s stamped tire measurement for all tires on the axle; or
(d) A tow vehicle whose horsepower or braking capacity is not adequate to safely transport the overweight load.
(12) This administrative regulation shall not prohibit the permit issuing office from further restricting movements or denying a permit for any movement which may cause damage to property or which may be detrimental to public safety and convenience.
(13) An annual permit shall not be issued if the vehicle is licensed with a limited or restricted registration as identified in KRS 186.050(8) and (9) for Kentucky-based vehicles.

Section 3. Height. (1) A vehicle [All vehicles] and load with a height in excess of thirteen [13] feet, six [6] inches [and one-half (1.5) feet] shall obtain a single-trip oversize permit, pursuant to KRS 189.2702, prior to movement.
(2) The maximum height for each single-trip oversize permit shall be determined by the cabinet, based upon underpass and bridge height along the designated route. [There is no set maximum height limit for the issuance of an oversize permit except as determined by underpasses and bridges.]

Section 4. Weight. (1) Gross or axle overweight shall not be permitted:
(a) On combination units of less than five (5) axles;
(b) On a single unit except off-road equipment such as scraper,
mobile cranes or other self-propelled units.

(2) Kentucky licensed vehicles shall not be permitted for weights exceeding that for which licensed unless licensed for the maximum of 80,000 pounds.

(3) The weight on any single axle in any combination shall not exceed the product of 700 pounds times the aggregate width in inches established by the manufacturer’s stamped tire measurement of all the tires on the axle, or the following axle or axle group weights, whichever is less:

(a) Single axle - 24,000 pounds;

(b) Tandem axle group if the combination vehicle has only five (5) axles total - 45,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(c) Tandem axle group if the combination vehicle has six (6) or more axles total - 48,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tandem axle group);

(d) Tridem axle group - 60,000 pounds (minimum of forty-two (42) inches spacing between the center of each of the axles of the tridem axle group);

(e) Five (5) axle combination units shall not exceed 96,000 pounds gross weight;

(f) Six (6) axle combination units shall not exceed 120,000 pounds gross weight.

(4) Since bridge capacity is the weight-controlling factor in most instances, these maximum weights shall not be permitted unless all bridges involved have sufficient capacity to accommodate the load.

Section 5. Responsibility of Permit Holder. (1) Any damage to the highway, signs, guardrail or other public or private property caused by the transportation of the specialized equipment shall be the responsibility of the permit holder. The permit holder shall either repair all damage incurred or pay for the repair.

(2) A permit holder shall not cut, trim, remove or relocate any tree, shrub, guardrail, highway sign or other object on the highway right-of-way without the written approval of the chief district engineer having jurisdiction over the property involved.

(3) The applicant shall be responsible for providing accurate information and reviewing [to review] the permit prior to travel on Kentucky highways.

Section 6. Permit Availability. (1) The original of the annual permit shall be carried in the overweight or overdimensional vehicle at all times.

(2) The original or facsimile copy of a single trip permit shall be carried in the overweight or overdimensional vehicle or equipment at all times.

(3) The annual or the single trip permit [it] shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

(4) [O] An unauthentic photocopy of the annual permit shall not be valid.

(4) The original annual or facsimile copy of a single trip permit shall be carried in the overweight or overdimensional vehicle or equipment at all times. It shall be presented, upon request, to any law enforcement officer or authorized personnel of the Department of Vehicle Regulation.

Section 7. Duplicate Permits. A duplicate permit which is needed to replace a lost, stolen or destroyed annual permit or to transfer the permit to another towing vehicle may be obtained from the Division of Motor Carriers by a payment of ten (10) dollars. Only one (1) transfer to another towing vehicle shall be allowed for each annual permit during its effective year. Any additional transfer of the annual permit requested shall be subject to the fees set forth in KRS Chapter 189.270.

Section 8. Travel Restrictions. (1) A single trip permit shall be valid for a period not to exceed ten (10) days. A time extension shall only be granted if the permit holder proves extenuating circumstances. An annual permit shall be valid for 365 days from date of issuance.

(2) The department may further prohibit movements in congested areas within the peak traffic hours. The additional restrictions shall be noted on the permit when issued.

(3) Overdimensional restrictions shall not prohibit [if] a utility company from [it] working in an emergency situation to restore utility service to an area otherwise experiencing an outage;—the overdimensional restrictions of regulation shall not prohibit travel.

Section 9. Farm Implements. (1) Unless the movement occurs on an interstate highway, toll road, or fully-controlled access highway, a permit shall not be [no-permit is] required for transport of overdimensional farm implements for the following trips: [A permit shall not be required to transport overdimensional farm implements, unless the movement occurs on an interstate highway, toll road, or fully controlled access highway in the following instances:]

(a) From one (1) farm to another;

(b) From a farm to a repair shop or dealer;

(c) From a repair shop or dealer to a farm.

(2) A permit holder or other operator moving [The movement of] overdimensional farm implements shall comply with the safety requirements set forth in this administrative regulation.

(3) The following movements of farm implements shall only be made under the authority of an overdimensional permit:

(a) Manufacturer to dealer;

(b) Dealer to manufacturer;

(c) Dealer to dealer;

(d) Moves on an interstate highway, toll road, or fully-controlled access highway.

(4) On an interstate highway, toll road, or fully-controlled access highway a self-propelled farm implement shall not be:

(a) Operated; or

(b) Issued a permit for movement.

(5) If the farm equipment to be transported exceeds twelve (12) feet in width, the farm equipment dealer who holds the annual permit shall, prior to the proposed move, survey [see] the entire route proposed to be used for the movement of the overdimensional farm equipment to confirm the roads are adequate to safely accommodate the load.

(6) If there is any doubt of the adequacy of the highway to safely accommodate the overdimensional farm equipment, the dealer shall:

(a) Select a different route; or

(b) Contact the appropriate highway district office for clearance to move the equipment over that specific route.

(7) If the highway district office does not issue clearance for the use of a particular route whose adequacy is in doubt, that route shall not be used.

Section 10. Escort Vehicle, Safety and Flag Requirements. (1) Required escort vehicles shall accompany the overweight vehicle at a distance of 300 feet (91.44 meters) on open highways and shall:

(a) Maintain radio contact with load;

(b) Post appropriate signs on the vehicle;

(c) Have amber strobe lights or flashing lights on the escort vehicle;

(d) Keep its headlamps lit at all times.

(2) In cities or congested areas the escort vehicle shall travel at a distance closer than 300 feet as necessary to protect other traffic.

(6) This interval shall be shortened in cities or congested areas to protect other traffic.

(3) [An escort vehicle’s] Headlamps shall be lit at all times.

(4) On a two (2) lane highway, a vehicle and load with a width in excess of ten (10) feet, six (6) inches (3.2 meters) but twelve (12) feet (3.65 meters) or less shall have one (1) lead escort.

(4) [On a two (2) lane highway, a vehicle and load with a width exceeding twelve (12) feet (3.65 meters) shall have one (1) lead escort and one (1) trail escort.]

(5) [On a two (2) lane highway, a vehicle and load traveling at speeds below the average driving speed of traffic on its route shall have one (1) trail escort.]

(5) [On a four (4) lane or wider highway, a vehicle and load shall have one (1) trail escort if:]

(a) Its width exceeds twelve (12) feet (3.66 meters); or

(b) It does not maintain a speed of forty-five (45) miles per hour (72.42 kilometers per hour).

(7) [On a two (2) lane highway;]
(a) A vehicle and load with a length in excess of seventy-five (75) feet (22.86 meters) but not more than eighty-five (85) feet (25.91 meters) shall have one (1) lead escort.
(b) A vehicle and load with a length in excess of eighty-five (85) feet (25.91 meters) on a two (2) lane highway, shall have one (1) lead and one (1) trail escort.

(8) On a four (4) lane or wider highway,
(a) A vehicle and load with a length of 120 feet shall have one (1) trail escort and
(b) A vehicle and load with a length of over 120 feet shall have a front and rear escort.

(9) A vehicle and load with a length in excess of seventy-five (75) feet (22.86 meters) but not more than eighty-five (85) feet (25.91 meters) shall have one (1) lead escort.
(c) If the vehicle and load exceed eighty-five (85) feet (25.91 meters) on a two (2) lane highway, it shall have one (1) lead and one (1) trail escort.

(10) On a four (4) lane or wider highway, a vehicle and load with a length of over 120 feet shall have one (1) trail escort. Over 120 feet shall have a front and rear escort.

(14) Red or orange fluorescent flags which are a minimum of eighteen (18) inches square (11,612.7 millimeters square) shall be displayed on each vehicle and load operating under the auspices of either an overlength or an overwidth permit.
(a) Vehicles operating overlength shall display four (4) [two (2) warning flags, one (1) at each of the four (4) corners, and if any portion of the vehicle extends from the outside of the recognized lane of travel, additional flags shall be displayed at the widest points of the load.]; one (1) on each side of the vehicle or load at its widest extremities.
(b) Vehicles operating overlength or with a reared overhang shall display two (2) warning flags at the extreme rear of the vehicle or load.
(c) These flags shall be located to indicate maximum width of the rearend.

(15) [44] All vehicles exceeding ten (10) feet, six (6) inches, and one-half (0.457) feet, three and two-tenths (3.2) meters in width or having front overhang shall display two (2) warning signs. The warning signs shall be:
(a) State in black letters on a yellow background, "OVERSIZE LOAD";
(b) Not be less than seven (7) feet (2.13 meters) long and eighteen (18) inches (0.46 meters) high;
(c) Have a brush stroke of one and four-tenths (1.4) inches (35.56 millimeters); and
(d) Be fastened at the front of the power unit and the rear part of the towered unit or at the rear of the load.

(16) If the utility equipment, pole, or pipe being transported exceeds fifty-five (55) feet (16.76 meters) in length, a front escort vehicle shall accompany the vehicle required to be permitted, [when transporting utility equipment, poles, or pipe] if the front overhang exceeds ten (10) feet (3.05 meters), [ ] an amber strobe or flashing light shall be placed on the power unit of the towing vehicle and the vehicle shall be in use at any time the power unit is in operation.

(17) The lighting devices and reflectors set forth in 49 CFR Part 393.11 for pole trailers and projecting loads shall be required.

(18) Each lamp or light shall be used at all times the vehicle is on or beside a highway.

(19) A front overhang shall not be allowed on a combination vehicle.

(20) As a special provision of the permit, the Department of Vehicle Regulation may require additional escort vehicles, lighting or warning flags.

The provisions of this section shall not apply if the vehicle or equipment is less than twelve (12) feet wide and the vehicle or equipment is used in part for road-use, is not required to be registered or licensed, and is not transporting cargo.

Section 11. House or Building Permits. (1) Permits for movement of houses or other buildings shall be issued by the Department of Vehicle Regulation, Division of Motor Carriers.
(2) House moving permits shall not be issued unless the move is done during off-peak hours when other traffic will be least affected. The mover shall be required to furnish all escorts and flagmen required in the interest of public safety.
(3) A permit shall not be issued for movement of any permanent building other than portable storage units [buildings] on either parkways, [coll-roads] or interstate highways [if the width of the building exceeds twelve (12) feet].

(4) The Division of Motor Carriers shall contact the appropriate Department of Highways' district office for specific routing restrictions or local highway conditions prior to the issuance of the permit. Specific restrictions shall be identified on the permit. Deviation from the restrictions shall void the permit.

Section 12. Route Deviation. All vehicles transporting a load under an annual or trip permit shall obtain prior approval from the Division of Motor Carriers for any deviation from the routes approved by the Transportation Cabinet for the towing vehicle. [Permit approval shall be secured from the Division of Motor Carriers for any vehicle transporting a load under an annual or trip permit which deviates from the routes prescribed in the permit issued for the towing vehicle.]

Section 13. Permit Required. Until a special written permit has been issued by the Department of Vehicle Regulation, Division of Motor Carriers under the provisions of this administrative regulation and KRS 199,270:
(1) An overweight/overdimensional load of a width greater than eight and one-half (8 1/2) feet shall not be towed on any state-maintained highway [listed in 603 KAR 5:070, Section (5)];
(2) An overweight/overdimensional load with a width greater than eight (8) feet shall not be towed on any state-maintained highway not included on the Transportation Cabinet's list of roads approved for passage of motor vehicles with increased dimensions pursuant to 603 KAR 5:070, [listed in 603 KAR 5:070, Section 5(4)] except as provided in KRS 199.222(3); and
(3) A manufactured home with a combined length of manufactured home and towing vehicle greater than 120 feet shall not be towed upon any Kentucky highway. The manufactured home shall not exceed eighty-five (85) feet in length.

Section 14. Annual Permits. (1) A permit shall not be issued for the movement of an overweight/overdimensional load in excess of sixteen (16) feet in width inclusive of the usual and ordinary overhang. Mirrors on the towing vehicle shall not be considered in making the determination of width.
(2) Prior to a movement of an overweight/overdimensional load under an annual permit, the permit holder shall survey the route [resou] and evaluate the entire route proposed to be used for the movement of the overweight/overdimensional load. The evaluation shall include the following:
(a) Highway width;
(b) Shoulder width and surface type;
(c) Bridge width and posted weights;
(d) Overpasses;
(e) Turns to be negotiated;
(f) Construction zones;
(g) Obstructions;
(h) Access control;
(i) Traffic volume; and
(j) Other routes available that might be safer even if not as convenient.
(3) The permit holder shall use the results of the evaluation to determine the safest route available to transport the overweight/overdimensional load. Also the permit holder shall determine if there would be any place on the proposed route which would be too narrow, have curves or turns too sharp or have other obstacles which would prevent the route from safely accommodating the move. The route selected by the permit holder shall be the safest available.
(4) If there is any doubt about the adequacy of the highway to safely accommodate the overweight/overdimensional load, the permit holder shall either:
(a) Select a different route; or
(b) Contact the appropriate highway district office for clearance to move that overweight/overdimensional load over that specific route.
(5) If the highway district office does not issue clearance for the use of a route whose adequacy is in doubt, that route shall not be used.
(6) An annual permit shall not be issued or used for the movement if the height of the combination load and towing vehicle exceeds thirteen (13) feet, six (6) inches [and one-half (0.5) feet].
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(7) Acceptance and use of the annual permit is the permit holder's acceptance of the liability associated with the move.

(8) Moves of overweight/overdimensional loads more than twelve (12) feet wide shall be limited to highways of four (4) or more lanes and to the shortest and best two (2) lane route designated by the Department of Vehicle Regulation, Division of Motor Carriers to be used to the unit's ultimate destination. The department shall deny movements on any routes deemed unsuitable for move.

(9) The issuance cost of an [a single-and annual and trip permit shall be that established by KRS 189.270.

Section 15. Traffic Control. (1) If an overweight/overdimensional load while crossing a bridge would encroach on any other lane of traffic:

(a) All approaching traffic shall be stopped; and

(b) All trailing traffic shall be prevented from approaching the overweight/overdimensional load until the load has cleared the bridge and has moved sufficiently to the right to safely allow following traffic to pass.

(2) An overweight/overdimensional load shall slow the movement of other traffic as little as possible. If traffic backs up either behind or in front of the load being moved, the escort vehicles and load shall exit the highway if [wherever] there is sufficient space to do so.

Section 16. Permit Validity. (1) Except for permits referenced in subsections (5) and (6) [subsection (5) of this section], permits shall be valid during:

(a) Daylight hours; and

(b) From Monday through Saturday.

(2) Travel shall not be permitted from noon of the proceeding day of a national holiday until daylight of the next permissible day.

(3) If the national holiday occurs on Saturday, the restricted period shall extend from noon of the proceeding Friday to daylight of the following Monday.

(4) If the national holiday occurs on Sunday or Monday, the restricted period shall extend from noon of the proceeding Friday to daylight of the following Tuesday.

(5) Permits used for the movement of mobile homes greater than fourteen (14) feet wide shall only be valid Monday through Friday between the hours of 9 a.m. and 3 p.m. and between 6 p.m. and one-half (1/2) hour after sundown local prevailing time. Permits used for the movement of mobile homes greater than fourteen (14) feet wide shall not be valid on Saturday or Sunday. Permits used for the movement of overweight/overdimensional loads more than fourteen (14) feet in width shall not be valid on Saturday or Sunday.

(6) In Jefferson, Fayette, Boone, Kenton and Campbell Counties, permits used for the movement of a mobile home [overdimensional lead fourteen (14) feet wide or less but more than twelve (12) feet wide shall only be valid between the hours of 9 a.m. and 3 p.m. and from 6 p.m. to one-half (1/2) hour after sundown, local prevailing time. Permits used for the movement of overweight/overdimensional loads greater than fourteen (14) feet wide shall only be valid Monday through Friday between the hours of 9 a.m. and 3 p.m. and between 6 p.m. and one-half (1/2) hour after sundown local prevailing time.

(8) If satisfactory proof of an emergency is furnished to the Division of Motor Carriers, moves may be authorized during the restricted hours.

(b) [69] A permit shall not be valid if the combined gross weight of the towing vehicle and load exceeds the registered weight of the towing vehicle.

Section 17. Weather Conditions. Moves of overweight/overdimensional loads more than twelve (12) feet wide shall not be made on any highway:

(1) If wind velocity exceeds twenty-five (25) MPH; or

(2) If adverse weather conditions or road conditions would cause these moves to be dangerous.

Section 18. Brakes. (1) The number, type, size and design of brake assemblies required to assist the towing vehicle in controlling and stopping a manufactured home or boat shall be sufficient and shall be approved by the director of the Department of Vehicle Regulation and meet the braking distance specified in this section.

(a) [63] This certification shall be in the form of a manufacturer's statement, documented technical data, or adequate engineering analysis or its equivalent, specifying that the braking distance requirement has been met.

(b) [44] This certificate shall be carried in the towing unit at all times and shall be presented upon request, to any law enforcement officer.

Section 19. Annual Farm Equipment Permits. (1) An annual permit shall not be issued for the movement of the following:

(a) Self-propelled farm equipment which exceeds thirteen (13) feet eleven (11) inches in width;

(b) Motor vehicle transporting farm equipment if the vehicle or load exceeds thirteen (13) feet eleven (11) inches in width unless the transporter is a farm equipment dealer transporting farm equipment from his dealership to a farm or from a farm to his dealership;

(c) A motor vehicle transporting farm equipment which exceeds sixteen (16) feet in width;

(d) Farm equipment if the length of the trailer and towing unit combined exceeds ninety-five (95) feet in length;

(e) Farm equipment if the length of the straight truck load exceeds fifty-five (55) feet [in length]; or

(f) A motor vehicle transporting farm equipment if the power unit does not have sufficient horsepower or braking capacity to safely handle the load being transported.

(2) A permit for the movement of farm equipment with a width greater than twelve (12) feet but which does not exceed sixteen (16) feet shall only be:

(a) Issued to a farm equipment dealer; and

(b) Valid when he is transporting the farm equipment from his dealership to a farm or from a farm to his dealership.

(3) A motor vehicle for which a permit was issued to a farm equipment dealer to transport farm equipment with a width greater than thirteen (13) feet eleven (11) inches shall be:

(a) Titled, registered and licensed in Kentucky;

(b) Apportioned licensed in another jurisdiction to operate in Kentucky.

Section 21. Denial of Permit Application. (1) In accordance with 23 CFR 658.17, the Transportation Cabinet, Division of Motor Carriers shall deny a permit application if:

(a) The route includes any portion of the interstate highway system;

(b) The load is divisible.

(2) The Transportation Cabinet may deny or restrict a permit for the use of any route if it would be detrimental to public safety or convenience. The Transportation Cabinet shall consider the following when making the determination on the application:

(a) The strength of all bridges and structures on the route;

(b) Traffic congestion on the route;

(c) Horizontal and vertical alignment of the route;

(d) The availability of alternate routes that afford greater safety;

(e) Urban development in residential and commercial areas on the route;

(f) The proximity of schools to the route; and

(g) Any other condition that would unduly compromise public safety and convenience.

Section 22. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) The Multistate Permit Agreement for Oversize and Overweight Vehicles, March 1999 edition;[1]

(b) 23 CFR Part 658.17, Truck Size and Weight, Route Designations - Length, Width and Weight Limitations, [effective] April 1, 2000; [revised December 22, 1998.]

(c) 49 CFR Part 393.11, Lighting Devices, Reflectors, and Electrical Equipment, [effective] October 1, 2000; and [revised December 7, 1998]

(d) Application for Annual Overweight/Overdimensional Permit, TC 95-25, July 1998.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law. All material incorporated by reference as a part of this administrative regulation may be obtained, viewed or cop-
ED LOGSDON, Commissioner
JAMES C. CODELL, III, Secretary
HOLLIE S. PAUC, Office of General Counsel/Legislative Affairs
APPROVED BY AGENCY: July 6, 2001
FILED WITH LRC: July 11, 2001 at 1 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
(As Amended at ARRS, October 9, 2001)


RELATES TO: KRS 160.345(6)
STATUTORY AUTHORITY: KRS 156.070(4), 160.345(8)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.345(8) requires that the Kentucky Board of Education adopt a formula by administrative regulation which formulates a formula by [guides the way in] which school district funds shall be allocated to each school council. This administrative regulation establishes the school council allocation formula [ie designed] for use by local school districts utilizing the Kentucky Education Technology System (KETS) District Administrative System Chart of Accounts per 702 KAR 3:120.

Section 1. Definitions. (1) "Categorical programs" means programs under which funding and uses for the funding are specifically set by the funding authority and are not in the general fund.

(2) [Instructional-supplies-and-materials] means items that are consumed or worn out in the instructional process to include:

(a) Library books.
(b) Periodicals and newspapers.
(c) Library supplies.
(d) Audio visual material and equipment.
(e) Supplementary books.
(f) Reference materials.
(g) Instructional software and.
(h) Teaching supplies to include paper products.

(3) "Equipment" means furniture, fixtures, and equipment for instruction which may be purchased, leased, or rented. Instructional equipment shall not mean computer laboratories, or the initial inventory of a new school plant.

(4) "Instructional-travel" means travel for personnel and their assistants, including travel in connection with everyday instructional activities and travel to conventions, meetings and workshops.

(5) "District average teacher's salary" means the total of all teacher salaries for 185 days in noncategorical programs in the district divided by the number of teachers in the noncategorical programs in the district.

Section 2. The local school district shall provide to school councils [established by January 30] an allocation for the funds and positions identified in [first] Sections 4, 5, 6, and 8 of this administrative regulation for the next budget year by March 1 of each year in accordance with this administrative regulation. The local school district shall provide to school councils an allocation pursuant to [first] Section 7 of this administrative regulation for the next budget year by May 30 of each year in accordance with this administrative regulation.

Section 3. The local school district shall calculate the funds available for distribution to school councils using only the general fund and by excluding the following proposed district-wide expenditures from the general fund proposed [in the district draft] budget for the year being allocated:

1. Function 1200, Home and hospital.
2. Function 1900, Other instructional programs.
3. Function 2100, Student support services, except for school-based employees and specified supplies.
4. Function 2210, Instructional staff support services, improvement of instruction, central office staff and supplies only.
5. Function 2300, District administrative support services.
6. Function 2500, Business support services.
7. Function 2600, Plant operation and maintenance, except for school-based employees [and specified supplies].
8. Function 2700, Student transportation.
9. Function 2800, Central Office support services.
10. Function 3000, Noninstructional services.
11. Function 4000, Facilities acquisition and construction services.
12. Function 5000, Other.
13. All expenditures for extra duty and extended employment, exceptional children services, [and] itinerant teachers, and fringe benefits in all codes.

Section 4. Allocation for Certified Staff. (1) A board staffing policy or guidelines shall be established to determine the number of allocated positions for each school. To determine the allocation to school councils for certified staff, the district shall provide sufficient funds:

(a) To meet class size caps and pupil contact hours established in KRS 157.360 based on the projected full-time equivalent enrollment for the upcoming school year; and

(b) To meet other clauses of teaching and certified staff positions not included in paragraph (a) of this subsection that are generated by the local board certified staffing policy.

(2) Any revisions of staffing policy or guidelines for the next school year shall be adopted by the local board and submitted to the Division of Instructional Leadership Development by March 1 of each year. Each district shall file a copy of the staffing policy or guidelines with the Division of School-based Decision Making by July 1. Any revisions shall be submitted within thirty (30) days of action.

(3) Funds for positions allocated in subsection (1) of this section shall be based on the previous year's actual 185 day salary [and associated fringe benefits except sick, personal, or emergency leave] adjusted by changes in rank, additional year of experience, and changes in the district's salary schedule for each existing staff member.

(4) Funds for new and vacant certified staff positions shall be based on a minimum of ninety-five (95) percent of the district's average 185 day certified salary [and associated fringe benefits except sick, personal, or emergency leave] adjusted for changes in the district's salary schedule for noncategorical staff paid in the previous year.

(5) If the actual salary of new certified personnel is less than ninety-five (95) percent of the certified district average salary, the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

(6) Any adjustments to the allocation due to increases in salary schedules, salary adjustments, or increases or decreases in enrollment shall be made by September 15. A council shall be notified of an adjustment if the adjustment represents a change. [Notification to council of adjustments is required only if adjustments represent changes] in staffing due to enrollment increases or decreases.

Section 5. Allocation for Classified Staff. (1) A board staffing policy or guidelines for the next school year shall be adopted by the local board and established to determine the number of allocated positions for each school. Any revisions of staffing policy or guidelines shall be submitted to the Division of Instructional Leadership Development by March 1 of each year. Each district shall file a copy of the staffing policy or guidelines with the Division of School-based Decision Making by July 1, 1995. Any revisions shall be submitted within thirty (30) days of action.

(2) Funds shall be provided for all school-based classified positions in noncategorical programs generated by the local board classified staffing policy using the previous year's salary adjusted for any district-wide increase.

(3) Funds shall be allocated for fringe benefit amounts except for sick, personal, or emergency leave for each classified staff member.

(4) Funds for new or vacant positions shall be based on ninety-five (95) percent of the districts average classified salary for that personnel job class [and associated fringe benefits except for sick, per-
sonal, or emergency leave) for nongeographic staff adjusted for any district-wide increase.

(4) [66] If the actual salary of new classified personnel is less than ninety-five (95) percent of the classified district average salary for the personnel job class (classification), the difference shall revert to the district budget for possible reallocation under Section 7 of this administrative regulation.

(5) [66] Any adjustments to the allocation due to increases in salary schedules, salary adjustments, or increases or decreases in enrollment shall be made by September 15. A council shall be notified if the adjustment represents a change (Notiﬁcation to council of adjustments shall be (1) required only if adjustments represent changes) in staffing due to enrollment increases or decreases.

Section 6. Other Minimum Allocations. [Instructional Supplies, Materials, Travel, and Equipment] (1) [For instructional supplies, materials, travel, and equipment] School councils shall receive a minimum allocation of three and one-half (3 1/2) percent of the statewide guaranteed base funding level for Support Education Excellence in Kentucky (SEEK) based on prior year’s actual averaged daily attendance.

(2) Any amount generated in subsection (1) of this section shall be adjusted at the end of the second school month for changes in average daily attendance and projected funding for SEEK. Adjustments prior to the end of the second school month for the 1995-96 school year shall use enrollment data and apply to the original allocations made by March 1, 1996. Subsection (1) of this section shall not apply for the 1996-97 school year.

(3) Allocations under subsections (1) and (2) of this section shall not include funds for operating expenses, including utilities, or for health and safety requirements of schools not included in the allocations required by Sections 4, 5, 7, or 8 of this administrative regulation or this section, if funds are given to a school for these purposes, the funds shall be distributed in a separate allocation.

Section 7. Distribution of the Balance. (1) The balance between the amount generated in Sections 4, 5, and 6 of this administrative regulation and the amount available for distribution to school councils from Section 3 of this administrative regulation shall be distributed by the local board in one (1) of the following manners:

(a) An amount per prior year’s average daily attendance;

(b) Based on pupil needs identified by school councils in their adopted school improvement plans and designated by the local school board. Money provided under this subsection shall be used only for the needs identified by the council from its adopted school improvement plan and designated by the board;

(c) For specific instructional purposes based on student needs identified by the board from disaggregated student achievement data. Money provided under this paragraph shall be used by the council to address any of the identified needs or to promote the board’s goals specified under Section 4.1 of this administrative regulation.

(d) A combination of paragraphs (a), (b), and (c) of this subsection [section] as follows:

(2) An adjustment may be made to allocations under subsection (1) of this section at the end of the second school month for changes in average daily attendance and projected funding for SEEK, and changes in the projections for prior year, end-of-year balances.

(3) If the allocations in Sections 4, 5, and 6 of this administrative regulation generate more funds than are available in Section 3 of this administrative regulation for distribution to school councils, the local board shall make every reasonable effort to make up the deficit.

Section 8. A tentative amount for professional development shall be allocated within thirty (30) days of notification from the Kentucky Department of Education, pursuant to KRS 160.345(6). The amount allocated shall be equal to at least the minimum requirement multiplied by the average daily attendance from the prior school year. The amount of professional development allocation shall be amended by September 15 to reflect the most recent annual average daily attendance. Nothing in this administrative regulation shall prohibit the district from providing funds to school councils in excess of the allocation amounts generated by Sections 4, 5, and 6 of this administrative regulation or other operational and capital outlay items.

Section 9. Each year school councils shall review the budgets for all categorical programs and provide comments to the local board prior to the adoption of the budget. [The district board of education shall develop allocation procedures for educational funds pursuant to KRS 160.345(6).]

Section 10. A council shall allocate the district board of education shall not result in a proposed expenditure that would cause the district budget to hold in reserve less than the required amount set by KRS 160.470.

Section 11. The provisions of this administrative regulation notwithstanding, a district shall not be prohibited [prohibit districts] from passing on to school councils any reduction in state and local revenues.

Section 12. The Kentucky Board of Education may approve requests from local school districts annually to use an alternative formula to allocate funds to schools. A local school district [district] request-approved to use an alternative process shall submit written documentation that the formula would generate funding equal to or greater than the amount provided to school councils under Section 3 of the administrative regulation. All requests shall be received by the Division of School Finance by October 1 preceding the allocation year. Any alternative process approved by the Kentucky Board of Education shall be subject to subsequent review.

Section 13. [41] Under Sections 4 and 5 of this administrative regulation, the funds allocated to staff positions shall be exactly the amounts permitted by the board policies or guidelines required in those sections. Amounts allocated for staff funding shall be exactly the amounts permitted by the board policies and guidelines required in those sections. No positions or funds shall be added to allocations under those sections except by amendment of the board policy.

(2) All amounts allocated under Section 7 of this administrative regulation shall be allocated equally among the schools in a district based on the average daily attendance unless a board vote permitted by the rules in Section 4.1 of this administrative regulation allows some or all Section 7 funds to be allocated differently.

GENE WILHOIT, Commissioner of Education
HELEN MOUNTJOY, Chairperson
APPROVED BY AGENCY: August 13, 2001
FILED WITH LRC: August 13, 2001 at 4 p.m.

EDUCATION, ARTS AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
Bureau of Learning Support Services
(As Amended at ARRS, October 9, 2001)


RELATES TO: KRS 157.390
STATUTORY AUTHORITY: KRS 157.390
NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.390 authorizes the Kentucky Board of Education to promulgate an administrative regulation for administration of a Professional Development Leadership and Mentor Fund to provide additional compensation to a classroom teacher or administrator serving as a classroom mentor, teaching partner, or professional development leader in core discipline areas. This administrative regulation establishes the guidelines for programs and activities that qualify for funds including the application and approval process for receipt of funds, and individual participant requirements, the amount of compensation, the timelines, and the reporting requirements.

Section 1. Definitions. (1) "Classroom mentor" means a highly-skilled, experienced teacher or administrator possessing current pro-
essional knowledge and the specific pedagogy in mathematics, lan-
guage arts, writing, science, social studies, arts and humanities, prac-
tical living and vocational studies, or reading who provides systematic
and on-going support and assistance to other teachers in a school or
school district to help them improve their teaching skills and practices.
(2) "Highly skilled" means documented expertise in content
knowledge, student learning, and assessment, the ability to teach all
students to meet the proficient standard, and the ability to use effective
communication skills with other professionals.
(3) "Professional development leader" means a highly-skilled
teacher or administrator who serves in a supportive, ongoing role
to provide professional development training and materials to teachers.
(4) "Teaching partner" means a highly-skilled teacher or adminis-
trator who is available during the school day to collaborate, teach, and
work with a teacher within the classroom setting.

Section 2. Purpose of Program. The Professional Development
Leadership and Mentor Fund provides competitive grants to pay one
(1) or more teachers or administrators additional compensation to
develop and implement an action plan for improving the academic
performance of students.

Section 3. Selection of Grants. (1) A public school that enrols
students that includes grades P-12 shall be eligible to compete for a
$10,000 grant. Preference shall be given to schools with a high per-
centage of students scoring at the novice level on the core content
section of the Kentucky Core Content Test (KCCCT) that relates to the
area for which the mentor program is focused.
(2) The following organizations may apply for the grant;
(a) A school council or school;
(b) A school jointly with one (1) or more schools, e.g., a high school
and feeder middle school;
(c) A school district;
or
(d) A school district jointly with one (1) or more school districts.
(3) The application shall be submitted by June 15, 2001 and by
May 15 of subsequent years and have the approval of the participating
district local board of education.
(4) Funds shall be made available to an eligible school through a
request for proposal (RFP) process. A grant application shall indicate
the fiscal agent as a local board of education or other entity eligible to
enter into a memorandum of agreement to receive state education
funds.
(5)(a) Priority shall be given to applications in 2001-2002 for
mentoring programs designed to improve reading instruction for all
students in the school resulting in increased reading assessment
scores. In subsequent years, and based on the available funds, the
Kentucky Board of Education shall determine the core discipline areas
and grade levels for which priority of funding shall be provided and
notified eligible recipients.
(b) To be eligible for funding, an application shall:
1. Propose a project designed to improve instruction for all
students in the school resulting in increased assessment scores in the
focus core area;
2. Designate a position as a classroom mentor, teaching partner,
or professional development leader who will receive additional com-
penation (separate and apart from the base salary) for planning and
facilitating the project, providing professional development for fellow
teachers, and working in classrooms with teachers. Assistance may
be focused on improving the skills in instruction of emergency-certified
teachers;
3. Include an assessment of need and rationale for proposing the
project;
4. Describe how the district will support the project and [1 include
a provision for improving the knowledge and skills of the classroom
mentor, teaching partner, or professional development leader through
ongoing professional development funded by the school or district;
and
5. Describe how the project will be evaluated.
(b) The Commissioner of Education shall appoint a panel of edu-
cators knowledgeable about instruction to review the applications for
funding based on the following criteria:
(a) Percentage of students scoring at the novice level on the
KCCCT;
(b) Effectiveness of the description of the rationale for the project;
(c) Effectiveness of the model proposed for the project;
(d) Level of commitment of the district, school and classroom
mentor, teaching partner, or professional development leader;
(e) Qualifications of the classroom mentor, teaching partner, or
professional development leader to assist teachers and plan for his or
her own professional development;
(f) Quality of the plan to evaluate results of the project; and
(g) Efficiency and effectiveness of the budget.
(7) Applications that involve other partners such as a feeder
school, a higher education institution, or other interested entity, or that
integrate the proposal with existing school programs, shall receive
additional consideration.
(8) After consideration of the criteria established in subsection (6)
of this section, geographic distribution may be considered.

Section 4. District Requirements. (1) A payment made from this
fund under the requirements of this administrative regulation shall be
disbursed by the Department of Education directly to the local school
district in which the mentor is employed for the July 1 to June 30 fiscal
year.
(2) The local school district shall be responsible for disbursing the
payment to the mentor and deducting any relevant withholdings prior
to disbursing the funds to the mentor.
(3) A local school district shall verify that the mentoring activities
have been accomplished and request reimbursement by May 1 of the
grant year.

GENE WILHOIT, Commissioner of Education
HELEN MOUNTJOY, Chairperson
APPROVED BY AGENCY: August 13, 2001
FILED WITH LRC: August 14, 2001 at noon

EDUCATION, ARTS, AND HUMANITIES CABINET
Commission on the Deaf and Hard of Hearing
(As Amended at ARRS, October 9, 2001)

735 KAR 1:010. Eligibility requirements, application and cer-
tification procedures to receive specialized telecommunications
equipment for the deaf, hard of hearing and speech impaired.

RELATES TO: KRS 12.290, 61.878, 163.500 to 163.527,
334.010(9), 334.020, 29 USC 794, 42 USC 12101 [163.510]
STATUTORY AUTHORITY: KRS 163.525(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290
requires each administrative body of state government to prom-
ulate administrative regulations, in compliance with federal
mandates, to provide accessibility to services by persons who
are deaf or hard-of-hearing. KRS 163.525(5) requires the com-
misson to promulgate administrative regulations to establish
procedures for application for, and distribution of, telecommunica-
tions devices. This administrative regulation establishes eligi-
bility criteria, requirements for application, and certification pro-
cedures. [This administrative regulation is necessary to implement
the provision of KRS 163.525(5) which mandates that the Kentucky
Commission on the Deaf and Hard of Hearing (KCDHH) establish a
program to distribute specialized telecommunications equipment
(STE) to any deaf, hard of hearing, or speech-impaired persons quali-
fied to receive the equipment at no additional cost beyond a single
party residence line. The function of this administrative regulation is to
establish the criteria for awarding (STE) and the application and cer-
tification procedures.]

Section 1. Definitions. (1) "Applicant" means a person who applies
to receive specialized telecommunications equipment under the aus-
pices of the KCDHH TDD Distribution Program.
(2) "Application" means the current KCDHH TDD Distribution
Program application which is entitled "TDD Distribution Program
Application and Certification" [July 2001].
(3) "Audiologist" is defined at KRS 334A.020(5), and is limited
to a person licensed by the board, as defined at KRS 334A.020(1) [as
defined as a person who is licensed by the Kentucky Board of Licensee
for Speech-Language to engage in the practice of audiology].
(4) "Certification" means professional verification of the extent and
permanence of the applicant's disability.

(5) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH, as determined by the TDD Distribution staff.

(6) "Deaf" and "hard of hearing" is defined by KRS 163.500.

(7) "Deaf-blind" means an [any] individual whose primary disability is blindness and secondary disability is vision impairment.

(8) "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(9) "Hearing instrument specialist" is defined at KRS 334.010(9) [means a person who is licensed by the Kentucky Licensing Board for Specialists in Hearing Instruments to engage in the practice of fitting hearing instruments].

(10) "KCDHH" means the Kentucky Commission on Deaf and Hard of Hearing, as described at KRS 163.508 [is defined by KRS 163.506 and 163.540].

(a) [Licensee] means any specialized telecommunications equipment [that the KCDHH loans to recipients while their STE is being repaired];

(b) "Physician" means a person;

(c) Licensed by the state in which he or she practices medicine and

(d) Recognized, by the state Board of Medical Licensure in the state in which he or she practices, as a specialist in:

1. Family practice;
2. General practice; or
3. Otolaryngology [who has a medical degree and is licensed to practice medicine in any one (1) of the United States and is listed in the most current version of the Kentucky Medical Directory as specializing in family practice, general practice, or otolaryngology; or provides verification of such certification if not listed in Kentucky directory].

(12) [(43)] "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

[(13) [(44)] "Residency" means a resident of Kentucky who is an individual who has resided within the Commonwealth of Kentucky as their primary residence, for at least one (1) full calendar-year prior to their date of application for a specialized telecommunications equipment.

[(44)] [(16)] "Specialized telecommunications equipment," or "STE" [(STE)] means readily-available or emerging adaptive equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications services, such as:

(a) TDSS;
(b) Amplifiers;
(c) Visual, audible, or tactile ring signal devices; and
(d) [ring-signal devices (visual, audible, or tactile) and] TDDs with large visual display.

[(45)] [(46)] "Speech-language pathologist" means a person [who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of speech-language pathology.

((15) [(16)] [(47)]) "Telecommunications device for the deaf," or "TDD," [(TDD)] is defined by KRS 163.525(1)(a).

5. "TDD Distribution Program" is defined by KRS 163.525(1)(b).

Section 2. General Applicant Criteria. (1) An applicant shall be:

(a) A person who has resided in Kentucky for one (1) year prior to the date of application, as demonstrated by one (1) or more of the following [legal resident of the state of Kentucky as documented by]:

1. Possession of a Kentucky driver’s license; or
2. Registered to vote in Kentucky; or
3. Kentucky automobile registration; or
4. Filing of Kentucky income tax return for the calendar year preceding the date of application; the [application for the specialized telecommunications equipment is submitted; or
5. A member of the Armed Forces, and his or her dependents, stationed in Kentucky on active military orders for at least [of not less than] one (1) year [which shall include spouse and dependents]; or
6. If a student enrolled at an institution of higher learning located in Kentucky meets the residency requirements of 13 KAR

2:045; [Regarding the residency of students enrolled at institutions of higher learning located in the Commonwealth of Kentucky, refer to 13 KAR 2:045.]

(b) At least five (5) years of age and if the applicant is between five (5) and eighteen (18) years of age, the applicant’s parents or guardians shall:

1. Apply on behalf of the child; and
2. Assume full responsibility for the equipment.

(c) Deaf, hard of hearing or speech impaired such that the applicant cannot use the telephone for communication without adaptive specialized telecommunications equipment.

(2) An application [Applications] shall be:

(a) Made on a "TDD Distribution Program Application and Certification" form, incorporated by reference [original forms provided by the KCDHH];

(b) Signed and submitted in person or by [via] mail;

(c) Accompanied by:

1. A copy of a telephone bill showing telephone number and name and address of the person being billed;
2. A copy of the applicant’s proof of residence
3. Document of certification, as required by subsection (3) of this section; and

4. Any other necessary supporting document required by the KCDHH [a copy of the telephone bill with the name and address of the person being billed and the telephone number, a copy of the driver’s license or any other document showing proof of legal residence, and any other supporting documentation as shall [may] be required by the KCDHH].

(3) An applicant shall [The KCDHH shall require that applicants] provide professional certification [verification] of the extent and permanence of the applicant’s disability. The certification shall be included as part of the application.

(a) Certification [Verification] shall be at the applicant’s expense.

(b) Certification shall be performed and provided [done] by:

1. A licensed physician;
2. A licensed audiologist;
3. A licensed speech-language pathologist;
4. A licensed hearing instrument specialist; or
5. A public or private agency [agency] providing direct services to [working with] deaf, hard of hearing, or speech-impaired individuals [shall may] provide certification, subject to approval by the KCDHH.

(4) Except for an individual receiving assistance from a program providing telephone services to persons normally unable to afford the services, an applicant shall subscribe to, or have currently applied for, telephone service, including [individuals who receive assistance from programs designed to provide telephone service to those who are would not normally be able to afford it, applicants shall subscribe to or have currently applied for telephone service, which shall include]:

(a) Installation of a telephone line in the applicant’s [their] home, at the applicant’s [their] expense; and

(b) Payment of monthly telephone bills.

(5) Eligible applicants shall be awarded program participation on a first-come, first-serve basis, in accordance with the approved date, as determined by the dated signature of the TDD Distribution staff. Applicants shall be placed on a waiting list during times of fiscal constraint.

(6) KCDHH shall distribute the STE in compliance with:

(a) The Model Procurement Code, KRS Chapter 45A; and
(b) 735 KAR 1:020, [through the Model Procurement Code (KRS Chapter 45A)] as established in 735 KAR 1:020.

(7) Not more than two (2) STEs one (1) of which shall be a visual or tactile signaler. One (1) additional visual or tactile signaler shall be distributed to a deaf or hard-of-hearing individual only.


(b) It may be inspected or obtained at the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky, 40601, Monday through Friday 8 a.m. to 4:30 p.m. The
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KCDHH—telephone number is 1-800-372-2907; V/TDD or 502-573-2604; V/TDD- the KCDHH fax number is 502-573-3904.

(2) As KCDHH recognizes that the demand for the specialized telecommunications equipment may exceed available funds, so the following information (statement) shall be included on each application form (all application forms, which) the applicant shall be required to sign:

(a) The TDD Distribution Program has a limited amount of funds.

(b) There is a possibility that applicants may be placed on a waiting list, due to a large number of applications.

(c) Funds may be exhausted in any given year and (the exhaustion of these limited funds on an annual basis).

(d) Subject to the availability of funds, each STE (The specialized telecommunications equipment) shall be distributed on a nondiscriminatory, first-come, first-served basis.

(e) The TDD Distribution Program shall distribute one (1) STE per individual for each residential telephone line.

Section 4. Application Process. (1) The KCDHH staff shall [may] provide assistance in completing forms if [when] requested by an applicant.

(2) The TDD Distribution Program staff shall review each application [all applications] in the order the KCDHH office receives them, in order to determine:

(a) All the necessary information is completed on the application;

(b) All required documentation is included; and

(c) All eligibility requirements are met.

(3) An (an) approved application shall be dated and signed by the TDD Distribution Program staff. The approved date shall determine the first-come, first-served roster.

(4) The KCDHH shall, within sixty (60) days of receipt of the application, notify an applicant if the application has been approved or rejected. [Applicants shall be notified in writing whether their application has been accepted or rejected within sixty (60) calendar days of the submission date.]

(5) The KCDHH shall, within sixty (60) days of receipt of the application, provide to an ineligible applicant, written reasons for the determination of ineligibility. An applicant may request a [an] appeal of the determination within sixty (60) days. Any applicant who has been denied participation may rescind the appeal should the program and the recipient determine that the recipient is ineligible.

(6) Training to properly select and use the STE shall be provided to applicants upon request.

Section 5. An application [Applications] shall be denied [if when]:

(1) The applicant does not meet the eligibility requirements as established in KRS 163.525, 735 KAR 1:010 and 1:020;

(2) The applicant has received STE from the TDD Distribution Program within the preceding four (4) years;

(3) The applicant is an active consumer [client] of the Department of Vocational Rehabilitation and receives a STE as part of an IPE (individual plan of employment, also known as an "IP" [IPE] [WRAP (individual written rehabilitation plan]);

(4) The applicant has negligently or willfully damaged a STE previously received from the KCDHH TDD Distribution Program, or has violated another provision [violated other provisions] of the law [administrative regulations] governing the TDD Distribution Program;

(5) The applicant fails to provide a police report of a stolen device or refuses to cooperate with the police investigation in the prosecution of the suspect, including the refusal to testify in court when subpoenaed to do so;

(6) The applicant is found negligent in a police report of a stolen device, such as doors to the house or car left unlocked or unattended;

(7) The applicant has lost or sold the STE; or

(8) In the case of replacing the equipment after four (4) years have passed, the original STE is found to be technologically out of date and functionally obsolete.

Section 6. Replacing the Specialized Telecommunications Equipment. During times of fiscal constraint, a reaplication [reapplication] shall be accepted and held pending until such time as funds become available. An applicant [Applicants] shall provide verification of eligibility at the time the reaplication is processed.

(1) A recipient may apply to replace the original STE (specialized telecommunications equipment) if:

(a) The STE (specialized telecommunications equipment) is damaged as a result of a [through] natural disaster (disaster) [such as lightning, electrical storms, floods or other acts of God];

(b) There is a change in status, such as deteriorating vision or hearing;

(c) A new device has become available through the TDD Distribution Program that is [and is deemed] more appropriate to the recipient's disability than a device previously received through the TDD Distribution Program; or

(d) It has been four (4) years since the recipient last received STE (specialized telecommunications equipment).

(2) As funds are available, new STE (specialized telecommunications equipment) to replace existing STE (specialized telecommunications equipment) shall be issued to applicants who:

(a) [Who can] Demonstrate eligibility; and

(b) [Who] Comply with the provisions of the administrative regulations governing the TDD Distribution Program: 735 KAR 1:010 and 735 KAR 1:020.

(3) Priority shall be given in the distribution of STE to first-time recipients during times of fiscal constraint.

(4) If a replacement is requested because the STE (specialized telecommunications equipment) is damaged as a result of a [through] natural disaster (disaster) [such as lightning, electrical storms, floods], then:

(a) The recipient shall first send the damaged equipment to the KCDHH, or directly to the vendor as directed by TDD program staff.

(b) If necessary, the recipient may apply for a loaner STE under the provisions of the loan agreement as described in 735 KAR 1:020, Section 6.

(c) KCDHH shall send the damaged STE to the vendor for verification of unrepairable damage.

(d) If the vendor certifies to the KCDHH that the equipment provided to the recipient is unrepairable due to natural disaster, a replacement shall be issued to the recipient, upon reaplication, subject to:

1. Equipment availability;

2. Compliance with eligibility criteria established in this administrative regulation; and

3. The first-come, first-served provision; and

4. Availability of funds.

(5) If the recipient obtains certification from a physician, audiologist, hearing instrument specialist, or speech-language pathologist stating that the recipient will [would] benefit from another device available through the KCDHH TDD Distribution Program due to a change in disability status or a new device becoming available, then a replacement shall be issued to the applicant based on first-come, first-served availability and availability of funds. As an alternative, a public or private agency [agencies] providing direct services to [working with] deaf, hard of hearing, or speech-impaired individuals may [shall] may provide certification, subject to approval by the KCDHH.

(6) If a replacement is requested due to the STE being stolen, then the recipient shall:

(a) Notify local police within thirty (30) days of the theft; and

(b) Forward a copy of the police report to the KCDHH within ten (10) [five (5)] working days of the date the theft was reported; and

(c) Aid in the prosecution of the alleged perpetrator of the theft, if a suspect and when the accused perpetrator is identified.

(7) If a replacement is requested because four (4) years have passed, then the recipient shall either bring in person or mail their original STE to the KCDHH.

(a) The KCDHH shall [then] determine if [whether or not] the original STE is technologically obsolete or nonfunctional.

(b) If the original STE is:

1. Technologically obsolete or nonfunctional, then the recipient shall follow the application process to replace the equipment as delineated in 735 KAR 1:010 and 735 KAR 1:020; or

2. Not determined to be technologically obsolete or nonfunctional, then the application for a replacement shall be denied and the original
STE shall be returned to the recipient.

Section 7. [Loan Equipment—(1) When recipients' STE is under repair or maintenance, the KCDHH TDD Distribution Program shall provide, at no cost, "loaner" STE upon receiving a completed Loan Agreement Form from the recipient.

(2)(a) Loan Agreement Form—(July 1995) is herein incorporated by reference.

(b) It may be inspected or obtained from the KCDHH, 632 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m.-4:30 p.m. The KCDHH phone number is (502) 573-2604 V/TTDD or 800-372-2907 V/TTDD; the KCDHH fax number is 502-573-3694.

Section 8. [FRAUD] Fraud. If a recipient obtained STE [specialized telecommunications equipment] under false pretenses or through misrepresentation of facts in the application [TDD Distribution Program Application—And Certification—(July 2001—June 1996)], the KCDHH shall [may] demand return of the equipment immediately. Upon demand, the recipient shall return the STE and shall be ineligible to participate in the KCDHH TDD Distribution Program thereafter.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the offices of the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky, 40601, Telephone 502-372-2907, V/TTDD or (502) 573-2604 V/TTDD, Monday through Friday, 8 a.m. to 4:30 p.m.

D. COLE ZULAUF, Chair
APPROVED BY AGENCY: August 7, 2001
FILED WITH LRC: August 14, 2001 at 2 p.m.

EDUCATION, ARTS, AND HUMANITIES CABINET
Commission on the Deaf and Hard of Hearing
(As Amended at ARRS, October 9, 2001)

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.


NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.290 requires each administrative body of state government to promulgate administrative regulations, in compliance with federal mandates, to provide accessibility to services by persons who are deaf or hard of hearing. KRS 163.525(5) requires the commission to promulgate administrative regulations to establish procedures for application and distribution of telecommunications devices. This administrative regulation establishes procedures for specialized telecommunications equipment vendors, for security, and for the maintenance and repair. [This administrative regulation is necessary to implement the provision of KRS 163.525(5) which mandates that the Kentucky Commission of the Deaf and Hard of Hearing (KCDHH) establish a program to distribute specialized telecommunications equipment to any deaf, hard-of-hearing, or speech-impaired person qualified to receive the equipment at no additional cost beyond a single-party residence line. The function of this administrative regulation is to establish the processing system for vendors, security, and the maintenance and repair of the STE.]

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(2) "Application" means the current KCDHH TDD Distribution Program application [which is entitled "TDD Distribution Program Application and Certification (July 2001)]

(3) "Audiology" is defined at KRS 334A.020(5), and is limited to a person licensed by the board, as defined at KRS 334A.020(1) [means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of audiology].

(4) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(5) "Approved date" means the date that all supporting documentation for the application is received and verified by the KCDHH, as determined by the TDD Distribution Program staff.

(6) "Deaf," and "Hard of hearing" is defined by KRS 163.500.

(7) "Deaf-blind" means an individual whose primary disability is deafness and secondary disability is vision impairment.

(8) "Fiscal constraint" means when seventy-five (75) percent of annual program funds have been disbursed or encumbered.

(9) "Hearing instrument specialist" is defined at KRS 334.010(9) [means a person who is licensed by the Kentucky Licensing Board for Specialists in Hearing Instruments to engage in the practice of fitting hearing instruments].

"KCDHH" means the Kentucky Commission on Deaf and Hard of Hearing, as described at KRS 163.508 [is defined by KRS 163.508 and 163.510].

(11) ["Loaner" means any specialized telecommunications equipment that the KCDHH lends to recipients while their STE is being repaired.

(12) "Physician" means a person;

(13) "With a medical degree"

(14) Licensed by the state in which he or she practices medicine and

(c) Recognized, by the state Board of Medical Licensure in the state in which he or she practices, as a specialist in:

1. Family practice;
2. General practice; or
3. Otolaryngology, who has a medical degree and is licensed as a licensed to practice medicine in any one (1) of the United States and is listed in the most current version of the Kentucky Medical Directory as specializing in family practice, general practice or otolaryngology, or provides verification of such certification if not listed in Kentucky's directory.

(12) (143) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(13) (144) ["Residency" means a resident of Kentucky is an individual who has resided within the Commonwealth of Kentucky as their primary residence, for at least one (1) full calendar year prior to their date of application for a specialized telecommunications equipment.

(14) [166] "Specialized telecommunications equipment" or "STE" ["STE"] means readily-available or emerging adaptive equipment that enables deaf, hard-of-hearing, or speech-impaired individuals to access telecommunications services, such as:

(a) [167] [166] TDDs;
(b) [167] [166] Amplifiers;
(c) [167] [166] Visual, audible, or tactile ring signal devices; and
(d) [167] [166] Tone signal devices (Visual, audible, or tactile) and TDDs with large visual display.

(15) [168] [177] "Speech-language pathologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the treatment [practise] of speech-language pathology.

(16) [177] [168] "Telecommunications device for the deaf" or "TDD" or "TTD" is defined by KRS 163.525(1)(e).

(17) [168] [177] "TDD Distribution Program" is defined by KRS 163.525(1)(b).

Section 2. Processing System. (1) The KCDHH shall use accounting procedures consistent with Commonwealth accounting practices in compliance with applicable sections of the Model Procurement Code, KRS Chapter 45.

(2) Contracting, purchasing, bidding, invoicing, and payment practices shall be conducted in accordance with applicable [the] provisions of the Model Procurement Code [KRS Chapter 45A, 1)] and shall be applied uniformly to applicants and vendors.

(3) The KCDHH TDD Distribution Program accounts shall be
Section 3. Vendor and Recipient Participation (1) The vendor shall be responsible for complying with the provisions of the Model Procurement Code 6/KRS Chapter 45A), as established in the contract between the vendor and KCDHH. The vendor [and] shall [send the]:
   (a) Mail or otherwise deliver the STE directly to the recipients’ Kentucky residence; and
   (b) Send the following to the KCDHH:
       1. An itemized invoice with the recipient’s name and STE model and serial number; and
       2. A copy of the delivery receipt for the STE [when] sent to the recipient.

(2) The vendor, in exchange for an itemized invoice and a copy of the delivery receipt, shall be paid by the KCDHH or a bank, pursuant to the Memorandum of Agreement established between the Public Service Commission and the KCDHH.

(3) The recipient shall be responsible for any costs involved in having features not specified in the vendor contract added to their STE. Paying the delivery and maintenance and repair of those features not specified in the vendor contract.

(4) Ownership rights and responsibilities for the STE shall belong to the recipient, as evidenced by the recipient’s copy of the delivery receipt. Equipment obtained under this program shall not be sold, loaned, or otherwise transferred or out of the possession of the originally-authorized recipient. An [Any] person who attempts to sell, or who knowingly purchases stolen equipment shall be prosecuted to the fullest extent of the law. A recipient shall not be responsible for the actual maintenance and repair of the equipment during the five (5) year warranty period. In order to have a malfunctioning STE repaired, [However], the recipient shall:
   1. Contact the KCDHH; and
   2. Comply with the repair and maintenance procedures established in Section 5 of this administrative regulation [in order to have equipment serviced to theST]. In order to receive the loaner-STE.

Each recipient shall:
   1. Purchase or lease a telephone;
   2. Pay the monthly telephone bill;
   3. Purchase batteries and paper for the TDD; and
   4. Pay for [Recipient] shall assume all responsibilities for:
     1. Paying the monthly telephone bill;
     2. Purchasing or leasing a telephone;
     3. Purchasing batteries and paper for the TDD; and
     4. Paying other general costs and supplies associated with the functions and use of the STE.

A recipient [Recipients] shall be responsible for the loss of an STE received [or borrowed] under the auspices of the KCDHH TDD Distribution Program.

Section 4. Security. (1) Equipment obtained under this program shall not be sold, loaned, or otherwise transferred out of the possession of the originally-authorized recipient.

(2) The recipient shall notify the KCDHH within ten (10) working days if the equipment is lost or damaged.

(2) If the equipment is stolen, the recipient shall:
   (a) Notify local police within thirty (30) days of the theft;
   (b) Forward a copy of the police report to the KCDHH within ten (10) (five-six) working days of the date the theft was reported; and
   (c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.

Equipment obtained under this program shall become the sole property of the recipient.

Section 5. Maintenance and Repair Procedures. (1) A recipient [Recipient] shall report equipment in need of repair to the KCDHH; and TDD Distribution Program staff shall inform the recipient of:
   (a) [Include] The mailing address and telephone number of the manufacturer; and
   (b) A telephone number of the manufacturer (company), and the purchase order number for the [Recipient]’s equipment.

(2) The recipient shall:
   (a) Report the problem to the manufacturer;
   (b) Ask that the manufacter pay for shipping the defective equipment.

1. To the manufacturer’s designated place of repair; and
2. Back to the recipient, once repaired, contact the company and report the problem, requesting the company to assume responsibility for shipping the defective equipment for repair and return to the recipient.

(3) The contracted repair agent shall notify the recipient that the STE is repaired, or is not repairable, and shall provide verification of the [this] transaction to the KCDHH. If the warranty period has ended, the recipient shall assume financial responsibility for repair of the equipment.

(4) A recipient shall notify the KCDHH immediately of a change of residence or address. Equipment Loan Program Maintenance and Repair Procedures. The [KCDHH] shall maintain a stock of at least twenty (20) “loaner” units to be used by recipients when their STE has been sent to the manufacturer for repair or maintenance.

(5) The loan program shall only be available to recipients of the TDD Distribution Program. The loan period shall extend until the recipient’s STE is returned in working condition.

(6) To participate in the loan program, the recipient shall:
   (a) Sign the “Loan Agreement Form,” as incorporated in 735 KAR 1:040;
   (b) Submit the Loan Agreement Form and the malfunctioning STE to the KCDHH TDD Distribution Program.

(7) The KCDHH shall issue a loaner STE to the recipient.

(8) The KCDHH shall assume responsibility for shipping the STE to the contracted repair agent. When the repaired STE is received by the KCDHH, the KCDHH shall:
   (a) Notify the recipient that their STE is repaired; and
   (b) Request the return of the loaner STE.

(9) If the recipient does not return the loaner equipment within twenty (20) days of the date the recipient is notified, the KCDHH shall retain the original, repaired STE in exchange.

(10) The KCDHH reserves the right to reposess the loan equipment at any time if:
   (a) There is a change in the recipient’s eligibility status;
   (b) Repaid negligent or willful damage is done to the equipment;
   (c) There are other violations of the administrative regulations governing the TDD Distribution Program.

(11) Equipment shall be marked with nonremovable identification by the company supplying the equipment.

(12) In the event equipment is lost or stolen, the recipient shall immediately notify the KCDHH, who shall notify manufacturers, distributors, repairmen, and any other pertinent parties of the serial numbers of the missing equipment so that it can be identified and returned to the KCDHH. Any person who attempts to sell or knowingly purchase stolen equipment shall be prosecuted to the fullest extent of the law.

(13) The recipient shall be responsible for the replacement or repair of the loaner STE should the STE be damaged, lost, or stolen while in their possession, in accordance with the provisions of 735 KAR 1:040, unless the police report or vendor certifies that the theft or damage was not due to negligence or willful damage done on the part of the recipient.

(14) If the recipient moves:
   (a) To a different address within the Commonwealth of Kentucky, the KCDHH shall be notified immediately of the address change; or
   (b) Out of state, the equipment shall be returned to KCDHH.

D. COLE ZULAUZ, Chair
APPROVED BY AGENCY: August 7, 2001
FILED WITH LRC: August 14, 2001 at 2 p.m.
WORKFORCE DEVELOPMENT CABINET
Department for Adult Education and Literacy
(As Amended at ARRS, October 9, 2001)
785 KAR 1:031. Repeal of 785 KAR 1:030 [administrative regulation in 785 KAR Chapter 1].

RELATES TO: KRS 151B.023, 151B.095, 151B.110, 151B.125, 151B.145, 160.180(2)(c)
STATUTORY AUTHORITY: KRS 151B.127(1) [151B.023, 151B.105, 151B.145]
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.127(1) requires the Department of Adult Education and Literacy, in conjunction with the Council on Postsecondary Education, to promulgate administrative regulations establishing operational procedures for high school equivalency programs. Procedures for granting eighth-grade equivalency certificates to eligible adults were established in 785 KAR 1:030. This administrative regulation repeals 785 KAR 1:030 as no longer necessary in light of KRS 151B.100(2), which requires school board members to have a high school diploma or its equivalent. There is currently no need by business or government for employees or others to present an eighth-grade certificate. Attainment of that level of education is demonstrated by examination. This administrative regulation is no longer necessary as demonstrated by the lack of requests to issue these certificates and the institution of higher requirements for school board membership in 1958.

Section 1. [The following administrative regulation is hereby repealed] 785 KAR 1:030. Eighth grade equivalency certificate, is hereby repealed.

CHERYL D. KING, Commissioner
APPROVED BY AGENCY: August 14, 2001
FILED WITH LRC: August 14, 2001 at 10 a.m.

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(As Amended at ARRS, October 9, 2001)
803 KAR 2:320. Air contaminants.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes [authorizes] the Kentucky Occupational Safety and Health Standards Board to [adopt and] promulgate occupational safety and health administrative regulations. KRS 338.061(2) authorizes [provides that] the board to [may] incorporate by reference established federal standards and national consensus standards. This [The following] administrative regulation establishes [contains] those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3) micrometer Methylene bis (2-chloroaniline) if containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas.
(2) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet.
(3) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.
(4) "Authorized employee" means an employee whose duties require him to be in the regulated area and who has been specifically assigned to that area by the employer.
(5) "Clean change room" means a room where employees put on clean clothing or protective equipment in an environment free of 4,4'-Methylene bis (2-chloroaniline).
(6) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) if containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.
(7) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.
(8) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by him or her in the Secretary of Health, Education, and Welfare to act for the director.
(9) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.
(10) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) which may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).
(11) "External environment" means any environment external to regulated and nonregulated areas.
(12) "Employee" is defined in KRS 338.015(2).
(13) "Employer" is defined in KRS 338.015(1).
(14) "Established federal standard" is defined in KRS 338.015(10).
(15) "Isolated system" means a fully enclosed structure, other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, if leakage or spillage from the vessel of containment occurs.
(16) "Laboratory type hood" means a device enclosed on three (3) sides with the top and bottom designed to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; and designed, constructed, and maintained so that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of an employee's body other than his hands and arms.
(17) "National consensus standard" is defined in KRS 338.015(9).
(18) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled by the employer.
(19) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.
(20) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).
(21) "Regulated area" means an area where entry and exit is restricted and controlled.
(22) "Standard" is defined in KRS 338.015(3). [Definitions applicable to this part:]
(a) "CFR means KRS Chapter 338.
(b) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.
(c) "Employee" means any person employed except those employees excluded in KRS 338.021.
(d) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.
(e) "Established federal standard" means any operable-occupational-safety- and health standard established by any agency of the United States Government.
(f) "National-consensus standard" means any occupational-safety- and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.
(g) "Standard" means the same as regulation or federal rule which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment.
(h) "U.S.-Department-of-Labor" means Kentucky Labor Cabinet, U.S.-127 South, Frankfort, Kentucky 40601, or U.S. Department-of
Labor.

(2) Definitions for Section 2 of this administrative regulation.

(a) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono-disperse aerosol of three tenths (0.3) micron particles.

(b) "Authorized employee" means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(c) "Clean change room" means a room where employees put on clean-clothing and/or protective equipment in an environment free of 4,4'-Methylene bis (2-chloroaniline). The clean-change room shall be contiguous to and have an entry from a shower room, when the shower facility is otherwise not required in this section.

(d) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) wherein containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, non-regulated areas, or the external environment.

(e) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(f) "Director" means the Director, National Institute for Occupational Safety and Health, or any person designated by him or the Secretary of Health, Education and Welfare to act for the Director.

(g) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(h) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) which may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

(i) "Environmental" means any environment external to regulated and non-regulated areas.

(j) "Isolated system" means a fully enclosed structure other than the vessel containing 4,4'-Methylene bis (2-chloroaniline) which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(k) "Laboratory type hood" means a device enclosed on three sides and the top and bottom designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 150 feet per minute; designed, constructed, and maintained is such a way that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(l) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(m) "Open vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, non-regulated areas, or the external environment.

(n) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(o) "Regulated area" means an area where entry and exit is restricted and controlled.

(3) Definitions for Section 5 of this administrative regulation.

(a) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet.

(b) "Assistant-secretary" means Secretary of Labor, Kentucky Labor Cabinet.

(c) "U.S. Department of Labor" means Kentucky Labor Cabinet.

Section 2. 4,4'-Methylene bis (2-Chloroaniline) (1) Scope and application.

(a) This section shall apply [applies] to any area in which 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144, is manufactured, processed, reconditioned, released, handled, or stored. This section [but] shall not apply to transportation in sealed containers, except for the labeling requirements under subsection (e) (b) (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than 1.0 (one) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, reconditioned, released, handled, and stored. Those [All] areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas where 4,4'-Methylene bis (2-chloroaniline) is stored in a sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only; and
2. Employees shall be required to wash hands, forearms, face, and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations shall be [as defined in Section 4-(1)(m) of this administrative regulation are] prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving a "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise closed system, but is transferred, charged [sharpen], or discharged into other normally closed containers, the provisions of this paragraph [subparagraph] shall apply; [it]

1. Access shall be restricted to authorized employees only; [it]
2. Each operation shall be provided with continuous local exhaust ventilation so that air movement shall always be [is-always] from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, non-regulated areas, or the external environment unless it is decontaminated. Clean-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.
3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.
4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 29 CFR 1910.134. A respirator affording a higher level of [or] protection may be substituted.
5. Prior to each exit from a regulated area, employees shall be required [require] to remove and leave protective clothing, and equipment at the point of exit and at the last exit of the day. To place used clothing and equipment in impervious [impermeable] containers at the point of exit for purposes of decontamination or disposal. The contents of the such impermeable containers shall be identified, as required under subsection (d) [59(b), (c), and (d) of this section.
6. Employees shall be required to wash hands, forearms, face, and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains shall be [are] prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall:

1. Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with 29 CFR 1910.134;
2. Be decontaminated before leaving the protective garments and hood; and
3. Be required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this paragraph [sub-
paragraph) shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.
2. Experiments, procedures, and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.
3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.
4. Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. The [Sueh] wastes and carcasses shall be incinerated so [in such a manner] that no carcinogenic products are released [reduced].
5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.
6. Employees engaged in animal support activities shall be:
   a. Provided with, and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and
   b. Required, prior to each exit from a regulated area, to remove clothing and equipment.
7. Employees, except for [other than] those engaged in animal support activities, each day shall be:
   a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully protected laboratory coat; and
   b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment.
8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in the surrounding area. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.
9. There shall be no connection between regulated areas and any other areas through the ventilation system.
10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.
11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify correct containment and operation.
12. Premixed solutions, where 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area shall not be required; except: however
   1. Only authorized employees shall be permitted to handle the [such] materials;
   2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used.
   3. Employees shall be required to remove and leave protective clothing and equipment when leaving the work area at the end of the work day or when [at any time] solution is spilled on the [such] clothing or equipment. Used clothing and equipment shall be placed in impervious containers for [purposes of] decontamination or disposal. The contents of the [such] impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) [paragraphs (a)-(b), and (c) of this section;]
4. Employees shall be required to wash hands [hand] and face after removing protective [such] clothing and equipment and before engaging in other activities; and
5. Employees assigned to work covered by this paragraph [the subparagraph] shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), (c)(1), (2), and (d) and (4), 6, 6, 6, and 6 of this section and paragraphs (e)(1), (2), and (3) of this section.
6. Work areas where solution may be spilled shall be:
   a. Covered daily or after any spill with a clean covering; and
   b. Cleaned thoroughly daily and after any spill.
7. General regulated area requirements.
   (a) Employee identification. A daily roster of employees entering regulated areas shall be established and maintained. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years. The rosters [and] summaries shall be provided upon request to authorized representatives of the assistant secretary and the director.
   (b) Emergencies. In an emergency, immediate measures including, but not limited to the requirements of subparagraphs 1, 2, 3, 4, and 5 of this paragraph shall be implemented.
1. The potentially affected area shall be evacuated as soon as the emergency has been determined.
2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.
3. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours of employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (5)(b) of this section.
4. If [Where] an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline), the [such] employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.
5. Any incident report on the emergency shall be reported as provided in subsection (5)(f) and (b) of this section.
(c) Hygiene facilities and practices.
1. Storage or consumption of food, storage or use of containers of beverages, storage or consumption [application] of beverages, storage or application of cosmetics, smoking, smoking of smoking materials, tobacco products or other products for chewing, or the chewing of those products, shall be prohibited in regulated areas.
2. If [Where] employees are required by this section to wash washing facilities shall be provided in accordance with 29 CFR 1910.141.
3. If [Where] employees are required by this section to shower facilities shall be provided in accordance with 29 CFR 1910.141(d)(3).
4. If [Where] employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 29 CFR 1910.141(e), for the number of [such] employees required to change clothes.
5. If toilets are located in regulated areas, the toilets shall be in a separate room.
(d) Contamination control.
1. Regulated areas, except for outdoor systems, shall be maintained under pressure relative to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean make-up air in equal volume shall replace air removed.
2. Any equipment, material or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.
3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment and the decontamination facility.
4. Dry sweeping and drying of [such] shall be prohibited.
5. Signs, information and training.
the employee's first training [employees-first-training] and indoctrination program and annually thereafter.

3. (60) Specific emergency procedures shall be prescribed[,] and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

4. (60) All materials relating to the program shall be provided if requested by [upon request to] authorized representatives of the assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1 of each year [., 1974], the information required in subparagraphs 1, 2, 3, and 4 of this paragraph shall be reported in writing by the employer to the nearest OSHA Area Director. Any change in the reported [changes-in-such] information shall be similarly reported in writing within fifteen (15) calendar days of the change. The report shall contain the following information: [such-change-]

1. A brief description and in-plant location of the areas [area(s)] regulated and the address of each regulated area.[1]

2. The names [name(s)] and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area.[2]

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area, such as [e.g.,] whether it is manufactured, processed, used, repackaged, released [release], stored, or otherwise handled.

(b) Incidents. Incidents which result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be [potentially] exposed shall be reported in accordance with this paragraph [paragraph].

1. A report [of-the-occurrence] of the incident and the facts obtainable at that time, including a report on any medical treatment of affected employees, shall be made within twenty-four (24) hours to the nearest OSHA Area Director.

2. A written report shall be filed with the nearest OSHA Area Director within fifteen (15) calendar days of the initial report [hereafter] and shall include:

   a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure; [1]

   b. A description of the area involved, and the extent of known and possible employee and area contamination; and

   c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

   d. An analysis of the steps [circumstances] to be taken, with specific completion [completes] dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area [are], a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided with periodic physical examinations at least [examinations, not less often than] annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, current [those-undergoing] treatment with steroids of cytotoxic agents, pregnancy, and cigarette smoking.

(b) Records.

1. Employers of [or] employees examined pursuant to this subsection shall maintain [paragraph shall cause to be maintained] complete and accurate records of all [record of all such] medical examinations. Records shall be maintained for the duration of the employment or [employee's] employment. If the employee's employment is terminated [Upon termination of the employee’s employment], including by retirement or death, or if [in the event that] the employer ceases business without a successor, records, or notarized true cop-
ies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided if requested by [a] upon request to authorized representatives of the assistant secretary or the director; and if requested by [b] and upon request of an employee or former employee, the records shall be provided to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this subsection [paragraph] shall furnish to the employer a statement of the employee's [employee’s] suitability for employment in the specific exposure.

Section 3. Laboratory Activities. The requirements of this section [subsection] shall apply to research and quality control activities involving the use of chemicals covered by 29 CFR 1910.1003-1016.

(1) Mechanical pipetting aids shall be used for all pipetting procedures.

(2) Experiments, procedures, and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(3) Surfaces on which chemicals covered by 29 CFR 1910.1003-1016 are contained must be cleaned and decontaminated prior to removal from the work area. Surfaces shall be cleaned with soap and water or a mild detergent and rinsed with water.

(4) Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated to [in such a manner] that no carcinogenic products are released.

(5) All other forms of chemicals covered by 29 CFR 1910.1003-1016 shall be decontaminated prior to disposal.

(6) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal adsorbents.

(7) Employees engaged in animal support activities shall be:
   (a) Provided with and required to wear a complete protective clothing change, clean each day, including overalls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices.
   (b) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) [2(2), (3), and (4)] of this administrative regulation;
   (c) Required, prior to each exit from a regulated area, [employees shall be required] to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) [2(2), (3), and (4)] of this administrative regulation; and
   (d) Required to shower after the last exit of the day.

(8) Employees, except for [other than] those engaged only in animal support activities, each day shall be:
   (a) Provided with and required to wear a clean change of appropriate laboratory clothing, such as a short front gown, surgical scrub suit [suit], or fully buttoned laboratory coat;
   (b) Required, prior to each exit from a regulated area, [employees shall be required] to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) [2(2), (3), and (4)] of this administrative regulation; and
   (c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities.

(9) Air pressure in laboratory areas, and animal rooms where chemicals covered by 29 CFR 1910.1003-1016 are handled and biological experiments are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless it is decontaminated.

(10) There shall be a [be no] connection between regulated areas and any other areas through the ventilation system.


(12) Ventilated apparatus such as laboratory-type hoods, shall be tested at least semi-annually or immediately after ventilation modifications or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 CFR 1910.1020(e)(1)(i):

(2) 29 CFR 1910.1020(e)(1)(ii) is amended to read: "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical;"

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 CFR 1910.1020(e)(1)(iii):

(4) 29 CFR 1910.1020(e)(1)(iii) is amended to read: "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (e) of this section, within the time period previously specified assure that either:"

Section 5. (1) The language relating to gloves in paragraph (2) of this subsection shall apply in lieu of 29 CFR 1910.1030(d)(3)(x):

(2) Gloves shall be worn when it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin when performing vascular access procedures and when handling or touching contaminated items or surfaces.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraph 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 2003 [1997, incorporated by reference]

(2) 29 CFR 1910.1000 to 29 CFR 1910.1030(d)(3)(iii); and


(f) The revisions to 29 CFR 1910.1043, "3 Carcinogens (4-Nitrobenzophenon, etc.)", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(g) The revisions to 29 CFR 1910.1043, "3 Carcinogens (4-Nitrophenol, etc.)", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.


VOLUME 28, NUMBER 5 – NOVEMBER 1, 2001

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(As Amended at ARRS, October 9, 2001)

806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance.


STATUTORY AUTHORITY: KRS 304.2-110, 304.3-200(1)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes [provides that the] Commissioner of Insurance to [may] make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation establishes [defines] unfair property and casualty insurance claims settlement practices, effectuating KRS 304.3-200(1)(e), 304.12-010, and 304.12-230.

Section 1. Definitions. [As used in this administrative regulation]

(1) "Agent" means any person authorized to represent an insurer with respect to a claim;

(2) "Claimant" means either a first party claimant, a third-party claimant, or both and includes the claimant's designated legal representative, such as an [e.g.] administrator, executor, guardian, or similar person, [and] includes a member of the insured's immediate family designated by the claimant [the-insurer-may-require-written-proof-of-designation];

(3) "Claim file" means any retrievable electronic file, paper file, or [combination of both;

(4) "Commissioner" is defined in KRS 304.4-050(1) [means the Commissioner of the Kentucky Department of Insurance];

(5) "Days" means any day, Monday through Friday, except holidays;

(6) "First party claimant" means a person asserting a right to payment under an insurance policy, certificate, or contract arising out of the occurrence of the contingency or loss covered by the policy, certificate, or contract;

(7) "Insurer" is defined by KRS 304.4-040 [means any person transacting property or casualty insurance, including reciprocal insurers and Lloyd's plan insurers. Insurer also means agents and third-party administrators];

(8) "Investigation" means all activities of an insurer [directly or indirectly] related to the determination of liabilities under coverages afforded by a policy, certificate, or contract;

(9) "Local market area" means a reasonable distance surrounding the area where a motor vehicle is principally garaged, or the usual location of the article covered by the policy. This area shall not be further limited to the geographic boundaries of the Commonwealth;

(10) "Notification of claim" means any notification, whether in writing or by other means acceptable under the terms of the policy, certificate, contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;

(11) [40] "Policy," or "certificate," or "contract" means [mean] any contract of insurance or indemnity, except for:

(a) [But does not include contracts for workers' compensation insurance (except to the extent provided in Section 2 of this administrative regulation.] Fidelity, suretyship, or boiler and machinery insurance; or

(b) [A contract of workers' compensation insurance unless it satisfies the requirements of Section 2 of this administrative regulation.

(12) [41] "Replacement crash part" means sheet metal or plastic parts which generally constitute the exterior of a motor vehicle, including inner and outer panels; and

(13) [42] "Third-party claimant" means any person asserting a claim against any person under a policy, contract, or certificate of an insurer.

Section 2. Scope and Purpose of this Administrative Regulation.

(1) This administrative regulation establishes [sets forth] minimum standards for the investigation and disposition of property and casualty insurance claims arising under policies, certificates, and contracts. This administrative regulation shall not [is not intended to] cover claims involving fidelity, suretyship, or boiler and machinery insurance.
This administrative regulation shall not [e--not-intended-to] cover claims involving workers' compensation if [to-the-extent] those questions arise under KRS Chapter 342 since those questions shall be resolved by workers' compensation administrative law judges or arbitrators, pursuant to KRS 342.285. [As not intended to cover] This administrative regulation shall not apply to claims for unearned premium refunds under workers' compensation policies since workers' compensation administrative law judges or arbitrators do not have jurisdiction over those claims [a--claim-of-this-type]. This administrative regulation establishes [is-intended-to-define] procedures and practices which constitute fair claims settlement practices.

(2) Statement of enforcement policy.

(a) Market conduct examinations shall note violations of this administrative regulation when the examination identifies errors in excess of standards established pursuant to the Market Conduct Examiners Handbook (February, 1992) published by the National Association of Insurance Commissioners, incorporated by reference and available for inspection and copying from the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601-1847, and the following:

(i) If complaints are [As-to-complaints] filed with the commissioner, the commissioner shall note violations of this administrative regulation [shall-be-noted] after the insurer or agent has been given an opportunity to pay the claim and any interest thereon.

(ii) [The--sole--purpose-of] This administrative regulation establishes [is-to-provide] standards for market conduct examinations, examinations, and administrative adjudication and appeals therefrom. A violation of this administrative regulation shall [can] be found only by the commissioner. This administrative regulation shall not [be-construed-to] create or imply a private cause of action for violation of this administrative regulation.

Section 3. File and Record Documentation. Each insurer's claim files for policies, certificates, or contracts are subject to examination by the commissioner or the commissioner's designee. To aid in an examination:

(1) The insurer shall maintain claim data that are accessible and retrievable for examination. An insurer shall be able to provide the claim number, line of coverage, date of loss and date of payment of the claim, and date of denial or date closed without payment. This data shall be available for both open and closed files for the current year and the five (5) prior years.

(2) The insurer shall maintain documentation [shall-be-contained] in each claim file to permit reconstruction of the insurer's activities relative to each claim.

(3) The insurer shall note each relevant document within the claim file [shall-be-noted] as to date received, date processed, or date mailed.

(4) If an insurer does [For-these-insurers-which-do] not maintain hard copy files, claim files shall be accessible from a computer terminal available to examiners or micrographics and be capable of duplication to legible hard copy.

Section 4. Misrepresentation of Policy Provisions. (1) Insurers and agents shall not misrepresent or conceal from first party claimants any pertinent benefits, coverages, or other provisions of any insurance policy or insurance contract if [when] the benefits, coverages, or other provisions are pertinent to a claim, pursuant to KRS 304.12-230(1).

(2) Insurers [A-claim] shall not deny a claim [be-denied] on the basis of failure to exhibit property unless there is documentation in the claim file of breach of the policy provisions.

(3) Insurers shall not deny a claim based upon the failure of a first party claimant to give written notice of loss within a specified time limit unless written notice of loss is a written condition in the policy, certificate, or contract and [of] the first-party claimant's failure to give written notice after being requested to do so is unreasonable as to constitute a breach of the first-party claimant's duty to cooperate with the insurer.

(4) Insurers shall not indicate to a first party claimant on a payment draft, check, or in an accompanying letter that payment is "final" or "a release" of any claim unless;

(a) The policy limit has been paid; or

(b) There has been a compromise settlement agreed to by the first party claimant and the insurer as to coverage and amount payable under the policy, certificate, or contract.

(5) Insurers shall not issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which releases [released] the insurer or its insured from total liability.

Section 5. Failure to Acknowledge Pertinent Communications. (1) Every insurer, upon receiving notification of a claim shall, within fifteen (15) days, acknowledge the receipt of the notice unless payment is made within that period of time. If an acknowledgement is made by means other than writing, an appropriate notation of the acknowledgement shall be made in the claim file of the insurer and dated. Notification given to an agent or an insurer shall be notification to the insurer.

(2) If an insurer receives an [Every insurer, upon receipt of any] inquiry from the Department of Insurance respecting a claim, the insurer shall, within fifteen (15) days of receipt of the inquiry, furnish the Department of Insurance with an adequate response to the inquiry in duplicate.

(3) The insurer shall make an appropriate reply [shall-be-made] within fifteen (15) days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.

(4) Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions, and reasonable assistance to first party claimants so that they can comply with the policy conditions and the insurer's reasonable requirements and, within thirty (30) days after the date of notification of a claim shall constitute compliance with subsection (1) of this section.

Section 6. Standards for Prompt, Fair, and Equitable Settlements Applicable to All Insurers. (1)(a) Pursuant to KRS 304.12-230(5), an [The] insurer shall, pursuant to KRS 304.12-235(1), affirm or deny any liability on claims within a reasonable time and shall offer any payments due within thirty (30) calendar days of receipt of due proof of loss. If [in] claims involve [where] multiple coverages [are-involved], payments which are not in dispute shall be tendered within thirty (30) calendar days of receipt of due proof of loss.

(b) If [Where] there is a reasonable basis supported by specific information available for review by the commissioner that a [the-first-party] claimant has fraudulently caused or contributed to the loss, the insurer shall:

1. Be [is] relieved from the requirements of this subsection; and
2. Advise the [however-any] first party [but-the] claimant [shall-be-advised] of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(c) If the insurer needs more time to determine whether a first party claim should be accepted or denied, it shall so notify the first party claimant within thirty (30) calendar days after receipt of the proofs of loss, giving the reasons more time is needed.

(b) If the investigation remains incomplete, the insurer shall, forty-five (45) calendar days from the date of the initial notification and every forty-five (45) calendar days thereafter, send to the first party claimant a letter stating [stating] the reasons additional time is needed for investigation.

(c) Where there is a reasonable basis supported by specific information available for review by the commissioner for suspecting that a [the-first-party] claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this subsection, however, first party [but-the] first-party claimant shall be advised of the acceptance or denial of the claim by the insurer within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

(3) Insurers shall not fail to settle first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

(4) Insurers shall not continue negotiations for settlement of a claim directly with a first party claimant who is not legally represented if the first party claimant's rights may be affected by a statute of limitations or a time limit in a policy, certificate, or contract, unless the insurer has given the first party claimant written notice of the limitation.

The notice shall be given to the first party claimant at least thirty (30) calendar days before the date on which the time limit expires.

(5) Insurers shall not make statements which indicate that the rights of a third-party claimant may be impaired if a form or release is
not completed within a given period of time unless the statement is given for the purpose of notifying the third-party claimant of the provision of a statute of limitations.

(5) Subject to subsection (1)(a) of this section relating to first party claims, insurers shall affirm or deny liability on claims within a reasonable time and shall tender payment within thirty (30) days of affirmation of liability, if the amount of the claim is determined and not in dispute. If [in] claims involving [where] multiple coverages, and if [are involved, payments which are not in dispute and where] the payee is known, payments which are not in dispute shall be tendered within thirty (30) calendar days if the payment would terminate the insured's known liability under that individual coverage.

(7) Insurers shall not request or require any insured to submit to a polygraph examination unless authorized under the applicable policy, certificate, contract, or [contract and] applicable law.

Section 7. Standards for Prompt, Fair, and Equitable Settlements Applicable to Motor Vehicle Insurance. (4)(1) If [When] the policy, certificate, or contract provides for the adjustment and settlement of first party motor vehicle total losses on the basis of actual cash value or replacement with another of like kind and quality, one (1) of the following methods shall apply:

(a) [If] The insurer may elect to offer a replacement motor vehicle which is a specific comparable motor vehicle available to the insured, with all applicable taxes, license fees (if these fees cannot be refunded by the Transportation Cabinet), and other fees incurred to transfer of evidence of ownership of the motor vehicle paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof shall be documented in the claim file. [If] The insurer may elect to offer cash settlement based upon the actual cost, less any deductible provided in the policy, to purchase a comparable motor vehicle including all applicable taxes, license fees (if these fees cannot be refunded by the Transportation Cabinet), and other fees incurred to transfer of evidence of ownership of a comparable motor vehicle. The actual cost shall [may] be determined by any one (1) of the following:

1. [For] The cost of a comparable motor vehicle in the local market area if [when] a comparable motor vehicle is available in the local market area;
2. [For] If a comparable motor vehicle is not available in the local market area, one (1) of (2) or more quotations obtained by the insurer from two (2) or more qualified and licensed dealers [dealers], which engage in the buying and selling of comparable motor vehicles in the ordinary course of their business[they] located within the local market area;
3. [For] Any source for determining statistically valid fair market values including nationally-recognized automobile evaluation publications that meet all of the following criteria:
4. [A] The source shall give [primary] consideration to the values of vehicles in the local market area and may consider data on vehicles outside the area;
5. [A] The source's data base shall produce values for at least eighty-five (85) percent of all makes and models for the last eight (8) model years taking into account the values of all major options for these vehicles; and
6. [A] The source shall produce fair market values based on current data available from the local market area where the insured vehicle was principally garaged or a necessary expansion of parameters such as travel time and area to assure statistical validity;
7. [A] Actual cash value as determined by the use of the source's database shall be adjusted to reflect any value of enhancements to the motor vehicle not accounted for by the database;
8. [A] If the vehicle's condition does not meet the criteria for value used in source's database, the actual cash value amount may be adjusted; and
9. [A] Absent an appraisal provision in the insurance contract, if the insured demonstrates, by presenting two (2) independent appraisals, based on measurable and discernable factors, that the vehicle would have a higher cash value in the local market area than the value reflected in the source's database, the local market value shall be considered when determining the actual cash value.

(c) (19) Right of recourse. If the insurer is notified within thirty-five (35) days of the receipt of the claim draft that the insured cannot purchase a comparable motor vehicle for market value as defined in paragraph (b) of this subsection [this paragraph], the insurer shall reopen its claim file and comply with the following procedure:

1. The insurer may locate a comparable motor vehicle by the same manufacturer, same year, similar body style, and similar options and price range for the insured for the market value determined by the insurer at the time of settlement. This vehicle shall [must] be available through licensed motor vehicle dealers;
2. The insurer shall either pay the insured the difference between the market value before applicable deduction to the cost of the comparable motor vehicle of like kind and quality which the insured has located, or negotiate and effect the purchase of this motor vehicle for the insured; or
3. The insurer may conclude the loss settlement as prepared for under the appraisal provision of the insurance contract in the event of no time of loss. This appraisal shall be considered as binding against both parties, but shall not preclude or waive waiving any other rights either party has under the insurance contract or law; or
4. If the first party motor vehicle's total loss is settled on a basis which deviates from the methods described in subsection (1) and (b) of this section, the deviation shall be supported by documentation giving particulars of the motor vehicle's condition. Any deductions from the cost, including deduction for salvage, shall be reasonable, disducible, itemized, and specified as to dollar amount and shall be supported as such. The alternative method of settlement shall be explained fully to the first party claimant.
5. The measure of damages in a third-party motor vehicle loss shall be [is] the difference between the fair market value of the motor vehicle immediately before and after the loss, proportioned by the third party's contributory negligence, if any. Repair estimates or repairers' reports may be used to indicate the difference in fair market value. The measure of damages in a third party vehicle loss shall be governed by the policy of insurance issued to the first party and shall not include any measure of damages not specifically provided for in the policy.

If the insurer is not [are] able to negotiate an agreement with the insured, the insurer shall [may] not include any measure of damages not specifically provided for in the policy.

5. If requested by the claimant, insurers shall [must] include the first party claimant's [claimant's] [claimants'] contribution to the settlement. If, in any, in any insurance accident, the insured is a subrogee, the settlement shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. [No] Deduction for expenses shall not be [can be] made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction shall then be for only a pro rata share of the allocated loss adjustment expense.

Section 8. Repairs to Motor Vehicles. (1) If losses involving motor vehicle repairs are settled on the basis of a written estimate prepared by or for the insurer, the insurer shall supply the insured a copy of the estimate upon which the settlement is based. The estimate prepared by or for the insurer shall be reasonable, in accordance with applicable policy provisions, and of an amount which will allow for repairs to be made in a reasonable manner. Subrogation recoveries shall be shared on a proportionate basis with the first party claimant, unless the deductible amount has been otherwise recovered. The deduction for expenses shall not be [can be] made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction shall then be for only a pro rata share of the allocated loss adjustment expense.

(2) If the amount claimed is reduced because of betterment or depreciation, all information for the reduction shall be included in the claim file. These deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.
(3) (6)(a) Betterment deductions shall be allowed [are allowable] only if the deductions reflect a measurable decrease in the market value and general overall condition of the motor vehicle.

(b) The deductions set forth in paragraph (a) of this subsection shall be measurable, itemized, specified as to dollar amount, and documented in the claim file.

(c) Insurers shall not require the insured or claimant to supply parts for replacement.

(d) (6)(i) Insurers shall not require the use of replacement crash parts in the repair of a motor vehicle unless the replacement crash part is at least equal in kind and quality to the part to be replaced in terms of fit, quality, and performance. Insurers specifying the use of replacement crash parts shall consider the cost of any modifications which may be necessary when making the repair.

(5) Insurers shall not require a claimant to travel an unreasonable distance:

(a) To obtain a repair estimate; or

(b) To have the motor vehicle repaired at a specific repair shop.

Section 9, [8] Standards for Prompt, Fair, and Equitable Settlements Applicable to Fire and Extended Coverage Type Policies with Replacement Cost Coverage. (1) If [When] the policy, contract, or certificate authorizes [provides for] the adjustment and settlement of first party losses based on replacement cost, the following shall apply:

(a) If [When] a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making the repair or replacement not otherwise excluded by the policy shall be included in the loss. The insured shall not have to pay for betterment nor any other cost to the extent of replacement cost, except for the applicable deductible.

(b) If [When] a loss requires replacement of items and the replaced items do not reasonably match in quality, color, or size, the insurer shall replace all items in the area so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The insured shall not bear any cost over the applicable deductible.

(2) Actual cash value.

(a) If [When] the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the insurer shall determine actual cash value as follows:

replacement cost of property at the time of the loss less depreciation, if any. If requested by the insured [upon the insured's request], the insurer shall provide a copy of the claim file worksheets showing any and all deductions for depreciation.

(b) If [In cases in which] the insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value as per [(that) of this subsection] shall not be [be not] required. If requested by the insured [in those cases], the insurer shall provide [upon the insured's request] a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

JULIE MCPEAK, Acting General Counsel
JANIE A. MILLER, Commissioner
RONALD B. MCCLUSKY, Secretary
APPROVED BY AGENCY: August 7, 2001
FILED WITH LRC: August 9, 2001 at 4 p.m.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(As Amended at ARRS, September 11, 2001 and As Amended at JIC on Licensing and Occupations, October 12, 2001)

811 KAR 1:125, Pari-mutuel rules.

STATUTORY AUTHORITY: KRS 230.260(3.6), 230.361(1)(1)(B)
230.630(3), (4), (7)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.361(1) requires the commission to promulgate administrative regulations governing mutual wagering under the pari-mutuel system of wagering. This administrative regulation establishes the requirement for pari-mutuel wagering at race meetings.

Section 1. Equipment. (1) Licensees may use vending machines for the sale of pari-mutuel tickets.

(2) The controls necessary to operate the odds board in the infield, relative to the way the horses finish, (if the finish is being contested, if there is a photo, dead heat, time, or race) shall be located in the judge's stand and controlled only by the presiding judge, or one associate judge designated to do so.

Section 2. [Fax. Each day's tax imposed by KRS Chapter 138 shall be remitted to the Kentucky Department of Revenue by the licensee by check or bank draft within twenty-four (24) hours after the close of the racing program. The remittance shall be accompanied by a tax return executed by the licensee on a form furnished by the Kentucky Department of Revenue. A copy of the form shall be filed daily with the commission.

Section 3. Sale of Pari-mutuel Tickets. (1) Only one (1) method of selling pari-mutuel tickets shall be used for the sale of tickets on individual races during any racing day.

(2) Unless prior commission approval has been obtained, pari-mutuel tickets shall not be sold except through regular ticket windows properly designated by signs showing the type of tickets sold at that particular window.

(3) Book making or betting other than pari-mutuel betting shall be strictly prohibited.

(4) A minor shall not be allowed to bet and a customer shall not sell or pay a wager to a minor.

(5) All wagering shall stop as soon as the word "go" shall be given by record or by voice of the starter. Vending machines for the sale of pari-mutuel tickets shall be electrically locked by the presiding judge from the jockey's stand.

(6) When the sale of pari-mutuel tickets has closed, it shall remain closed until after the race has finished and has been declared official, unless an objection imposes a delay. If an objection imposes a delay, the sale of pari-mutuel tickets for the next succeeding race may be begun without waiting for the race to be declared official.

(7) The method of selling pari-mutuel tickets shall be approved by the commission.

(8) The manager of the pari-mutuel department shall be properly and timely advised by the presiding judge, prior to the beginning of wagering on each race, of the horses that will compete in the race.

(9) If less than five (5) interests qualify horses to start in a race, the manager of the pari-mutuel department may prohibit show wagering on that race.

(10) If less than four (4) interests qualify horses to start in a race, the manager may prohibit both place and show wagering on that race.

(11) If less than three (3) interests qualify horses to start in a race, the manager may prohibit wagering on that race.

(12) The manager may prohibit show wagering on any particular horse or entry in any race. The exclusions shall be clearly indicated on the program or score card or announced and horses excluded shall be numbered to indicate that they are not coupled in the field. Horses once excluded from the betting shall remain excluded during the day or race in which they are scheduled to start.

(13) If more horses representing separate interests are started in a race than the number of post positions on the infield tote board, all horses in excess of a number of interests one (1) less than the total number of post positions on the infield tote board shall be grouped in the betting as the field.

(14) A refund at cost value shall be made to all holders of a pur chased ticket bearing the number of a horse in any race which has been scratched or withdrawn before the horse has become a starter in the race under the rules, unless the horse is part of an entry, and one (1) or more of the entry starts.

Section 3. [Fax. Each day's tax imposed by KRS Chapter 138 shall be remitted to the Kentucky Department of Revenue by the licensee by check or bank draft within twenty-four (24) hours after the close of the racing program. The remittance shall be accompanied by a tax return executed by the licensee on a form furnished by the Kentucky Department of Revenue. A copy of the form shall be filed daily with the commission.
redistribute not less than one (1) dollar and ten (10) ten cents on each one (1) dollar wagered. If there is a minus pool, the minimum payoff of each one (1) dollar wagered shall be one (1) dollar and five (5) cents.

(2) At the end of each race, the judges shall advise the manager of the pari-mutuel department by the use of the tote equipment or by telephone of the official placement of the horses, and no payoffs shall be made until the receipt of the notice.

(3) If a horse wagers and there is no money wagered on him to win, the win pool shall be apportioned among the holders or the place tickets on that horse, if any, otherwise among holders of the show tickets.

(4) If no money has been wagered to place on a horse which is placed first or second in a race, the place pool for that race shall be apportioned among the holders of the place tickets on the other horse which was placed first or second.

(5) If no money has been wagered to show on a horse which has placed first, second, or third in a race, the show pool in that race shall be apportioned among the holders of show tickets on the other horses which are placed first, second, or third in that race.

(6) If only two (2) horses finish in any one (1) race, the show pool shall be figured the same as the place pool and monies shall be apportioned to the holders of show tickets on the (2) horses which finished third or less. If only one (1) horse finishes in any one (1) race, all three (3) pools shall be figured separately as straight pools and all the monies shall be awarded to the ticket holders of the finishing horse. If no horse finishes the race, then the entire pool shall be refunded to all ticket holders.

(7) If two (2) horses finish in a dead heat for first place, the money in the win mutuel pool shall be divided between the two (2) dead-heaters according to their proportionate shares in the pool.

(8) If two (2) horses finish in a dead heat for second place, the division shall be made as follows: There shall be allotted to the pool of the winner of the race one-half (1/2) of the place pool and the two (2) dead-heaters one-half (1/2) each of the remaining half of the place pool.

(9) If two (2) horses coupled in the betting as an entry or the field finish first and second, first and third, or second and third, two-thirds (2/3) of the net show pool shall be allotted to the pool of the entry and the balance one-third (1/3) to the other horse.

(10) If one (1) horse of the entry or the field finishes first or second and the other part of the entry or field finishes in a dead heat for third with another horse, the division of the net show pool shall be as follows: one-half (1/2) of the net show pool shall be allotted to the pool of the entry, one-third (1/3) to the winning horse and one-sixth (1/6) to the nonentry horse finishing in the dead heat, and one-sixth (1/6) to the nonentry horse finishing in the dead heat.

(11) If the entry or field horses finish first, second, and third, the entire money in each pool shall go to the entry or field tickets, and no other tickets shall participate.

(12) A mutuel or pari-mutuel ticket that is not easily identifiable as a valid ticket shall not be accepted for payment.

(13) Claims for lost pari-mutuel tickets shall not be considered.

(14) If an error in calculation resulting in a price being too high, the association shall lose the amount between the proper price and one cent. If the error is in calculation results in a price being too low, the amount between proper price and price paid shall be added to the net pool of the same position in the following race on the same day or if it is the last race of the day then it shall be added to the net pool of the same position in the same race on the following day. If an error occurs causing underpayment on the last race of the entire racing meeting, the underpayment shall be paid to the Kentucky Revenue Cabinet.

Section 4. [61] Daily Doubles. (1) There shall not be an exchange of daily double tickets after the purchaser has left the sales window.

(2) The daily double shall not be a parlay, and shall not have a connection with or relation to the tote betting. All tickets on the daily double shall be calculated in an entirely separate pool. Without prior commission approval, only one (1) daily double shall be permitted during any single program.

(3) All tickets shall be won (straight) only. Entries and the field shall run as one (1) horse in the daily double. If two (2) or more horses in a race are coupled on the same totalizator ticket, there shall not be refunds, unless all of the horses so coupled are excused before off time.

(4) Selections shall be made of one (1) horse for each of the two (2) races in the daily double by tote program numbers.

(5) If no ticket is sold combining the two (2) winners of the daily double, the pool shall then be apportioned equally between those having tickets including the winner in the first race of the daily double and those having tickets including the winner in the second race of the daily double in the same manner in which a place pool is calculated and distributed.

(6) If no ticket is sold on the winner of the first race of the daily double on any combination, the entire pool shall be apportioned to the holders of tickets on the winner of the second race of the daily double. If no ticket is sold on the winner of the second race of the daily double or any combination, the entire pool shall be apportioned to the holders of tickets on the winner of the first race of the daily double.

(7) If a dead heat to win results in either the first or second race of the daily double, the total pool shall be calculated as a place pool. If there is a dead heat for the winner of the first race of the daily double, the posting of payoff prices shall be made after the winner of the second race of the daily double is official.

(8) If no ticket is sold containing the numbers of either winner on any combination, the pool shall be allotted to those having tickets on horses finishing next to the winners.

(9) If any horse or horses in the first half of the daily double are excused by the judges after the horses have left the paddock for the post, or after the betting on the daily double has been closed, or if any horse or horses in the first half of the daily double are prevented from racing because of failure of the arm or arms of the starting gate to open, the money wagered on one (1) or more horses excused or prevented from racing shall be deducted from the daily double pool and refunded to the purchaser or purchasers of tickets on the horse or horses excused or prevented from racing.

(10) If a horse is scratched from the second half of the daily double before it becomes a starter in the second half, but after the first half of the daily double has been run, all daily double tickets combining the scratched horse in the second race of the daily double with the actual winner of the first race of the daily double shall be paid a price equivalent to that fraction of the net pool derived by dividing the net pool by the total purchase price of all tickets combining the winner of the first race of the daily double with all horses in the second race of the daily double. The total payoff on all tickets combining the winner of the first race of the daily double with the scratched horse in the second race of the daily double as determined by the method set forth in this rule shall be deducted from the daily double pool.

(11) The possible payoff prices shall be posted or announced to the public before the start of the last race of the daily double, and as soon as possible after the horses in the race of the last half of the daily double have entered upon the track on the way to the post.

(12) If for any reason the second race of the daily double is cancelled or declared "no race" by the judges after the first daily double race is declared official, then the net daily double pool shall be distributed to wagering combinations which include the horse or betting interest which finished first in the first daily double race.

(13) If a daily double is scheduled to be held, subsections (1) to (12) of this section shall be printed in conspicuous places in the grandstand area and an abridged version shall be printed on the day's racing program, and a notice shall be printed on the program as follows: "Retain Your Tickets Until The Result of the Daily Double Has Been Posted."

Section 5. [61] Perfecta Wagering. (1) The perfecta (also known as exacta or correcta) shall be a contract by the purchaser of a ticket combining two (2) horses in a single race, selecting the two (2) horses that will subsequently finish first and second in that race. Payment of the ticket shall be made only to the person who has selected the same order of finish as officially posted.

(2) The perfecta shall not be a parlay and shall not have a connection with or relation to the win, place, or show betting and shall be calculated as an entirely separate pool.

(3) If no ticket is sold on the winning combination of a perfecta pool, the net pool shall be distributed equally between holders of tickets selecting the winning combination and those holders of tickets selecting the second place horse to finish second.

(4) If no ticket is sold that would require distribution of a perfecta
pool to a winner pursuant to subsection (3) of this section, the association shall make a complete and full refund of the perfecta pool.

(5) If there is a dead heat between two (2) horses for first place, the net perfecta pool shall be calculated and distributed as a place pool to holders of tickets of the winning combinations. If there is a dead heat between two (2) horses for second place, the perfecta pool shall be figured as a place pool, and the holders of tickets combing the winning horse and the two (2) horses finishing second shall participate in the payoff.

(6) If there is a dead heat for second place, and if no ticket is sold on one (1) of the two (2) winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the perfecta pool shall be calculated and distributed as a place pool to holders of tickets combining the winning horse and the two (2) horses finishing second shall participate in the payoff.

Section 6. (F)1. Quintella Wagering. (1) The quintella shall be a form of pari-mutuel wagering consisting of selecting the first two (2) horses to finish, irrespective of their place of finish.

(2) The quintella shall not be a parlay and shall not have a connection with or relations to the win, place, or show betting and shall be calculated as an entirely separate pool.

(3) If there is a dead heat between two (2) horses for first place, the combination shall be the winner of the quintella pool. If there is a dead heat between two (2) horses for second place, the quintella pool shall be figured as a place pool, and the holders of tickets combining the winning horse and the two (2) horses finishing second shall participate in the payoff.

(4) If there is a dead heat for second place, and if no ticket is sold on one (1) of the winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the net pool shall be calculated and distributed as a place pool to holders of tickets combining either of the place horses; except, if any tickets combine both horses in the dead heat for place, the net pool shall be calculated and distributed as a win pool to holders of such tickets.

(5) If no ticket is sold on the winning combination of a quintella pool, the net pool shall then be apportioned equally between those having tickets including the horse finishing first and those having tickets including the horse finishing second in the same manner in which a place pool is calculated and distributed.

(6) If no ticket is sold that would require distribution of a quintella pool to a winner as defined in this section, the association shall make a complete and full refund of the quintella pool.

(7) If a perfecta or quintella is scheduled to be held, such association shall print an abbreviated version of the rules established by this section on the day's racing program.

(8) If two (2) or three (3) horses coupled in an entry or the mutual field finish first and second, or first, second, and third, the winning combination shall be the coupled horses and the horse placed immediately behind such entry or field.

Section 7. (L)1. Double Perfecta Wagering. (1) The double perfecta shall be a form of pari-mutuel wagering in which the bettor selects the two (2) horses that will finish first and second in each of two (2) consecutive races in the exact order as officially posted.

(2) Double perfecta tickets shall be sold only at double perfecta windows, and only from automatic double issue machines.

(3) Each bettor purchasing double perfecta tickets shall designate his two (2) selections as the first two (2) horses to finish in that order in the first of two (2) consecutive races.

(4) After the official declaration of the first two (2) horses to finish in the first race of the double perfecta, each bettor holding a ticket combining the first perfecta horses shall have his ticket marked with a new order of finish shall prior to the running of the second double perfecta race, exchange the ticket at the double perfecta window and shall select the two (2) horses to finish in the second race of the double perfecta in the exact order as officially posted. Further money shall not be required of the holder of the ticket to make the exchange.

(5) A double perfecta exchange ticket upon the second race shall not be issued except upon the exchange of the double perfecta ticket from the first race pursuant to subsection (4) of this section. If the double perfecta pool obtained from the sale of double perfecta tickets upon the first race shall be held and divided among the winning tickets of the double perfecta exchange tickets, subject to the rules established by this section. Double perfecta windows shall be open to make the exchange only after the first race has been declared official.

(6) If a winning double perfecta ticket from the first race is not presented for exchange within the time provided, the bettor shall forfeit all rights to any distribution or refund unless the second half of the double perfecta is cancelled or declared "no race".

(7) If a horse is scratched in the first race of the double perfecta races, all double perfecta tickets on the scratched horse shall be refunded.

(8) If a horse is scratched in the second race of the double perfecta, after the first race of the double perfecta has been declared official, all exchange tickets combining the scratched horse shall become consolation tickets and shall be paid a price per dollar denomination calculated as follows: the net double perfecta pool (gross pool less commission) shall be divided by the total purchase price of all tickets combining the winner of the first race of the double perfecta. The quotient thus obtained shall be the price to be paid to holders of exchange tickets combining the scratched horses in the second race of the double perfecta. The exchange pool (number of eligible tickets times the consolation price) shall be deducted from the net double perfecta pool.

(9) If no double perfecta ticket sold as a winning combination in the first race of the double perfecta, the double perfecta pool shall be divided among those having tickets including the horse finishing first and those having tickets including the horse finishing second and the distributing shall be calculated and made as a place pool. If that occurs, the double perfecta race shall end and the pool shall be closed for the day.

(10) If no double perfecta exchange ticket is sold on the winning combination, the net pool shall then be apportioned equally between those having tickets including the horse finishing first and those having tickets including the horse finishing second in the same manner in which a place pool is calculated and distributed.

(11) If a double perfecta exchange ticket combines only one (1) of the two (2) winners and no double perfecta exchange ticket combines the other winner, the entire pool shall be distributed as a straight pool to the holders of those tickets.

(12) If no exchange ticket includes either the first or second horse of the second half of the double perfecta, the entire net pool shall be distributed as a straight pool to all holders of perfecta tickets combining the first horse and either of the place horses. If there is a dead heat for place in the first race of the double perfecta races, all double perfecta tickets combining the first horse and either of the place horses shall be eligible for exchange for the double perfecta exchange tickets.

(13) If there is a dead heat for place in the second race of the double perfecta, the double perfecta pool shall be divided, calculated, and distributed as a place pool to the holders of perfecta tickets combining the first horse and either of the place horses. If there is a dead heat for place and there are no tickets sold on one (1) combination, then the other combination having the winning horses shall be declared the winner. If no exchange tickets combine the winning horse and either of the place horses in the dead heat, the double perfecta pool shall be calculated and distributed as a win pool to holders of tickets representing any interest in the net pool.

(15) If for any reason the second of the double perfecta races is cancelled or declared "no race", the pool shall be calculated as a straight pool and shall be distributed among the holders of the tickets combining the first two (2) horses of the first race of the double perfecta otherwise eligible for double perfecta exchange tickets and also distributed to holders of the double perfecta exchange tickets.

(16) If there is a dead heat for the winning horse in either of the two (2) consecutive races for the double perfecta, the calculation of the distribution of the double perfecta pool shall be made in the manner in which any ordinary perfecta pool would be made if there was a dead heat for the win despite the number of horses involved in the dead heat.

(17) The purchase of double perfecta tickets other than through
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pari-mutuel machines and the sale of double perfecta tickets from one (1) individual to another shall be deemed illegal and shall be prohibited.

Section 8. [81.1 Big Q Rules. (1) Each operator wishing to conduct Big Q wagering shall first petition the commission for permission to do so.

(2) Each operator shall either print in the daily program or prominently post at all areas where Big Q wagering is conducted the complete rules for Big Q wagering as established by this section.

(a) The Big Q shall consist of selecting the quinella (the first two (2) horses) to finish each of the first two (2) consecutive races. Pari-mutuel wagering tickets shall be sold upon the first race of the (2) races only. The division of the pool shall be calculated as in a straight pool, except as provided by this section.

(b) Entries or field horses shall not be allowed to start in any race comprising the Big Q.

(c) Tickets shall be sold only at Big Q windows and only from automatic double-issuing machines.

(d) Each bettor purchasing tickets shall designate his two (2) selections as the first two (2) horses to finish in the first race of the two (2) races.

(e) After the official declaration of the first two (2) horses to finish the first of the Big Q races, each bettor holding a ticket combining the two (2) horses to finish shall, prior to the running of the second race, exchange the winning ticket for a Big Q exchange ticket at the Big Q window and shall select the first two (2) horses to finish in the second race of the Big Q. Further money shall not be required of the holder of the winning ticket to make the exchange.

(f) A Big Q exchange ticket upon the second race shall not be issued except upon the surrender of the Big Q ticket from the first race pursuant to paragraph (f) of this subsection. The Big Q pool obtained from the sales of the Big Q tickets upon the first race shall be held and divided among the winning tickets of the Big Q exchange tickets, pursuant to the rules established by this section. Big Q windows shall be open to make the exchange only after the first race has been declared official. The windows shall close at noon time at the start of the second race of the Big Q races.

(g) If a winning Big Q ticket from the first race is not presented for exchange within the time provided, the bettor shall forfeit all rights to any distribution or refund unless the second half of the Big Q is cancelled or declared "no race", or if no exchange ticket includes either the first or second horse of the second half of the Big Q.

(h) If a horse is scratched in the first race, all Big Q tickets on the scratched horse shall be refunded. If a horse is scratched in the second race, the holders of tickets on the scratched horse shall be entitled to exchange their tickets for another selection. If there is a late scratch, after the exchange windows have closed, all exchange tickets combining the scratched horse shall become consolation tickets and shall be paid a price per dollar denomination calculated as follows: The Big Q pool (less consolation commission) shall be divided by the total purchase price of all tickets combining the winners of the first race of the Big Q. The quotient obtained shall be the price to be paid to holders of exchange tickets combining the scratched horse in the second race of the Big Q. The entire consolation pool (number of eligible tickets times the consolation price) plus the breakage shall be deducted from the net Big Q pool.

(i) If no ticket is sold as a winning combination in the first race of the Big Q, the Big Q pool shall be divided among those having tickets including the horse finishing first or second and the distributions shall be calculated and made as a place pool. If that occurs, the Big Q race shall end and the pool shall be closed for the day.

(j) If a Big Q exchange ticket is sold on the winning combination, the net pool shall be apportioned equally between those having tickets including the horse finishing first or second in the same manner in which a place pool is calculated and distributed.

(k) If a Big Q exchange ticket combines only one (1) of the winners and no Big Q exchange ticket combines the other winner, the entire pool shall be distributed as a straight pool to the holders of those tickets.

(l) If no exchange ticket includes either the first or second horse of the winning half of the Big Q, the entire net pool shall be distributed as a straight pool to all holders of exchange tickets and winning combinations of the first half that have not been exchanged.

(m) If there is a dead heat for place in the first race of the Big Q races, all Big Q tickets containing the first horse and either of the place horses shall be eligible for exchange for Big Q exchange tickets.

(n) If there is a dead heat for place in the second race of the Big Q races, the pool shall be divided, calculated, and distributed as a place pool to the holders of Big Q exchange tickets containing the first horse and either of the place horses. If there is a dead heat to place and there are no tickets sold or one (1) combination, then the other combination having winning horses shall be declared the winner.

(o) If no exchange tickets combine the winning horse with either of the place horses in the dead heat, the Big Q pool shall be calculated and distributed as a place pool to holders of tickets containing either of the place horses, except if any exchange tickets combine both horses in the dead heat for place, the Big Q pool shall be calculated and distributed as a place pool to holders of such tickets.

(p) If for any reason the first race of the Big Q races is cancelled or declared "no race", a full and complete refund shall be made from the Big Q pool.

(q) If for any reason, the second of the Big Q races is cancelled or declared "no race", the pool shall be calculated as a straight pool and shall be distributed among the holders of tickets combining the first two (2) horses of the first race of the Big Q, otherwise eligible for Big Q exchange tickets and also distributed to holders of the Big Q exchange tickets.

(r) If there is a dead heat for the winning horses in either of the two (2) consecutive races for the Big Q, the calculation of the distribution of the Big Q pool shall be made in the manner in which any ordinary quinella pool would be made if there was a dead heat for the win despite the number of horses involved in the dead heat.

(s) If an incorrect exchange ticket is issued during the second half of the Big Q pool, the incorrect exchange ticket shall be turned in to the stake auditor prior to the running of the second half. The tickets shall be deducted from both exchange and individual combination totals. The ticket shall be voided and filed with the performance worksheets and a report, including the seller's name and license number, shall be made to the commission of the complete incident.

Section 9. [81.2 Trifecta Wagering. (1) The trifecta shall be a combination by the purchaser of a ticket selecting three (3) horses in a single race, selecting the three (3) horses that will subsequently finish first, second, and third in that race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted.

(2) The trifecta shall not be a pari-mutuel and shall have no connection with or relation to the win, place, and show betting and shall be calculated as an entirely separate pool.

(3) Trifecta tickets shall not be sold in less than one (1) dollar denominations.

(4) If no ticket is sold on the winning combination of a trifecta pool, the net pool shall be distributed to the holders of tickets selecting the win and place finisher in that order. If no ticket is sold combining the win and place finish, the net pool shall be distributed to the holders of tickets selecting the winner.

(5) If no ticket is sold that requires distribution of the net trifecta pool to a winner pursuant to subsection (4) of this section, the association shall make a full refund of the trifecta pool.

(6) If there is a dead heat or dead heats, all trifecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead heat, shall be winning tickets. The payoff shall be calculated as a place pool.

(7) If there is a scratch in the trifecta, no exchanges shall be made. All tickets which include the scratched horse shall be eliminated from further participation in the trifecta pool and shall be refunded.

(8) Entries or field horses shall not be allowed in any race that the trifecta is being sold.

(9) Trifecta tickets shall be sold only by the licensee through pari-mutuel machines programmed to print all selections on one (1) ticket. Resale of such tickets from one (1) individual to another shall be prohibited and shall be grounds for election.

(10) Each association shall print in heavy type in a conspicuous place in its printed program all the provisions of this section and post printed copies of this section about the track.

For the purpose of trifecta wagering, the trifecta race shall be drawn to consist of six (6) starters.
Section 10. [18-1] Twin Trifecta. The twin trifecta shall be a form of pari-mutuel wagering. It shall not be a pari-mutuel and shall not have a connection with or relation to any pari-mutuel pools made and conducted by an association. The twin trifecta shall not be connected with or related to any win, place, and show pools shown on the totalizer board, and it shall not be governed by any division rules pertaining to the distribution of any pari-mutuel pools.

(1) In the twin trifecta, the bettor shall select the three (3) horses that will finish first, second, and third in any order from any of the two (2) designated twin trifecta races in the exact order as officially posted.

(2) Twin trifecta tickets shall be sold and exchanged only from the association's ticket-issuing machines.

(3) Twin trifecta wagers shall be made only in denominations of three (3) dollars.

(4) Each bettor purchasing twin-trifecta tickets shall designate three (3) selections as the first three (3) horses to finish in that order in the first race of the designated two (2) twin trifecta races.

(5) After the wagering closes for the first half of the twin trifecta, the commissions shall be deducted from the pool pursuant to KRS 138.510. The remaining pool shall then be divided into two (2) separate pools of equal amounts.

(6) The money in the first part of the divided pool shall be distributed to the holders of the twin trifecta tickets selecting the first three (3) horses in any order, in the designated twin trifecta race, in accordance with this administrative regulation. The term "first part of divided pool" shall mean one-half (1/2) of the net distributable pool of the total money wagered in the twin trifecta on the current program only and, specifically excluded therefore shall be any carry-over of any special cumulative second race twin trifecta pool from any previous program.

(7) The second part of the divided pool shall be placed in a separate pool to be distributed to holders of second half twin trifecta tickets selecting the first three (3) horses, in order, on the selected twin trifecta race, in accordance with this administrative regulation.

(8) In the first half of the twin trifecta only, if there is a failure to select in exact order, the first three (3) horses, payoffs and exchanges shall be made on twin trifecta tickets selecting in the following order of priority:

(a) The first two (2) horses in exact order, if no such ticket is outstanding, then;

(b) The first horse, and any ticket within the applicable above order of priority shall be deemed a winning ticket entitling the holder thereof to an exchange ticket, in addition to the usual payoff for first half winners; and

(c) Failure to select winner to win, regardless of the selection of the exact order of the second or third horse shall cause a refund to all twin trifecta tickets.

(9) After the official declaration of the first three (3) horses to finish in the first race of the twin trifecta, each bettor holding a winning ticket shall, prior to the running of the second twin trifecta race, exchange the winning ticket for both the monetary value established by the association's mutuel department and a twin trifecta exchange ticket and shall select the three (3) horses to finish in the second race of the twin trifecta in exact order as officially posted. Further money shall not be required of the holder of the winning ticket in order to make the exchange. Each association conducting the twin trifecta shall designate all windows to be used as exchange windows unless the first half payoff is $500 or more in winnings (if such winnings are at least 300 times the amount of the single wager). If that occurs, valid exchange tickets shall be exchanged only at all windows designated IRS windows.

(10) A twin trifecta exchange ticket upon the second race of the twin trifecta shall not be issued except upon surrender of the winning twin trifecta ticket from the first race of the twin trifecta pursuant to subsection (9) of this section. Windows for the purpose of cashing and exchanging twin trifecta tickets shall be open only after the first race of the twin trifecta has been declared official and windows shall close whenever wagering closes for the race designated as the second half of the twin trifecta. More than one (1) race shall not lapse between the race designated the first half of the twin trifecta and the race designated the second half of the twin trifecta.

(11) If a winning twin trifecta ticket from the first race is not presented for cashing and exchange with the time provided, the bettor may still collect the monetary value attached to the ticket but shall forfeit all rights to any distribution of the second race twin trifecta pool and carry-over jackpot.

(12) If a horse is scratched from the first race of the twin trifecta, all twin trifecta tickets on the scratched horse shall be refunded. If a horse is scratched from the second race of the twin trifecta, public address announcements shall be made and a reasonable time shall be given for exchange of tickets on the scratched horse.

(13) If there is a dead heat in either the first or second half of the twin trifecta, all twin trifecta tickets as set forth in the correct order of finish counting a horse in a dead heat as finishing in any position dead heated shall be winning tickets. If there is a dead heat occurring in the first half, the payoff shall be calculated as a win pool. If there is a dead heat occurring in the second half, contrary to the usual pari-mutuel practice, the aggregate number of winning tickets shall be divided into the net pool and be paid the same payoff payoffs.

(14) If there is no twin trifecta ticket issued accurately selecting the officially declared first three (3) finishers of the second race, the pool, as divided earlier, shall be held for the next consecutive program and combined with that program's second race twin trifecta pool. This sum shall be termed the "carry-over jackpot". Distribution of the special cumulative second race twin trifecta pool shall be made only upon the accurate selection, in exact order, of the first three (3) officially declared finishers of the second twin trifecta race except on the closing program of the meeting pursuant to paragraph (15) of this section.

(15) If for any reason the second half of the twin trifecta is not declared "official", the winning ticket holders who have cashed their tickets on the first half and have received an exchange ticket shall be entitled to the remaining amount of the current program's divided pool.

(16) On the closing program of the meeting, the current carry-over jackpot, if any, plus the second half pool for that program shall be combined and distributed in the manner described above, and the following shall occur:

(a) The total twin trifecta pool shall be distributed to the holders of twin trifecta exchange tickets showing the first three (3) horses to finish in exact order.

(b) If there are no twin trifecta exchange tickets showing the first three (3) horses, in the exact order, the payoff shall be made on twin trifecta exchange tickets selecting the first two (2) horses in exact order.

(c) If there is no twin trifecta exchange ticket showing the first two (2) horses in exact order, the first horse, and any ticket within the applicable above order of priority shall be deemed a winning ticket entitling the holder to the total twin trifecta pool.

(d) If there are no valid exchange ticket holders, the total twin trifecta pool shall be distributed to the holders of first half tickets selecting the first two (2) horses in the exact order. If there are no first half twin trifecta tickets showing the first two (2) horses, the total twin trifecta pool shall be distributed to the holders of first half tickets selecting the horse of the first half of the twin trifecta.

(e) If no ticket is sold that requires the distribution of the net pools as established by this subsection, the association shall equally distribute the total twin trifecta pool to all first half ticket holders.

(17) Sales of twin trifecta tickets other than from the association's ticket-issuing machines or from one (1) individual to another shall be deemed illegal. Exchange tickets shall not be transferable. Persons involved in the unauthorized transfer of exchange tickets shall be ejected.

Section 11. [18-2] Types of Wagering Allowed. The following types of wagering shall be permitted at all tracks given racing dates by the commission:

(1) Normal win, place, and show betting on each race;

(2) A daily double on the first and second race; and

(3) Any other methods of betting approved in advance by the commission.

Section 12. [18-3] Betting Interests Involving More than One (1) Horse. If two (2) or more horses entered for the same race are determined by the commission to have common ties through ownership and are joined by the commission as a mutuel entry, the mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. If the number of horses competing in a race exceeds the number-
ing capacity of the totalizer, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the numbering capacity of the totalizer together with horses of higher numbers, shall be grouped in the multiple field as a single betting interest, and a wager on one (1) horse in the multiple field shall be a wager on all horses in the same multiple field.

Section 13. [11] Emergency Situation. If any emergency arises in connection with the operation of the pari-mutuel department not pro-

vided for by this administrative regulation, the pari-mutuel manager shall make an immediate decision and shall by the quickest means possible notify the presiding judge and render a full report to the com-

mission.


(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Racing Commission, 4063
Iron Works Pike, Building B, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m. [Re- regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to provide and regulate pari-mutuel wagering at race meetings.

Section 1. Equipment. (1) The commission considers it desirable for licensees to use vending machines for the sale of pari-mutuel tick-
ets. All licensees will be required to employ the use of totalizer equipment or its equivalent of a type approved by the commission.

(2) The controls necessary to operate the odds board in the in-

field, relative to the way the horses finish, if the finish is being con-
tested, if there is a photo, dead heat, time or race, are to be located in the judges’s stand and controlled only by the presiding judge, or an associate judge designated to do so.

Section 2. Definitions for Pari-Mutuel Rules. (1) For the purpose of pari-mutuel betting, every heat or dash shall be a separate and distinct race.

(2) Where the term “race” is used throughout the following rules, it shall not be considered to apply as if the term “heat” had been used. [Wagering shall be prohibited on more than ten (10) races, heats ex-

cluded, during the course of a single racing program, provided that the commission may extend the number of races authorized.]

Section 3. Tax. Each day’s tax imposed by KRS Chapter 138 shall be remitted to the Kentucky Department of Revenue by the licensee by check or bank draft within twenty-four (24) hours after the close of the racing program. Such remittance shall be accomplished by a tax return executed by the licensee on a form furnished by the Kentucky Department of Revenue. A copy of each form will be filed daily with the commission.

Section 4. Sale of Pari-Mutuel Tickets. (1) Only one (1) method of selling pari-mutuel tickets shall be used for the sale of tickets on individ-

ual races during any race day.

(2) Unless prior commission approval has been obtained no pari-

mutuel tickets shall be sold except through regular ticket windows properly designated by signs showing type of tickets sold at that par-

i-mutuel window.

(3) Without prior commission approval no pari-mutuel tickets shall be sold on any race prior to the day of the race.

(4) Book making or betting other than pari-mutuel betting is strictly prohibited.

(5) No minor shall be allowed to bet and no mutuel employee shall sell or pay a wager to a minor.

(6) All wagering shall stop as soon as the word “go” shall be given by record or by voice of the starter. Vending machines for the sale of pari-mutuel tickets shall be electrically locked by the presiding judge from the judge’s stand.

(7) When the sale of pari-mutuel tickets has closed, it shall remain closed until after the race has finished and has been declared official, unless an objection impose a delay in which case the sale of pari-mutuel tickets for the next succeeding race may be begun without waiting for the race to be declared official.

(8) Without approval of the commission, no pari-mutuel ticket shall be sold for less than two (2) dollars. Without approval of the commission, no pari-mutuel ticket combining win and place, win and show, or place and show, shall be sold for less than four (4) dollars. Without approval of the commission, no pari-mutuel ticket combining win, place, and show shall be sold for less than six (6) dollars. Without approval of the commission, no pari-mutuel tickets for perfecto, double perfecto, quinte, double quinte, or combination tickets shall be sold for less than two (2) dollars.

(9) The method of selling pari-mutuel tickets shall be ap-

proved by the commission.

(10) The manager of the pari-mutuel department shall be properly and timely advised by the presiding judge, prior to the begin-

ning of wagering on any race, of the horses that will compete in the race.

(11) At meetings of more than ten (10) days, if less than five (5) [six (6)] interests qualify to start in a race, the manager of the pari-

mutuel department[ with the consent of the representative of the commission] shall be permitted to prohibit show wagering on that race.

(12) At meetings of more than ten (10) days, if less than four (4) [five (5)] interests qualify to start in a race, the manager[ with the consent of the representative of the health department of the Kentucky Horse Racing Commission] shall be permitted to prohibit both place and show wagering on that race.

(13) At meetings of more than ten (10) days, if less than three (3) interests qualify horses to start in a race, the said manager, with the consent of the representative of the commission, shall be permitted to prohibit wagering on that race.

(14) At meetings of more than ten (10) days, the said manager, with the consent of the representative of the commission, may prohibit show wagering on any particular horse or entry in any race. [Such consent shall be sought by the manager of the pari-mutuel department from the representative of the commission. Such exclusion, if consented to by the representative of the commission, shall be clearly indicated on the program or score card or announced and horses excluded shall be numbered so as to have no way in which they are not coupled in the field. Horses once excluded from the betting shall remain excluded until the day or race in which they are scheduled to start.

(15) When more horses representing separate interests are start-

ed in a race than the number of post positions on the in-field tote board, all horses in excess of a number of interests one (1) less than the total number of post positions on the in-field tote board shall be grouped in the betting as the "field."...

(16) A refund at cost value shall be made to all holders of a purchased ticket bearing the number of a horse in any race which has been scratched-off or withdrawn before said horse has become a starter in the race under the rules, unless such horse is part of an entry, and one (1) or more of said entry starts.

Section 5. Payments. (1) Payments due on all wagers shall be made in conformity with well-established practice of the pari-mutuel system. The practice is to work in dollars and not in the number of tickets. Money wagered on winning tickets is returned in full plus the profit. In all cases of a winning pari-mutuel pool each licensee must redistribute not less than one (1) dollar and ten (10) cents on each one (1) dollar wagered. In the event of a minus pool, the minimum pay-off on each one (1) dollar wagered shall be one (1) dollar and five (5) cents.

(2) At the end of each race, the judges shall advise the manager of the pari-mutuel department by the use of the tote equipment or by telephone of the official placement of the horses, and no payoffs shall be made until the receipt of such notice.

(3) If a horse wins and there is no money wagered on him to win, the win pool shall be apportioned among the holders of the win pool on the horse, if any, otherwise among holders of the show tickets.

(4) If no money has been wagered to place a horse which has placed first or second in a race, the place pool for that race shall be apportioned among the holders of the place tickets on the horse which placed first or second in the race.

(5) If no money has been wagered to show on a horse which has placed first, second, or third in a race, the show pool in that race shall be apportioned among the holders of show tickets on the other horse.
which are placed first, second or third in that race.

(6) In the event that only two (2) horses finish in any one (1) race, the show pool shall be figured the same as the place pool and monies apportioned to the holders of show tickets on the two (2) finishing horses. In the event only one (1) horse finishes in any one (1) race all three (3) pools shall be figured separately as straight pools and all the monies shall be awarded to the ticket holders of the finishing horse. In the event no horse finishes the race, then the entire pool shall be refunded to all ticket holders.

(7) If two (2) horses finish in a dead heat for first place, the money in the win-mutual pool shall be divided equally between the two (2) dead-heaters according to their proportionate shares in the pool.

(8) If two (2) horses finish in a dead heat for second place, the division is made as follows: There shall be allotted to the pool of the winner the race one half (1/2) of the place pool and the two (2) dead-heaters one half (1/2) each of the remaining half of the place pool.

(9) If two (2) horses coupled in the betting as an "entry" or the field finish first and second, and one or more horses finish in a dead heat for third with another horse, the division of the net show pool shall be as follows: one half (1/2) of the net show pool shall be allotted to the pool of the entry; one third (1/3) to the money horse not involved in the dead heat, and one sixth (1/6) to the nonentry horse finishing in the dead heat.

(10) If the entry or field horses should finish first, second and third, the entire money in each pool goes to the entry or field tickets, no other tickets participating.

(11) No multilateral pari-mutuel ticket that is not easily identifiable as being a valid ticket shall be accepted for payment.

(12) No claims for lost pari-mutuel tickets shall be considered.

(13) In the event an error is made in calculation resulting in a price being too high, the association shall lose such amount between the proper price and the one paid. If the error in calculation results in a price being too low, such amount between proper price and price paid shall be added to the net pool of the same position in the following race on the same day or if it is the last race of the day then it shall be added to the net pool of the same position in the same race on the following day. If such an error occurs causing underpayment on the last race of the entire racing meeting, the underpayment shall be paid to the Kentucky Revenue Cabinet.

Section 6. Daily Doubles. (1) Positively no exchange of daily double tickets after purchaser thereof has left the racetrack.

(2) A daily double is not a parlay and has no connection with or relation to the "tote" betting. All tickets on the daily double will be calculated in an entirely separate pool. Without prior commission approval, only one (1) daily double will be permitted during any single program.

(3) All tickets will be win (straight) only. Enter and the field run as one (1) horse in the daily double. If two (2) or more horses in a race are coupled on the same localizer ticket, there shall be no refunds, unless all of the horses so coupled are excused before off time.

(4) Selections are to be made of one (1) horse for each of two (2) races in the daily double by "tote" program numbers.

(5) If no ticket is sold combining the two (2) winners of the daily double, the pool shall then be apportioned equally between them having tickets including the winner in the first race of the daily double and those having tickets including the winner in the second race of the daily double in the same manner in which a pool is calculated and distributed.

(6) If no ticket is sold on the winner of the first race of the daily double on any combination, the entire pool is apportioned to the holders of tickets on the winner of the second race of the daily double. Likewise, if no ticket is sold on the winner of the second race of the daily double on any combination, the entire pool is apportioned to the holders of tickets on the winner of the first race of the daily double.

(7) If a dead heat to win should result in either the first or second race of the daily double, the total pool is calculated as a place pool. In case of a dead heat for the winner of the first race of the daily double, the posting of payoff prices will be made after winner of second race of the daily double is official.

(8) Should no ticket be sold containing the numbers of either winner on any combination, the pool shall be allotted to those having tickets on horses finishing next to the winner.

(9) In the event any horse or horses in the first half of the daily double should be excused by the judges after the horses shall have left the paddock for the post, or after the betting on the daily double has been closed, or should any horse or horses in the first half of the daily double be prevented from racing because of failure of the arm or arm of the starting gate to open, the money wagered on the horses so excused or prevented from racing shall be deducted from the daily double pool and refunded to the purchaser of race or races on the horses so excused or prevented from racing.

(10) If a horse is scratched from the second half of the daily double before it becomes a starter in the second half, but after the first half of the daily double has been run, all daily double tickets containing the scratched horse in the second race of the daily double with the actual winner of the first race of the daily double shall be paid a price equivalent to that fraction of the net pool derived by dividing the net pool by the total purchase price of all tickets combining the winner of the first race of the daily double with all horses in the second race of the daily double. The total payoff on all tickets combining the winner of the first race of the daily double with the scratched horse in the second race of the daily double as determined by the method set forth in this rule shall be deducted from the daily double pool.

(11) The possible payoff prices shall be posted or announced to the public before the start of the last race of the daily double, and as soon as possible after the horses in the race of the last half of the daily double have entered upon the track on the way to the post.

(12) If for any reason the second race of the daily double is canceled or declared "no race" by the judges after the first daily double race is declared official, these horses shall be placed on any horse or horses so excluded to wagering combinations which include the horse or betting interest which finished first in the first daily double race.

(13) If a daily double is scheduled to be held, subsections (1) to (12) of this section shall be printed in conspicuous places in the grandstand area and an abbreviated version shall be printed on the day's racing program, and notice printed on sold program as follows: "Retain Your Tickets Until The Result Of The Daily Double Has Been Posted."

Section 7. Perfection Wagering. (1) The "perfecta" (also known as exactas or correctas) is a contract by the purchaser of a ticket combining two (2) horses in a single race, selecting the two (2) horses that will subsequently finish first and second in that race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted.

(2) The perfecta is not a "parlay" and has no connection with or relation to the win, place or show betting and will be calculated as an entirely separate pool.

(3) No ticket is sold on the winning combination of a perfecta pool, the net pool shall be distributed equally between holders of tickets selecting the winning horses to finish first and second, holders of tickets selecting the second place horse to finish second.

(4) If no ticket is sold that would require distribution of a perfecta pool to winner as above defined, the association shall make a complete and full refund of perfecta pool.

(5) In case of a dead heat between two (2) horses for first place the net-perfecta pool shall be calculated and distributed as a place pool to holders of tickets of the winning combination(s). In case of a dead heat between two (2) horses for second place, the perfecta pool shall be figured as a place pool, the holders of tickets combining the winning horse and the two (2) horses finishing second participating in the payoff.

(6) In the event of a dead heat for second place, if no ticket is sold on one (1) of the (2) winning combinations, the entire net pool shall be calculated on a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the perfecta pool shall be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.

(7) In the event two (2) or three (3) horses coupled in an entry or the mutual-field finish first and second or first, second and third, the winning combination shall be the coupled horses and the horse placed.
immediately behind each entry or field.

Section 8. Quinella Wagering. (1) The "quinella" is a form of a pari-mutuel wagering consisting of selecting the first two (2) horses to finish, irrespective of their place of finish.
(2) The quinella is not a "parlay" and has no connection with or relation to the win, place, or show betting and will be calculated as an entirely separate pool.
(3) In case of a dead heat between two (2) horses for first place, the combination shall be the winner of the quinella pool. In case of a dead heat between two (2) horses for second place, the quinella pool shall be divided as a place pool, the holder of tickets combining the winning horse and the two (2) horses finishing second-participating in the payoff.
(4) In the event of a dead heat for second place, if no ticket is sold on one (1) of the winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the net pool shall be calculated and distributed as a place pool to holders of tickets combining the exact order as officially posted. If any tickets combine both horses in the dead heat for place, the net pool shall be calculated and distributed as a win pool to holders of such tickets.
(5) If no ticket is sold on the winning combination of a quinella pool, the net pool shall then be apportioned equally between those having tickets including the horse finishing first and those having tickets including the horse finishing second in the same manner in which a win pool is calculated and distributed.
(6) If no ticket is sold that would require distribution of a quinella pool to a winner as above defined, the association shall make a complete refund of the quinella pool.
(7) If a perfecta and/or quinella is scheduled to be held, each association shall print an abbreviated version of this rule on the day's racing program.
(8) In the event two (2) or three (3) horses coupled in an entry or the mutual-field-finish first- and second- or first- and second- and third- winning combination shall be the coupled horses and the horse placed immediately behind each entry or field.

Section 9. Double Perfecta Wagering. (1) The double perfecta is a form of pari-mutuel wagering in which the better selects the two (2) horses that will finish first and second in each of the two (2) consecutive races in the order as officially posted.
(2) Double perfecta tickets shall be sold only at double-perfecta windows and only from automatic double-issue machines.
(3) Each better purchasing double perfecta tickets shall designate his two (2) selections as the first two (2) horses to finish in that order in the first of the two (2) consecutive races.
(4) After the official declaration of the first two (2) horses to finish in each of the two (2) races, a double-perfecta bet shall be a ticket containing the first two (2) horses in the exact order of finish, prior to the running of the second double perfecta race. The winning combination shall be calculated as a double perfecta and distributed.
(5) In the event of a dead heat for place in the first race of the double perfecta pool, the bets shall be calculated and distributed as a perfecta pool to holders of tickets combining the first and second horses and either, of the place horses. In the event of a dead heat for place, there are no tickets sold on one (1) combination, then the other combination having the winning horses shall be declared the winner. If no dead heats occur, the double perfecta pool shall be calculated and distributed as a win pool to holders of tickets representing any interest in the net pool.
(6) If for any reason the second of the double perfecta races is cancelled or declared "no race," the pool shall be calculated as a straight pool and shall be distributed among the holders of the tickets combining the first two (2) horses of the first race of the double perfecta, otherwise eligible for double perfecta exchange tickets and also distributed to holders of the double perfecta exchange tickets.
(7) If there is a dead heat for place in the second race of the two (2) consecutive races of the double perfecta, the calculation of the double perfecta pool shall be made in the manner in which any ordinary perfecta pool would be made should there be a dead heat for the win despite the number of horses involved in the dead heat.
(8) The purchase of double-perfecta tickets at terminals through pari-mutuel machines and the sale of double-perfecta tickets from one (1) individual to another shall be deemed illegal and is prohibited.

Section 10. Big "Q" Wagering. (1) Each operator wishing to conduct Big "Q" wagering must first petition the commission for permission to do so.
(2) Each operator shall either print in the daily program or prominently post at all areas where Big "Q" wagering is conducted the complete rules for Big "Q" wagering as set forth in the following sections:
(a) The Big "Q" consists of selecting the quinella (the first two (2) horses to finish) of each of two (2) consecutive races. Pari-mutuel wagering tickets are to be sold upon the first race of the two (2) races only. The division of the pool shall be calculated as in a straight pool, subject to provisions of these rules to the contrary.
(b) No entries or field horses shall be allowed to start in any race comprising the Big "Q".
(c) Tickets shall be sold only at Big "Q" windows and only from the official, all exchange tickets-combining the scratched horse shall become consolation tickets and shall be paid a price per dollar denomination calculated as follows: the net double perfecta pool (gross pool less commission) shall be divided by the total purchase price of all tickets-combining the winners of the first race of the double perfecta. The quotient thus obtained shall be the price to be paid to holders of exchange tickets combining the scratched horse in the second race of the double perfecta. The entire consolation pool (numerator-of eligible tickets times the consolation price) shall be deducted from the net double perfecta pool.
(6) If no double perfecta ticket is sold as a winning combination in the first race of the double perfecta, the double perfecta pool shall be divided among those having tickets-including the horse finishing first and those having tickets-including the horse finishing second-in the same manner in which a place pool is calculated and distributed.
(11) If a double perfecta exchange ticket combines only one (1) of the two (2) winners and no double perfecta exchange ticket combines the other winner, the entire pool shall be distributed as a straight pool to the holders of those tickets.
(12) If no exchange ticket includes either the first or second horse of the second half of the double perfecta-the entire net pool shall be divided as a straight pool to the holders of exchange tickets.
(13) In the event of a dead heat for place in the first race of the double perfecta races, all double perfecta tickets-combining the first horse and either of the place horses shall be eligible for exchange for double perfecta exchange tickets.
(14) In the event of a dead heat for place in the second race of the double perfecta, the double perfecta pool shall be divided, calculated and distributed as a place pool to the holders of double perfecta exchange tickets-combining the first horse and either of the place horses. In the event of the dead heat for place, there are no tickets sold on one (1) combination, then the other combination having the winning horses shall be declared the winner. If no dead heats occur, the double perfecta pool shall be calculated and distributed as a win pool to holders of tickets representing any interest in the net pool.
(d) Each better purchasing tickets shall designate his two (2) selections as the first two (2) horses to finish in the first race of the two (2) races.

(e) After the official declaration of the first two (2) horses to finish the first of the Big Q races, each better holding a ticket combining the said two (2) horses to finish must, prior to the running of the second race, exchange such winning ticket for a Big Q exchange ticket at the Big Q windows and at such time the said holder shall select the first two (2) horses to finish in the second race of the Big Q. No further money shall be required of the holder of the ticket in order to make the exchange.

(f) No Big Q exchange ticket upon the second race shall be issued except upon the surrender of the Big Q ticket from the first race as described in these sections. The Big Q pool obtained from the sales of the Big Q tickets upon the first race shall be held subject to these sections, and divided among the winning ticket-holders of the Big Q exchange tickets. The Big Q windows shall be open for the purpose of making the exchange as described only after the first race has been declared official and such windows shall close at post time at the start of the second race of the Big Q races.

(g) If a winning Big Q ticket from the first race is not presented for exchange within the time provided, the better forfeits all rights to any distributions or exchanges except in the event the Big Q is declared or declared "no race" or if no exchange ticket includes either the first or second horse of the second half of the Big Q.

(h) If a horse is scratched in the first race, all Big Q tickets on the scratched horse will be refunded. If a horse is scratched in the second race, the holders of tickets on the scratched horse will be entitled to exchange their tickets for another selection. In the event of a total scratch, after the exchange windows have closed, all exchange tickets combining the scratched horse shall become consolation tickets and shall be paid a price per dollar denomination calculated as follows: The net Big Q pool (gross pool less commission) shall be divided by the total purchase price of all tickets combining the winnings of the first race of the Big Q. The quotient thus obtained shall be the price to be paid to holders of exchange tickets combining the scratched horse in the second race of the Big Q. The entire consolation pool (number of eligible ticket times the consolation price) plus the breakage shall be deducted from the net Big Q pool.

(i) If no ticket is sold as a winning combination in the first race of the Big Q, the Big Q pool shall be divided among those having tickets including the horse finishing first or second and such distributions shall be calculated and made as a place pool. In such an instance, the Big Q race shall end and the pool shall be closed for that day.

(j) If a Big Q exchange ticket is sold on the winning combination, the net pool shall be apportioned equally between those having tickets including the horse finishing second in the same manner in which a place pool is calculated and distributed.

(k) If a Big Q exchange ticket combines only one (1) of the winners and no Big Q exchange ticket combines the other winner, the entire pool shall be distributed as a straight pool to the holders of those tickets.

(l) If no exchange ticket includes either the first or second horse of the second half of the Big Q, the entire net pool will be distributed as a straight pool to all holders of exchange tickets and winning combinations of the first half that have not been exchanged.

(m) In the event of a dead heat for place in the first race of the Big Q races all Big Q tickets combining the first horse and either of the place horses shall be eligible for exchange for Big Q exchange tickets.

(n) In the event of a dead heat for place in the second race of the Big Q races the pool will be divided, calculated and distributed as a place pool to the holders of Big Q exchange tickets combining the first horse and either of the place horses. In the event of the dead heat to place and there are no tickets sold on one (1) combination, then the other combination having winning horses shall be declared the winner.

(o) If an exchange ticket combines both winning horses in the dead heat, the Big Q pool shall be calculated and distributed as a place pool to holders of tickets combining both of the place horses. However, if any exchange ticket combines both horses in the dead heat for place, the Big Q pool shall be calculated and distributed as a place pool to holders of such tickets.

(p) If for any reason the first race of the Big Q races is cancelled or declared "no race" full and complete refund shall be made from the Big Q pool.

(q) If for any reason the second of the Big Q races is cancelled or declared "no race" the pool shall be calculated as a straight pool and shall be distributed among the holders of tickets combining the first two (2) horses of the first race of the Big Q otherwise eligible for Big Q exchange tickets and also distributed to holders of the Big Q exchange tickets.

(r) If there is a dead heat for the winning horses in either of the two (2) competitive races for the Big Q, such calculation of distribution of the Big Q pool shall be made in the manner in which any ordinary quinella pool would be made should there be a dead heat for the win despite the number of horses involved in the dead heat.

(s) In the event that an incorrect exchange ticket is issued during the second half of the Big Q pool, such incorrect exchange ticket must be turned in to the state auditor prior to the running of the second half. Said tickets shall be voided and the purchased and individual horses' names and license numbers shall be recorded in the commission of the complete incident.

Section 11. Trifecta-Wagering. (1) The "Trifecta" is a contract by the purchaser of a ticket combining three (3) horses in a single race, second and third for the three (3) horses that will subsequently finish first, second and third in that race. Payment of the ticket shall be made only to the person who has selected the same order of finish as officially posted.

(2) The "Trifecta" is not a parlay and has no connection with-or relation to the win, place and show betting and will be calculated as an entirely separate pool.

(3) Trifecta tickets shall be sold in lots of less than one (1) dollar denominations.

(4) If no ticket is sold on the winning combination of a trifecta pool, the net pool shall be distributed to the holders of tickets selecting the win and place finishers in that order. If no ticket is sold combining the win and place finish, the net pool will be distributed to the holders of tickets selecting the winner.

(5) If no ticket is sold that would require distribution of the net trifecta pool to a winner as above defined, the association shall make a full refund of the trifecta pool.

(6) In the event of a dead heat or dead heats, all trifecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position dead heated, shall be winning tickets. The payoff will be calculated as a place pool.

(7) In the event of a scratch in the trifecta no exchanges will be made. All tickets which in any combination includes the scratched horse are eliminated from further participation in the trifecta pool and will be refunded.

(8) No entries or field horses shall be allowed in any race that the trifecta is being sold.

(9) Trifecta tickets shall be sold only by the licensee through pari-mutuel machines programmed to print all selections on one (1) ticket. Resale of such tickets from one (1) individual to another is prohibited and shall be grounds for election.

(10) Each association shall print in heavy type in a conspicuous place in its printed program all the provisions of this section and post printed copies of this section about the track in such places as it may deem advisable.

(11) For the purpose of trifecta wagering the trifecta races shall be drawn to consist of six (6) [nine (9) if starters] except where the tote board has only eight (8) numbers then the trifecta races shall be drawn to consist of eight (8) starters.

(12) Nothing in this section shall preclude the sale of combination trifecta tickets in the amount of six (6) dollars.

Section 12. Twin-Trifecta. The twin-trifecta is a form of pari-mutual wagering. It is not a parlay and has no connection with or relation to any other pari-mutuel pools made and conducted by an association nor is the twin trifecta connected with or related to any win, place and show pools shown on the totalizer board, nor is it governed by any division rules pertaining to the distribution of any other pari-mutuel pools.

(1) In the twin trifecta, the better selects the three (3) horses that will finish first, second and third in each of the two (2) designated twin
trifecta races in the exact order as officially posted.
(2) Twin trifecta tickets shall be sold and exchanged only from the association's ticket-issuing machines.
(3) Twin trifecta wagers shall be made only in denominations of three (3) dollars.
(4) Each bettor purchasing twin trifecta tickets shall designate three (3) selections as the first three (3) horses to finish in that order in the first race of the designated two (2) twin trifecta races.
(5) After the wagering closes for the first half of the twin trifecta, the commissions will be deducted from the pool in accordance with the laws of the state of Kentucky. The remaining pool will then be divided into two (2) separate pools of equal amounts.
(6) The money in the first part of the divided pool will be distributed to the holders of the twin trifecta tickets selecting the first three (3) horses, in order, on the first designated twin trifecta race, in accordance with the established pari-mutuel practice.
(7) The term "first part of divided pool" shall mean one-half (1/2) of the net distributable pool of the total money wagered on the twin trifecta on the current program only and, specifically excluded therefrom shall be any carry-over of any special cumulative second race twin trifecta pool from any previous program.
(8) The second part of the divided pool will be placed in a separate pool to be distributed to holders of "second half" twin trifecta tickets selecting the first three (3) horses, in order, on the second designated twin trifecta race, in accordance with the established pari-mutuel practice.
(9) In the first half of the twin trifecta only, if there is a failure to select, in exact order, the first three (3) horses, payoff and exchanges shall be made on twin trifecta tickets selecting in the following order of priority:
(a) The first two (2) horses in exact order, if no such ticket is outstanding, then;
(b) The first horse, and any such ticket within the applicable above order of priority shall be deemed a winning ticket entitling the holder thereof to an exchange ticket, in addition to the usual payoff for first half winners;
(c) Failure to select winner-to-win, regardless of the selection of the exact order of the second and/or third horse shall cause a refund to all twin trifecta tickets.
(10) After the official declaration of the first three (3) horses to finish in the first race of the twin trifecta, each bettor holding a winning ticket must, prior to the running of the second twin trifecta race, exchange such winning ticket for both the money value established by the association's pari-mutuel department and a twin trifecta "exchange" ticket and at such time shall select the three (3) horses to finish in the second race of the twin trifecta in exact order as officially posted. No further money shall be required of the holders of the winning ticket in order to make the exchange. Each association conducting the twin trifecta shall designate all windows to be used as "exchange" windows except when the first half payoff is $600 or more in winnings (if such windows are at least $100 times the amount of the cingle wager). In this case, valid exchange tickets will be exchanged only at all windows designated IRS windows.
(11) No twin trifecta exchange ticket upon the second race of the twin trifecta shall be issued except upon surrender of the winning twin trifecta ticket from the first race of the twin trifecta as described in this administrative regulation. Windows for the purpose of exchanging and exchanging twin trifecta tickets shall be open only after the first race of the twin trifecta has been declared official and windows shall close when wagering closes for the race designated as the second half of the twin trifecta. Not more than one (1) race shall elapse between the race designated the first half of the twin trifecta and the race designated as the second half of the twin trifecta.
(12) If a winning twin trifecta ticket from the first race is not presented for exchanging and exchanging with the time provided, the bettor may still collect the money value attached to the ticket but forfeits all rights to any distribution of the second race twin trifecta pool and the carry-over jackpot.
(13) If a horse is scratched from the first race of the twin trifecta, all twin trifecta tickets on the scratched horse will be refunded. If a horse is scratched from the second race of the twin trifecta, public announcements will be made and all bets on that horse will be taken off the board. Any reasonable time will be given for exchange of tickets on the scratched horse.
(14) In the event of a dead heat in either the first or second half of the twin trifecta, all twin trifecta tickets selecting the correct order of finish counting a horse in a dead heat as finishing in any position dead heat shall be winning tickets. In the case of the dead heat occurring in the first half, the payoff shall be calculated as a win pool. In the case of the dead heat occurring in the second half, contrary to the usual pari-mutuel practice, the aggregate number of winning tickets shall be divided into the net pool and paid the same payoff price.
(15) For any reason the second half of the twin trifecta is not declared "official," the winning ticket holders who have cashed their tickets on the first half and have received an exchange ticket will be entitled to the remaining amount of the current program's divided pool.
(16) On the closing program of the meeting, the current carry-over jackpot, if any, shall be added to the pool for that program will be combined and distributed in the following manner:
(a) The total twin trifecta pool shall be distributed to the holders of twin trifecta exchange tickets showing the first three (3) horses to finish in exact order.
(b) If there are no twin trifecta exchange tickets showing the first three (3) horses, in exact order, the payoffs will be made on twin trifecta exchange tickets selecting the first two (2) horses in exact order. If no such ticket is outstanding, then;
(c) The first horse, and any such ticket within the applicable above order of priority shall be deemed a winning ticket entitling the holder to the total twin trifecta pool.
(17) Sales of twin trifecta tickets other than from the association's ticket issuing machines or from one (1) individual to another shall be deemed illegal. Exchange tickets shall be nontransferable. Persons involved in the unauthorized transfer of exchange tickets shall be ejected.

Section 13. Types of Wagering Allowed. The following types of wagering shall be permitted at all tracks, given racing dates by the commission:
(1) Normal win, place and show betting on each race.
(2) A daily double on the first and second races.
(3) Any other methods of betting approved in advance by the commission.

Section 14. Betting Interests Involving More Than One (1) Horse. When two (2) or more horses entered for the same race are determined by the commission to have common ties through ownership and are entered by the commission as a "mutuel entry," the mutuel entry shall become a single betting interest and a wager on one (1) horse in a mutuel entry shall be a wager on all horses in the same mutuel entry. When the number of horses competing in a race exceeds the number of capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to horses so that the highest numbered horse within the capacity of the totalizator together with horses of higher numbers, shall be grouped in the "mutuel field" as a single betting interest, and a wager on one (1) horse in the mutuel field shall be a wager on all horses in the same mutuel field.

Section 15. Emergency Situation. If any emergency arises in connection with the operation of the pari-mutuel department not provided
C. FRANK SHOOP, Chairman  
APPROVED BY AGENCY: July 12, 2001  
FILED WITH LRC: July 12, 2001 at 1 p.m.

CABINET FOR HEALTH SERVICES  
Office of the Inspector General  
(As Amended at ARRS, October 9, 2001)

902 KAR 20:145. Operations and services; rural health clinics.

RELATES TO: KRS 216B.010 to 216B.130, 216B.990(1), (2), 42  
USC Part 254r  
STATUTORY AUTHORITY: KRS 216B.042[1] to 216B.105  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042[1] requires [and 216B.105 authorizes] the Kentucky Cabinet for Health Services [Human Resources] to regulate health facilities and health services. This administrative regulation establishes [sets forth the] requirements for the operation and services of rural health clinics.

Section 1. Location and Requirement to Provide Services. (1) A health facility shall not [no health facility shall be licensed] or relicense as [Scope of Operations and Services:] a rural health clinic unless it:
(a) Is located in an area [that has been designated by the United States Public Health Service, Division of Shortage Designation as [either]:
1. Health professional shortage area; or
2. [A] medically underserved area; and
(b) Complies with the requirements established in Sections 2 and 3 of this administrative regulation, [is a health facility located in a rural area that has a shortage of health manpower. Rural health clinics provide a broad range of diagnostic and treatment services, on an outpatient basis for a variety of health conditions.]
(2) The rural health clinic may [does not have to be] freestanding, or [but may be] an [in-integrated and] subordinate part of a licensed health facility, or health service.

Section 2. Administration and Operation. (1) The licensee shall be legally responsible for the operation of the clinic and for compliance with federal, state, and local laws and regulations pertaining to the operation of the clinic.
(2) The rural health clinic shall be under the medical direction of a physician.
(3) The licensee shall establish written policies and [3] lines of authority, and shall designate the person who shall be principally responsible for the daily operation of the clinic.
(4) The licensee shall develop patient care policies with the advice of a group of professional personnel that includes [includes] one (1) or more physicians [physicians] and one (1) or more advanced registered nurse practitioners [practitioners] or physician assistant [assistants]. At least one (1) member shall not be an employee [a member of the rural health clinic staff]. The policies shall include:
(a) A description of the services provided [the rural health clinic provides] directly by the rural health clinic and those provided through agreement;
(b) Guidelines for the medical management of health problems which include the conditions requiring medical consultation and [or] patient referral, and the maintenance of health records;
(c) Procedures to be followed in the storage, handling, and administration of drugs and biologicals; and
(d) Procedures for an annual review and evaluation of the services provided by the clinic [at least annually].
(5) Personnel. The rural health clinic shall have a staff that includes at least one (1) physician and at least one (1) advanced registered nurse practitioner or physician assistant. The clinic shall employ [such] other staff or ancillary personnel that are necessary to provide the services essential to the clinic's operation.

(a) The physician shall:
1. Be responsible for all medical aspects of the center and shall provide direct medical services in accordance with the Medical Practice Act, KRS Chapter 311;
2. [In addition, the physician shall] provide medical direction, supervision, and consultation to the staff;
3. [In conjunction with the advanced registered nurse practitioner(s) or physician assistant(s), participate in developing, executing, and periodically reviewing the rural health clinic's written policies and services;]
4. [Periodically review the rural health clinic's patient records;]
5. [Provide medical orders and [and provide] medical care services to patients of the rural health clinic; and]
6. [Be physically present for consultation weekly]
7. [and] Be [immediately] available [within one (1) hour] through direct telecommunication, for consultation, assistance with medical emergencies, or patient referral.
(b) The advanced registered nurse practitioner or physician assistant shall:
1. Participate in the development, execution and periodic review of the written policies governing the services the rural health clinic provides;
2. Participate with the physician in periodic review of patient health records;
3. Provide services in accordance with rural health clinic policies, established protocols; and
4. For an advanced registered nurse practitioner, the Nurse Practice Act, [KRS Chapter 314], and [with] administrative regulations [promulgated thereunder] relating to the practice of an advanced registered nurse practitioner; or
5. For a physician assistant, KRS 311.565 and [with] administrative regulations [promulgated thereunder] relating to the practice of a physician assistant.
4. Arrange for, or refer a patient to, a needed service that is not [patients to needed services that cannot be] provided at the rural health clinic; and
5. Assure that adequate patient health records are maintained and transferred when a patient is [patients are] referred.
(6) The rural health clinic shall have a linkage agreement or an agreement for patient referral [agreements or arrangements] with each of the following:
(a) Inpatient hospital care;
(b) Physician services in a hospital, patient's home, or long term care facility;
(c) Additional and specialized diagnostic and laboratory services that are not available at the rural health clinic;
(d) Home health agency;
(e) Local health department;
(f) Emergency medical services; and
(g) Pharmacy services.
(7) The rural health clinic shall maintain a clinical record system in accordance with written policies and procedures. A member of the professional staff shall be designated to be responsible for maintaining the records and for insuring that the records are systematically organized, readily accessible and accurately documented.
(8) For each patient receiving health care services, the rural health clinic shall maintain a record that includes, as applicable:
(a) Identification and social data, evidence of consent forms, pertinent medical history, assessment of the health status and health care needs of the patient, and a brief summary of the episode, disposition, and instructions to the patient for each [patient contact];
(b) Reports of physical examinations, diagnostic and laboratory test results, and consultation findings;
(c) All orders, reports of treatments rendered and medications given and other pertinent information necessary to monitor the patient's progress;
(d) Signature [Signatures] of the physician or other health care professional [professionals] on each order written or treatment provided;
(9) The rural health clinic shall maintain the confidentiality of medical record information and shall [provide a safeguard safeguarded] against loss, destruction, or unauthorized use. Written policies and procedures shall govern the use and removal of records from the clinic.
and the condition for release of information.

(10) Medical records shall be retained for a minimum of five (5) years or in the case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longer.

(11) The rural health clinic shall carry out or arrange for an annual evaluation of its total program, [shall] consider the findings of the evaluation, and take corrective action, if necessary. The evaluation shall include:

(a) The utilization of clinic services including at least the number of patients served and the volume of services;
(b) A representative sample of both active and closed clinical records;
(c) The rural health clinic's health care policies.

Section 3. Services. (1) The rural health clinic shall develop and maintain written protocols that:

(a) Are signed by a staff physician;
(b) Explicitly direct the step-by-step collection of subjective and objective medical data from a patient;
(c) Direct explicit medical action depending on the medical data collected; and
(d) Include:
(1) (f.e.) Standing orders; [ ];
(2) Rules of practice; [ ]; and
(3) Medical directives, which apply to services provided by the center and which explicitly direct the step-by-step collection of subjective and objective data from the patient. The protocol shall further direct data analysis, direct explicit medical action depending upon the data collected and include rationale for each decision made. The protocols shall be signed by the staff physician.

(2) The rural health clinic staff shall furnish [these] diagnostic and therapeutic services and supplies [that are] commonly furnished in a physician's office, or at the entry point into the health care delivery system. These include medical history, physical examination, assessment of health status, and treatment for a variety of medical conditions.

(3) The rural health clinic shall provide basic laboratory services essential to the immediate diagnosis and treatment of the patient, including:

(a) Chemical examinations of urine by stick or tablet methods, or both, [(including urine ketones)];
(b) Microscopic examinations of urine sediment;
(c) Hemoglobin or hematoцит;
(d) Glucose;
(e) Blood-sugar;
(e) Gram-stain;
(f) Examination of stool specimens for occult blood;
(g) (g) Pregnancy tests; and
(h) Primary culturing for transmittal to a hospital laboratory or licensed laboratory; [ ; and]
(i) Test for pinworms;
(j) The rural health clinic 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 lifesaving procedures, such as analgesics, local anesthetics ([local]), antibiotics, anticonvulsants, antihypertensives, and narcotics and toxoids.

The clinic shall post in a conspicuous area at the entrance, visible from the outside of the clinic, the hours that emergency medical services will be available in the clinic, and where emergency medical services not provided by the clinic can be obtained during and after the clinic’s regular scheduled hours of operation.

CABINET FOR HEALTH SERVICES
Office of Inspector General
(As Amended at ARRS, October 9, 2001)

902 KAR 20:370. Operations and services; private duty nursing agencies.

RELATES TO: KRS 216B.010, 216B.015, 216B.040, 216B.042, 216B.045 to 216B.055, 216B.075, 216B.105 to 216B.131, 216B.990, 311.560(4), 314.011(8), 314.041, 314.051

STATUTORY AUTHORITY: KRS 216B.042(1)
NECESSITY, FUNCTION AND CONFORMITY: KRS 216B.042(1)
requires [and 216B.105 require] the Kentucky Cabinet for Health Services to regulate health facilities and health services. This administrative regulation establishes licensure requirements for the operation of, and nursing services provided by, private duty nursing agencies.

Section 1. Definitions. (1) "Agency" means a private duty nursing agency.

(2) "Governing authority" or "licensee" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(3) "License" means an authorization issued by the cabinet for the purpose of operating a private duty nursing agency.

(4) "Licensed practical nurse" or "LPN" means a person [nurse who is] licensed [to engage in practical nursing practice] pursuant to KRS 314.051.

(5) "Private duty nursing agency" means an entity [a person, firm, corporation, partnership or association engaged for hire] in the business of providing licensed nursing care to a client in his or her home for a continuous block of time, in increments of at least four (4) hours, in which the private duty nursing agency supervises nursing care provided by agency personnel [is responsible for all clinical care]. It shall not include a registered nurse providing nursing services as an independent practitioner.

(6) "Registered nurse" or "RN" means a person [nurse who is] licensed [to engage in registered nursing practice] pursuant to KRS 314.041.

Section 2. Administration. (1) The licensee shall:

(a) Have legal responsibility for the service and for compliance with relevant federal, state and local law;
(b) Establish lines of authority, and
(c) Designate an administrator who shall be responsible for the daily operation of the agency.

(2) Policies. The licensee shall establish and enforce written administrative policies covering all aspects of operation, including:

(a) A description of organizational structure, staffing and allocation of responsibility and accountability;
(b) A description of linkages with inpatient facilities and other providers;
(c) Policies and procedures for the guidance and control of personnel performance; [performance.]
(d) A narrative describing in detail:
1. The services offered by the agency;
2. Methods and protocols for service delivery; and
3. Qualifications of personnel involved in the delivery of the service; [and]
4. Goals of the agency, [and]
(e) A description of the administrative and patient care records and reports;
(f) Procedures to be followed in the handling and administration of drugs and biologicals; and
(g) Patient care policies developed with the advice of a group of professional health providers, including [personnel that includes] one (1) or more physician [physicians] and one (1) or more registered nurse [nurses], and shall include:
1. A description of the services provided;
2. A requirement for a written nursing care plan for a patient;
3. Guidelines to ensure coordination of treatment with other licensed health care providers servicing a patient;
4. Guidelines for the medical management of health problems including;
The conditions requiring medical consultation or patient referral; and
2. Procedures for the annual review and evaluation of the services provided;
3. Guidelines for patient and environment assessment; and
4. Guidelines to ensure that a patient is receiving adequate services for assistance with daily living activities.

(3) Personnel.

(a) Medical director. The agency shall have a medical director who shall be:
1. A licensed physician with specialized training and experience in medical services provided by the agency; and
2. Responsible for medical aspects of medical services provided by the agency.

(b) The agency shall provide adequate staffing to provide for effective patient care, in accordance with the terms and conditions of the contract with the patient. [The service shall manual, or provide for through a written contractual agreement, sufficient number of qualified personnel to provide effective patient care and all other related services.]

(c) [ib] The licensee shall provide written personnel policies, which shall be:
1. Available to each employee;
2. [All employees,] Reviewed on an annual basis; and
3. [and] Revised as necessary.

(d) Each employee shall have a written job description for each position, which shall be reviewed and revised as necessary.

(e) There shall be an employee health and infection control program with provisions for [preemployment and periodic health examination,] tuberculin testing, [tests,] and titers necessary for the nursing service to be performed [other appropriate tests].

(f) The licensee shall maintain a current personnel record for each employee. Data maintained shall include:
1. Name, address, and Social Security number;
2. Evidence of current registration, certification, or licensure;
3. Records of training and experience;
4. Records of performance evaluation;
5. Current negative tuberculin skin test or chest x-ray for an employee having direct contact with a patient; and
6. Preemployment criminal conviction information for private duty nursing agency personnel who provide nursing care to a patient in his or her home.

(g) An employee of the program who has direct patient care responsibilities shall have current [cardiopulmonary–resuscitation (CPR)] certification from either the American Heart Association or the American Red Cross.

(h) In-service training. An employee shall participate in ongoing in-service training programs relating to the employee's job activities, including thorough job-orientation for a new employee.

(4) Medical records.

(a) The service shall maintain a medical record for each patient, to include the following:
1. Medical and social history relevant to the service provided, including data obtainable from other providers;
2. Name of referring physician, or other referring practitioner, if any, acting within the [his] statutory scope of practice;
3. Orders of referring physician, or other referring practitioner, if any, acting within the [his] statutory scope of practice;
4. Description of each contact, including the:
   a. Condition or reason necessitating contact;
   b. Assessment;
   c. Service provided;
   d. Medication and treatment prescribed; and
   e. Disposition made; and
5. Documentation of referrals made, including:
   a. Reason for referral;
   b. To whom the patient was referred; and
   c. Information obtained from a referral source.

(b) Confidentiality of patient records shall be maintained at all times.

(c) Transfer of records. If the patient moves to another source of care, the agency shall:
1. Establish systematic procedures to assist in continuity of care;
2. Transfer medical records [or an abstract thereof] if requested and signed and the agency receives a [signed] release signed by the patient or the patient's agent.

(d) Retention of records. [A] After the patient's death or discharge of an adult patient, the completed medical record shall be placed in an inactive file and retained for five (5) years.

(e) After the death or discharge of a minor patient, the record shall be placed in an inactive file and retained for five (5) years from the date of the event, or in case of a minor, three (3) years after the patient reaches the age of majority [under state law], whichever is longer.

(f) The agency shall designate a specific location for the maintenance and storage of the agency's medical records.

(g) The agency shall have provisions for storage of medical records in the event the agency ceases to operate.

(h) The licensee shall safeguard the record and its content against loss, defacement or tampering.

Section 3. Nursing Services Provided by Private Duty Nursing Agencies. [Agency Services]. (1) Nursing services provided by a private duty nursing agency, if ordered by a physician or other ordering practitioner acting within the statutory scope of practice, [services] shall be provided in accordance with a plan of treatment [prescribed by the licensed physician or other ordering practitioner acting within his statutory scope of practice and as permitted by KRS Chapter 314].

(a) The plan of treatment shall be developed in consultation with the prescribing practitioner, agency personnel, and the patient, patient's family, family member or patient's responsible party.

(b) The plan of treatment shall be reviewed by the ordering practitioner in consultation with agency personnel and the patient, patient's family member or patient's responsible party, at such intervals as the severity of the patient's illness requires or, at least [a minimum of] once every two (2) months.

(2) Each private duty nursing agency service [services] shall be nonabusive and provided in a manner[,] which ensures the greatest amount of safety and security for the patient.

(3) Private duty nursing agency personnel shall ensure that any medical waste generated as a result of a service [provided] shall be removed from a patient's home and disposed of properly.

Section 4. Licensing Procedures. (1) Initial licensure.

(a) A private duty nursing agency applying for a license to operate shall return a completed L&R 144 to the Office of Inspector General along with the initial licensing fee of $134.

(b) The Office of the Inspector General shall conduct an initial licensing inspection pursuant to 202 KAR 20:08.

(c) Reissue. Prior to the date that the license to operate expires, a private duty nursing agency shall send a completed L&R 144 to the Office of the Inspector General along with the renewal license fee of $134.

Section 5. Incorporation by Reference. (1) The following material is incorporated by reference "Form L&R 144, Application for a License to Operate a Health Facility or Service, January 2001 edition" is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Inspector General 275 East Main Street, Fifth Floor East, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.
GOVERNOR'S OFFICE OF THE KENTUCKY AGENCY FOR SUBSTANCE ABUSE POLICY
(Amended After Hearing)

10 KAR 7:010. Kentucky Agency for Substance Abuse Policy (KY-ASAP) Program and start-up funding.


STATUTORY AUTHORITY: KRS 12.332(19) [12.330, 12.332, 12.334]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 12.332 requires [authorizes] the Kentucky Agency for Substance Abuse Policy (KY-ASAP) to promulgate administrative regulations to develop [for the implementation of] a statewide strategic plan [which develops policy-directed to reduce the prevalence of tobacco use and drug and alcohol abuse among both the youth and adult populations in Kentucky. This administrative regulation establishes [prescribes]: the mechanism for the distribution of start-up funds for the implementation of the approved local community strategy; the incentives to encourage formation of multicity county advisory and coordination boards; the composition of a local board; and reporting requirements.

Section 1. Definitions. (1) "Initial fiscal agent" means an [a] public entity that shall have a permanent representative on a local board and [have] a financial structure that currently receives funding from state or federal government.

(2) "Kentucky Agency for Substance Abuse Policy or "KY-ASAP" means [the agency] which has been established at KRS 12.330(1) to (3).

(3) "Local board" means [the entity described] as defined at KRS 12.334(1).

(4) "Start-up funds" shall be one [a] time lump sum money issued in two (2) equal parts.

(5) "Conveying agency" means that agency which conveys the initial member and assists in the applicant process, up and until receipt of local KY-ASAP board designation.

Section 2. General. (1) KY-ASAP shall develop proposal instructions with advice from the following: KY-ASAP shall implement in accordance with requirements of KY-ASAP and through the use of local boards to ensure coordination and collaboration of alcohol, tobacco use and drug and alcohol abuse prevention and treatment resources and systems at the state and local level.

(2) Start-up funding proposal instructions shall be developed with advice from the following:

(a) KY-ASAP Board;

(b) Cabinet for Health Services, Department for Mental Health and Mental Retardation Services.

(3) Instructions shall be contained in the Kentucky Agency for Substance Abuse Policy (KY-ASAP) Community Readiness Instrument, incorporated by reference. 

(4) [44] If a local board fails to comply with KRS 12.334, the Executive Director or KY-ASAP shall notify the chairman of the local board by letter that the existing board may be abolished.

(5) An adverse action letter to a local board chairman shall comply with the notice requirements of KRS Chapter 13B.

Section 3. Local Board Membership. (1) A local board representing more than one (1) county shall ensure that each county is represented on the local board when requesting appointment for local board members.

(2) Membership of a single county local board shall be no less than fifteen (15) and no more than twenty (20) members.

(3) Membership of a multicounty local board shall be no less than fifteen (15) and no more than thirty (30) members.

(4) Membership of a single county local board for a county with a population exceeding [above] population of 250,000 shall be no less than fifteen (15) and no more than thirty (30).

(5) The [Local board members shall comply with KRS 12.334(3).

(6) A permanent membership [member] of a local board shall include [represent] the:

(a) County judge executive or designee;

(b) Executive director of a community mental health center or designee;

(c) Executive director of a health department or designee;

(d) Coordinator of a family resource or youth services center or family resource and youth service centers;

(e) Superintendent of a local school district or designee;

(f) Service Region Administrator of the Cabinet for Families and Children, Department for Community Based Services or designee; [and]

(g) [23] A nonpermanent board member shall be selected to fill [any of the] remaining seats from the following:

(a) Business leaders;

(b) Religious leaders;

(c) Judicial system;

(d) Law enforcement;

(e) Media;

(f) Health care;

(g) Group with funds to provide alcohol, tobacco, and other drug prevention;

(h) Group with funds to provide alcohol, tobacco, and other drug treatment;

(i) Local leaders in the area of alcohol, tobacco, and drug prevention;

(j) Member of existing health or related strategic planning initiatives; and

(k) University or local college that serves the county.

(7) [66] Representatives appointed under any paragraph in this section, excluding subsection (6)(a) of this section, shall not comprise more than ten (10) percent of the total board membership.

(8) [69] Representation from health departments and community mental health centers shall be equivalent.

Section 4. Local Board Bylaws Requirement. (1) A local board shall include [maintain] the following in [local] written bylaws when developed:

(a) Definition of officers and membership, and instructions for their selection: [A written description on how membership and officers are defined and selected];

(b) An organizational chart;

(c) [A written] Description of the responsibilities of officers;

(d) [A written] description of procedures for decision making;

(e) [A written] policy for officer [member] rotation;

(f) Establishment of meeting times at a regular hour [time] and date;

(g) Description of procedure for dispute resolution;

(h) Requirements for the:

1. Preparation of a written agenda for a meeting;

2. [The] Provision of a standard orientation for all new members;

3. [The] Distribution of meeting minutes to members prior to meetings;

4. Selection of a fiscal agent that receives state or federal funding, excluding the initial fiscal agent specified in Section 7(1) of this administrative regulation; and

5. Fiscal agent to provide necessary insurance coverage for KY-ASAP local board activities.

[9] A written description of procedures for dispute resolution; and

[9] Except as specified in Section 7(1) of this administrative regulation, selection and use of a fiscal agent that receives funding from state or federal government.

7. [All necessary insurance shall be made available to cover KY-ASAP local board activities by the fiscal agent.]

(2) If local board membership requirements of KRS 12.334 or
Section 2(5) of this administrative regulation are not met, the KY-ASAP Executive Director shall send written notification to:
(a) The convening agency, refer to or following board designation;
(b) The fiscal agent and the chairperson of the board made known to KY-ASAP by the board, following designation.
(3) A local board shall include changes in membership in the semiannual report required by KRS 12.334(2). The KY-ASAP Executive Director shall send written notification in writing to the convening agency, if notification is warranted prior to or following board designation and thereafter to the fiscal agent for failure to meet local board requirements in accordance with KRS 12.334 and Section 2(6) of this administrative regulation.
(3) Change in local board membership shall be filed with the agency semiannually in accordance with Section 8 of this administrative regulation.

Section 5. Application Process. (1) In order to approve start-up funding in accordance with Section 6 of this administrative regulation, a local board shall submit an application to KY-ASAP.
(2) If an applicant, during an initial submission period, includes a county or counties that are also specified in another application, the applications duplicating those applications that include overlapping counties shall be submitted to the applicants for resolution.
(3) If an application time frame does not allow for resolution of an overlapping county issue and this overlap remains in the final applications submitted, the [those local] applicants shall be issued a certified letter from KY-ASAP requesting the organizations to reapply during the next application cycle.
(4) The following process shall apply to an entity seeking to qualify as a local board: [Prior to acceptance of an application by the KY-ASAP Executive Director into the KY-ASAP local board process, an applicant shall complete the following]:
(a) The [An] applicant shall submit a letter of intent to begin the KY-ASAP local board and strategic plan development process;
(b) KY-ASAP shall respond to a letter of intent within fifteen (15) calendar days of receipt [of a letter of intent];
(c) The applicant shall then [An applicant shall upon receipt of notification by KY-ASAP] submit a community readiness document according to [in compliance with the instructions issued by KY-ASAP local board announcement] which shall be available on the World Wide Web.
(d) Accepted applicants shall submit an approved community needs assessment that includes assessment of existing strategic plan or others that address alcohol, tobacco, or other drug prevention or treatment and a board system structure development plan.
(5) For an applicant accepted into the program, payment of the initial lump sum shall require completion of the following:
(a) An approved community needs and resource assessment of existing or proposed strategic plans that address alcohol, tobacco, and other drug abuse prevention or treatment [in order for an initial lump sum payment to be made, the following actions shall be taken]:
(e) A community needs and resource assessment pertaining to tobacco and alcohol and other drug use and programs;
(b) A system structure plan that details local board development and activities;
(c) A list of permanent local board members in accordance with Section 3 of this administrative regulation;
(d) A list of nonpermanent local board members in place at the time of application submission;
(e) If the local board encompasses more than one (1) county, a letter of support from the judge executive [shall be required from] each county affected [judge executive];
(f) If a local board includes a city of the first class, a letter of support from the city's [shall be required from the] mayor;
(g) A written notice sent from the executive director to the initial fiscal agent.
1. Indicating approval and
2. Including a letter of intent to contract, in compliance with applicable sections of KRS Chapter 45A; [A notice of approval shall be sent in accordance with KRS 12.334 by the executive director to the initial fiscal agent with a letter of intent to contract that complies with KRS Chapter 45A and]

(b) The contract shall specify:
1. Obligations of the parties (and deliverables);
2. Services to be provided;
3. Requirement for fund repayment;
4. [Payback requirement and penalty for] Failure to meet contract provisions; and
5. [] Signature of the initial fiscal agent.
(6) Final lump sum payment shall be made following a fiscal review of the local board pertaining to:
(a) Proper use of initial start-up funding [in accordance with subsections (2) and (3) of this section]; and
(b) Implementation of the [a long term community strategic plan; and
(c) Local board activity including election of chairman and completion of appointment of board members.

Section 6. Start-Up Funding. (1) In order to insure funding is received by local boards without unnecessary delay, KY-ASAP shall pay start-up funding in [shall be provided through] two (2) lump sum payments.
(2) Lump sum payments shall be used to develop and implement the long-term community strategic plan.
(3) No more than fifteen (15) percent of the total start-up funds shall be used prior to the executive director’s approval [receipt of approval by the Executive Director of KY-ASAP] of the long-term community strategic plan.
(4) An initial lump sum payment may be made when at least one (1) more than half [1] of (a) at least fifty (50)-percent plus one (1) of the membership has been appointed to the board, if all other conditions are met.

Section 7. Start-Up Funding Payment. (1) The initial fiscal agent, upon receipt of notice of local board designation, shall submit a letter of agreement to KY-ASAP to serve as permanent fiscal agent. [In case application KY-ASAP local board designation is refused,]
(2) KY-ASAP shall award payments to a [Payment shall be awarded by KY-ASAP to] designated local board through that [local board's] selected fiscal agent, to the extent funds are available, as follows:
(a) $50,000 for a single county with a local board;
(b) An incentive of $110,000 for a single local board that coordinates two (2) counties [which coordinates the two (2)-counties] local board in accordance with KRS 12.334;
(c) An incentive of $175,000 for a single local board that coordinates three (3) or more counties, or [three (3)- or more多重 counties using a single local board];
(d) $200,000 for single local board that coordinates [which shall coordinate the efforts of] a multicity area with a combined population of 250,000 or greater.

Section 8. Local Board Reporting. (1) A local board shall report semiannually to KY-ASAP in accordance with KRS 12.334(2) on the following dates:
(a) March 1; and
(b) September 1.
(2) KY-ASAP shall forward a copy of each report [report copy upon request] to the KY-ASAP Board.
(3) A copy of each semiannual report shall be included in the KY-ASAP Annual Report to the Legislative Research Center and the Governor, as required by [in accordance with KRS 12.332(20)].

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Kentucky Agency for Substance Abuse Policy (KY-ASAP) Community Readiness Instrument, 2001";
(b) "KY-ASAP Local Board Announcement, 2001".
(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Kentucky Agency for Substance Abuse Policy Office, 859 East Main Street, Suite 7A, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY CARRICO, Executive Director
APPROVED BY AGENCY: October 1, 2001
VOLUME 28, NUMBER 5 – NOVEMBER 1, 2001

FILED WITH LRC: October 3, 2001 at 11 a.m.
CONTACT: Karen C. Jones, Executive Assistant, Governor’s Office for the Kentucky Agency for Substance Abuse Policy, PO Box 733, 859 East Main Street, Suite 7A, Frankfort, Kentucky 40601. Phone: (502) 564-8262; fax: (502) 564-6104.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Karen C. Jones, Executive Assistant
(1) Provide a brief summary of:
(a) What this administrative regulation does:
1. Establish a mechanism for the distribution of start-up funds for the implementation of an approved long-term care community strategy;
2. Provide incentives to encourage formation of multi-county drug, alcohol and tobacco advisory coordination boards;
3. Outline the composition and requirements for Kentucky Agency for Substance Abuse Policy (KY-ASAP) local boards;
4. Establishes the application process and reporting requirements.
(b) The necessity of this administrative regulation: The administrative regulation is necessary to comply with SB 315 of the 2000 General Assembly to implement a statewide strategy for the development of policy directed to reduce the prevalence of tobacco use and other drug and alcohol use among both the youth and adult population of Kentucky.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation conforms SB 315 of the 2000 General Assembly as specified in (1)(b).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
This administrative regulation will allow for the implementation of a statewide plan for the development of policy directed to reduce the prevalence of tobacco use and other drug and alcohol use among both the youth and adult population of Kentucky.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) The necessity of the amendment to this administrative regulation:
(b) The amendment will change this existing administrative regulation:
(c) How the amendment will assist in the effective administration of the statutes:
(d) How the amendment will assist in the effective administration of the statutes:
(e) The type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation sets up local boards which will be comprised of county judge executives, community mental health centers, health departments, family resource and youth service centers, superintendents of local school districts, Cabinet for Families and Children local staff, judicial system representatives, law enforcement representatives, media, health care representatives, local colleges or university representatives, representatives from groups that provide alcohol, tobacco and other drug prevention or treatment.
(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 be impacted through promoting the reduction of alcohol, tobacco and other drug use and related consequences through comprehensive research based state and county strategies.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: Funding was appropriated in the 2000-2001 Budget Bill (HB 502).
(a) Initials:
(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: House Bill 502 of the 2000 General Assembly Budget Bill.
(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: Refer to item (6).
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase fees.
(9) TIERING: Is tiering applied? Tiering was not used. The administrative regulation is applicable on a statewide basis.

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 judge executives, community mental health centers, health departments, family resource and youth service centers, superintendents of local school districts, Cabinet for Families and Children local staff, judicial system representatives, law enforcement representatives, and local colleges or university representatives.
3. State the aspect or service of local government to which this administrative regulation relates. The service would be for those branches of local government or local agencies, which address the issues of alcohol, tobacco, and other drug prevention and treatment.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulations 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.
Minimum Impact. We recognize there is a cost in coordinating community efforts, but any initial cost should in turn reduce overall costs. KY-ASAP requests agencies to dedicate a staff person to attend the business of the board. Any other impact will result from local board decisions based on local community needs.
Revenues (+ / -):
Expenditures (+ / -):
Other Explanation:

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Vehicle Licensing
(Amended After Hearing)


RELATES TO: KRS 186A.190, 186A.193, 186A.195, 186A.185
STATUTORY AUTHORITY: KRS 186A.010(2), 186A.190
NECESSITY, FUNCTION, AND CONFORMITY: KRS 186A.190
states that the notation of a security interest on a certificate of title shall automatically expire within a certain period. The statute further provides that secured parties may continue their security interest notation beyond the expiration by filing a continuation statement. This administrative regulation sets forth the procedure for filing a continuation statement to extend a security interest notation on a certificate of title.

Section 1. Continuation of a Security Interest. A secured party may continue a security interest on a certificate of title beyond the expiration date set forth in KRS 186A.190 by filing a Title Lien Statement Form (TC 96-187E) in the office of the county clerk of the county where the original lien is filed.

(1) For the purpose of continuing a security interest, the Title Lien Statement Form shall be filed no sooner than six (6) months prior to the expiration date of the initial period set forth in KRS 186A.190 on the date corresponding to the date of lapse or the last day of the month if there is no corresponding date. The Title Lien Statement form must be filed no later than close of business on the date upon which the financing statement lapses.
(2) The date the statement form is received in the appropriate county clerk’s office as indicated in this section shall control the effectiveness of the continuation statement.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet, Division of - 1154 -
VOLUME 28, NUMBER 5 – NOVEMBER 1, 2001

Motor Vehicle Licensing, 2nd Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

DALE SHROUT, Commissioner

JAMES C. CODELL, III, Secretary

HOLLIE SPADE, Office of General Counsel/Legislative Affairs

APPROVED BY AGENCY: October 1, 2001

FILED WITH LRC: October 11, 2001 at 11 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Hollie Spade

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation provides a procedure for continuation of a title lien pursuant to KRS 186A.190.
(b) The necessity of this administrative regulation: The amendment to KRS 186A.190 passed during the 2000 General Assembly states that a creditor can continue a security interest beyond the automatic lapse, but does not set forth how to do so.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Transportation Cabinet gets its authority to determine the procedure pursuant to KRS 186A.010 and the continuation itself is authorized by the amendment to KRS 186A.190.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation will provide the method for obtaining continuation of a security interest on a vehicle title.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: 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 and type the number of individuals, businesses, organization, or state and local governments affected by this administrative regulation: All entities that take security interests in motor vehicles, owners of motor vehicles, and county clerks.
(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 clerks will be subject to this process and have been consulted. The procedure provides creditors a means to extend their security interests.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Minor printing cost for new forms.
(b) On a continuing basis: Minor printing costs for new forms.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Road 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: None known.
(8) State whether or not this administrative regulation established any fees or directly or indirectly increase any fees: None known.
(9) TIERING: Is tiering applied? No. Tiering was not appropriate in this situation because uniformity is needed.

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 clerks.
3. State the aspect or service of local government to which this administrative regulation regulates: This administrative regulation governs procedure clerks and creditors must follow to continue liens.
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 in effect: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
   Revenue (+/-): 0
   Expenditures (+/-): 0

Other Explanation: The lien continuation form is being consolidated with the title lien form so that it should be efficient. The clerks have worked closely with the cabinet on this administrative regulation.

CABINET FOR HEALTH SERVICES

Department for Public Health
Division of Local Health Department Operations
(Amended After Hearing)

902 KAR 8:150. Board of health requirements.

RELATES TO: KRS 212.020, 212.210, 212.230, 212.245, 212.640, 212.855, 212.860, 212.880

STATUTORY AUTHORITY: KRS 194A.050, 211.025
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.025, 211.050, 211.170, 212.120, and 212.230 mandates the Cabinet for Health Services establish policies and standards of operation for the boards of health for local health departments of Kentucky. This administrative regulation establishes minimum administrative and operational requirements for city-county, county and district boards of health. This administrative regulation does not apply to the Lexington-Fayette and Louisville-Jefferson County Boards of Health and the Northern Kentucky Independent District Board of Health.

Section 1. Definitions. (1) "Agency" means a local health department established pursuant to KRS Chapter 212, excluding a health department in a county containing a city of the first class, an urban-county health department, or an independent district health department.
(2) "Agency director" means the administrative officer of the agency.
(3) "Board" means the statutorily mandated governing city-county, county, and district boards of health created pursuant to KRS 212.020, 212.640, and 212.855 and does not apply to boards of health containing:
(a) A city of the first class created pursuant to KRS 212.350;
(b) An urban county government created pursuant to KRS 212.365;
(c) An independent district health department created pursuant to KRS 212.780.
(4) "City-county board" means the statutorily mandated governing body of a county which contains a city of the second class, is created pursuant to KRS 212.640, and is not contained in a district board.
(5) "County board" means the statutorily mandated governing body of a single county health department created pursuant to KRS 212.020, and does not exist in a district board.
(6) "District board" means the statutorily mandated governing body of a multicounty agency created pursuant to KRS 212.855.
(7) "Quorum" means a simple majority of the members of a board.

Section 2. Compliance. The policies and procedures established by boards must be in compliance with KRS 212.230(1)(c).

Section 3. Functions of a Board. (1) A board shall:
(a)Assure that the services provided meet the needs of the local citizenry, protect and promote public health;
(b)Establish priorities and objectives for: 1. Service delivery considering federal and state disease prevention and health promotion objectives; 2. Specific health and safety needs of the community; and 3. Resources of the agency;
(c)Assure that financial controls and program evaluation measures are ongoing to facilitate effective and efficient agency services and operations;
(d)Interview and hire an agency director in accordance with 902 KAR 8:040 through 902 KAR 8:140.
(e) Communicate board policies and priorities to the agency director;
(f) Evaluate the performance of the agency director; and
(g) Review information and data provided by the agency director to assess the effectiveness and efficiency of the agency in complying with federal and state public health laws, regulations, and board policies.

(2) A city-county or county board existing in a district [contained within a district board] shall:
(a) Maintain a membership on the county public health taxing district board;
(b) Prepare the annual public health tax resolution;
(c) Maintain trusteeship of the county public health tax;
(d) Provide for maintenance and upkeep of the agency building and determine the appropriate use of the facility by community groups and other agencies; and
(e) Provide the district board with specific public health needs and concerns of the city-county or county board.

Section 4. Composition of the Board. (1) No ex officio member shall be permitted to serve on the city-county, county or district board with the exception of a county judge executive, a mayor, or a city manager of a second class city.

(2) A person eligible for membership as a lay member shall not be currently licensed and practicing as:
(a) Physician;
(b) Dentist;
(c) Nurse;
(d) Optometrist;
(e) Engineer; or
(f) Veterinarian.

(3) A lay member may be a retired:
(a) Physician;
(b) Dentist;
(c) Nurse;
(d) Optometrist;
(e) Engineer; or
(f) Veterinarian.

(4) The board shall elect a chairman from its membership.

(5) The chairman shall be elected each year. A chairman may serve more than (1) consecutive term.

(6) Officers shall be elected or appointed members of the board with the exception of the board secretary.

(7) The agency director may serve as secretary to the board. An agency director or a district agency may serve as secretary to the district board and as secretary to the county or city-county board existing within the district; or the agency director may designate an employee to serve as secretary of a city-county or county board.

(8) An employee of an agency shall not serve as a member of theboard.

(9) A person shall not serve on a [governing city-county, county or a-district] board and receive in excess of $2,000 per year in contract payments, unless approved in writing by the cabinet.

Section 5. Meetings of the Board. (1) A quorum shall be present in order to conduct business.

(2) A vacant position shall be counted when determining the number to be present for a quorum to exist.

(3) A majority of the quorum is required to approve actions of the board.

(4) A telephone poll vote shall not be permitted on any issue considered by the board.

(5) A member of a board shall not be represented by a proxy at a board meeting with the exception of a county judge executive, mayor or a city manager of a second class city.

(6) Meetings of a board and its committees shall comply with the Kentucky Open Meetings Law, KRS 61.805 to 61.850.

(7) Meetings of a board shall be held at specific times and places convenient to the public.

(8) The board shall provide a schedule of regular meetings, which shall be made available to the public and published in a local newspaper of general circulation.

(9) Board meetings shall be held in locations accessible to individuals with disabilities.

(10) A qualified interpreter for the deaf and hard of hearing shall be made available upon request to the board chairman or agency director at least ninety-six (96) hours prior to the scheduled meeting.

(11) A board may establish an executive committee for the execution of specific tasks.

(12) An executive committee shall be subordinate to the board.

(13) Matters delegated to an executive committee by the board shall be specifically set forth in the minutes.

(14) An executive committee shall report its actions at the next regular meeting of the board.

(15) Actions of an executive committee shall be confirmed by the board and reflected in the board minutes.

Section 6. Minutes of Board Meetings. (1) Actions of the board shall be made a part of the minutes.

(2) Minutes shall be signed by the secretary and chairman of the board.

(3) Minutes shall include the following information:
(a) Name of the board;
(b) Date, time, and location of the board meeting;
(c) Listing of board members present and absent;
(d) Acknowledgment of a quorum;
(e) Review and approval or correction of the minutes of the last meeting;
(f) Presentation of old business;
(g) Presentation of new business;
(h) Statement of each motion made, identification of member moving and seconding motion, and tabulation of the vote by the members voting either for or against each motion;
(i) Scheduled date of next meeting; and
(j) Motion to adjourn.

(4) Board minutes shall be available in an alternative format within a reasonable period of time when requested by a member of the public who is in need of these accommodations.

(5) A permanent copy of the official minutes shall be maintained and kept on file by the agency.

(6) A signed copy of the minutes of the board shall be submitted to the cabinet within two (2) weeks after the date of the meeting.

Section 7. Conflicts of interest. (1) A member of a board shall comply with the KRS 45A.340, Conflicts of Interest of public officers and employees.

(2) A board member or a member of the board's family shall not be considered for a contract, lease or bid for services, in excess of $2,000, unless the services are in the best public interest and have the prior approval in writing of the cabinet.

(3) In the event a board member or a member of the board's family is considered for approval for a contract, lease or bid for the services to the agency, the board member shall:
(a) Leave the board meeting prior to discussion of the contract, lease or bid; and
(b) Not be allowed to vote on the contract, lease or bid.

(4) The board minutes shall reflect the board member was absent from the discussion because of a conflict of interest and was not permitted a vote.

Section 8. Training for Board Members. (1) A new member appointed to the board shall receive training from the agency director or other appropriate agency representatives.

(2) The training shall include discussion or written materials on the following topics:
(a) Statutory responsibilities and functions of the cabinet, agency, and the board;
(b) Board laws, regulations, and local ordinances;
(c) Board members' responsibilities and functions;
(d) Agency services sites and the services provided at these sites;
(e) Agency staff by discipline;
(f) Review of agency medical and environmental services, budget and annual report;
(g) Board minutes for the last calendar year; and
(h) Tour of the agency's main facility or, if feasible, a tour of satellite or remote sites.

Section 9. Board Regulations. (1) Internal board regulations and
ordinances shall be indexed and placed in an agency's local board of health policy manual.

(2) New policies shall be placed in the manual no later than thirty (30) days after approval by the board and the cabinet, if applicable.

Section 10. Legal Advice. A board, created pursuant to KRS 212.020, 212.040, and 212.856, may employ counsel as needed to act as legal advisor for the board.

NICHOLAS Z. KAFOGILS, M.D., Chairman
RICE C. LEACH, M.D., Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: October 4, 2001
FILED WITH LRC: October 5, 2001 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Betty H. Olinger

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes minimum administrative and operational requirements for city-county, county, and district boards of health.
(b) The necessity of this administrative regulation: This administrative regulation is needed to establish minimum administrative and operational requirements for city-county, county and district boards of health.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 211.111(1), 211.09, 211.07, 212.20, and 212.23 mandate that the Cabinet for Health Services establishes policies and standards of operation for the local health departments of Kentucky and their governing boards. This administrative regulation conforms to the content of authorizing statutes by establishing policies and standards of operations for the local health departments of Kentucky and their governing boards.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: N/A
(a) How the amendment will change this existing administrative regulation:
(C) 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: This administrative regulation will affect 118 county boards of health and 15 district boards of health.
(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 be impacted by the implementation of this administrative regulation insofar as they will better understand the requirements for boards of health membership, functions and responsibilities.
(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: Any costs incurred by a local health department would come from local health department funds (direct state or federal funds, Department for Public Health allocations, legislative appropriations, fees for service, local health tax, etc.).
(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 of fees or funding will be required.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No increase of fees or funding will be required.
(9) TIERING: Is tiering applied? Yes, tiering was applied. This regulation applies to all boards of health with the exception of Lexington-Fayette and Louisville-Jefferson County Boards of Health and the Northern Kentucky Independent District Board of Health. The exception boards of health have specific enabling legislation, which allows them to establish their own policies and procedures.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Local Health Department Operations (Amended After Hearing)

902 KAR 8:160. Local health department operations requirements.

RELATES TO: 211.180, 212.230, 212.240, 212.245, 212.890
STATUTORY AUTHORITY: KRS 194A.050, 211.170, 211.180

MISCELLANEOUS: FUNCTION. AND CONFORMANCE: KRS 211.170 mandates that the Cabinet for Health Services establish policies and standards of operation for the local health departments of Kentucky. This administrative regulation establishes compliance with minimum administrative and operational requirements for Kentucky's local public health departments.

Section 1. Definitions. (1) "Agency" means a local health department established pursuant to the provisions of KRS Chapter 212.
(2) "Agency director" means the administrative officer of the agency.
(3) "Board" means the statutorily mandated governing body for local health departments in Kentucky.

Section 2. Policies and Procedures. Internal policies and procedures for operations established by agencies must be in compliance with KRS 211.170(1), (2), (3), (4), and (6).

Section 3. Conflict of Interests. (1) An agency employee shall avoid situations that are or appear to be a conflict of interest.
(2) An agency employee shall not:
(a) Sell, recommend or promote a specific brand of product or equipment which is subject to inspection or evaluation by an agency and its employees;
(b) Recommend or express to the public preference for health-related professional services or products of an individual or firm;
(c) Be engaged in a business or have financial interests which affect the employee's professional relationship with the agency or cabinet or impair the effectiveness of the employee;
(d) Enter into a contract with or hold an additional full-time or part-time position in another agency unless approved by the cabinet in writing;
(e) Be an owner or part owner of a business that contracts or is regulated by the agency unless approved by the cabinet; or
(f) Accept appointment or be employed as a dog warden.
(3) An agency employee shall not conduct the following services for himself, his spouse, parent, child, brother or sister or the spouse of either of them, grandparent, grandchild, mother or father-in-law, daughter or son-in-law:
(a) Determine eligibility for any agency service;
(b) Issue women, infants, and children food instruments or prescription food packages;
(c) Conduct an inspection or monitor compliance with the agency's medical or environmental standards and administrative regulations.
(4) An employee or former employee shall not be permitted to receive severance pay whether cash, benefits, goods or services.

Section 4. Employee Tuition Assistance. (1) An agency director may approve payment of tuition for a regular full-time or designated part-time 100-hour employee to attend courses of study provided by a college or university, correspondence school, vocational school or other training institution.
(2) The approved coursework shall be related to the work of the agency and to the employee's current position or a position which the
employee can reasonably aspire to in the agency.
(3) The agency director may approve tuition assistance for a non-
related course if:
(a) The course is a requirement for a degree or certification pro-
gram; and
(b) The degree is determined to be necessary to the function and
purpose of the agency.
(4) Payment of tuition assistance shall come from the agency
budget.
(5) Restricted funds used for payment of tuition assistance shall
receive prior written approval from the funding authority.
(6) The board may approve tuition assistance requests for the
agency director.
(7) An employee approved to receive tuition assistance shall per-
mit the agency to recover [all-or-part-of] the tuition paid on his behalf if he:
(a) Fails to provide the agency, or board, evidence of satisfactory
completion of the training within thirty (30) working days after sched-
uled completion;
(b) Receives a grade of:
1. Less than a "C" in an undergraduate course;
2. Less than a "B" in a graduate course;
3. A "F" in a pass/fail course;
4. An "U" in a satisfactory/unsatisfactory course;
5. An "F" for incomplete;
6. Withdraws prior to completion; or
7. Fails to complete the training regardless of cause without prior
approval by the agency director or board.
(8) The employee must maintain paid full time or 100+ work
status for the agency while taking courses.
(9) An employee shall continue employment with the agency for a
period of at least one (1) month employment for each semester hour or
equivalent of tuition paid by the agency, unless directed by the
agency to undertake the course work.
(10) The employee may be allowed to use accumulated annual
leave or compensatory time as necessary to attend classes.
(11) The maximum allowable course hours an employee may take
in a semester are:
(a) Six (6) graduate hours;
(b) Nine (9) undergraduate hours;
(c) Nine (9) classroom hours per week for vocational school train-
ing;
or
(d) Three (3) hours for a summer session, intersession, or
minisemester.
(12) Tuition assistance shall be granted for:
(a) Tuition and routine registration fees;
(b) Laboratory and examination fees; and
(c) Required textbooks.
(13) Payment shall not be granted for:
(a) Late registration fees;
(b) Graduation fees;
(c) Parking or transportation;
(d) Records or transcripts;
(e) Supplies;
(f) Assessments; or
(g) Courses taken prior to approval by the agency.
(14) Tuition and fees shall be paid directly to the college or training
institution or reimbursed to the employee.
(15) An agency shall maintain records to ensure the proper ad-
ministration of the employee tuition assistance program.
(16) Records shall be subject to audit.

Section 5. Educational Leave Program. (1) The agency director
may approve educational leave for a regular full-time or designated
part-time 100-hour employee.
(2) Educational leave may be approved on a full-time or part-time
basis with or without pay for periods not to exceed two (2) years (fifty-
two (52) continuous pay periods).
(3) Educational leave shall be for the purpose of coursework or
training related to the current and/or future duties and responsibili-
ties of the employee.
(4) Payment for educational leave shall come from the agency
budget.
(5) Restricted funds used for payment of educational leave shall
receive prior written approval from the funding authority.
(6) Educational leave payment shall not be granted for:
(a) Late registration fees;
(b) Graduation fees;
(c) Parking or transportation;
(d) Records or transcripts;
(e) Supplies;
(f) Assessments; or
(g) Courses taken prior to approval by the agency.
(7) To participate in educational leave with pay, the employee
shall:
(a) Be a regular full-time or designated part-time 100 hours em-
ployee;
(b) Enroll in an area of study with a clear and direct relationship to
the work of the agency;
(c) Be formally accepted by the educational institution; and
(d) Be approved for educational leave by the agency.
(8) An agency approving an employee for educational leave with
pay shall:
(a) Place the employee on full- or part-time educational leave at
the employee's regular rate of pay; and
(b) Restore the employee to the position he formerly held, to a
position of like status and pay, or promote the employee to a higher
position upon the employee's successful completion of educational
leave;
or
(c) Cancel the employee's educational leave and restore the em-
ployee to the same or like position if the academic standing of the
employee falls below the requirement of Section 4(7) of this admin-
istrative regulation.
(9) An employee on full-time leave with pay shall be a full-time
student as defined by the institution in which the employee is enrolled.
(10) After satisfactorily completing the educational leave the em-
ployee shall:
(a) Continue employment with the agency;
(b) At least [10] one (1) day for each full day of leave used if tuition
and other fees are paid by the agency; or
2. At least [1] one and one-half (1 1/2) days for each full day of leave
used if tuition and other fees are paid by the agency; or
(b) Repay the agency at the rate of 100 percent of his daily pay or
an average of his daily pay during leave, multiplied by the number of
obligated days remaining if he terminates employment with the
agency; and
(c) Forfeit all leave rights if he accepts public or institutional finan-
cial assistance other than that provided by the agency unless prior
approval to receive this funding has been granted by the agency.
(11) An agency directing an employee to be placed on full-time or
part-time educational leave shall:
(a) Pay the following:
1. The employee's regular rate of pay;
2. Tuition and routine registration fees;
3. Required textbooks and course supplies;
4. Laboratory and examination fees;
5. Dormitory or housing costs; and
6. Transportation costs to and from the school once per semester;
(b) Restore the employee to the position he formerly held, to a
position of like status and pay, or promote the employee to a higher
position, if qualified, following completion of educational leave; and
(c) Cancel the employee's educational leave and restore the em-
ployee to the same or like position if the academic standing of the
employee falls below the requirement of Section 4(7) of this admin-
istrative regulation.
(12) An employee approved for educational leave without pay
shall not incur any service obligation to the agency.
(13) An agency shall maintain an educational leave file on each
employee requesting or receiving educational leave.

Section 6. Employment of Relatives. (1) Except as provided in
subsections (3) and (4) of this section, an agency shall not employ an
individual that is immediately related to the agency director or to an
immediate supervisor.
(2) An individual immediately related to the agency director or
immediate supervisor shall include:
(a) Spouse;
(b) Parent;
(c) Child;
(d) Brother or sister or the spouse of either of them;
(e) Grandparent;
(f) Grandchild;
(g) Mother- or father-in-law; or
(h) Daughter- or son-in-law.

(3) If a current employee is in a supervisory relationship with an immediate relative, the employee shall be transferred to another site within the agency with the same job duties, or assigned a different supervisor.

(4) The cabinet may approve the employment of an immediate relative in cases determined to be in the public interest and approved by the board.

Section 7. Agency Facility Ownership. (1) An agency shall not pay rent to the fiscal court if the facility is owned by the fiscal court and was constructed with state funds, agency funds, or local public health tax appropriations.

(2) The agency shall be permitted to remain in the facility owned by the fiscal court rent-free for a minimum of twenty (20) years or for the useful life of the facility whichever is longer.

Section 8. Capital Construction Requirements. (1) An agency requesting state capital construction funds from the cabinet for new construction, building expansion or renovation shall:

(a) Submit one (1) copy of the plans and specifications for the project to the cabinet for review and approval;

(b) Submit one (1) copy of the plans and specifications, if appropriate, to the Department of Housing, Buildings, and Construction to assure compliance with building and safety codes;

(c) Provide written assurance to the cabinet that the facility will be constructed in accordance with approved plans and specifications;

(d) Provide written assurance to the cabinet that any cost overrun or financial commitment above the state grant will be paid by the agency;

(e) Submit architectural and contractor agreements or contracts to the cabinet for review prior to implementation;

(f) Provide written assurance to the cabinet that the agency will be allowed to use the facility for a minimum of twenty (20) years rent free or for the useful life of the facility whichever is longer;

(g) Provide written documentation to the cabinet that the board has approved the awarding of the architectural and contractor agreements;

(h) Provide quarterly progress reports to the cabinet on the status of the project;

(i) Submit a closing report upon completion or close-out of the project; and

(j) Maintain a comprehensive construction file for the useful life of the building which includes:

1. Documents and correspondence relative to the project;
2. Written contracts or agreements;
3. Progress reports, and financial transactions.

(2) An agency's facilities, whether owned or leased by the agency, shall comply with applicable state and local building, fire and safety codes and ordinances.

(3) Prior to construction or modification of an x-ray room, the plans and specifications for the construction or modification shall be evaluated by a qualified expert. The Radiation Health and Toxic Agents Branch of the department shall be contacted regarding compliance requirements.

(4) The cabinet shall not provide more than fifty (50) percent of the total amount of funds necessary for the agency's construction project.

Section 9. Agency Insurance Requirements. (1) An agency shall maintain current replacement value insurance on any building owned by the agency or board and on the contents of both owned and leased facilities.

(2) An agency shall maintain:

(a) Public officials' liability insurance for board members;

(b) General liability insurance for agency staff; and

(c) Fiduciary bonding on staff and board members who handle public funds.

(3) Contracted providers shall be required to attest to current liability coverage under the terms of their contract with the agency.

(4) Contractors of capital construction projects shall be required to post bid and performance bonds and shall carry appropriate liability insurance at such levels approved by board to cover their contracted responsibilities.

Section 10. Quality Assurance. (1) An agency shall establish a process approved by the cabinet to assure the quality of services provided.

(2) The quality assurance process shall include:

(a) An assessment of public health services provided by the agency;

(b) A review of medical records;

(c) Community satisfaction surveys which address the community, patient and provider perspectives; and

(d) A review of administrative data and outcomes based on a cabinet approved community plan.

(3) The findings, interventions implemented, and recommendations to assure continued improvement shall be provided to the board and cabinet.

Section 11. Days and Hours of Operation. (1) An agency shall post the hours of operation near the main entrance to the agency and this posting shall be plainly visible from the outside.

(2) Except in emergency situations, an agency shall be required to publicize in advance if the agency is to be closed during regular working hours. The notice shall:

(a) Be prominently displayed at the main entrance to the agency;
(b) Indicate where and how staff may be reached; and
(c) Indicate when offices are expected to reopen.

Section 12. Grievance Policies. (1) An agency shall establish an internal grievance procedure to assure the timely and equitable resolution of complaints alleging discrimination, unfair or inappropriate treatment of a member of the public or a patient.

(2) An agency grievance procedure shall:

(a) Protect the rights of the complainant;

(b) Meet due process requirements;

(c) Assure compliance with applicable federal laws and regulations governing equal opportunity;

(d) Designate an employee to coordinate the grievance process; and

(e) Provide for methods of accepting written, verbal, or anonymous complaints.

(3) A complaint shall be filed within sixty (60) days of the alleged incident to be considered for investigation.

(4) An agency shall conduct an investigation of the complaint to afford interested or affected parties an opportunity to submit evidence or testimony relevant to the complaint.

(5) A written description of the investigation and a description of the resolution shall be issued and a copy forwarded to the complainant and the agency director no later than forty-five (45) calendar days after receipt of the complaint.

(6) The agency shall maintain files and records relating to complaints filed.

(7) The complainant may request reconsideration within thirty (30) calendar days to the agency director or the board if he is dissatisfied with the resolution.

(8) The complaint shall continue through the agency's grievance process even though the complainant is pursuing other state or federal agency remedies, unless otherwise advised by legal counsel.

NICHOLAS Z. KAFQOLIS, M.D., Chairman
RICE C. LEACH, M.D., Commissioner
MARCA R. MORGAN, Secretary
APPROVED BY AGENCY: October 4, 2001
FILED WITH LRC: October 5, 2001 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Betty H. Olinger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes compliance with minimum administrative and operational requirements for local health departments.
(b) The necessity of this administrative regulation: This administrative regulation is needed to establish compliance with minimum administrative and operational requirements for local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing compliance with administrative and operational requirements for local health departments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing policies governing local health departments.

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

(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: This administrative regulation will affect 120 county boards of health and 16 district boards of health.

(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 be impacted by the implementation of this administrative regulation insofar as they better understand administrative and operational requirements for local health departments.

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

(a) Initially: None

(b) On a continuing basis: None

(3) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Any costs incurred by a local health department would come from local health department funds (direct state or federal funds, Department of Public Health allocations, legislative appropriations, fees for service, local health tax, etc.).

(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 of fees or funding will be required.

(8) State whether or not this administrative regulation establishes any fees directly or indirectly increases any fees: No increase of fees or funding will be required.

(9) TIERING: Is tiering applied? No. Tiering is not applied because the administrative regulation applies to individual or entities regulated by it.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Resource Management
(Amended After Hearing)

902 KAR 8:165. Local health department accounting/auditing requirements.

RELATES TO: 211.180, 212.230, 212.240, 212.245, 212.890
STATUTORY AUTHORITY: KRS 194A.050, 211.170, 211.180
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.170 mandates that the Department for Public Health establish policies and standards of operation for Kentucky's local public health departments. This administrative regulation establishes minimum accounting and auditing requirements for Kentucky's local public health departments.

Section 1. Accounting and Auditing Requirements. (1) All recording by health departments in the books of account and all financial reporting shall be performed in accordance with this regulation, cash or modified accrual accounting procedures as approved by the Department for Public Health, the Office of Management and Budget (OMB) Circular A-87, (as revised) incorporated by reference, and Generally Accepted Accounting Principles (GAAP). When GAAP conflicts with these policies, local health departments shall follow these policies.

(2) The Department for Public Health requires that each local health department be audited by a certified public accountant after the close of every fiscal year. The nature of audit services required is as follows:

(a) The objectives of the audit is to assure that receipts and [are] to determine whether any unauthorized, irregular, or illegal handling or expenditure of revenue or other improper practice of financial administration has occurred and to assure that all expenditures have been properly authorized, recorded, and reported;

(b) The following items shall be audited:

1. Federal, state, fees, and local funds received and expended; and

2. Books, accounts, and other financial documentation by cost center.

(c) An OMB Circular A-133 (as revised) audit shall be performed to determine whether the financial statements present fairly the financial position and results of operations in accordance with the appropriate standards of accounting and in compliance with federal and state laws and administrative regulations.

(d) The audits shall be conducted in accordance with generally accepted auditing standards, "Government Auditing Standards (as revised)" and the provisions of OMB Circular A-133 (as revised); and to A-133 Compliance Supplement (as revised).

(e) The following reports shall be provided to the local health departments and the Department for Public Health:

1. Auditor's opinion on the financial statements and on the schedule of expenditures of federal awards;

2. Statement of assets, liabilities, and fund balance;

3. Statement of revenues and expenditures by cost center;

4. Statement of changes in fund balance;

5. Comparative schedule of budgeted to actual operating revenues and expenditures by cost center;

6. Audit adjustments. If there are no audit adjustments, a statement to this effect must be included in the audit report;

7. Schedule of expenditures of federal awards, as required by OMB Circular A-133 (as revised);

8. Report on compliance and internal control over financial reporting based on an audit of financial statements performed in accordance with "Government Auditing Standards (as revised)";

9. Audit report on compliance with requirements applicable to each major program and internal control over compliance in accordance with OMB Circular A-133 (as revised);

10. Schedule(s) of findings and questioned costs, in accordance with OMB Circular A-133 (as revised), including the status of uncorrected findings from prior audits;

11. A summary of the auditor's results, in accordance with OMB Circular A-133 (as revised);

12. Management's corrective action plan; and

13. Management letter. Any internal control and compliance deficiencies that are not reportable conditions must be described in a written management letter, which must be referenced in the auditor's report(s) on internal control and compliance. This management letter must be submitted to the local health department with the other reports noted in this section.

(f) The reports described in paragraph (e) of this subsection shall be presented as prescribed by the American Institute of Certified Public Accountants Statement of Position 98-3, Audits of States, Local Governments, and Not-for-Profit Organizations Receiving Federal Awards, and subsequent amendments, except that a written management letter is required when internal control and compliance deficiencies are determined not to be reportable conditions. The management letter must be submitted with the other required reports.

(3) The reports shall contain all reportable conditions, with those reportable conditions which are considered material weaknesses being appropriately segregated and identified. Any other matters conveyed to management shall be in writing in the management letter, and shall be discussed during the exit conference. Reportable conditions presented as part of the reports shall be well developed and shall consist of the following components to the extent practicable:
(a) A statement of condition;
(b) The criteria for the reportable condition;
(c) The cause of the condition;
(d) The effect of the condition;
(e) A recommendation for correction; and
(f) Management's response and corrective action plan.
(4) If applicable, the audit firm shall report on any uncorrected comments reported in the preceding audit. Also, if applicable, the audit firm shall report on the status of prior-year questioned costs, whether resolved with the federal grantor or unresolved. The questioned costs to be reported on shall include all questioned costs from the preceding audit plus any unresolved questioned costs from prior years.
(5) The audit firm shall immediately report, in writing, any fraud, irregularity, or illegal act or indication thereof that comes to its attention during the term of the contract. The report shall be made to the Commissioner of the Department for Public Health.
(6) Procurement of audit services shall be in accordance with the annual instructions issued by the Department for Public Health.

Section 2. Internal Control Procedures. (1) A local health department shall have written internal control procedures that shall be followed by the local health department. The chief executive officer, senior local health department management official, or other staff shall immediately notify the Department for Public Health if evidence of possible fraud or mismanagement is discovered.
(2) A local health department shall use an automated financial accounting system approved by the Department for Public Health.
(3) Local health departments shall submit all financial reports to the Department for Public Health in accordance with the accounting instructions and time frames distributed to all local health departments.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) OMB Circular A-87 - Cost Principles for State, Local and Indian Tribes Government.
(b) OMB Circular A-133 - Audits of States, Local Governments and Nonprofit Organizations.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Resource Management, Financial Management Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

NICHOLAS Z. KAFOGLOU, M.D., Chairman
RICE C. LEACH, M.D., Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: October 4, 2001
FILED WITH LRC: October 5, 2001 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Clyde Bolton
(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes minimum accounting and auditing requirements for Kentucky's local health departments.
(b) The necessity of this administrative regulation: The Department for Public Health must promulgate this administrative regulation to meet its statutory requirement to supervise the financial functions of local health departments.
(c) How this administrative regulation conforms to the content of the authorizing statutes: To our knowledge and belief, the regulation conforms to all applicable provisions of the authorizing statutes.
(d) How this administrative regulation currently assists or will assist in the effective administration of these statutes: The current regulations are contained in the Financial Management Manual for Local Health Departments which contains both policies and instructions and is incorporated by reference in 902 KAR 8:020. The new regulation contains only policy pronouncements and will be easier to understand and amend when necessary.
(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 these statutes:
(2) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 55 separate local health departments in Kentucky serving all 120 counties. All local health departments are 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: Due to federal grant requirements and directives from the Department of Public Health, local health departments are required to comply with the provisions of this regulation. There should not be an impact on the local health departments.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: None.

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 whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation would affect only a part or division of the local government.
3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to local health departments only. Establishes audits and accounting procedures for fiscal management of local health departments.
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: $0

- 1161 -
DEPARTMENT FOR PUBLIC HEALTH  
Department for Public Health  
Division of Resource Management  
(Amended After Hearing)

902 KAR 8:170. Local health department financial management requirements.

RELATES TO: 211.180, 212.230, 212.240, 212.245, 212.890  
STATUTORY AUTHORITY: KRS 194A.050, 211.170, 211.190  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.170 mandates the Department for Public Health establish policies and standards of operation for Kentucky's local public health departments. This administrative regulation establishes minimum fiscal and financial management requirements for Kentucky's county and district public health departments and for all other classes of local health departments except when a specific Kentucky revised statute requires a more stringent minimum requirement.

Section 1. Definitions. As used in these administrative regulations, these terms have the definitions set forth below:

(1) "Undesignated fund balance" means the portion of a local health department's total fund balance that is not restricted by the Department for Public Health for a specific program's expenses or other items of expense.

(2) "Restricted fund balance" means the portion of a local health department's total fund balance that is restricted by the Department for Public Health for a specific program's expenses or other items of expense.

(3) "Local support" means local health department support which includes all unrestricted receipts from local government agencies and special districts, receipts from the public health taxing districts, nontax receipts from contracts with boards of education and unrestricted donations from other sources. Funds from the undesignated and restricted fund balances are specifically excluded.

(4) "Chief administrative officer" means the administrative officer is the health officer of a county or district health department, the administrative assistant of a county health department that does not have a health officer, the director of a district health department that does not have a health officer, the district director of health of an independent district department of health, the commissioner of an urban-county department of health or of a health department of a county with a city of the first class.

Section 2. Budgeting Requirements. (1) Local health departments shall prepare a fiscal year budget in accordance with annual budgeting instructions developed and distributed by the Department for Public Health.

(2) Local health departments shall have a balanced budget in which receipts at least equal expenditures and local health departments shall operate within their approved budgets.

(3) Local health department annual budgets shall be approved by both the governing local board of health and the Department for Public Health.

(4) Local health departments shall be responsible for making any budget changes necessary because of changes in financial status, changes in project status or the addition or deletion of new projects. These changes shall be subject to review and approval by the Department for Public Health. Budget changes shall also require a corresponding change in plans when required by the Department for Public Health.

(5) Actual capital expenditures of local health departments for furniture and equipment, data processing equipment and vehicles shall not exceed the approved budgeted amount without prior notification and approval by the Department for Public Health.

(6) Actual use of a local health department's undesignated fund balance in excess of the amount included in the approved budget shall be approved by the governing board of health and the Department for Public Health and shall be used solely for the operation and maintenance of the local health department.

(7) An actual deficit in a local health department's financial operations for the fiscal year wherein cash expenditures and payroll related liabilities exceed available cash receipts (including approved use of the unrestricted fund balance) shall not be allowable. [Local health departments with an end-of-fiscal-year deficit are out of compliance with the standards of the Department for Public Health.]

(8) If the Department for Public Health determines that a local health department is receiving fewer receipts than are budgeted or is making expenditures in excess of the approved budget or, if through any other circumstances a deficit condition is probable at the end of the fiscal year, the Department for Public Health shall notify the local health department in writing of the determination. Within fifteen (15) working days of receipt of the notification, the local health department shall inform the Department for Public Health in writing of the reasons that the determination may be in error. If the reasons and corrective actions listed by the local health department are not sufficient in the department's opinion to prevent a deficit from occurring at the end of the fiscal year, the Department for Public Health shall direct the local health department to institute a hiring freeze on employees, a freeze on merit increases, promotional or other salary increments, or a reduction in contractual and other expenditure categories, or other actions deemed necessary to correct the deficit situation. Such directives shall be followed by the local health department.

Section 3. Use of Receipts. (1) Receipts from any source shall be used in accordance with laws, policies, regulations, and contracts governing the use of the receipts. Receipts shall be used only for the operation and maintenance of the health department for necessary, reasonable, and proper purposes that protect and improve the health of the people of the Commonwealth.

(2) The minimum acceptable level of local support shall be determined annually by the Commissioner of the Department for Public Health.

(3) The state allotment to a local health department shall be subject to adjustment [decreased] if a local health department:

(a) Increases its budgeted amount of local support below the minimum acceptable level. The state allotment shall be decreased by the percentage in the year of the decrease;

(b) Receives less local financial support than the required level. The state allotment shall be decreased by a percentage amount equal to the percentage that the actual local support was less than the required local support. This decrease shall apply to the fiscal year following the shortage; or

(c) Accumulates an unrestricted fund balance, as of June 30 of a fiscal year, in excess of twenty (20) percent [16.67 percent; two-(2) months' funding] of that year's expenditures for fee for service programs (programs in which service fees, excluding program administrative contract fees, are greater than fifty (50) percent of funding) or $80,000 whichever is greater. The local health department shall prepare a written plan of use for the amount of the excess. The plan will be submitted to the Department for Public Health for approval. Approved funds shall be placed into a state-restricted fund to be used solely for the purpose(s) approved. Redundant allotment shall be decreased by the amount of the excess. This decrease shall apply to the subsequent fiscal year(s) following accumulation of the excess balance. A one (1) time transfer of the funds in excess of the unrestricted fund balance limit as of June 30,2002 from the local health departments to the public health taxing districts shall be allowed prior to September 30, 2002. In a district-health department, the funds shall be transferred to the member counties' taxing districts in proportion to each county's required minimum local support.

(4) Requests for local health departments to charge patient fees shall be sent to the Department for Public Health for approval. Requests to charge fees shall conform to the following requirements:

(a) Requests may include documentation of the proposed full amount of the fee, the estimated annual cost of the service and the estimated net fee income for the service. Charges for medical supplies and equipment may be requested as a percentage of the acquisition cost of the supply or equipment item or may be requested as charges for individual items;

(b) Patient fees which are charged to self-pay patients with a household income up to 250 percent of the most recent poverty guidelines published annually by the Department of Health and Family Services shall be based on a schedule of discounts from 101 percent - 250 percent of poverty, with full charge assessed for individuals above 250 percent of poverty and a zero charge for individuals below 101 percent.
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percent of poverty. Except that nominal fees up to five (5) dollars shall be charged for communicable disease services specified by the Department for Public Health; and except that no discount may be allowed for services as authorized by the Department for Public Health; and except that no charges may be made to school age children at a school-based clinic when requested by the local health department and as authorized by the Department for Public Health.

1. Inability to pay the assessed fee shall not be a barrier to services.

2. [Refusal to pay shall place the patient in a low priority for services, and may constitute a reason to refer to other agencies of service.]

Any policy of a local health department that will result in referral of services due to nonpayment of fees must be approved by the Department for Public Health.

3. Local health departments shall bill third party payors for covered services provided to individuals.

(c) If third-party governmental payors are billed for services rendered to eligible patients, the regulations of the third-party payor shall be followed for any part of the fee that is charged directly to the patient.

(d) Medicaid "spend down" patients shall be billed at 100 percent of charges.

(e) A patient who has health insurance coverage shall be billed at 100 percent of charges. A balance not covered [paid] by health insurance shall be charged to the patient except that the amount charged shall not exceed the amount that is a reasonable cost of services if health insurance coverage would be charged using standard discounts as applied to total charges for services rendered; and

(f) Fees regardless of the source of the fee or the funding of the project shall be applied to the project that generates the fee in accordance with income procedures of the Federal Office of Management and Budget (OMB) Circular A-102 (as revised). Third-party cost reimbursement payments and interim payments shall be recorded in the same project where the costs were recorded in proportion to the expenditures of each project that were reimbursed by the third party.

(5) A matching requirement for any source of receipts shall be the sole responsibility of each local health department.

(a) A copy of proposed grants, program administration contracts or other requests for project restricted funding applied for by each local health department from agencies other than the Department for Public Health shall be sent to the Department for Public Health when submitted to the grantor agency.

(b) The Department for Public Health reserves the right to determine the correct receipt account for the recording of funds in all cases.

(6) The following policies shall be consistently applied in closing receipt accounts for the local health department fiscal year (July 1 to June 30):

(a) Receipts earned and received during a fiscal year by June 30 shall be recorded as a receipt of that fiscal year; and

(b) Receipts earned in one (1) fiscal year and received after June 30 shall be recorded as new year receipts; and

(c) The Department for Public Health may provide additional instructions as necessary on an annual basis.

Section 4. Expenditure Policies. Policies and procedures required by the OMB Circular A-87 (as revised) shall be followed by local health departments for expenditures in projects regardless of the source of funds for the project. The following policies concerning allowable expenditures and their proper documentation shall be followed by local health departments:

(1) Only those salaries and wages for positions specified under the merit system administrative regulations for local health departments (902 KAR 8:040 and 902 KAR 8:050 through 902 KAR 8:140) are allowable unless specifically approved by the Department for Public Health. In addition, these positions and related expenditures shall be included in the approved budget or approved budget revisions of the local health department. Other salary, wage, or bonus payments shall not be allowable, unless specifically approved by the Department for Public Health. Uniform pay dates shall be determined annually by the Department for Public Health.

(2) Expenditures shall also be authorized for payment of employer paid fringe benefits required or allowed by policies of the Department for Public Health:

(a) Required benefits are payments of the single coverage amount for health insurance and life insurance that are part of the state-negotiated plans.

(b) Allowed benefits shall be the single-coverage amount for a dental insurance plan selected by the local health department and a flexible spending account program with similar provisions as the plans available to state employees.

(c) Part-time less than 100 hours per month employees and personal services contract employees shall not be eligible for any employer paid fringe benefits.

(d) Other payments to or on behalf of any employee for any other direct or deferred non-employment benefit or for any other reason shall not be made unless specifically allowed by this administrative regulation or approved by the Department for Public Health.

(3) Disbursements for services of contract employees or independent contractors shall be made in accordance with the terms of the written contract. Contract payments shall not be made without proper written documentation that services have been rendered;

(4) Capital expenditures are allowable for necessary capital equipment, land and buildings:

(a) The equipment in this category shall cost more than $5,000 and have an expected useful life of one (1) year or more;

(b) The same purchasing policies apply to capital items as apply to noncapital purchases;

(c) Before purchasing land or buildings or contracting for the construction or remodeling of a building, the local health department shall contact the Department for Public Health for specific instructions on the requirements that apply to land and building purchases and construction;

(5) Proposed leases for land or buildings shall be submitted to the Department for Public Health for review before they are entered into by the local health department;

(a) Local health departments shall not enter into a lease until the review process has been completed by the Department for Public Health and written notice of the completion of the review is received by the local health department;

(b) Leases shall not exceed a one (1) year period and shall end on June 30. Leases shall not automatically renew, but may contain a renewal clause requiring written notification for periods not to exceed one (1) year;

(c) Vendor payments shall be made by local health departments within thirty (30) working days of the receipt of the service or goods, or within thirty (30) working days of the receipt of the invoice or bill from the vendor, whichever is later, unless the health department and the vendor have agreed in writing to a longer period of time; and

(d) Local health departments shall not make donations of any thing of value to any individual or entity.

Section 5. Travel Policies. (1) Disbursements for employee travel shall be made in accordance with the following reimbursement policies:

(a) The local health department's chief executive officer shall be responsible for insuring that travel expenses are economical; and

(b) Persons who travel on official local health department business shall state on the expense voucher the purpose of each trip (except viscosity mileage) and shall maintain records to support claims.

1. Local health departments may provide employees with credit cards to cover their travel expenses.

2. Due care shall be taken to assure that use of local health department credit cards is not abused.

3. Local health departments shall not provide employees with cash to pay travel expenses; and the chief executive officer who is responsible for insuring that travel reimbursement conforms to this policy, may disallow, reduce or strike from expense vouchers any claims contrary to these regulations and may also require written justification for amounts claimed.

2. With the exceptions cited in this policy, reimbursement shall not be claimed for expenses of any person other than employees, or other persons in the official service of the local health department. Only necessary expenses of official travel shall be reimbursed.

(3) Interpretations of this policy shall be made by the Department for Public Health and these interpretations shall be final.

(4) Each day's viscosity travel shall be listed on separate lines on the expense voucher from other trips which shall also be listed separately. It is the supervisor's or chief executive officer's responsibility to
monitor vicinity mileage claimed by employees on travel status.

(5) Travel vouchers shall be signed and dated by the employee and submitted to the department or agency with whom the work was performed. The vouchers shall be signed by one (1) or more board of health members who have been designated at a board of health meeting to perform this function.

(6) The official work station of employees shall be the street address where the health department facility is located.

(a) In health departments with more than one (1) facility, the employee's official work station shall be the facility that he works at most often.

(b) The official work station of employees shall be established in the best interest of the health department and not for the employee's convenience.

(c) The designation of work station shall not be for the purpose of allowing mileage reimbursement for the employee.

(7) A standard travel expense voucher or another voucher approved by the Department for Public Health shall be used to claim reimbursement for travel expenses.

(a) Each travel expense voucher shall show the claimant's identifying number, name, address and official workstation. The travel voucher may be typed, prepared by computer, or legibly prepared in ink.

(b) Receipts shall be stapled to the travel voucher.

(c) If leave interrupts official travel, the travel voucher shall show the dates of leave.

(8) A travel expense shall not be reimbursed unless the travel was authorized in advance as follows:

(a) Travel in Kentucky and within the other forty-nine (49) states and the District of Columbia may be approved by the chief executive officer or designee.

(b) Budgeted out-of-state travel funds shall be available in the amounts required for the out-of-state travel; and

(c) Attendance by employees, board of health members, or other persons in the official service of the health department at the same out-of-state meeting shall be limited to two (2) persons, unless prior approval for additional attendees has been obtained from the Department for Public Health.

(9) Health department employees traveling on department business shall use the most economical, standard transportation available and the most direct and usually traveled routes. Expenses added by use of other transportation or routes shall be assumed by the employee.

(10) Health department-owned vehicles and gasoline credit cards shall be used for health department business travel when available and feasible.

(a) Mileage payment shall not be claimed by an individual when health department vehicles are used.

(b) Routine personal use of a health department vehicle, including commuting use, is not an allowable public expenditure.

(c) An assignment of a vehicle to an employee who takes the vehicle home shall be minimal and limited to direct service personnel providing:

1. On-call direct services, or a majority of services in the field.
2. Substantial direct services on the way to and from the employee's workstation.
3. In these circumstances, some personal commuting mileage may be unavoidable. Local health departments shall develop a written policy to address these situations. These policies shall conform to current federal and state tax requirements for income and travel and shall be forwarded to the Department for Public Health for review and approval.

(11) Mileage claims for use of privately-owned vehicles may be disallowed if a health department vehicle was available and feasible.

(12) An employee on official travel status whose private or agency automobile breaks down more than forty (40) miles from the employee's official workstation or home may continue in travel status for one (1) day if approval is obtained from the chief executive officer.

(13) Employees on official travel status may be granted annual leave during which time travel expenses shall not be reimbursed.

(a) An employee on official travel status may be continued on travel status for a period of seven (7) calendar days if he becomes incapacitated due to illness or injury that qualifies as official sick leave.

(b) Medical expenses shall not be allowable travel costs.

(14) On nonworking days, an employee on official travel status shall cease to be so considered if:

(a) The employee returns to his official work station or domicile; or

(b) The nonworking day is immediately preceded by or followed by a period of annual leave.

(15) Reimbursement shall not be paid for travel between the employee's residence and official workstation.

(16) For city travel, employees are encouraged to use buses and subways. Taxi fare may be allowed when more economical transportation is not feasible.

(17) Commercial airline travel shall be coach or tourist class and on United States airlines. Additional expense for first-class travel shall not be reimbursed.

(18) Mileage for each in-state trip shall be based on the Department of Transportation's official mileage map or on the Finance and Administration Cabinet's mileage chart if available. Out-of-state mileage shall be based on Rand McNally mileage maps. If point of origin is the claimant's residence, mileage shall be paid between his residence and travel destination or between his work station and travel destination, whichever is shorter.

(19) The cost of hiring cars or other special conveyances in lieu of ordinary transportation shall be allowed only with acceptable written justification to the chief executive officer. Privately-owned aircraft may be used only when it is to the advantage of the health department as evidenced by a reduction in both travel costs and travel time.

(20) Lodging costs shall be the most economical.

(a) Facilities providing special government rates or commercial rates shall be used where feasible.

(b) State-owned facilities shall be used for meeting rooms and lodging where available, practical, and economical.

(21) A claimant who attaches the hotel's or motel's preprinted, receipted bill shall be reimbursed for the claimant's actual cost of lodging, subject to the following provisions:

(a) Reimbursement that is in excess of the state's approved standard lodging rate per day plus taxes (except at a Kentucky state park) shall have individual written justification and prior approval from the chief executive officer. The written justification and approval shall be attached to the travel voucher;

(b) Reimbursement at any Kentucky state park shall be at the park's actual rate;

(c) The local health department shall not pay for lodging within forty (40) miles of claimant's residence or work station; and

(d) Lodging accommodations shared with another person or persons, not a local health department employee, shall be reimbursed at the rate for a single room. Lodging accommodations shared with other local health department employees shall be reimbursed on a pro rata basis.

(22) Mileage reimbursement for official use of privately-owned vehicles shall be at the mileage reimbursement rate determined annually by the Department for Public Health during the month of February. For out-of-state travel, mileage reimbursement for privately-owned vehicles shall not exceed airplane coach fare and ground transportation.

(23) With receipts, actual commercial transportation costs shall be reimbursed.

(24) Reimbursement for use of privately-owned aircraft shall not exceed the cost of air coach fare or the privately-owned vehicle rate whichever is less.

(25) Claimants using camping vehicles for lodging shall not be reimbursed more than ten (10) dollars per night, plus parking or camping charges. A receipt for parking or camping charges shall be submitted.

(26) Actual parking, bridge and toll charges are reimbursable. Toll receipts shall be required for in-state travel by two (2) axle vehicles.

(27) Reasonable expenses are allowed for baggage handling, for delivery to or from a common carrier or lodging, and for storage. Charges for overweight baggage may be allowed if the excess was for official business.

(28) Registration fees required for admittance to meetings shall be allowed. If the registration fee entitles registrants to one (1) or more meals, then subsistence for those meals (meal expense) shall not be claimed. A notation shall be made on the travel voucher that the reg-
istration fee included the cost of meals. Reimbursement for registration fees and other job-related training may be claimed as other expenses on the travel voucher and charged to the appropriate expenditure accounts. Receipts for these fees shall be attached to the travel voucher.

(29) Telephone, fax, and telegraph costs for necessary official business shall be allowed. Calls to agency central offices shall be made collect or telephone credit cards or similar telephone cards shall be used.

(30) Where justified, other necessary miscellaneous expenses associated with official travel may be allowed by the chief executive officer. Receipts shall be attached to the travel voucher.

(31) Receipts shall be required for travel expenses over ten (10) [two (2)] dollars except for subsistence expense items.

(32) Subsistence shall include amounts determined to have been spent for meals, taxes, and tips. To be eligible for subsistence for breakfast or lunch while traveling in Kentucky, a claimant's authorized work shall require overnight accommodations at a destination more than forty (40) miles from both work station and home and shall also require travel from the work station and home during mealtime. (The claimant shall attach to his travel voucher, either his lodging receipts or other credible documentation sufficient for audit.)

(33) Health department employees assigned to attend a function of an organization not under their control may be reimbursed for actual meals charged or arranged for by the organization. Receipts for meals shall be attached to the travel voucher. When a health department may pay for subsistence and related expenses at staff meetings not to exceed four (4) meals per year for an employee. The subsistence expense shall not exceed the department's standard meal reimbursement amount. Travel status shall not be required for staff meeting meals.

(35) Other allowable travel expense reimbursements shall consist of the following:

(a) Expenditures are allowed to pay the actual and reasonable cost of meals provided for district and county board of health members for official board functions. Payment is allowed for meals for guests who have been invited to participate in the official business conducted at these functions;

(b) Travel expenditures of board of health members attending official board of health functions shall be allowed. Reimbursement shall be in accordance with travel policy provided.

(c) Travel expenditures incurred by board members other than the chairperson shall be approved by the chairperson or have full board approval. Travel expenditures incurred by the chairperson shall be approved by the vice-chairperson or have full board approval;

(d) Expenditures shall be allowed to pay for meals and transportation expenses of local health department advisory committee members attending official local health department functions and

(e) Local health departments may pay for travel expenses of persons applying for a position that will designate the applicant as the public health director for the department or as the medical director. Allowable travel expenses shall be subject to the limits applicable to local health department employees but no more than one (1) round trip for each applicant shall be reimbursed.

(36) Expenditures shall be authorized for employee morale and welfare items, as defined in OMB circular A87, in an amount not to exceed twenty-five (25) dollars per employee per fiscal year. Receipts shall be kept for all expenditures.

(37) Expenditures shall be allowed for other necessary items for the maintenance and operation of the local health department if the expenditure is made in accordance with statutes and administrative policies.

(a) The Department for Public Health may require a local health department to provide adequate justification for any expenditure made by the local health department.

(b) If the justification is determined to be inadequate, appropriate corrective action shall be taken by the Department for Public Health.

Section 6. Purchasing Policies. (1) Each local health department shall establish and follow formal procedures for authorizing purchases made on behalf of the local health department.

(a) These procedures shall be outlined in the local health department's written internal control procedures.

(b) Written purchase orders (service authorizations for independent contractors) and receiving reports or service verifications shall be used except when paying utility bills and when purchase orders are not standard business practice.

(2) Local health department shall use at least the following minimum procedures for purchasing and advertisement for bids:

(a) If an expenditure for a single type of good or service not covered by contract policies is more than $20,000 in a fiscal year, advertisements for bids shall be made in accordance with KRS 424.110-424.150:

1. The Department for Public Health may be contacted for assistance in determining whether an expenditure is for a single type of good or service;

2. Automobile leases shall be advertised for bids if the total payments for leased similar vehicles exceed $20,000 in a fiscal year;

3. The bid selected shall be the lowest and best bid;

(b) If the expenditure for a single type of good or service is more than $5,000 but less than $20,000 in a fiscal year, local health departments shall:

1. Obtain three (3) or more price quotations from qualified sources of supply, if available, in the department's normal trade area; and

2. The price quotations received, a tabulation of prices offered, and reasons concerning the basis for selecting and placing the order (if the lowest price item was not purchased) shall be recorded in writing by the local health department and maintained for review by the Department for Public Health;

(c) Local health department may purchase supplies and services or technical services on a cooperative purchasing basis for local health departments in accordance with these purchasing administrative regulations for local health departments;

(d) Local health departments shall not enter into lease or purchase agreements for nonprofessional services with a local health department employee or a business entity in which a local health department employee owns or controls more than five (5) percent interest, except if determined to be in the best interest of the public and is approved in writing by the Department for Public Health.

Section 7. Contracting for Services. (1) The purpose of this policy shall be to establish uniform contract standards for local health departments in accordance with KRS 211.170 and 212.245. Local health departments shall not contract with providers who are [that have been] debarred or suspended from a federal funding agency or by a local health department.

(2) This policy applies to personal services contracts for services of a professional or technical nature not available through the local health department merit system.

(3) Services of a professional or technical nature, including audit services, legal services, and computerized data processing services, shall be contracted for in writing in accordance with this policy except that:

(a) Medical laboratory testing services do not require a written contract unless specifically directed by a Department for Public Health program;

(b) Medical services for independent contractors that do not exceed $5,000 in a fiscal year shall not require a written contract.

(c) Nonprofessional emergency repair services of skilled tradesmen shall not require written contracts. Nonemergency services of skilled tradesmen shall be procured in accordance with purchasing policies; or

(d) Administrative or management services, financial management services, data processing services or consulting services or studies shall not be contracted for if these services can be provided to the local health department by the Department for Public Health.

(4) Allowable services:

(a) The service desired to be contracted for shall be an essential service which is necessary for carrying out public health services.

(b) Health departments shall not use a personal services contract to substitute for establishing a full-time position in the local health
department.

(c) A personal service contract is not appropriate for an individual who works 1200 hours or more in a year except with Department for Public Health approval.

(5) At least two (2) potential providers, if available, shall be contacted before a provider is selected. Selection shall be based on the lowest and best bid.

(6) In determining acceptable rates of reimbursement, consideration shall be given to the type of service to be provided; the availability of providers; the duration of services to be performed; rates being paid to regular employees for similar services; and comparable rates being paid in the area and other parts of the state for similar services. A provider shall not be paid in excess of a standard hourly rate determined annually by the Department for Public Health.

(7) A contract shall not be entered into with a provider when a conflict of interest, real or apparent, will occur.

(a) Conflicts of interest fall into the following categories:
1. Constitutional;
2. Statutory;
3. Common-law; and
4. Department for Public Health policies.

(b) Contracts shall not be entered into with local health department employees or with local board of health members unless authorized in writing by Department for Public Health except medical/professional services under $2000.

(c) County board of health members who are not members of the district board of health shall not incur a conflict of interest when the district health department contracts for the county board of health member's services.

(d) [Written or oral independent] Contracts exceeding $5,000 in a fiscal year shall not be entered into with professional service corporations which have employees or governing board members as constituents unless authorized in writing by Department for Public Health.

(8) In drafting a contract, a determination shall be made concerning whether the provider of the service is an "independent contractor". If it is determined that the individual is not an independent contractor, the local health department shall withhold applicable federal, state, and local taxes and Social Security (FICA), and use a standard local health department personal services contract.

(b) If it is determined that the provider is an independent contractor, standard local health department independent contracts shall be used.

(9) Contracts shall not exceed one (1) year in duration and shall not contain a clause which indicates the contract is automatically renewable at the end of the fiscal year.

(a) Contracts shall expire on or before June 30 of each fiscal year unless approved by the Department for Public Health.

(b) A contract may be extended into the new fiscal year by filing a formal contract extension which shall be approved by the Department for Public Health.

(10) Either party shall have the right to terminate a contract at any time upon notice to the other party.

(a) A local health department shall have the discretion to add a clause to any contract indicating that up to a ninety (90) day notice shall be required prior to termination.

(b) Confirmation of terminations shall be in writing and a copy of the notice of termination shall be provided to the Department for Public Health.

(11) For contracts exceeding $10,000, contract payments shall not be made to a proposed contractor until the Department for Public Health has reviewed the contract and the contract has been returned to the local health department.

(a) If the Department for Public Health questions the legality, propriety, necessity, rate of compensation, or description of services, in a contract, the department shall notify the local health department of its concerns.

(b) A contract for which clarification is requested by the Department for Public Health shall be put on hold until a review has been completed.

(12) Contracts may be modified at any time.

(a) A proposed change requires a formal contract amendment.

(b) Amendments shall be submitted to the Department for Public Health for review prior to implementation.

(13) Local health departments may enter into contracts with public or private entities to provide needed health services and to receive payment for their services. Standard contract forms may be used for these types of contracts. For contracts exceeding $10,000, services may not be provided until the Department for Public Health has reviewed the contract and the contract has been returned to the local health department.

Section 8. Disposition of Assets. If one (1) or more counties withdraw from a district health department, the following policies shall apply to the disposition of surplus receipts, assets, and liabilities:

(1) Project restricted surplus receipts or supplies, inventories or equipment shall be retained by the district health department except in the case of complete dissolution of the district. In this instance, project restricted surplus receipts and items shall be equitably distributed to the county or counties proportionate to their participation in the district [returned to the Department for Public Health];

(2) Unrestricted surplus receipts shall be divided among the district and the withdrawing county boards of health according to the ratio of local support provided by each party in the year preceding the withdrawal;

(3) Unrestricted supplies and inventories shall be divided among the district and the withdrawing county boards of health according to the ratio of local support provided by each party in the year preceding the withdrawal. The Department for Public Health shall approve the disposition of supplies and inventories;

(4) Deficits shall be charged to the district and withdrawing county boards of health according to the ratio of local support provided by each party in the year preceding the withdrawal;

(5) Equipment purchased by withdrawing county boards of health prior to the organization of the district shall be returned to the board which originally purchased the equipment;

(6) Equipment purchased during the operation of the district shall be divided among the district and the withdrawing boards of health according to the ratio of local support provided by the withdrawing county boards of health to the total local support of the district in the year preceding the withdrawal;

(a) The net inventoried book value of the equipment shall be used in determining the distribution;

(b) The Department for Public Health shall approve the final disposition of equipment.

(7) Buildings owned by the district board of health shall remain the property of the district health department. If total dissolution of a district health department occurs, buildings owned by the district shall be sold according to the policies of the Department for Public Health and the proceeds shall be added to the surplus receipts of the district to be divided according to the procedures listed in Item 2; and

(8) The Department for Public Health shall approve the disposition of assets and liabilities.

Section 9. Disposition of Surplus or Excess Property. (1) A local health department may sell or dispose of any real or personal property including intangible property which is not needed or has become unsuitable for use.

(2) The funding source shall be contacted for the exact requirements. Property purchased with restricted funds may have disposal requirements in addition to or instead of the following requirements:

(a) A written determination as to need or suitability of any property of the local health department shall be made, and such determination shall fully describe the property; its intended use at the time of acquisition, and the reasons why it is in the public interest to dispose of the item;

(b) Surplus or excess property may be transferred, with or without compensation, to another governmental agency; or it may be sold at public auction or by sealed bid. The highest bid shall be accepted. Other methods of disposition of surplus or excess property shall not be allowable;

(c) If a local health department receives no bids for surplus or excess property, either at public auction or by sealed bid, or reasonably determines that the aggregate value of the item is less than $500, the property may be disposed of, consistent with the public interest, in an amount determined appropriate by the local health department. In these instances, a written description of the property, the method of disposal, and the amount of compensation, if any, shall be made; and

(d) Any compensation resulting from the disposal of surplus or
excess property shall be deposited in the local health department's bank account. If the property was purchased with restricted funds, appropriate accounting of the compensation received shall be made as required by OMB Circular A-87 (as revised), incorporated by reference.

Section 10. Bank Accounts and Investments. (1) Fidelity bonding shall be obtained on local health department employees and board of health members who handle funds of the local health department.

(a) An individual who makes deposits or signs checks or other instruments on local health department checking or investment accounts or certificates shall be bonded.

(b) Employees or board members shall be bonded in an amount sufficient to cover the total amount of funds to which they have access at any one (1) time.

(2) Local health departments may invest and reinvest money subject to their control and jurisdiction in the following investments:

(a) Obligations of the United States and of its agencies and instrumentalities. These investments may be accomplished through purchase agreements reached with national or state banks chartered in Kentucky; and bonds or certificates of indebtedness of the state of Kentucky and of its agencies and instrumentalities;

(b) A savings and loan association insured by an agency of the government of the United States up to the amount so insured; and

(c) Interest-bearing deposits in national or state banks chartered in Kentucky and insured by an agency of the government of the United States or other authorized insurance instrument up to the amount so insured, and in larger amounts if the bank shall pledge as security for the obligations as permitted by KRS 41.240(4), having a current quoted market value at least equal to uninsured deposits.

(3) A local health department may hold funds in its local bank account in a federally-insured bank at the minimum level necessary for efficient operations.

(4) Local health department funds shall not be transferred to a public health taxing district account or to an account not reported in the local health department financial statements.

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

(a) OMB-87 - Cost Principles for State, Local and Indian Tribes Government.

(b) OMB-A-102 - Grants and Cooperative Agreement with State and Local Government.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Resource Management, Financial Management Branch, 275 East Main Street, Frankfort, Kentucky Monday through Friday, 8 a.m. to 4:30 p.m.

NICHOLAS Z. KAFOSLIS, M.D., Chairman
RICE C. LEACH, M.D., Commissioner
MARCIA R. MORGAN, Secretary

APPROVED BY AGENCY: October 4, 2001
FILED WITH LRC: October 5, 2001 at noon

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Clyde Bolton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes minimum fiscal and financial management requirements for local health departments.

(b) The necessity of this administrative regulation: The Department for Public Health must promulgate this administrative regulation to meet its statutory requirement to supervise the financial functions of local health departments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: To our knowledge and belief, the regulation conforms to all applicable provisions of the authorizing statutes.

(d) How this administrative regulation relates to the public health services provided by local health departments

(2) This administrative regulation relates to the public health services provided by local health departments.

(3) State the aspect of local government to which the administrative regulation applies.

(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: $0
VOLUME 28, NUMBER 5 – NOVEMBER 1, 2001
PROPOSED AMENDMENTS RECEIVED THROUGH NOON, OCTOBER 15, 2001

PERSONNEL CABINET
(Submission)

101 KAR 2:034. Classified compensation administrative regulations.

RELATES TO: KRS 18A.030(2), 18A.110, 18A.165
STATUTORY AUTHORITY: KRS 18A.110(1)(c), (d), (g), (7)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 requires the Secretary of Personnel to promulgate administrative regulations which govern the pay plan for all employees in the classified service. This administrative regulation establishes requirements to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. New Appointments. (1) An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade;

(2) The appointing authority shall adjust to that salary, an employee who is earning less than the new appointee's salary if the appointing authority determines that the incumbent employee:

(a) Is in the same class;
(b) Is in the same work county; and
(c) Has a similar combination of education and experience relating to the job classification.

Section 2. Reemployment to Classified Service. (1) Returning retirees. An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System shall be appointed in accordance with the provisions for new appointments.

(2) Other reentering employees.

(a) Former classified employees. An appointing authority shall set the salary of a former classified employee, other than a returning retiree, who is being reemployed, reinstalled, or probationarily appointed in one (1) of the following ways:

1. In accordance with the standards used for making new appointments;
2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary, [as within the current pay grade; or]
3. Higher than the salary paid at the time of separation from the classified service, if the salary would have changed due to intervening changes in the salary schedule, or due to pay grade adjustments made on or after the effective date of this administrative regulation as amended.]

(b) Former unclassified employees with prior classified service. An appointing authority shall set the salary of a former classified employee who moved to the unclassified service and who is reinstated, reemployed, or probationarily appointed to a position in the classified service in one (1) of the following ways:

1. In accordance with the standards for making new appointments;
2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary, [as within the current pay grade;]
3. [Higher than the salary paid at the time of separation from the classified service, if the salary would have changed due to intervening changes in the salary schedule, or due to pay grade adjustments made on or after the effective date of this administrative regulation as amended; or]
4. At a salary that is the same as the salary the employee last received in the classified service with adjustments for increases that would have been received if the employee had remained in the classified service prior to resignation providing that salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary.

4. At a salary up to five (5) percent above the grade entry level wage for each year of service in the KRS Chapter 18A system, provided that the salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary.

(c) Former unclassified employees with no previous classified service. An appointing authority shall set the salary of a former unclassified employee with no previous classified service, who is probationarily appointed or reemployed, in one of the following ways:

1. In accordance with the standards for making new appointments; or
2. At five (5) percent above the minimum salary for each year of service in the unclassified service, provided that the salary shall not exceed the salary does not exceed the midpoint salary plus the difference, in dollars, between the entry level salary and the midpoint salary [range maximum].

(3) Laid off employees. A former employee, separated from the classified service by layoff and reinstated or reemployed in the same or similar job classification within five (5) years from the date of layoff, may receive the salary they were receiving at the time of layoff, even if the salary is above the maximum of the pay grade.

(3) Probationary increments upon reemployment to state service. (a) A former employee who is probationarily appointed or salary below the midpoint of the pay grade shall receive a probationary increment upon successful completion of the probationary period.

(b) A former employee who is probationarily appointed at a salary that equals or exceeds the midpoint of the pay grade may, at the discretion of the appointing authority, receive a probationary increment at the time of successful completion of the probationary period. If the employee is not granted a probationary increment at the time of completion of the probationary period, an increment shall be awarded at the beginning of the month following completion of twelve (12) months of service from the date of appointment.

Section 3. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive the greater of five (5) percent for each grade, or an increase to the minimum of the new grade except as provided under Subsection 3(2)(c).

(2) Demotion. If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

(a) The employee's salary shall be reduced by five (5) percent for each grade the employee is reduced to a rate that is below the minimum for the class to which the demotion is made; or
(b) The employee shall retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain in writing and place the explanation in the employee's personnel files.

(c) An employee whose salary is not reduced by five (5) percent per grade upon demotion or after the effective date of this administrative regulation shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty or reallocation until he is moved to a job class with a higher pay grade than that from which he was demoted and for which he received a five (5) percent per grade reduction. If such promotion, reclassification detail to special duty or reallocation occurs, it shall be deemed as having been made from the grade from which the employee had been demoted.

(3) Reclassification. (a) An employee who is advanced to a higher pay grade through reclassification shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(c) of this section.

(b) An employee who is placed in a lower pay grade through reclassification shall receive the same salary received prior to reclassification but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty or reallocation unless he is moved to a job class with a higher pay grade than that from which he was reclassified and for which he received a five (5) percent per grade reduction. If such promotion, reclassification detail to special duty or reallocation occurs, it shall be deemed as having been made from the grade from which the employee had been reclassified.

(4) Reallocation.
(a) An employee who is advanced to a higher pay grade through reallocation shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(c) of this section.

(b) An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty or reallocation until he is moved to a job class with a higher pay grade than that from which he was reallocated and for which he received a five (5) percent per grade reduction. If such promotion, reclassification detail to special duty or reallocation occurs, it shall be deemed as having been made from the grade from which the employee had been reallocated.

(5) Detail to special duty.

(a) An employee who is approved for detail to special duty shall receive, during the period of detail, the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(c) of this section.

(b) An employee who is approved for detail to the same or lower pay grade shall receive the same salary received prior to detail.

(6) Reversion.

(a) The salary of an employee who is reverted while serving a promotional probationary period, or following detail to special duty in a higher class, shall be adjusted to:
1. The salary received prior to the promotion or detail; and
2. All salary advancements and adjustments which would have been awarded if the promotion or detail had not occurred.

(b) The salary of an employee who is reverted from a position in the unclassified service to a position in the classified service shall be adjusted to:
1. The salary received prior to leaving the classified service; and
2. All salary advancements and adjustments which would have been awarded if the individual had remained in the classified service.

(7) Pay grade changes.

(a) If a job classification is assigned to a higher pay grade, the appointing authority shall raise the salary of an employee below the new grade minimum to the new grade minimum. If sufficient funds are available, an appointing authority may uniformly adjust the salary of all employees in that agency in that class to:
1. The greater of the new grade minimum or five (5) percent; or
2. The greater of the new grade minimum or ten (10) percent; or
3. The greater of the new grade minimum or a dollar amount approved by the secretary.

(b) If a job classification is assigned to a lower pay grade, an employee in that class shall retain his current salary.

(8) Special entrance rates. If a special entrance rate is established for a job classification, an appointing authority shall adjust the salary of an employee in the classification whose salary is below the special entrance rate to the new rate. If sufficient funds are available, an appointing authority may uniformly grant to all employees in that class a salary adjustment equal to the difference between the former entrance rate and the new entrance rate.

(9) Other salary adjustments.

(a) On the 16th of a month, an appointing authority may grant a salary adjustment to all employees in a class within an agency who were eligible for, but did not receive, a five (5) percent salary adjustment as a result of a grade change applicable to the class, on or after January 1, 1999. The total adjustment granted at the time of the grade change and under this paragraph shall equal five (5) percent of the employee's salary immediately prior to the grade change.

(b) On the 16th of a month, an appointing authority may grant a salary adjustment based on the establishment of a special entrance rate on or after the effective date of this administrative regulation, under the following provisions:
1. The adjustment shall be uniformly granted to all employees within the agency who were eligible for, but did not receive, a salary adjustment equal to the difference in the former entrance rate and the new entrance rate at the time a special entrance rate was established; and
2. The total adjustment granted at the time of the special entrance rate and under this paragraph shall equal the difference in the former entrance rate and the new entrance rate.

Section 4. Salary Advancements. (1) Initial probation increase. A full-time or part-time employee who completes an initial probationary period shall be granted a five (5) percent salary advancement on the first of the month following completion of the probationary period, except as specified under Section 2(3) of this administrative regulation.

(a) Promotional probation increase. An employee shall receive a five (5) percent salary advancement on the first of the month following completion of the promotional probationary period except as provided under Section 3(2)(c) of this administrative regulation.

(3) Annual increment dates shall be established as follows:
(a) Upon completion of an initial probationary period,
(b) When a former employee has been probationarily appointed and has completed a total of twelve (12) months of service without receiving an increment; or
(c) When an employee returns from leave without pay under the provisions of subsection (5) of this section.

(4) Annual increment dates shall not change when an employee:
(a) Is in a position which is assigned a new or different pay grade;
(b) Receives a salary adjustment as a result of a reallocation;
(c) Is promoted;
(d) Is transferred;
(e) Is demoted;
(f) Is detailed to special duty;
(g) Receives an educational achievement award;
(h) Returns from military leave;
(i) Is reclassified; or
(j) Receives a promotional increase after completion of a promotional probationary period.

(5) Return from leave without pay. An employee returning to duty from leave without pay shall receive an annual increment on the first of the month after completing twelve (12) months of service since the last increment was received.

(6) Service computation. Full-time and part-time service shall be counted in computing service for the purpose of determining increment eligibility.

(7) Order of calculating increments and other salary increases which occur at the same time. If an employee's increment date occurs on the same date that a salary adjustment or advancement is granted, the increment shall be applied before the adjustment or advancement is added to the employee's salary except if the adjustment is based on a pay grade change or a salary schedule change.

Section 5. Educational Achievement Award. (1) On the 16th of a month, an appointing authority may grant a five (5) percent increase to an employee's base salary based on educational achievement as specified in this section.

(2) An agency may seek to participate in the educational achievement program if sufficient funds are not available.

(3) An employee shall receive more than one (1) educational achievement award in a fiscal year.

(4) An employee shall not receive an educational achievement award and an adjustment for continuing excellence (ACE) based on the same training.

(5) By submitting a personnel action to grant an educational achievement award, the appointing authority shall certify that all of the qualifying conditions established by this section for the appropriate fiscal year's educational achievement award have been met.

(a) High school diploma, high school equivalency certificate, or a passing score on the GED test:
1. The employee has obtained the high school diploma, equivalency certificate, or passing score on the GED test:
   a. Outside of work hours;
   b. While in state service; or
   c. On or after January 1, 1984;
2. The employee has not previously attained a high school diploma, equivalency certificate, or passing score on the GED test; and
3. The employee has not completed college coursework on the undergraduate or graduate level prior to obtaining the high school diploma, equivalency certificate or a passing score on the GED test.

(b) Postsecondary education or training.
1. The employee has completed 260 hours of courses related to the equivalent as determined by the Secretary of Personnel;
2. The employee began the course work after becoming a state employee and completed the course work after establishing an increment date;
3. The employee has completed the course work within five (5) years of the date on which it was begun;
4. The course work has not previously been applied toward an educational achievement award;
5. The agency has not paid for the course work or costs associated with it, in whole or in part; and
6. The employee was not on educational or extended sick leave when the courses were taken.
   (c) Kentucky Certified Public Manager Program.
   1. The employee has successfully completed the Kentucky Certified Public Manager Program offered by the Governmental Services Center at Kentucky State University; and
   2. The employee has not previously received an educational achievement award for completing the Kentucky Certified Manager Program.

Section 6. Salary Schedule Adjustment. If the secretary authorizes an adjustment of all grades in the salary schedule, an appointing authority shall adjust, or which the shift premium is approved, the new minimum rate to the new minimum rate. If sufficient funds are available, the secretary may authorize an appointing authority to grant a salary increase for all employees equal to the difference in the old schedule minimum for the grade and the new schedule minimum for the grade.

Section 7. Paid Overtime. (1) Overtime for which pay is authorized shall be in accordance with 101 KAR 2:102, Section 5, and the Fair Labor Standards Act, 29 USC Section 201, et seq., as amended.
   (2) Eligibility for overtime pay shall be approved by the appointing authority, and shall be subject to review by the Secretary of Personnel and the Secretary of the Finance and Administration Cabinet.
   (3) An employee who is eligible for overtime shall request permission from or be directed in advance by the supervisor to work overtime;
   (4) An overtime payment shall not be added to base salary or wages.

Section 8. Maintenance and Maintenance Allowance. If an employee, or the employee and family, is provided with full or partial maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, the maintenance shall be treated as partial payment of wages. The value of these services shall be deducted from the employee's salary in accordance with a maintenance schedule developed by the appropriate appointing authority after consultation with the Secretary of the Finance and Administration Cabinet.

   (a) Upon request by an appointing authority, the secretary may authorize the payment of a supplemental premium for an employee who is regularly assigned to work an evening or night shift in that agency.
   (b) Once authorized, this premium shall apply to all employees in that agency who are regularly assigned to work an evening or night shift in a job classification in which the shift premium is approved.
   (c) An employee shall not receive a shift premium after shift reassignment, transfer, promotion or demotion to a position that is ineligible for a shift differential premium.
   (d) The secretary may rescind authorization to pay shift premium for a class at any time.
   (e) Shift differential pay shall not be considered a part of base pay or wages.
   (2) Weekend premium.
   (a) Upon request by an appointing authority, the secretary shall authorize the payment of a weekend premium for an employee in a specific class who is regularly assigned to work on Saturdays, Sundays, and state holidays as part of the usual work week.
   (b) Once authorized, the premium shall apply to all employees in the specified classes in that agency who are regularly assigned to work on Saturdays, Sundays, and state holidays as part of their usual work week.
   (c) An employee shall not receive a weekend premium after reassignment, transfer, promotion, or demotion to a position that is ineligible for weekend premium.

(d) The secretary may rescind authorization to pay weekend premium at any time.
(e) Weekend premium pay shall not be considered part of the employee's base salary or wages.
(f) An agency may request and be authorized for, both shift premium and weekend premium for the same job classes.

Section 10. Employee Recognition Award. (1) On the 16th day of a month, an appointing authority may grant an employee an employee recognition award (ERA) in the form of a lump sum payment of up to five (5) percent of midpoint under the following conditions:
   (a) The employee has established an annual increment date and has worked at least twenty-four (24) consecutive months in state service, twelve (12) consecutive months of which is in the department granting the award;
   (b) The employee has not received an ERA or a distinguished service award in the preceding twenty-four (24) months, nor an Adjustment for Continuing Excellence (ACE) award in the preceding twelve (12) months; and
   (c) The appointing authority determines that the employee's acts or ideas have resulted in significant financial savings or improvements in services to the Commonwealth and its citizens; or
   2. The employee has exhibited distinguished performance during participation in special projects that have had a significant beneficial impact on the department or governmental operations;
   (2) An employee shall not be eligible for an ERA under this section for an act or idea that has been approved or submitted for consideration as an Employee Suggestion System Award. An employee who has received an ERA shall not be eligible to be considered for an Employee Suggestion System Award for those acts or ideas upon which the ERA is based.
   (3) The granting of an ERA shall be within the sole discretion of the appointing authority.
   (4) If an appointing authority grants an ERA, the justification for the award shall be stated in writing, and placed in the employee's personnel files.
   (5) An appointing authority shall not grant an ERA to more than twenty-five (25) percent of the total number of full-time employees in the department in a calendar year.
   (6) An appointing authority shall submit a letter or memorandum to the cabinet to award an ERA. The letter or memorandum shall:
      (a) Explain the reason or reasons for the granting of the award; and
      (b) Include a certification by the appointing authority that:
         1. Sufficient funds are available within the department; and
         2. The criteria and limitations established in this section have been met.

Section 11. Adjustment for Continuing Excellence (ACE) Award. (1) On the 16th day of a month, an appointing authority may grant a salary adjustment of up to ten (10) percent of the grade midpoint to a full-time employee's base pay as an adjustment for continuing excellence award (ACE) under the following conditions:
   (a) The employee has established an annual increment date;
   (b) The employee has worked at least twenty-four (24) consecutive months, twelve (12) consecutive months of which shall have been served in the department granting the award;
   (c) The employee has not received an ACE award or a distinguished service award in the preceding twenty-four (24) months or an employee recognition award (ERA) in the preceding twelve (12) months; and
   (d) The employee has demonstrated a sustained level of exceptional job performance; or
   2. The employee has assumed a significant level of additional job responsibilities or duties consistent with the assigned classification, and has performed them in an exceptional manner; or
   3. The employee has acquired professional or technical skills or knowledge through department directed or authorized attainment of a job related license, certification, or formal training that will substantially improve job performance;
   (2) An employee shall not be eligible for an ACE award under this section if an educational achievement award has been granted for the same training.
   (3) The granting of an ACE award shall be within the sole discre-
tion of the appointing authority.
(4) More than twenty-five (25) percent of the total number of full
time employees in a department, in a calendar year, shall not receive
an ACE award.
(5) The appointing authority shall submit a letter or memorandum to
the cabinet to grant an ACE award. The letter or memorandum shall:
(a) Explain the reason or reasons for the granting of the award; and
(b) Include a certification by the appointing authority that:
1. The criteria and limitations established in this section have been met; and
2. Funds are available within the department's current recurring base budget to support the award.

CAROL M. PALMORE, Secretary
PAUL E. PATTON, Governor
APPROVED BY AGENCY: October 11, 2001
FILED WITH LRC: October 12, 2001 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regu-
lated proposed amendment shall be held on November 21, 2001 at 2
p.m., prevailing local time in Room 508 of the Personnel Cabinet's
Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals
interested in being heard at this hearing shall notify the agency in
writing by November 14, 2001, five working days prior to the hearing
of their intent to attend. If no notification of intent to attend is received by
that date, the hearing may be canceled. The hearing is open to the
public. Any person who wishes to be heard will be given an opportu-
nity to comment on this proposed administrative regulation amend-
ment. 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 amendment. Send written notification
of intent to be heard at the public hearing or written comments on the
proposed administrative regulation to: Daniel F. Egbers, General
Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite
516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, fax num-
ber: (502) 564-7603.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Daniel F. Egbers, General Counsel
(1) Provide a brief summary of:
(a) What this administrative regulation does: Clarifies the salary
that may be offered to former employees of the classified and unclas-
sified services of the executive branch of state government who reen-
ter state service. The amendment permits such an employee to be
paid a salary that does not exceed the midpoint of the salary schedule
plus $50 per hour, between the entry level salary and the
midpoint. The amendments also permit former unclassified employees
with prior classified service to receive credit for that service at the
same rate as a former classified employee. The amendments provide
that an employee who received the benefit of not having his salary
reduced when demoted or otherwise reduced in grade will not be able
to have his salary artificially inflated by a subsequent personnel action
to the same grade.
(b) The necessity of this administrative regulation: This adminis-
trative regulation is necessary in order to treat returning retirees with
prior merit service the same, whether or not they retired from the
unclassified service. The amendment is also necessary to prevent artifi-
cial inflation of salaries by allowing demotions without salary cuts and
then promoting the same individual to the same level with a salary increase.
(c) How this administrative regulation conforms to the content of
the authorizing statutes: These amendments serve the function of
establishing a fair and uniform pay plan for the classified service.
(d) How this administrative regulation currently assists or will as-
sist in the effective administration of the statutes: This administrative
regulation will restore equity of salary treatment for all returning retir-
ees and eliminate the abuse of the compensation system which cur-
cently permits selective, artificial inflation of salaries.
(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: Please see the summary in (1)(a), above.
(b) The necessity of the amendment to this administrative regula-
tion: Please see the summary in (1)(b), above.
(c) How the amendment conforms to the content of the authorizing statutes: Please see the summary in (1)(c), above.
(d) How the amendment will assist in the effective administration of
the statutes: Please see the summary in (1)(d), above.
(e) What the type and number of individuals, businesses, organiza-
tions, or state and local governments affected by this administrative
regulation: These amendments will potentially impact 32,000 employ-
ees in the classified service of state government.
(4) Provide an assessment of how the above group or groups will be
affected by either the implementation of this administrative regula-
tion, if new, or by the change if it is an amendment: Please see the
responses to question 1, above.
(5) Provide an estimate of how much it will cost to implement this
administrative regulation:
(a) Initially: Nothing
(b) On a continuing basis: Nothing
(6) What is the source of the funding to be used for the imple-
mentation and enforcement of this administrative regulation: No new
funding sources are required.
(7) Provide an assessment of whether an increase in fees or
funding will be necessary to implement this administrative regulation, if
new, or by the change if it is an amendment: No increases in funding or fees are anticipated.
(8) State whether or not this administrative regulation establishes
any fees or directly or indirectly increases any fees: No fees are estab-
dlished, directly or indirectly.
(9) TIERING: Is tiering applied? Tiering is applied since this ad-
mnistrative regulation amendment impacts the employees in the clas-
sified service of the executive branch of state government, only. We
anticipate that similar regulations will be filed with identical changes for the
unclassified service.

PERSONNEL CABINET
(Annendment)

101 KAR 2:102. Classified leave administrative regulations.

RELATES TO: KRS 18A.030, 18A.110, 18A.195, 61.394,
344.030, 29 USC 201, et seq., 2601, et sec.
STATUTORY AUTHORITY: KRS 18A.030, 18A.110, 18A.155,
344.030, 29 USC 201, et seq., 2601, et seq.
NECESSITY, FUNCTION, AND CONFORMITY: KRS
18A.110(7)(g) requires the Secretary of Personnel, with the approval
of the Governor, to promulgate administrative regulations which gov-
ern annual leave, sick leave, special leaves of absence, and for other
conditions of leave. This administrative regulation establishes the
leave requirements for classified employees.

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

<table>
<thead>
<tr>
<th>Months of Service</th>
<th>Annual Leave Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-60 months</td>
<td>1 leave day per month; 1/2 per year</td>
</tr>
<tr>
<td>60-119 months</td>
<td>1 1/2 leave days per month; 15 per year</td>
</tr>
<tr>
<td>120-179 months</td>
<td>1/2 leave days per month; 18 per year</td>
</tr>
<tr>
<td>180-239 months</td>
<td>1 1/2 leave days per month; 21 per year</td>
</tr>
<tr>
<td>240 months &amp; over</td>
<td>2 leave days per month; 24 per year</td>
</tr>
</tbody>
</table>

(b) A full-time employee shall have worked, or been on paid leave,
other than educational leave with pay, for 100 or more regular hours
per month to accrue annual leave.
(c) Accrued leave shall be credited on the first day of the month
following the month in which the annual leave is earned.
(d) In computing months of total service for the purpose of earning
annual leave, only the months for which an employee earned annual
leave shall be counted.
(e) An employee who has been rehired, except as provided in
paragraph (f) of this subsection, shall receive credit for prior service,
unless the employee had been dismissed as a result of misconduct or
a violation of KRS 18A.140, 18A.145, or 18A.190.
(f) An employee, who has retired from a position covered by a
state retirement system, is receiving retirement benefits and returns to state service, shall not receive credit for months of service prior to retirement.

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

(2) Use and retention of annual leave.

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

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

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

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

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

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

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

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

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

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

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

(3) Annual leave on separation.

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

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

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

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

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

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

1. He resigns, or is laid off from his position, because of an approved plan of privatization of the services he performed; and

2. The successor employer has agreed to credit him with an equal amount of annual leave.

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

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

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

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

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

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

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

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

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

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

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

(a) An appointing authority shall grant or may require the use of [accrued] sick leave with or without pay if an employee: 1. Is unable to work due to medical, dental or optical examination or treatment; 2. Is disabled by illness or injury. The appointing authority may require the employee to provide a doctor’s statement certifying the employee’s inability to perform his duties for the days or hours sick leave is requested. The appointing authority may also require an employee to produce a certificate from an appropriate medical health professional certifying the employee’s fitness to return to duty before the employee is permitted to return to work; 3. Is required to care for or transport a member of his immediate family suffering from medical ailments for a reasonable period of time. The appointing authority may require the employee to provide a doctor’s statement certifying the employee’s need to care for a family member; 4. Would jeopardize the health of himself or others at his work station because of a contagious disease or demonstration of behavior that might endanger himself or others; or 5. Has lost by death a spouse, parent, grandparent, child, brother or sister, or the spouse of any of them and may be granted to include other relatives of close association. Leave under this subparagraph shall be limited to three (3) days.

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

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

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

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

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

(g) Sick leave without pay.

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

1. The total continuous leave does not exceed one (1) year; and

2. The employee has used or been paid for all accumulated an-
nual, sick and compensatory leave unless he has requested to retain up to ten (10) days of accumulated sick leave.

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

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

(d) An appointing authority may grant sick leave without pay to an employee who does not qualify for family and medical leave due to lack of service time and who has exhausted all accumulated paid leave if the employee is required to care for an immediate family member on a day-to-day basis for a member of the immediately preceding the first day of family and medical leave.

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

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

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

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

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

(j) Worker’s compensation.

(a) If an absence is due to illness or injury for which workers’ compensation benefits are received, accumulated sick leave may be used to maintain regular full salary.

(b) If paid sick leave is used to maintain regular full salary, workers’ compensation pay benefits shall be assigned to the state for the period of time the employee received paid sick leave.

(c) The employee’s sick leave shall be immediately reinstated to the extent that workers’ compensation benefits are assigned.

(k) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, an employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

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

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

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

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

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

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

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

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

Section 4. Court Leave. (1) An employee shall be entitled to court leave or court leave during his scheduled working hours without loss of time or pay for the amount of time necessary to:

(a) Comply with a subpoena by a court, or administrative agency or body of the federal or state government or any political subdivision thereof;

(b) Serve as a juror or a witness, unless the employee or a member of his family is a party to the proceeding.

(c) Court leave shall include necessary travel time.

(d) If relieved from duty as a juror or witness during his regular working hours, the employee shall return to work or use annual or compensatory leave.

(4) An employee shall not be required to report as court leave attendance at a proceeding that is part of his assigned duties.

Section 5. Compensatory Leave and Overtime. (1) Accrual of compensatory leave and overtime.

(a) An appointing authority shall comply with the overtime and compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 USC Chapters 8.

(b) An employee who is directed to, or who requests and is authorized to, work in excess of the prescribed hours of duty shall be granted compensatory leave and paid overtime subject to the provisions of the Fair Labor Standards Act, the Kentucky Revised Statutes, and this administrative regulation.

(c) An employee deemed to be "nonexempt" by the provisions of the FLSA shall be compensated for hours worked in excess of forty (40) hours per week as provided by subparagraphs 1 to 3 of this paragraph.

1. An employee who has not accumulated the maximum amount of compensatory leave shall have the option to accumulate compensatory leave at the rate of one and-one-half (1 1/2) for each hour worked in excess of forty (40) per week in lieu of paid overtime.

2. The election to receive compensatory leave in lieu of paid overtime shall be in writing on the Overtime Compensation Form and shall remain in force for a minimum of six (6) months. The election shall be changed by the submission of a new form. The effective date of a change shall be the first day of the next work week following receipt of the election.

3. An employee who does not elect compensatory leave leave in lieu of paid overtime shall be paid one and-one-half (1 1/2) times the regular hourly rate of pay for all hours worked in excess of forty (40) hours per week.

(c) An employee deemed to be "exempt" under the provisions of the FLSA shall accumulate compensatory time on an hour-for-hour basis for hours worked in excess of the regular work schedule.

(e) Compensatory leave shall be accumulated or taken off in one-quarter (1/4) hour increments.
(f) The maximum amount of compensatory leave that may be carried forward from one (1) pay period to another shall be 240 hours. (g) An employee who is transferred or otherwise moved from the jurisdiction of one (1) agency to another shall retain the compensatory leave in the receiving agency. (2) Reductions in compensatory leave balances. (a) An appointing authority may require an employee who has accrued at least 100 hours compensatory leave to use compensatory leave before annual leave and shall otherwise allow the use of compensatory leave if it will not unduly disrupt the operations of the agency. (b) An appointing authority may require an employee who has accrued 200 hours of compensatory leave to take off work using compensatory leave in an amount sufficient to reduce the compensatory leave balance below 200 hours. (c) An employee who is not in a policy-making position may, after accumulating 151 hours of compensatory leave, request payment for fifty (50) hours at the regular rate of pay. If the appointing authority or the employee approves the payment, an employee’s leave balance shall be reduced accordingly. (d) [ee] An employee who is not in a policy-making position shall be paid for fifty (50) hours at the regular hourly rate of pay, upon accumulating at the end of the pay period, 240 hours of compensatory leave. The employee’s leave balance shall be reduced accordingly. (e) [dd] If an employee’s prescribed hours of duty are normally less than forty (40) hours per week, the employee shall receive compensatory leave for the number of hours worked that: 1. Exceed the number of normally prescribed hours of duty; and 2. Do not exceed the maximum amount of compensatory time that is permitted. (f) [ee] Only hours actually worked shall be used for computing paid overtime or time and one-half (1 1/2) compensatory time. (g) [ff] Upon separation from state service, an employee shall be paid for all unused compensatory leave at the greater of: 1. Regular hourly rate of pay; or 2. Average regular rate of pay for the final three (3) years of employment. Section 6. Military Leave. (1) Upon request, an employee who is an active member of the United States Army Reserve, the United States Air Force Reserve, the United States Navy Reserve, the United States Marine Corps Reserve, the United States Coast Guard Reserve, the United States Public Health Service Reserve, or the Kentucky National Guard shall be relieved from the civil duties, to serve under order on training duty without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394 for a federal fiscal year. (2) The absence shall not be charged to leave. (3) Absence that exceeds the number of working days specified in KRS 61.394 for a federal fiscal year shall be charged to annual leave, compensatory leave or leave without pay. (4) The appointing authority may require a copy of the orders requiring the attendance of the employee before granting military leave. (5) An appointing authority shall grant an employee entering military duty a leave of absence without pay for a period of the duty not to exceed six (6) years. Upon receiving military duty leave of absence, all accumulated annual and compensatory leave shall be paid in a lump sum, if requested by the employee. Section 7. Voting and Election Leave. (1) An employee who is eligible and registered to vote shall be allowed, upon prior request and approval, four (4) hours, for the purpose of voting. (2) An election officer shall receive additional leave if the total leave for election day does not exceed a regular workday. (3) The absence shall not be charged against leave. (4) An employee who is permitted or required to work during the employee’s regular work hours, in lieu of voting leave, shall be granted compensatory leave on an hour-for-hour basis for the hours during the times the polls are open, up to a maximum of four (4) hours. Section 8. Special Leave of Absence. (1) If approved by the secretary, an appointing authority may grant a leave of absence for continuing education or training. (a) Leave may be granted for a period not to exceed twenty-four (24) months. (b) If granted, leave shall be granted either with pay (if the employee contractually agrees to a service commitment) or without pay. (c) Leave shall be restricted to attendance at a college, university, vocational or business school for training in subjects that relates to the employee’s work and will benefit the state. (2) An appointing authority, with approval of the secretary, may grant an employee a leave of absence without pay for a period not to exceed one (1) year for purposes other than specified in this administrative regulation that are of tangible benefit to the state. (3) If approved by the secretary, an appointing authority may place an employee on special leave with pay for investigative purposes pending an investigation of an allegation of employee misconduct. (a) Leave shall not exceed sixty (60) working days. (b) The employee shall be notified in writing by the appointing authority that he is being placed on special leave for investigative purposes, and the reasons for being placed on leave. (c) If the investigation reveals no misconduct by the employee, records relating to the investigation shall be purged from agency and Personnel Cabinet files. (d) The appointing authority shall notify the employee, in writing, of the completion of the investigation and the action taken. This notification shall be made to the employee, whether the employee has remained in state service, or has voluntarily resigned after being placed on special leave for investigative purposes. Section 9. Absence Without Leave. (1) An employee who is absent from duty without prior approval shall report the reason for the absence to the supervisor immediately. (2) Unauthorized or unreported absence shall: (a) Be considered absence without leave; (b) Be treated as leave without pay for an employee covered by the provision of the Fair Labor Standards Act; and (c) Constitute grounds for disciplinary action. (3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be considered to have resigned the employment. Section 10. Absences Due to Adverse Weather. (1) An employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early in the event of adverse weather conditions such as tornado, flood, blizzard or ice storm, shall have the time of the absence reported as: (a) Charged to annual or compensatory leave; (b) Taken as leave without pay, if annual and compensatory leave has been exhausted; or (c) Deferred in accordance with subsections (3) and (4) of this section. (2) An employee who is or prearranged annual, compensatory or sick leave shall charge leave as originally requested. (3) Where operational needs allow, except for an employee in mandatory operations, management shall make every reasonable effort to arrange schedules whereby an employee will be given an opportunity to make up time not worked rather than charging it to leave. (4) An employee shall not make up work if the work would result in the employee working more than forty (40) hours in a workweek. (a) Time lost shall be made up within four (4) months of the occurrence of the absence. If it is not made up within four (4) months, annual or compensatory leave shall be deducted to cover the absence, or leave without pay shall be charged if no annual or compensatory leave is available. (b) If an employee transfers or separates from employment before the leave is made up, the leave shall be charged to annual or compensatory leave or deducted from the final paycheck. (5) If catastrophic, life-threatening weather conditions occur, as created by a tornado, flood, ice storm or blizzard, and it becomes necessary for authorities to order evacuation or shutdown of the place of employment, the following provisions shall apply: (a) An employee who is required to evacuate or who would be required to report to a location that has been shutdown shall not be required to make up the time that is lost from work during the period officially declared hazardous to life and safety.
(b) An employee who is required to work in an emergency situation shall be compensated pursuant to the provisions of Section 5 of this administrative regulation and the Fair Labor Standards Act as amended.

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

(2) Leave granted under this section shall be used at the time of the donation unless circumstances as specified by the supervisor required the employee to return to work. If the employee returns to work, the unused portion of the leave time shall be credited as compensatory leave.

(3) An employee shall request leave in advance to qualify for blood donation leave.

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

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

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CAROL M. PALMORE, Secretary
PAUL E. PATTON, Governor
APPROVED BY AGENCY: October 11, 2001
FILED WITH LRC: October 12, 2001 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation proposed amendment shall be held on November 21, 2001 at 2 p.m. prevailing local time in Room 508 of the Personnel Cabinet’s Offices, 200 Fair Oaks Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by November 14, 2001, five working days prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation amendment. 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 amendment. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Daniel F. Egbers, General Counsel, Kentucky Personnel Cabinet, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, telephone: (502) 564-4460, fax number: (502) 564-7603.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Daniel F. Egbers, General Counsel

(1) Provide a brief summary of:
   (a) What this administrative regulation does: The amendments will authorize agencies to direct employees who have acquired 200 hours of compensatory time to take time off, using compensatory leave, in order to reduce the compensatory leave balance. The purpose of this proposal is to limit the potential of employees reaching 240 hours of compensatory leave and qualifying for “Block 50” payments. The amendments will also provide that employees will have the option to receive family and medical leave, if otherwise eligible, while they retain a paid leave balance, if they choose. The amendments will also provide that an employee may be required to use paid or unpaid sick leave if an agency determines that he has an illness or impairment that creates a risk of harm to himself or others and that the employee may be required to produce a medical fitness for duty statement before returning to work under these circumstances.
   (b) The necessity of this administrative regulation: The regulation as amended will govern the leave for all positions in the classified service of state government and limit the circumstances in which employees can qualify for “Block 50” payments.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.110(7)(g) authorizes the Secretary of Personnel, with the approval of the Governor, to promulgate administrative regulations for the classified service governing leave. This amendment accomplishes this requirement.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will conform to federal requirements governing family and medical leave, promote agency budgets from unnecessary “Block 50” expenditures, and clarify the rules governing work to work and thus be placed on involuntary sick leave.

(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: Please see the summary in (1)(a), above.
   (b) The necessity of the amendment to this administrative regulation: Please see the summary in (1)(b), above.
   (c) How the amendment conforms to the content of the authorizing statutes: Please see the summary in (1)(c), above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: These amendments would potentially impact 32,000 employees in the classified service of state government.

(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: Please see the responses to question 1, above.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: Nothing
   (b) On a continuing basis: Nothing

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

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

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

(9) TIERING: Is tiering applied? Tiering is applied since this administrative regulation amendment impacts the employees in the classified service of the executive branch of state government, only. We anticipate that similar regulations will be filed with identical changes for the unclassified service.

KENTUCKY BOARD OF VETERINARY EXAMINERS
(AMENDMENT)

201 KAR 16:090. Certification as an animal euthanasia specialist.

RELATES TO: KRS 321.207
STATUTORY AUTHORITY: KRS 321.235
NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.207(4) requires the board to issue a certificate to a person who meets the qualification of an animal euthanasia specialist. This administrative regulation establishes the qualifications for certification as an animal euthanasia specialist and the duties of an animal euthanasia specialist.

Section 1. In order to qualify for certification as a certified euthanasia specialist an applicant shall:
(1) Be twenty-one (21) years of age;
(2) Be of good moral character;
(3) Not have been convicted of, or entered an "Alford" plea or plea of no contest to, a crime constituting or relating to, or having the effect of, an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of such plea, one (1) or more of the following:
   (a) A felony;
VOLUME 28, NUMBER 5 – NOVEMBER 1, 2001

(b) An act involving moral turpitude or gross immorality; or
(c) A violation of any law, rule, or administrative regulation of this state, any other state, or the federal government which involves the use or trafficking of illegal substances;
(4) After December 31, 2002, have received a high school diploma or GED;
(5) Pay the initial certification fee as specified in 201 KAR 16:015;
(6) Be employed by a certified animal control agency;
(7) Complete a sixteen (16) hour euthanasia specialist training course as set forth in Section 2 of this administrative regulation; and
(8) Complete the "Application for Animal Euthanasia Specialist Certification".

Section 2. Euthanasia Specialist Training Course Curriculum. (1) The curriculum for the sixteen (16) hour euthanasia specialist course shall provide information on the following subjects:
(a) Pharmacology, proper administration and storage of euthanasi solution that shall consist of a minimum of eight (8) hours;
(b) Federal and state laws regulating the storage and accountability for euthanasia solutions;
(c) Euthanasia specialist stress management;
(d) Proper animal handling with emphasis on easing the trauma and stress to the animal; and
(e) Disposal of euthanized animals.
(2) A training course for a euthanasia specialist shall be reviewed and approved by the board prior to presentation. A provider of a euthanasia specialist training shall submit the following information:
(a) A published course or similar description;
(b) Names and qualifications of instructors;
(c) A copy of the program agenda indicating hours of education, coffee, and lunch breaks; and
(d) Official certificate of completion from the sponsoring agency.

Section 3. Employment and Termination. (1) A certified animal euthanasia specialist may function only while employed by a certified animal control agency.
(2) Upon termination from a certified animal control agency, a certified animal euthanasia specialist shall not perform animal euthanasia until employed by a certified animal control agency.

Section 4. Duties of a Certified Animal Euthanasia Specialist. The duties of a certified animal euthanasia specialist shall include the following:
(1) Preparing animals for euthanasia;
(2) Carefully and accurately recording dosages and drug waste;
(3) Ordering supplies and drugs;
(4) Maintaining the security of all controlled substances and drugs;
(5) Reporting to the board any infraction of KRS Chapter 321 or the administrative regulations promulgated thereunder;
(6) Humanely euthanizing animals;
(7) Disposing of the bodies in a manner in the same manner as established by KRS 257.160;
(8) Maintaining his certification;
(9) Reporting to the board any change of address; and
(10) Providing a written response to a complaint or inquiry from the board within fifteen (15) working days of receipt.

Section 5. Approved Methods of Euthanasia. (1) A certified animal euthanasia specialist shall perform euthanasia by means of lethal injection on an animal by use of sodium pentobarbital or sodium pentobarbitol with lidocaine, in a manufactured dosage form, whose only indication is for euthanizing animals.
(2) When using a lethal solution to perform euthanasia on an animal, a certified animal euthanasia specialist shall use the appropriate solution in accordance with the following methods and in the following order of preference:
(a) Intravenous injection by hypodermic needle;
(b) Intraperitoneal injection by hypodermic needle;
(c) Intracardial injection by hypodermic needle, but only on a sedated or unconscious animal;
(d) Solution or powder added to food.

Section 6. Disciplinary Action. A certified animal euthanasia specialist shall be subject to disciplinary action pursuant to KRS 321.235(7) and 321.351 for any applicable violation of the Kentucky Revised Statutes or administrative regulations or any federal statutes or regulations.

HOWARD E. RENNECKER, DVM, Chair
APPROVED BY AGENCY: September 27, 2001
FILED WITH I RC: October 11, 2001 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 2001, 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 November 18, 2001, 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 shall 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 on this rule, 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, Executive Director, Kentucky Board of Veterinary Examiners, 700 Louisville Road, Berry Hill Mansion, Frankfort, Kentucky 40602; Phone: (502) 564-4233; 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 establishes the criteria to become certified and the duties of euthanasia specialists.
(b) The necessity of this administrative regulation: To advise and inform applicants of the qualifications for issuance and certificate holders what is required of them.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 321.207(4) authorizes the board to issue to any person whom it determines to be qualified a certificate for the person to function as a certified animal euthanasia specialist. This regulation sets out the criteria for qualification which allows applicants to know the requirements for certification.
(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation establishes criteria for qualification which allows applicants to know the requirements for certification.

(2) How the amendment will change the existing administrative regulation:
(a) The amendment will change the existing administrative regulation: The amendment will grandfather persons who do not hold a high school diploma until December 2002. County humane societies and managers of certified animal control agencies have expressed a desire to allow long-standing employees who have abundant experience in the field to qualify for the certificate.
(b) The necessity of the amendment to this administrative regulation: To advise and inform applicants of the qualifications for issuance and certificate holders what is required of them.
(c) How the amendment conforms to the content of the authorizing statutes: KRS 321.207(4) authorizes the board to issue to any person whom it determines to be qualified a certificate for the person to function as a certified animal euthanasia specialist. This regulation sets out the criteria for qualification.
(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation establishes criteria for qualification which allows applicants to know the requirements for certification.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 100 certified euthanasia specialist in the Commonwealth.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: This regulation establishes criteria for qualification which allows applicants to know the requirements for certification.

(5) Estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no costs associated with the initial imple-
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mentionation of this regulation.
(b) On a continuing basis: There are no continuing costs associated with implementation of this regulation.
(6) The source of funding for the implementation and enforcement of this administrative regulation: Fees paid by certified euthanasia specialists.
(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increases in fees or funding to implement this administrative regulation.
(8) This administrative regulation does not establish any fees or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all applicants for certification throughout the state.

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


RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.01 to 61.139, 61.160 to 61.358, 42 USC 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 61.01 to 61.139, 61.160 to 61.358, 42 USC 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: 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 incorporates by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 CFR 61.01 to 61.139 and 61.160 to 61.358. Delegation of implementation and enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 USC 7412(f).

Section 1. (1) For purposes of 40 CFR Part 61, "Part 61 NESHAP" shall be the National Emission Standards for Hazardous Air Pollutants codified in 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF). (2) For purposes of 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), the "administrator" shall be the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of the Part 61 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF). These sources shall comply with the following:
(1) The applicable provisions in 40 CFR 61.01 to 61.19 (Subpart A), "General Provisions", which is incorporated by reference in Section 3 of this administrative regulation;
(2) The applicable methods, procedures, and reporting requirements contained in 40 CFR Part 61, Appendices A through E, which are incorporated by reference in Section 3 of this administrative regulation; and
(3) The applicable Part 61 NESHAP incorporated by reference in Section 3 of this administrative regulation.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) 40 CFR 61.01 to 61.19 (Subpart A), "General Provisions", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 2000 [1998];
(c) 40 CFR 61.30 to 61.34 (Subpart C), "National Emission Standard for Beryllium", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 2000 [1998];
(d) 40 CFR 61.40 to 61.44 (Subpart D), "National Emission Standard for Beryllium Rocket Motor Firing", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 2000 [1998];
(g) 40 CFR 61.80 to 61.97 (Subpart H), "National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 2000 [1998];
(i) 40 CFR 61.110 to 61.112 (Subpart J), "National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 2000 [1998];
(k) 40 CFR 61.130 to 61.139 (Subpart L), "National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 2000 [1998];
(m) 40 CFR 61.170 to 61.177 (Subpart O), "National Emission Standard for Inorganic Arsenic Emissions from Primary Copper Smelters", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 2000 [1998];
(u) 40 CFR 61.300 to 61.306 (Subpart BB), "National Emission Standard for Benzene Emissions from Benzene Transfer Operations", as published in the Code of Federal Regulations, 40 CFR Parts 61 to
62, July 1, 2000 [1998];
(y) "Appendix C to Part 61, Quality Assurance Procedures", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 2000 [1998];
(z) "Appendix D to Part 61, Methods for Estimating Radionuclide Emissions", as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 2000 [1998]; and
(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:
(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;
(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;
(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;
(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;
(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;
(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 878-0157;
(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 867-7304; and
(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 898-8460.

JAMES E. BICKFORD, Secretary
APPROVED BY AGENCY: September 20, 2001
FILED WITH LRC: September 21, 2001 at 9 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for November 29, 2001, at 10 a.m. (Eastern Time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by November 20, 2001, five (5) workdays prior to the hearing of their intent to attend. 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. 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: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone: (502) 573-3382 Fax: (502) 573-3787.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Millie Ellis

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR 61.01 to 61.139 and 61.160 to 61.359 (Subparts A to L and N to FF), as published in the Code of Federal Regulations, 40 CFR Parts 61 to 62, July 1, 2000.
(b) The necessity of this administrative regulation: This administrative regulation allows Kentucky to have the delegated authority to implement and enforce the federal Part 61 NESHAP Program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Commonwealth is required to adopt the federal Part 61 NESHAP in order to retain implementation and enforcement authority. This administrative regulation is the state's adoption of NESHAP pursuant to 42 USC 7412.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Sources that are subject to the Part 61 NESHAP Program are able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This amendment will update the material incorporated by reference in 40 CFR Part 61 to include revisions made after July 1, 1998 through July 1, 2000.
(b) The necessity of the amendment to this administrative regulation: This amendment will allow Kentucky to continue to have the delegated authority to implement and enforce the federal Part 61 NESHAP Program.
(c) How the amendment conforms to the content of the authorizing statutes: The Commonwealth is required to adopt the federal Part 61 NESHAP in order to retain implementation and enforcement authority. This amendment will update the administrative regulation to be consistent with the July 1, 2000 version of 40 CFR Part 61.
(d) How the amendment will assist in the effective administration of the statutes: Sources that are subject to the Part 61 NESHAP Program will continue to be able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are no individuals, businesses, organizations, or state and local governments affected by this administrative regulation beyond those affected in the federal Part 61 NESHAP 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: Groups affected by the federal Part 61 NESHAP Program will continue to be able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There are no new initial costs for the implementation of this amendment to the administrative regulation.
(b) On a continuing basis: There are no known continuing costs for the implementation of this amendment to the administrative regulation.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division will absorb all costs for the implementation and enforcement of this amendment to the administrative regulation in its operating budget.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees or funding is necessary to implement the amendment.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This amendment to the administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Tiering is not applied. The cabinet is incorporating by reference 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), July 1, 2000, without change. There is no tiering of requirements beyond that contained in the fed-
eral Part 61 NESHAP.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found in 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), July 1, 2000. The United States Environmental Protection Agency (U.S. EPA) may grant states implementation and enforcement authority for the federal Part 51 NE-
SHAP program pursuant to 42 USC 7412(d).

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 61.01 to 61.139 and 61.160 to 61.358 (Subparts A to L and N to FF), July 1, 2000, contain national emission standards for hazardous air pollutants that the U.S. EPA is required to promulgate pursuant to 42 USC 7412.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation imposes no stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

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 govern-
ment? No

2. State what unit, part, or division of local government this admin-
istrative regulation will affect. This administrative regulation does not affect any known unit, part, or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

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

401 KAR 60:005. 40 CFR Part 60 standards of performance for new stationary sources.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.1 to 60.19, 60.40(b) to 60.64, 60.66) to 60.506, 60.540 to 60.606, 60.660 to 60.759, 42 USC 7411

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 60.1 to 60.19, 60.40(b) to 60.64, 60.66) to 60.506, 60.540 to 60.606, 60.660 to 60.759, 42 USC 7411

NECESSITY, FUNCTION, AND CONFORMITY: 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 incorporates by reference the Standards of Performance for New Stationary Sources (NSPS) codified in 40 CFR 60.1 to 60.19, 60.40(b) to 60.64, 60.66) to 60.506, 60.540 to 60.606, and 60.660 to 60.759. Delegation of implementation and enforcement authority for the federal NSPS program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 USC 7411(c)(1).

Section 1. (1) For purposes of 40 CFR Part 60, “Part 60 NSPS” shall be the Standards of Performance for New Stationary Sources codified in 40 CFR 60.1 to 60.19, 60.40(b) to 60.64, 60.66) to 60.506, 60.540 to 60.606, and 60.660 to 60.759 (Subparts A, D[b]-E, F) to XX, BBB to NNN, and PPP o WWW.

(2) For purposes of 40 CFR 60.1 to 60.19, 60.40(b) to 60.64, 60.66) to 60.506, 60.540 to 60.606, and 60.660 to 60.759 (Subparts A, D[b]-E, F) to XX, BBB to NNN, and PPP o WWW), the “administra-
tor” shall be the Secretary of the Natural Resources and Environ-
mental Protection Cabinet unless a specific provision of a Part 60 NSPS states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 CFR 60.1 to 60.19, 60.40(b) to 60.64, 60.66) to 60.506, 60.540 to 60.606, and 60.660 to 60.759 (Subparts A, D[b]-E, F) to XX, BBB to NNN, and PPP o WWW). These sources shall comply with the following:

(1) The applicable provisions in 40 CFR 60.1 to 60.19 (Subpart A), “General Provisions,” which is incorporated by reference in Section 3 of this administrative regulation;

(2) The applicable methods, procedures, and reporting require-
ments contained in 40 CFR Part 60, Appendices A through F, which are incorporated by reference in Section 3 of this administrative regu-
lation;

(3) The applicable Part 60 NSPS incorporated by reference in Section 3 of this administrative regulation.

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


(b) 40 CFR 60.40 to 60.46 (Subpart D), “Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971”, as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2000;

(c) 40 CFR 60.40a to 60.46a (Subpart D), “Standards of Perform-
ance for Electric Utility Steam Generating Units for Which Con-
struction is Commenced After September 18, 1978”, as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2000;

(d) 40 CFR 60.40b to 60.49b (Subpart D), “Standards of Perfor-


(f) [67] 40 CFR 60.50 to 60.54; (Subpart E), “Standards of Performance for Incinerators”, as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2000 [1998];

(g) 40 CFR 60.50a to 60.59a (Subpart Ea), “Standards of Perfor-

(h) 40 CFR 60.50b to 60.59b (Subpart Eb), “Standards of Perfor-
ance for Large Municipal Waste Combustors For Which Con-
struction is Commenced After September 20, 1994 or for Which Modifi-
cation or Reconstruction is Commenced After June 19, 1996”, as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2000;

(i) 40 CFR 60.50c to 60.38c (Subpart Ec), “Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1986”, as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2000;

(j) [69] 40 CFR 60.60 to 60.68 (Subpart F), “Standards of Per-

(k) [70] 40 CFR 60.70 to 60.74 (Subpart G), “Standards of Per-

(l) [71] 40 CFR 60.85 to (Subpart H), “Standards of Per-
(a) [f] 40 CFR 60.490 to 60.495 (Subpart WW), "Standards of Performance for the Beverage Can Surface Coating Industry", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2000 [1998];

(b) [f] 40 CFR 60.500 to 60.506 (Subpart XX), "Standards of Performance for Bulk Gasoline Terminals", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2000 [1998];

(c) [f] 40 CFR 60.520 to 60.526 (Subpart BB), "Standards of Performance for the Rubber Tire Manufacturing Industry", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2000 [1998];


(g) [l] 40 CFR 60.600 to 60.604 (Subpart HHH), "Standards of Performance for Synthetic Fiber Production Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2000 [1998];


(i) 40 CFR 60.620 to 60.625 (Subpart JJJ), "Standards of Performance for Petroleum Dry Cleaners", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2000 [1998];

(j) 40 CFR 60.630 to 60.636 (Subpart KKK), "Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2000 [1998];


(s) [l] 40 CFR 60.740 to 60.748 (Subpart VVV), "Standards of Performance for Polymeric Coating of Supporting Substrates Facilities", as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2000 [1998];


(2) This material may be inspected, copied, or obtained at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;

(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 876-0175;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 667-7304;

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (270) 899-8468;


JAMES E. BICKFORD, Secretary
APPROVED BY AGENCY: September 20, 2001
FILED WITH LRC: September 21, 2001 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation is scheduled for November 29, 2001, at 10 a.m. (Eastern Time) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals who intend to be heard at this hearing shall notify this agency in writing by November 20, five (5) workdays prior to the hearing, of their intent to attend. 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. 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: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone (502) 573-3382 Fax: (502) 573-3767.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Millie Ellis

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation incorporates by reference the federal New Source Performance Standards, 40 CFR 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.688, and 60.680 to 60.759 (Subparts A, D to XX, BBB to NNN, and PPP to WWW), as published in the Code of Federal Regulations, 40 CFR Part 60, July 1, 2000.

(h) The necessity of this administrative regulation: This administrative regulation allows Kentucky to have the delegated authority to implement and enforce the federal Part 60 NSPS Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Commonwealth is required to adopt the federal NSPS Program in order to retain implementation and enforcement authority. This administrative regulation is the state's adoption of NSPS pursuant to 42 USC 7411.

(d) How this administrative regulation currently assists or will assist in the effective implementation of the statutes: Sources that are subject to the Part 60 NSPS Program are able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements.

(b) On a continuing basis: There are no new initial costs for the implementation of this administrative regulation.

(c) On a continuing basis: There are no known continuing costs for the implementation of this administrative regulation.

(d) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division will absorb all costs for the implementation and enforcement of this amendment to the administrative regulation in its operating budget.

(e) An estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There are no new initial costs for the implementation of this amendment to the administrative regulation.

(b) On a continuing basis: There are no known continuing costs for the implementation of this amendment to the administrative regulation.

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.688, and 60.680 to 60.759 (Subparts A, D to XX, BBB to NNN, and PPP to WWW), July 1, 2000. The United States Environmental Protection Agency (U.S. EPA) may grant states implementation and enforcement authority for the federal Part 60 NSPS Program pursuant to 42 USC 7411.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 60.1 to 60.19, 60.40 to 60.506, 60.540 to 60.688, and 60.680 to 60.759 (Subparts A, D to XX, BBB to NNN, and PPP to WWW), July 1, 2000, contain new source performance standards that the U.S. EPA is required to promulgate pursuant to 42 USC 7411.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation imposes no stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

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? No.

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part, or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 known effect on current revenues.
Expenses (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

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


RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.1661 [63-13435], 42 USC 7401, 7412, 7414, 7416, 7601

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.1 to 63.15, 63.70 to 63.81, 63.100 to 63.1651 [63-13435], 42 USC 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: 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 incorporates by reference the National Emission Standards for Hazardous Air Pollutants (NESHAP) codified in 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.1661 [63-13435]. Delegation of implementation
enforcement authority for the federal NESHAP program from the United States Environmental Protection Agency to the Commonwealth of Kentucky is provided under 42 USC 7412(c).

Section 1. (1) For purposes of 40 CFR Part 63, “Part 63 NESHAP” shall be the National Emission Standard for Hazardous Air Pollutants codified in 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.1681 [63.1338] (Subparts A, D, and F to XXX [JJJ]).

(2) For purposes of 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.1681 [63.1338] (Subparts A, D, and F to XXX [JJJ]), the “administrator” shall be the Secretary of the Natural Resources and Environmental Protection Cabinet unless a specific provision of the Part 63 NESHAP states that the United States Environmental Protection Agency shall retain enforcement authority.

Section 2. Applicability. This administrative regulation shall apply to sources that are subject to 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.1681 [63.1338] (Subparts A, D, and F to XXX [JJJ]). These sources shall comply with the following:

(1) The applicable provisions in 40 CFR 63.1 to 63.15 (Subpart A), “General Provisions”, which is incorporated by reference in Section 3 of this administrative regulation;

(2) For sources that applied for early reduction credit and wish to extent the credit for compliance demonstration, the applicable provisions in 40 CFR 63.70 to 63.81 (Subpart D), “Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants”, which is incorporated by reference in Section 3 of this administrative regulation;

(3) The applicable test methods, procedures, and other provisions contained in 40 CFR Part 63, Appendices A through D, which are incorporated by reference in Section 3 of this administrative regulation; and

(4) The applicable Part 63 NESHAP incorporated by reference in Section 3 of this administrative regulation.

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

(a) 40 CFR 63.1 to 63.15 (Subpart A), “General Provisions”, which is published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 2000 [1998];


(cc) 40 CFR 63.840 to 63.853 (Subpart LL), “National Emission...
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. 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: Millie Ellis, Supervisor, Regulation Development Section, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, phone: (502) 573-3382 Fax: (502) 573-3787.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Millie Ellis

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation incorporates by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR 63.1 to 63.70 to 63.81, and 63.100 to 63.1661 (Subparts A, D, and F to XXX) as published in the Code of Federal Regulations, Part 63, July 1, 2000.

   (b) The necessity of this administrative regulation: This administrative regulation allows Kentucky to have the delegated authority to implement and enforce the federal Part 63 NESHAP Program.

   (c) How this administrative regulation conforms to the content of the authorizing statutes: The Commonwealth is required to adopt the federal Part 63 NESHAP in order to retain implementation and enforcement authority. This administrative regulation is the state's adoption of NESHAP pursuant to 42 USC 7412.

   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Sources that are subject to the Part 63 NESHAP Program are able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements.

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

   (a) How the amendment will change this existing administrative regulation: This amendment will update the material incorporated by reference in 40 CFR Part 63 to include revisions made and subparts added after July 1, 1998 through July 1, 2000.

   (b) The necessity of the amendment to this administrative regulation: This amendment will allow Kentucky to continue to have the delegated authority to implement and enforce the federal Part 63 NESHAP Program.

   (c) How the amendment conforms to the content of the authorizing statutes: The Commonwealth is required to adopt the federal Part 63 NESHAP in order to retain implementation and enforcement authority. This amendment will update the administrative regulation to comply with the July 1, 2000 version of 40 CFR Part 63.

   (d) How the amendment will assist in the effective administration of the statutes: Sources that are subject to the Part 63 NESHAP Program will continue to be able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements.

   (3) List the types and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are no individuals, businesses, organizations, or state and local governments affected by this administrative regulation beyond those affected in the federal Part 63 NESHAP.

   (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 affected by the federal Part 63 NESHAP Program will continue to be able to work with the state rather than the United States Environmental Protection Agency (U.S. EPA) to demonstrate compliance with applicable requirements.

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

(a) Initially: There are no new initial costs for the implementation of this amendment to the administrative regulation.

(b) On a continuing basis: There are no known continuing costs related to this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The division will absorb all costs for the implementation and enforcement of this amendment to the administrative regulation in its operating budget.

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

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This amendment to the administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.1661 (Subparts A, D, and F to XXX) as published in the Code of Federal Regulations, Part 63, July 1, 2000.

2. State compliance standards. The state compliance standards are found in KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 63.1 to 63.15, 63.70 to 63.81, and 63.100 to 63.1661 (Subparts A, D, and F to XXX), July 1, 2000, contain national emission standards for hazardous air pollutants that the U.S. EPA is required to promulgate pursuant to 42 USC 7412.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation imposes no stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard; or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

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? No.

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part, or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 known effect on current revenues.

   Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.
VOLUME 28, NUMBER 5 – NOVEMBER 1, 2001

JUSTICE CABINET
Division of Adult Institutions
(AMENDMENT)


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 Kentucky State Reformatory.

Section 1. Incorporation by Reference. (1)(a) Kentucky State Reformatory policies and procedures October 15, 2001 [June 43, 2000], are incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, P.O. Box 2400, Frankfort, Kentucky 40602-2400, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 2. Kentucky State Reformatory policies and procedures include:

KSR 01-00-09 Public Information and News Media Relations
KSR 01-00-10 Entry Authorization for All Cameras and Tape Recorders Brought into the Institution
KSR 01-00-15 Cooperation and Coordination with Oldham County Courts
KSR 01-00-19 Personal Service Contract Personnel
KSR 02-00-01 Inmate Canteen [Amended 6/13/00]
KSR 02-00-03 Screening Disbursements from Inmate Personal Accounts [Amended 6/13/00]
KSR 02-00-11 Inmate Personal Accounts [Amended 6/13/00]
KSR 02-00-12 Institutional Funds and Issuance of Checks [Amended 6/13/00]
KSR 04-00-02 Staff Training and Development
KSR 05-00-01 Officers' Daily Housing Security and Safety Log
KSR 05-00-02 Research Activities
KSR 05-00-03 Management Information Systems
KSR 08-00-01 Inmate Master File
KSR 08-00-03 Kentucky Open Records Law and Release of Psychological/Psychiatric Information
KSR 07-00-02 Institutional Tower Room Regulations
KSR 07-00-06 Asbestos Abatement
KSR 07-00-07 Discharge Monitoring Report (DMR)
KSR 07-00-08 Control of Hazardous Energy (Lockout or Tagout)
KSR 07-00-09 Inventory Control of Underground Storage Tanks
KSR 08-00-07 Inmate Family Emergency - Life Threatening Illness or Death in Inmate's Immediate Family
KSR 09-00-00 Death of an Inmate/Notification of Inmate Family in Case of Serious Injury, Critical Medical Emergency, Major Surgery or Death
KSR 08-00-10 Hazardous Materials and Chemicals Safety Data Sheet
KSR 09-00-21 Crime Scene Camera
KSR 09-00-22 Collection, Preservation, and Identification of Physical Evidence
KSR 09-00-23 Public Information and News Media Relations
KSR 09-00-26 Contraband Outside Institutional Perimeter
KSR 09-00-28 Restricted Areas
KSR 09-00-30 Parole Board
KSR 09-00-31 Forced Cail Move in Medium or Maximum Area
KSR 10-00-10 Special Management - Inmate Legal Access [Amended 6/13/00]
KSR 10-00-11 Unit D - Behavior Problem Control
KSR 10-01-13 Unit D - Property Room Access

KSR 10-01-01 Special Management Unit Staff Allocation, Position Description, Staff Selection, Training and Evaluation
KSR 10-01-02 Segregation - General Operational Procedures
KSR 10-01-03 Special Management Unit - Inmate Tracking System and Records System [Amended 6/13/00]
KSR 10-01-04 Special Management - Administrative Segregation [Amended 6/13/00]
KSR 10-01-05 Special Management - Disciplinary Segregation [Amended 6/13/00]
KSR 10-01-07 Special Management - Protective Custody [Amended 6/13/00]
KSR 10-01-08 Special Management - Safekeepers and Pretrial Contract Hold Status Inmates [Amended 6/13/00]
KSR 10-01-09 Special Management - Hold Ticket Inmates [Amended 6/13/00]
KSR 10-01-13 Special Management - Property Room Access [Amended 6/13/00]
KSR 10-02-01 Department of Corrections Division of Mental Health's Intensive Services Transitional Program:
Staffing Pattern, Staff Allocation, Position Description, Staff Selection, Training, Time and Attendance
KSR 10-02-02 Department of Corrections Division of Mental Health's Intensive Services Transitional Program:
Unit E Designated Staff Visits
KSR 10-02-04 Department of Corrections Division of Mental Health's Intensive Services Transitional Program:
General Operating Procedures
KSR 10-02-07 Correctional Psychiatric Treatment Unit: Inmate Tracking System and Record System
KSR 10-02-08 Correctional Psychiatric Treatment Unit
KSR 11-00-01 Meal Planning and Procedure
KSR 11-00-02 Special Diets
KSR 11-00-03 Food Service Inspections
KSR 11-00-04 Dining Room Rules and Dress Code for Inmates
KSR 11-00-06 Health Standards and Regulations for Food Service Employees
KSR 11-00-07 Early Chow Line Passes for Medically Designated Inmates
KSR 12-00-01 Inmate Summer Dress Regulations
KSR 12-00-03 State Items Issued to Inmates
KSR 12-00-05 Sanitation Policy and Standards
KSR 12-00-07 Regulations for Inmate Barber Shop
KSR 12-00-09 Treatment of Inmates with Body Lice
KSR 13-00-03 Medication for Inmates Leaving Institution Grounds
KSR 13-00-04 Medical and Dental Care
KSR 13-00-05 Medical Records
KSR 13-00-08 Institutional Laboratory Procedures
KSR 13-00-09 Institutional Pharmacy Procedures
KSR 13-00-10 Requirements for Medical Personnel
KSR 13-00-11 Health Evaluation
KSR 13-00-12 Vision Care/Optometry Services
KSR 13-00-14 Periodic Health Examinations for Inmates
KSR 13-00-15 Medical Alert System
KSR 13-00-16 Suicide Prevention and Intervention Program
KSR 13-00-17 Special Care
KSR 13-00-18 Mental Health Services
KSR 13-00-22 Mental Health Services
KSR 13-00-23 Suicide Prevention and Intervention Program
KSR 13-00-24 Department of Corrections Division of Mental Health's Intensive Services Transitional Program:
Program Description
KSR 13-00-25 Access to Intensive Services Programs Operated at Kentucky State Reformatory by the Division of Mental Health's Intensive Services
KSR 14-00-01 Inmate Rights
KSR 14-00-02 Americans with Disabilities Act Inmate Program Access
KSR 15-00-02 Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
KSR 15-00-06 Inmate I.D. Cards
KSR 15-00-07 Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 15-00-08 Firehouse Living Area
KSR 15-00-09 Use of Tobacco Products for Inmates and Staff
KSR 15-00-10 Program Services for Special Housing Placement
Contact Person: Jack Damon, Deputy General Counsel

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures of the Department of Corrections (Corrections) governing the operation of Kentucky State Reformatory and Corrections, which directs institutional employees in the safe and appropriate control of the inmate population and security of the institution.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the operations of this institution.
(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 institutional employees to ensure the safe and efficient operation of the institution.
(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 shall delete the secured policies and procedures from this regulation.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirements 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 Kentucky State Reformatory.
(d) How the amendment will assist in the effective administration of the statutes: It will make changes to delete the secured policies and procedures, thereby impacting the safety and security of the institution and the public.
(3) Type and number of individuals, businesses, organizations, state and local governments affected by this administrative regulation: 573 employees and 1608 inmates of the Kentucky State Reformatory.
(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, thereby impacting the safety and security of Kentucky State Reformatory and the public.
(5) Provide an assessment 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 2000 - 2002 biennium.
(7) Provide and 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 applied 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 or 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.
VOLUME 28, NUMBER 5 – NOVEMBER 1, 2001

JUSTICE CABINET
Department of Corrections
Division of Adult Institutions
(回ment)

501 KAR 6:130. Western Kentucky Correctional Complex.

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 Western Kentucky Correctional Complex.

Section 1. Incorporation by Reference. (1)(a) Western Kentucky Correctional Complex policies and procedures, October 15, 2001 [December 14, 1999], are incorporated by reference. (b) They may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Western Kentucky Correctional Complex policies and procedures include:

WKCC 01-02-01 Public Information and Media Communication
WKCC 01-08-01 Smoking Policy [Added 12/14/99]
WKCC 02-05-01 Fiscal Management Audits [Added 10/15/01]
WKCC 02-05-03 Invoice and Voucher Processing [Deleted 10/15/01]
WKCC 02-00-04 Monetary Receipts During Nonbusiness Hours [Amended 10/15/01]
WKCC 02-05-01 Fiscal Management Organization and Budget Preparation [Added 10/15/01]
WKCC 02-00-06 Purchasing Procedures [Amended 10/15/01]
WKCC 02-01-01 Inmate Funds [Amended 10/15/01]
WKCC 02-01-02 Inmate Canteen [Amended 10/15/01]
WKCC 02-02-01 Agency Funds and Accounting Procedures [Amended 10/15/01]
WKCC 02-02-03 Property Receipt and Inventory Procedures [Amended 10/15/01]
WKCC 04-01-01 Travel Reimbursement for Official Business in Attendance at Professional Meetings [Amended 10/15/01]
WKCC 04-02-01 Employee Training and Development [Amended 10/15/01]
WKCC 05-01-01 Research, Consultants, and Student Interns
WKCC 06-00-01 Offender Records and Information Access [Amended 10/15/01]
WKCC 06-00-02 Administrative Process for Inmate Court Orders [Amended 10/15/01]
WKCC 07-00-01 Preventive Maintenance Program [Added 10/15/01]
WKCC 07-00-02 Mechanical Equipment Repair and Control of Hazardous Energy [Added 10/15/01]
WKCC 10-02-01 Special Management Inmates
WKCC 11-00-02 Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKCC 11-00-03 Food Service Inspections, Sanitation, Purchasing, and Storage of Food
WKCC 11-00-04 Food Service Security
WKCC 11-00-05 Food Service General Guidelines
WKCC 11-03-01 Food Service Meals, Menus, Nutrition and Special Diets
WKCC 12-01-01 Inmate Clothing [Amended 10/15/01]
WKCC 12-00-01 Special Health Programs [Amended 10/15/01]
WKCC 13-01-01 Use of Pharmaceutical Products
WKCC 13-02-01 Health Care Services
WKCC 14-04-01 Legal Services Program [Amended 10/15/01]
WKCC 15-01-01 Hair and Grooming Standards [Amended 10/15/01]
WKCC 16-01-01 Visiting Policy and Procedures [Amended 10/15/01]
WKCC 16-02-01 Inmate Correspondence
WKCC 16-03-01 Inmate Access to Telephones
WKCC 16-04-01 Inmate Packages
WKCC 17-01-01 Inmate Personal Property [Amended 10/15/01]
WKCC 17-02-01 Inmate Reception and Orientation [Amended 10/15/01]
WKCC 19-04-02 Correctional Industries [Added 10/15/01]
WKCC 20-01-01 Education Program
WKCC 22-00-01 Inmate Recreation and Leisure Time Activities
WKCC 22-00-02 Inmate Organizations [Amended 10/15/01]
WKCC 23-00-01 Religious Services
WKCC 24-00-01 Social Services [Amended 10/15/01]
WKCC 25-02-01 Inmate Release Process [Amended 10/15/01]
WKCC 25-03-01 Pre-release Programs [Amended 10/15/01]

VERITNER L. TAYLOR, Commissioner
APPROVED BY AGENCY: October 11, 2001
FILED WITH LRC: October 15, 2001 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 2001, 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 November 14, 2001, 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: Jack Damron, Staff Attorney, Kentucky Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Phone (502) 564-2024, Fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jack Damron, Deputy General Counsel

1. Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operations of the Western Kentucky Correctional Complex including the rights and responsibilities of Western Kentucky Correctional Complex employees and the inmate populations.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 198.035 and 197.020.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the operations of Western Kentucky Correctional Complex.
(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 Western Kentucky Correctional Complex employees and the inmate population as to their duties, rights, privileges and responsibilities.

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 shall bring Western Kentucky Correctional Complex in compliance with the ACA Standards, who compliance with CPP, and show actual practice of the institution.
(b) The necessity of the amendment to this administrative regulation: To conform to the requirement of KRS 198.035 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 Western Kentucky Correctional Complex.
(d) How the amendment will assist in the effective administration
of the statutes: This will help Western Kentucky Correctional Complex to operate more efficiently.

(3) The number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 177 employees of the correctional institution, 577 inmates, 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 or non-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, thereby impacting the security and safety of the institution 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 2000 - 2002 biennium.

(7) Provide and 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 applied 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 or 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
Department of Corrections
Division of Adult Institutions
[Amendment]

501 KAR 6:140. Bell County Forestry Camp.

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 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. This administrative regulation establishes the policies and procedures for the Bell County Forestry Camp.

Section 1. Incorporation by Reference. (1)(a) "Bell County Forestry Camp Policies and Procedures", October 15, 2001 [March 15, 1999], is incorporated by reference.

(b) This material [II] may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the General Counsel, Department of Corrections, 2439 Lawrenceburg Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Bell County Forestry Camp Policies and Procedures:

BCFC 01-01-01 Establishment of the BCFC Institutional Operations Manual (Added 10/15/01)
BCFC 01-01-02 Organization of BCFC Operations Manual (Added 10/15/01)
BCFC 01-01-03 Formulation and Revision of BCFC Operating Procedures (Added 10/15/01)
BCFC 01-03-01 Representations Conducted and Their Purpose (Added 10/15/01)
BCFC 01-04-01 Monthly Reports (Added 10/15/01)
BCFC 01-02-01 Organization and Assignment of Responsibility (Amended 10/15/01)
BCFC 01-06-01 Inmate Access To, and Communication With BCFC (Added 10/15/01)

BCFC 01-05-01 Monitoring of Operations, Policies and Procedures (Amended 10/15/01)
BCFC 01-08-01 Public Information and News Media Access (Amended 10/15/01)
BCFC 01-10-01 Cooperation With Outside Bodies Including Courts, Legislative, Executive, Governmental and Community Agencies (Added 10/15/01)
BCFC 01-11-01 Institutional Duty Officer (Amended 10/15/01)
BCFC 01-12-01 Tours of Bell County Forestry Camp (Added 10/15/01)
BCFC 01-13-01 Annual Planning Document (Amended 10/15/01)
BCFC 02-01-01 Inmate Canteen (Amended 10/15/01)
BCFC 02-02-01 Warden's Fund (Amended 10/15/01) [Inmate Accounts]
BCFC 02-03-01 Purchasing (Amended 10/15/01) [Purchase Orders]
BCFC 02-04-01 Fiscal Management: Organization, Accounting, Insurance and Audit (Amended 10/15/01) [Processing of Invoices]
BCFC 02-05-01 Budget Administration (Amended 10/15/01) [BCFC Materials Receiving Procedure]
BCFC 02-06-01 Nonexpendable Personal Property (Amended 10/15/01) [Inventory]
BCFC 02-06-02 Materials Receiving and Control (Amended 10/15/01)
BCFC 02-07-01 Imprest Cash Fund (Amended 10/15/01)
BCFC 02-08-01 Prisoners Fund (Amended 10/15/01)
BCFC 03-01-01 Code of Ethics (Added 10/15/01)
BCFC 03-02-01 Criminal History Checks on all Personnel and the Employment of Exoffenders (Added 10/15/01)
BCFC 03-03-01 Employee Physicals (Added 10/15/01)
BCFC 03-04-01 Personnel Files (Added 10/15/01)
BCFC 03-05-01 Selection, Retention and Promotion of Employees (Added 10/15/01)
BCFC 03-06-01 Performance Evaluation (Added 10/15/01)
BCFC 03-07-01 Hours of Work, Inclement Weather, Leave Request and Sick Time (Amended 10/15/01) [Added 3/4/99]
BCFC 03-08-01 Confidentiality of Information (Added 10/15/01)
BCFC 03-09-01 Kentucky Employers Assurance Program (Added 10/15/01)
BCFC 03-10-01 Employee Handbook (Added 10/15/01)
BCFC 03-11-01 Replacement of Damaged or Destroyed Personal Property (Added 10/15/01)
BCFC 03-12-01 Drug Free Work Place (Added 10/15/01)
BCFC 04-01-01 Employees Training and Development (Amended 10/15/01)
BCFC 05-01-01 Information System (Amended 10/15/01)
BCFC 05-02-01 Consultants, Research, and Student Interns (Added 10/15/01)
BCFC 06-01-01 Offender Records (Amended 10/15/01)
BCFC 06-02-01 Storage of Expunged Records (Amended 10/15/01)
BCFC 06-03-01 Court Records (Amended 10/15/01)
BCFC 06-03-02 Receipt of Order of Appearance (Amended 10/15/01)
BCFC 07-02-01 Preventative Maintenance Plan (Added 10/15/01)
BCFC 07-04-01 Smoking Control (Amended 10/15/01)
BCFC 07-05-01 Permit Required Confined Space (Amended 10/15/01)
BCFC 07-06-01 Control of Hazardous Energy (Amended 10/15/01) [Lockout/Tagout]
BCFC 08-02-01 Fire Prevention (Amended 10/15/01)
BCFC 08-03-01 Fire Procedures (Amended 10/15/01) [Amended 3/15/99]
BCFC 08-03-02 Fire Extinguishers and Their Use (Amended 10/15/01)
BCFC 08-09-01 Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances (Amended 10/15/01)
BCFC 08-09-02 OSHA Hazard Communication Program (Deleted 10/4/04)
BCFC 08-10-04 Bell County Forestry Camp Emergency Response Team (Deleted 10/4/04)
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: Jack Damron, Staff Attorney, Kentucky Department of Corrections, 2439 Lawrenceburg Road, PO Box 2400, Frankfort, Kentucky 40602-2400, Phone (502) 564-2024, Fax (502) 564-6494.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jack Damron, Deputy General Counsel

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of Bell County Forestry Camp including the rights and responsibilities of Bell County Forestry Camp and the inmate population.
(b) How this administrative regulation fits into the structure of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the operations of Bell County Forestry Camp.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By providing clear and concise directions and information to Bell County Forestry Camp employees and the inmate population as to their duties, rights, privileges and responsibilities.

(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 shall bring Bell County Forestry Camp in compliance with ACA Standards and Procedures Policies and Procedures and to show actual practice at the institution.
(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 Bell County Forestry Camp.
(d) How the amendment will assist in the effective administration of the statutes: This will help Bell County Forestry Camp to operate more efficiently.

(3) Type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 44 employees of the correctional institutions and 215 inmates.

(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 and the inmate population, thereby impacting the security and safety of the institution.

(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 2000 - 2002 biennium.

(7) Provide and assess 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 applied 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 or 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.

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JUSTICE CABINET
Kentucky Department of Corrections

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the policies and procedures governing the operation of Bell County Forestry Camp including the rights and responsibilities of Bell County Forestry Camp and the inmate population.
(b) How this administrative regulation fits into the structure of this administrative regulation: To conform to the requirements of KRS 196.035 and 197.020.

(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 shall bring Bell County Forestry Camp in compliance with ACA Standards and Procedures Policies and Procedures and to show actual practice at the institution.
(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 Bell County Forestry Camp.
(d) How the amendment will assist in the effective administration of the statutes: This will help Bell County Forestry Camp to operate more efficiently.

501 KAR 6:999. Corrections secured 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: "Department of Corrections Secured Policies and Procedures, October 15 [September 11], 2001".

BCC 09-01-01 Inclement Weather/Emergency Condition Operations
BCC 09-02-01 Restricted Areas
BCC 09-02-02 Inmate Pass System to Restricted Areas
BCC 09-02-03 Regulation of Inmate Movement
BCC 09-04-01 Construction Crew Entry, Exit and Regulations
BCC 09-04-02 Complex Entry and Exit
BCC 09-05-01 Key Control
BCC 09-06-02 Transportation to Courts
BCC 09-07-01 Drug Abuse and Intoxicants Testing
BCC 09-09-01 Population Counts and Count Documentation
BCC 09-15-01 Search Policy and Disposition of Contraband
BCC 09-16-01 Security Activity Logs
BCC 09-17-01 Institutional Supervisor Inspections
BCC 09-20-01 Inmate Death
BCC 09-21-01 Tool Control
BCC 09-22-01 Emergency Communication System
BCCF 08-01-01 Bell County Forestry Camp's Institutional Emergency Plan (Added 10/15/01)
BCCF 08-09-02 OSHA Hazard Communication Program (Added 10/15/01)
BCCF 08-19-01 Bell County Forestry Camp Emergency Response Team (Added 10/15/01)
BCCF 09-07-01 Key Control (Added 10/15/01)
BCCF 09-11-01 Guidelines for Contractors (Added 10/15/01)
BCCF 09-15-01 Count Procedures and Regulation of Inmate Movement (Added 10/15/01)
BCCF 09-18-01 Inmate Death (Added 10/15/01)
BCCF 09-19-01 Tool Control (Added 10/15/01)
BCCF 09-20-01 Weapons, Chemical Agents, and Related Security Device Control (Added 10/15/01)
BCCF 09-20-01 Transportation of Inmates (Added 10/15/01)
CPP 8.3 Emergency Planning
CPP 8.4 Emergency Preparedness
CPP 8.5 Emergency Squads
CPP 9.1 Use of Force (Amended 02/28/04)
CPP 9.3 Security Threat Groups
CPP 9.7 Storage, Issue, and Use of Weapons Including Chemical Agents
CPP 9.9 Transportation of Inmates
CPP 9.10 Security Inspections
CPP 9.11 Tool Control
FCDC 09-01-02 Institutional Entry and Exit Surveillance and Perimeter Security Procedures
FCDC 09-01-03 Firearms, Mechanical Restraints, and Emergency Equipment
FCDC 09-03-01 Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials
FCDC 09-07-01 Guidelines for Contract and Construction Personnel
FCDC 09-09-01 Tool Control

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RCC 09-19-01 Tool Control [(Added 9/14/01)]
RCC 09-20-01 Weapons and Related Security Device Control [(Added 9/14/01)]
RCC 09-20-03 Issuance of Firearms and Chemical Weapons from the Armory [(Added 9/14/01)]
RCC 09-21-01 Transportation of Inmates [(Added 9/14/01)]
RCC 09-22-02 Use of Electronic Hot Shield [(Added 9/14/01)]
RCC 09-23-01 Use of Restraints [(Added 9/14/01)]
RCC 09-25-01 Procedure for Operation in Inclement Weather [(Added 9/14/01)]
RCC 09-26-01 Use of State Vehicles and Staff Owned Vehicles [(Added 9/11/01)]

(2) There shall not be a public hearing on these policies and procedures as they are secured policies under the provisions of KRS 197.025(5) which states that these policies shall not be accessible to the public or inmates.

VERTNER L. TAYLOR, Commissioner
APPROVED BY AGENCY: October 11, 2001
FILED WITH LRC: October 15, 2001 at 8 a.m.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jack Damron, Staff Attorney
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation incorporates by reference the secured policies and procedures of the Department of Corrections (Corrections) governing the operation of Kentucky State Reformatory, which directs institutional employees in the safe and appropriate control of the inmate population and security of the institution.
(b) The necessity of this administrative regulation: To conform to the requirements of KRS 106.035 and 197.020.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation governs every aspect of the security operations of these institutions.
(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 institutional employees as to their duties and responsibilities to ensure the safe and secure operation of the institution.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendments to the Kentucky State Reformatory policies update and bring the policies into line with Corrections secured policies and procedures.
(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: The amendment 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 institutional employees, thereby impacting the safety and security of the institution 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, 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) Initial: 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 2000 - 2002 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.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Vehicle Enforcement
(Amendment)

601 KAR 15:010. Disciplinary actions relating to commissioned employees [commissioned pursuant to the provisions of KRS 281.770].

RELATES TO: KRS 281.765 [284-770], 281.771, 281.772, 281.773
STATUTORY AUTHORITY: KRS 13A.100, 189.227, 281.765, 281.771 [281.772]
NECESSITY, FUNCTION, AND CONFORMITY: An officer [KRS 18A.095—specifies—that employees] of the Transportation Cabinet, Department of Vehicle Regulation, Division of [Motor] Vehicle Enforcement is commissioned pursuant to KRS 281.765. In Howard v. Transportation Cabinet, Ky. 878 S.W.2d14 (1994), the Supreme Court of Kentucky held that a vehicle enforcement officer is commissioned pursuant to KRS 281.765 instead of KRS 281.770. An officer commissioned under KRS 281.765 is still subject to discipline [281.770] disciplined] under the provisions of KRS 281.771 [Chapter 284] rather than KRS 18A.095. This administrative regulation sets forth the administrative procedure to be followed by the Department of Vehicle Regulation in imposing disciplinary action against a [Motor] Vehicle Enforcement officer [commissioned-employees] and the procedure for review of disciplinary action taken by the trial board. A weighmaster is commissioned pursuant to KRS 189.227. The Transportation Cabinet has authority to promulgate a regulation governing employee disciplinary procedures pursuant to KRS 13A.100.

Section 1. (1) An employee commissioned pursuant to KRS 281.765 or 189.227 shall conduct himself in accordance with the Commissioned Employee Code of Conduct.
(2) When a charge or complaint is filed against a commissioned employee, the Commissioner of the Department of Vehicle Regulation and those appointed by him shall conduct an investigation pursuant to the standards set forth in the Commissioned Officer Code of Conduct and impose a penalty where appropriate pursuant to the same code of conduct.

Section 2. (1) When disciplinary action is taken against an officer, the officer may request a hearing before the trial board pursuant to the procedure set forth in the Commissioned Officer Code of Conduct and KRS 281.771(9).

Section 3. (1) When disciplinary action is taken against an inspector, the inspector shall be entitled to pursue any available remedy set forth in KRS Chapter 18B with regard to the action taken.

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Division of Vehicle Enforcement, State Office Building, 8th Floor, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. [procedures before the trial boards].

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Section 1. Definitions. (1) "Class A violation" means any violation for which the disciplinary action to be dismissal, a reduction in grade, salary reduction of more than ten (10) percent, temporary transfer of work station for up to sixty (60) days, or suspension without pay of more than twenty (20) days.

(2) "Class B violation" means any violation for which disciplinary action to be dismissal, a reduction in grade, salary reduction of ten (10) percent or less, temporary transfer of work station for up to thirty (30) days, or suspension without pay of five (5) to twenty (20) days.

(3) "Class C violation" means any violation for which the disciplinary action to be written reprimand or a suspension without pay of four (4) days or less.

(4) "Commissioned employee" means an employee of the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Vehicle Enforcement appointed pursuant to KRS 281.770.

(5) "Complaint" means an allegation preferred against a commissioned employee which may result in a charge against that commissioned employee pursuant to 1904 Ky. Acts ch. 317.

(6) "Disciplinary action" means the punishment of a commissioned employee found guilty of one (1) or more charges, to include the specific charges found in 1904 Ky. Acts ch. 317, sec. 2(17).

(7) "Felony" means as defined in KRS 431.060 and 500.080.

(8) "Internal affairs" means the Director of the Division of Motor Vehicle Enforcement who has designated the employee to investigate complaints, and the administrative staff designated by the director to process complaints, charges, and disciplinary actions.

(9) "Misdemeanor" means as defined in KRS 431.060 and 500.080.

(10) "Probation" means a condition under which disciplinary action against a commissioned employee is suspended provided the employee complies with all conditions of the probation.

(11) "Suspension" means an immediate suspension from duty imposed by a supervisor or a subordinate commissioned employee when the supervisor deems the suspension is necessary for the preservation of public order, the protection of the physical safety of an individual, to prevent any violation of law by the commissioned employee, or as a result of any violation of law by the commissioned employee.

(12) "Supervisor" means any commissioned employee who

(a) Has been designated by the Director of the Division of Motor Vehicle Enforcement to exercise command authority over any region, branch, post or section of the Division of Motor Vehicle Enforcement;

(b) Has been designated by an officer of superior rank to exercise supervisory authority; or

(c) Any commissioned employee who holds the rank of sergeant or above.

(13) "Violation" means as defined in KRS 431.060 and 500.080.

Section 2. Time Limitation on Disciplinary Action. (1) Except as set forth in subsection (2) of this section, review of or investigation into an alleged act of misconduct shall be initiated within one (1) year after the date of the alleged act of misconduct.

(2) A review of or investigation into an alleged act of misconduct classified as a Class A violation may be initiated at any time.

(3) A review of or investigation into an alleged act of misconduct is initiated when a complaint is received and recorded by Internal Affairs or when the commissioned employee is suspected of wrongdoing is notified in writing that he is under investigation, whichever occurs first.

Section 3. Criminal Charges. (1)(a) Any commissioned employee who is arrested or indicted for any offense classified as a felony shall

1. Be summarily suspended from duty by his immediate supervisor, any supervisor in his chain of command, or the commissioner, and

2. Not exercise any of the powers of a peace officer for the duration of the suspension.

(b) The suspension shall be with pay unless the commissioner determines that it shall be without pay.

(2) A commissioned employee who is summarily suspended shall surrender his badge, identification card, issued vehicle and all issued weapons to the supervisor who suspends his powers.

(d) The commissioner may assign the commissioned employee suspended pursuant to this subsection to clerical or administrative duties during the period of suspension.

(e) The suspension shall remain in effect until a final determination of the criminal charge has been made by the court of jurisdiction, or until the commissioner determines that a return to full duty status is appropriate under the circumstances.

(f) The department may proceed with disciplinary action prior to a final disposition of the criminal charge.

(2)(a) Any commissioned employee who is arrested, summoned or cited for an offense classified as a misdemeanor or violation may be summarily suspended from duty by his supervisor if, in the exercise of his discretion, the supervisor determines that such suspension serves the best interests of the department or the commissioned employee.

(b) The commissioned employee under suspension shall not possess or attempt to exercise any of the powers of a peace officer for the duration of the suspension.

(c) A commissioned employee who is summarily suspended shall surrender his badge, identification card, issued vehicle and all issued weapons to the supervisor who suspends his powers.

(d) The suspension shall be with pay unless the commissioner determines that it shall be without pay.

(e) The supervisor may assign the commissioned employee to administrative or clerical duties during the period of suspension.

(f) The suspension may be rescinded at any time by the supervisor, when in his discretion he determines that the purpose for the suspension has been served.

(g) The department may initiate disciplinary action prior to a final disposition of the charge.

Section 4. Summary Suspension. (1) A supervisor may summarily suspend from duty any subordinate commissioned employee.

(a) When the suspension is necessary for the preservation of public order;

(b) To protect the physical safety of an individual;

(c) To prevent a violation of law by the commissioned employee;

(d) As a result of any violation of law by the commissioned employee.

(2) A commissioned employee who is summarily suspended shall surrender his badge, identification card, issued vehicle and all issued weapons to the supervisor who suspends his powers.

(3) A commissioned employee under summary suspension shall be relieved of duty and shall not exercise the powers of a peace officer until he is returned to duty.

(4) A summary suspension shall be with pay unless the commissioner determines that it shall be without pay.

(5)(a) Any supervisor who summarily suspends a subordinate commissioned employee shall, immediately notify the commissioner through the chain of command, of the action taken and the material circumstances surrounding the action.

(b) This notification shall be followed with all due speed by a written report to the commissioner which shall describe with specificity the reasons for the suspension.

(c) A copy of this report shall be forwarded directly to Internal Affairs for investigation and to the commissioned employee who was summarily suspended.

Section 5. Complaints Against Commissioned Employees. (1) Each written complaint received by the commissioner or charge-filed by the commissioner regarding a commissioned employee shall be reviewed and classified according to degree of seriousness by internal Affairs.

(2) A person making a written complaint shall be advised in writing by Internal Affairs of the receipt of the complaint.

(3)(a) A commissioned employee against whom a complaint is made or a charge-filed by the commissioner shall be provided with a copy of the complaint by Internal Affairs.

(b) Internal Affairs may waive this requirement only if there are reasonable grounds to believe that the commissioned employee will attempt to obstruct the investigation.

(c) If Internal Affairs waives notice to the commissioned employee of the complaint or charge, the reasons for the waiver shall be set forth in writing and made available to the commissioned employee following
completion of the investigation.
(4) A copy of the complaint or charge notification to the commission-
ed employee shall be served by Internal Affairs to the commissioned
employee's immediate supervisor.
(5) Verbal complaints may be recorded and transcribed for signing
by the complainant.
(6) Unsigned complaints shall not be a matter of record
unless a cause exists to believe the complaint to be true and the
alleged misconduct constitutes a Class A violation, in which case the
supervisor shall initiate a written complaint. Persons who make verbal
complaints shall be informed of this policy.
(7) A supervisor may make an inquiry into any alleged unwritten or
unsigned statement of misconduct to determine if the supervisor
should file a written complaint with the commissioner.
(8) Any commissioned employee who has knowledge of or ob-
serves a violation of the Standards of Conduct set forth in Section 13
of the administrative regulation by another commissioned employee
may initiate disciplinary action through the filing of a written complaint.
(9) A supervisor who initiates disciplinary action against a subordi-
nate commissioned employee shall do so by the filing of a written
complaint with the commissioner.
(10) After receiving notice of a written complaint, the commis-
sioned employee shall have the opportunity to make written response,
but shall not be required to do so.

Section 6. Internal Investigation of Complaints. (1) Internal Affairs
shall investigate any complaint which, if true, would be a Class A vio-
lation. A case number shall be assigned by Internal Affairs to each
complaint investigated or referred for investigation. A log shall be
maintained by Internal Affairs showing the name of the complainant,
the employee of the state's commissioned employees who is the subject of
the complaint, the case number, the date received, and the disposition.
(2) The commissioned employee under investigation shall answer
all questions specifically directed and narrowly related to the perfor-
amce of official duty.
(b) Any commissioned employee who refuses to answer any
question specifically directed and narrowly related to the perfor-
amce of official duty or who believes that the answer would tend to incrimi-
nate him shall be advised that he may be disciplined for refusing to
answer a question that is specifically directed and narrowly related to the per-
formance of duty, and the case shall then be referred to the Office of
General Counsel for review and advice prior to any additional ques-
tioning or investigation.
(3) The office from Internal Affairs conducting an internal in-
vestigation may interview any other commissioned employee or em-
ployee of the Division of Motor Vehicle Enforcement on any matter
related to the investigation.
(b) The commissioned employee shall answer truthfully any ques-
tion relating to the subject matter of the investigation of which he has
knowledge.
(c) If the commissioned employee or employee refuses to answer
on grounds of privilege or that the answer would tend to incrimi-
nate him, the case shall be referred to the Office of General Counsel
for review and advice prior to any additional questioning of the witness.
(4) Internal investigations of complaints shall be conducted by a
finding that:
(a) The complaint is ungrounded;
(b) Insignificant evidence exists to determine the validity of the
complaint.
(c) One (1) or more of the allegations of the complaint have been
substantiated.
(5) If one (1) or more of the allegations of the complaint are sub-
stantiated, a recommendation shall be made by the Internal Affairs
investigator(s) regarding disciplinary action. Recommendations for
disciplinary action shall be supported by specific and articulable fact.
(6) Completed Internal Affairs investigations of Class B or C viola-
tions with recommended disciplinary action shall be forwarded by the
appropriate supervisor through the following channels for review:
(a) Appropriate supervisor's supervisor;
(b) Director of the Division of Motor Vehicle Enforcement;
(c) Internal Affairs; and
(d) Commissioner.
(7) The routing mechanism shall be sealed and marked "EYES
ONLY" on the outside of the envelope.
(8) Completed Internal Affairs investigations of Class A violations
with recommended disciplinary action shall be forwarded through the
channel established by Internal Affairs to the division director and com-
mmissioner.
(9) Completed Internal Affairs investigations with a recommenda-
tion of no disciplinary action shall be forwarded through the channel
set forth in subsection (6) of this section terminating at the division
director for final action.
(10) The notice of final action on disciplinary matters shall be
routed by Internal Affairs by the same procedures as the complaints
against commissioned employees are routed. All reports of internal
investigations shall be filed in Internal Affairs upon conclusion of the
investigation.
(11) For purposes of this review process, when an item is marked
"EYES ONLY" the individual to whom the item is addressed shall be
the only one to open and review it. The individual to whom the item is
addressed shall reseal the item and forward it to the next person in the
review process.
(12) The complainant, at the discretion of the commissioner,
be informed at the conclusion of the investigation of whether discipli-
nary action was imposed as a result of the complaint, but shall not be
apprised of any details of the investigation.

Section 7. Imposition of Disciplinary Action. (1) Prior to the imposi-
tion of any disciplinary action other than a written reprimand, a written
notice shall be provided to the commissioned employee by the com-
misioner of the precise form that the disciplinary action will take,
together with a specific explanation of the reasons for the action. The
notice shall be precise as to the standard of conduct violated and the
attendant facts and circumstances.
(2) Within five (5) days after receiving notice of disciplinary action,
a commissioned employee may make written response and request
that the proposed action be reviewed by an individual member of the
trial board prior to imposition. A request for review shall be specific to
the reasons why the proposed action is in error or unjust.

Section 8. Review of Proposed Disciplinary Action. (1) The indi-
vidual members of the trial board shall be appointed pursuant to
195 K.Y. Acts ch. 317, sec. 3 and shall be assigned by the appointed
members of the trial board to review and determine the facts of the
complaint.
(b) The review officer has the following responsibilities and capa-
(b) The review officer may interview any other commissioned employee or
(c) The review officer may interview any other commissioned employee or
(d) The review officer may interview any other commissioned employee or

Section 9. Board of Appeals. (1) Except for the disciplinary actions
which result in a Trial Board pursuant to the provisions of 195 K.Y.
Acts ch. 317, sec. 3 or a reprimand, except where the reprimand is for
conduct unbecoming as set forth in Section 13(44) of this administra-
tive regulation, any disciplinary action may be appealed to a Board of
Appeals.
(2) The Board of Appeals shall consist of three (3) members of the
Trial Board appointed by the commissioner.
(3) The members of the Board of Appeals shall serve for one (1)
calendar year from the date of appointment.
(4) Any Board of Appeals member who is disciplined for miscon-
duct shall be removed and a successor shall be appointed to serve the
remainder of the term.
(5) Members may serve more than one (1) term.
(6) The commissioner shall designate one (1) of the members to serve as
chairman.
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(7) A request for appeal shall be filed with the commissioner not later than ten (10) days following the effective date of the disciplinary action.

(8) A request for appeal shall cause a hearing to be held within sixty (60) days from the date of the request.

(9) The appellant shall be notified at least ten (10) days prior to the hearing of the time and location at which the hearing will be held.

(10) The board may not subpoena witnesses, but any witnesses who are employed by the Division of Motor Vehicle Enforcement shall be required to attend and testify if the appellant or the Investigating Officer requests.

(11) The appellant shall be entitled to review any departmental reports relating to the disciplinary action prior to the hearing, and shall be provided with a copy of the Internal Affairs report.

(12) The appellant may be represented by counsel. The department shall be represented by the Office of General Counsel.

(13) All testimony at the hearing shall be given under oath and recorded.

(14) Any evidence that is relevant and material shall be admissible, including hearsay.

(15) Board members may question the appellant and any witnesses.

(16) The disciplinary action may be revised, affirmed, or modified upon the vote of two (2) of the three (3) board members.

(17) The audio record of the appeal shall be filed in Internal Affairs.

(18) If the appellant wants a transcript of the record, he shall pay for it.

(19) The chairman shall cause an order to be written concerning the proceedings which report the action taken. This order shall be filed with Internal Affairs and in the office of the Director of the Division of Motor Vehicle Enforcement and shall constitute final administrative action on the case absent a showing of fraud or duress in which case another hearing may be held.

(20) All records and reports of proceedings before the Board of Appeals, with the exception of the final order, shall be confidential.

(21) Decisions of the Board of Appeals may only be appealed to the Franklin Circuit Court as provided in 1994 Ky. Acts ch. 317, sec. 3.

Section 10. Retention of Disciplinary Records. (1) All records of disciplinary actions for Class A violations shall be retained by internal Affairs until ten (10) years after separation or termination of the affected employee.

(2) All records of disciplinary actions for Class B or Class C violations shall be destroyed after the expiration of five (5) years from the effective date of the action.

Section 11. Types of Disciplinary Actions. (1) The appropriate disciplinary action for committing a Class A violation shall be one (1) or more of the following:

(a) Dismissal;
(b) Reduction in grade;
(c) Salary reduction greater than ten (10) percent;
(d) Temporary transfer of work station for up to sixty (60) days; or
(e) Suspension from duty without pay for at least twenty-one (21) working days.

(2) The disciplinary action for committing a Class B violation shall be a suspension from duty without pay for a minimum of five (5) working days and a maximum of twenty (20) working days, a reduction in grade, or a salary reduction of ten (10) percent or less.

(3) The disciplinary action for committing a Class C violation shall be one (1) of the following:

(a) A written reprimand; or
(b) A suspension from duty without pay of four (4) working days or less.

(4) A repeated violations of the standards of conduct shall result in enhanced penalties.

(b) The third disciplinary action in any twelve (12) month period shall be enhanced as follows:

1. A Class C violation shall be treated as a Class B violation and
2. A Class B violation shall be treated as a Class A violation.

(c) The commissioner may place on probation for a period of up to one (1) year any commissioned employee found to have violated any of the standards of conduct set forth in Section 13 of this administrative regulation.

(5) The commissioner may predicate the entire disciplinary action given a commissioned employee for any part of it.

(d) Determination of what will be probated is at the discretion of the commissioner after consideration of input from the commissioned employee's supervisor, Internal Affairs, and the Director of the Division of Motor Vehicle Enforcement.

(e) The only condition of probation which may be imposed is that the commissioned employee not violate any of the standards of conduct during the probationary period.

(f) The violation of any of the standards of conduct during the probationary period shall cause the probation to be revoked and the original sentence, or remainder thereof, to be imposed.

(1) Probation shall not be granted except on the commissioned employee's admission of guilt to the alleged violation, and shall not be granted for more than one (1) violation in any twelve (12) month period.

(5) Complaints which contain more than one (1) allegation shall be classified according to the most serious violation alleged and shall not be severed for purposes of investigation.

Section 12. Trial Board. (1) If a commissioned employee is entitled to a Trial Board hearing as provided in 1994 Ky. Acts ch. 317, sec. 3, a Trial Board hearing shall be automatically scheduled unless the commissioned employee, in writing specifically, waives his right to the Trial Board hearing within five (5) days of the effective date of the order of charges.

(2) The commissioner shall serve as Chairman of the Motor Vehicle Enforcement Trial Board.

(3) The commissioner shall rule on all motions except as otherwise provided by law.

(4)(a) The Trial Board hearing shall commence with a reading of the charges by the chairman.

(b) If the commissioned employee is not represented by counsel, the chairman shall advise the defendant-commissioned employee that he has the right to be represented by private counsel of his choice at his own expense.

(5) The chairman shall swear in the Trial Board members.

(6) The chairman shall consider other preliminary motions by either party.

(7) The order for presentation of evidence and arguments is as follows:

(a) Department opening statement.
(b) Defendant opening statement.
(c) Presentation of evidence by department.
(d) Presentation of evidence by defendant.
(e) Presentation of rebuttal evidence by department.
(f) Presentation of rebuttal evidence by defendant.
(g) Closing statement by defendant.
(h) Closing statement by department.

(5)(a) All witnesses shall be sworn at the time their testimony is offered and shall be separated unless otherwise ordered by the chairman.

(b) The defendant-commissioned employee shall be permitted to remain present throughout all proceedings even though he may testify in his own behalf.

(c) The department shall be permitted to have representatives present throughout the proceedings.

(d) At the hearing, all charges shall be put in issue, and evidence at the hearing shall be confined and limited to the issues presented by the written charges. Technical rules of evidence shall not apply.

(10) The attorney for the department shall state to the Trial Board the nature of the charges and the evidence upon which he relies to support it.

(11) The department shall bear the burden of proof and it shall be by a preponderance of the evidence.

(12) The defendant or his attorney may state his defense and the evidence upon which he relies to support it or he may reserve his opening statement until the conclusion of all evidence of the agency.

(13) At the conclusion of all evidence, the chairman shall instruct the Trial Board as to the law of the case, including the issues which are to be decided, the grounds for finding for or against the defendant.
commissioned employee, and its other duties in considering the case. If the Trial Board consists of seven members, a vote of at least four (4) members concuring shall be necessary to sustain the charges; if five (5) members, a vote of at least three (3) members concuring; and if three (3) members, a vote of at least two (2) members concuring.

(14) If the Trial Board finds the commissioned employee guilty of any of the offenses charged, it shall fix his punishment by as set forth in KRS 281.771(17). The same number of members concuring as provided in subsection (13) of this section shall be necessary to establish the penalty.

Section 13.- Standards of Conduct. (1) Conformance to law.
(a) A commissioned employee, whether on- or off-duty, shall obey all laws of the United States and of any state or local jurisdiction in which the commissioned employee is present.
(b) A conviction for violating any law shall be prima facie evidence of a violation of this standard, but the fact that no conviction is obtained or that no prosecution is initiated, shall not preclude the department from taking disciplinary action for a violation of this standard.
(c) Violation of law is:
1. A Class A violation if the law violated is a felony or a Class A misdemeanor;
2. A Class B violation if the law violated is a Class B misdemeanor;
3. A Class C violation if the law violated is a violation of local ordinance.

(2) Dishonesty.
(a) Commissioned employees shall, at all times, be honest and truthful in dealing with their fellow commissioned employees or members of the public and in any written or oral communications.
(b) Upon the order of the commissioned employee, the commissioned employee shall answer truthfully all questions specifically directed and narrowly related to the scope of employment of the Division of Motor Vehicle Enforcement or any authorized representative who may be asked of him.
(c) Dishonesty is a Class A violation.

(3) Cowardice.
(a) Commissioned employees shall carry out their duties with courage and determination and shall remain firm and steadfast in the face of opposition and danger.
(b) Cowardice is a Class A violation.

(4) Use of force.
(a) Commissioned employees shall use force in accordance with law and division policy and shall use only that degree of force which is reasonable and necessary under the circumstances.
(b) Use of excessive force is a Class C violation unless the complainant suffered serious physical injury in which case it is a Class B violation.

(5) Affiliation with a subversive organization.
(a) Commissioned employee shall not in any manner affiliate himself with any organization or group which:
1. Advocates the overthrow of the government of the United States or any state;
2. Has adopted the policy of advocating or promoting the commission of acts of force or violence to deny any person his rights under the Constitution of the United States or any state; or
3. Seeks to alter the form of government of the United States or any state by unconstitutional means.
(b) Affiliation with a subversive organization is a Class A violation.

(6) Obstructing an internal investigation.
(a) Commissioned employee shall not destroy, conceal or alter any record, or attempt to coerce or intimidate any witness or potential witness in any internal investigaton of alleged misconduct.
(b) Obstructing an internal investigation is a Class A violation.

(7) Negligence.
(a) Commissioned employees shall perform their duties in a competent and efficient manner.
(b) Negligence occurs when, due to a commissioned employee's inaction or failure to perform assigned tasks correctly, an incident takes place which causes harm (physical, financial or otherwise) to a member of the public, a fellow employee, a member of another agency or the Division of Motor Vehicle Enforcement.
(c) Negligence is a Class A violation.

(8) Insubordination.
medication—properties which cause a disturbance or otherwise affects adversely the commissioned employee’s ability to operate a motor vehicle safely.

(b) Improper use of medication is a Class C violation.

(16) Use of intoxicants off duty.
(a) Commissioned employee, while off-duty, shall refrain from consuming intoxicating beverages to the extent that it results in:
1. Intoxication in public;
2. Any behavior which discredits the commissioned employee or the Division of Motor Vehicle Enforcement; or
3. The commissioned employee being un-fit to report for his next regular tour of duty.
(b) Excessive use of intoxicants while off-duty is a Class C violation.

(17) Alcoholic beverages and drugs on motor vehicle enforcement property.
(a) Commissioned employee shall not store or bring into any post, vehicle, or other facility of the Transportation Cabinet any alcoholic beverage or controlled substances except those which are being held as evidence or have been seized as contraband.
(b) Possessing alcoholic beverages or controlled substances on transportation cabinet property is a Class C violation.

(18) Gambling.
(a) Commissioned employee shall not participate in any form of gambling while on duty or while in any Division of Motor Vehicle Enforcement post, vehicle, or other Transportation Cabinet facility.
(b) Commissioned employee shall not participate in any form of illegal gambling at any time except in the performance of duty and while acting under direct and specific orders from a superior officer.
(c) Gambling on duty or on Transportation Cabinet property is a Class C violation.

(19) Personal appearance.
(a) Commissioned employees shall maintain a neat and clean appearance at all times when in public or when engaged in the performance of duty.
(b) Commissioned employee shall not use tobacco in any form when performing any official duty in direct or immediate contact with the public.
(c) Failure to maintain a proper personal appearance is a Class C violation.

(20) Gratuities or rewards.
(a) Commissioned employee shall not solicit or accept any gratuity or reward for any activity performed in his official capacity.
(b) Solicitation or acceptance of a gratuity or reward is a Class C violation.

(21) Abuse of position.
(a) Commissioned employee shall not use his official position, official identification card, or badge for the following:
1. Personal or financial gain;
2. Obtaining privileges not otherwise available to him except in the performance of duty;
3. Avoiding consequences of illegal acts.
(b) Commissioned employee shall not lend to another person his identification card or badge or permit them to be photographed or copied.
(c) Commissioned employee shall not authorize the use of his name, photograph, or likeness in connection with testimonial or advertisements of any commodity or commercial enterprise without the approval of the commissioner.
(d) Abuse of position is a Class C violation.

(22) Endorsements and referrals.
(a) Commissioned employee shall not recommend or suggest in any manner, except in the transaction of personal business, the employment or procurement of a particular product, professional service, or commercial service.
(b) In the case of ambulance or towing service, when the service is necessary and the person needing the service is unable or unwilling to procure it or requests assistance, commissioned employees shall proceed in accordance with procedures established in the guidance manual or by policy memorandum.
(c) Making an endorsement or referral is a Class C violation.

(23) Discretion.
(a) Commissioned employees shall be courteous to the public and other commissioned employees.
(b) Commissioned employees shall be tactful in the performance of their duties, shall control their temper, exercise patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation.

(c) In the performance of their duties, commissioned employees shall not use coarse, violent, profane, or insolent language or gesture, and shall not express any prejudice concerning race, religion, politics, national origin, disability, lifestyle or similar personal characteristics.
(d) When performing any official duty in direct or immediate contact with members of the public or other commissioned employees, commissioned employees shall address superior officers by rank.
(e) Discrepancy is a Class C violation.

(24) Identification.
(a) Commissioned employees shall furnish their name and unit number to any person requesting that information when they are on duty or while holding themselves out as having an official capacity, except when the withholding of such information is necessary for the performance of police duties or is authorized by their superior.
(b) Failure to provide proper identification is a Class C violation.

(25) Associations.
(a) Commissioned employees shall avoid associations or dealings with persons whom they know, or should know, are racketeers, gamblers, felons, persons under criminal investigation or indictment, or others who have a reputation in the community for felonious or criminal behavior, except as directed otherwise by a superior officer.
(b) Commissioned employee shall not visit or enter a house of prostitution, gambling house, or any other establishment wherein the laws of the United States, the laws of the Commonwealth of Kentucky, or any other law or ordinance are violated except in the performance of duty and while acting in response to lawful and specific orders of a superior officer.
(c) Prohibited associations is a Class C violation.

(26) Requests for assistance.
(a) When any person applies for assistance or advice or makes complaints or reports, either by telephone or in person, all pertinent information will be obtained in an official and courteous manner and will be properly and judiciously acted upon consistent with established procedures.
(b) Failure to properly respond to a request for assistance is a Class C violation.

(27) Public statements and appearances.
(a) Commissioned employees shall not publicly criticize or ridicule the Division of Motor Vehicle Enforcement, its police, or other commissioned employees by speech, writing, or other expression where the speech, writing, or other expression is defamatory, obscene, unlawful, undermines the effectiveness of the Division of Motor Vehicle Enforcement, interferes with the maintenance of discipline, or is made with reckless disregard for truth or falsity.
(b) Commissioned employee shall not address public gatherings, appear on radio or television, prepare any articles for publication, act as correspondents to a newspaper or periodical, release or divulge investigative information or any other matters of the Division of Motor Vehicle Enforcement while holding himself out as representing the Division of Motor Vehicle Enforcement in those matters without proper authority.
(c) Improper public statements or appearances is a Class C violation.

(28) Payment of debts.
(a) Commissioned employees shall not undertake any financial obligations which they know or should know they will be unable to meet and shall pay all just debts when due.
(b) Any isolated instance of financial irresponsibility shall not be grounds for discipline.
(c) Repeated instances of financial irresponsibility may be cause for disciplinary action.
(d) Filing for bankruptcy shall not be cause for discipline.
(e) Financial difficulties stemming from unforeseen medical expenses or personal disaster shall not be cause for discipline, provided that a good faith effort to settle all accounts is being undertaken.
(f) Failure to pay a just indebtedness is a Class C violation.

(29) Dissemination of information.
(a) Commissioned employees shall not disclose the official business of the Division of Motor Vehicle Enforcement as confidential.
(b) Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with procedures...
established in the guidance manual or by policy memorandum.  
(c) Commissioned employees may remove or copy official records or reports only in accordance with established procedures.
(d) Commissioned employees shall not divulge the identity of persons giving confidential information except as authorized by proper authority.
(e) Dissemination of confidential information except as authorized by proper authority.
(f) Reporting of cases.
(a) Commissioned employees shall submit all necessary reports on time and in accordance with established procedures.
(b) Reports submitted by commissioned employees shall be accurate and complete.
(c) Submission of inaccurate or late reports is a Class C violation.
(d) Improper handling of property and evidence.
(e) Improper handling of property and evidence is a Class C violation.
(f) Improper-use and care of equipment.
(a) Commissioned employees shall utilize issued equipment only for its intended purpose, in accordance with established procedures and training instructions, and shall not abuse, damage, lose, or use for personal purposes any issued equipment.
(b) All issued equipment shall be maintained in proper order.
(c) Any commissioned employee who violates this standard of conduct may be required to reimburse the department for the replacement or repair cost of the damaged or lost equipment.
(d) Use or loss of equipment is a Class C violation.
(e) Improper use of official vehicles.
(a) Commissioned employees shall operate official vehicles in a careful and prudent manner, and shall obey all laws of the Commonwealth and administrative regulations of the Commonwealth pertaining to the operation of motor vehicles.
(b) Loss or suspension of any driving privilege or license shall be reported immediately.
(c) Careless or improper operation of an official vehicle is a Class C violation.
(d) Use of weapons.
(a) A commissioned employee shall not use or handle weapons in a careless or imprudent manner.
(b) Careless or improper use of a weapon is a Class C violation.
(e) Unauthorized appearance in a civil case.
(a) Without the prior approval of his supervisor, a commissioned employee shall not testify or give sworn statements in any civil case, in which the Division of Motor-Vehicle Enforcement may have an interest or in which the commissioned employee has acted in his official capacity.
(b) If the commissioned employee has been lawfully served with process, he shall notify his supervisor.
(c) Unauthorized appearance in a civil case is a Class C violation.
(f) Reporting violations of standards of conduct.
(a) A commissioned employee shall not fail to report to his supervisor any violation of any standard of conduct which he observes or of which he has knowledge concerning other members of the Division of Motor-Vehicle Enforcement.
(b) Failure to report a violation of the standards of conduct is a Class C violation.
(g) Leaving assignment.
(a) A commissioned employee shall not leave his patrol area or work assignment without proper authority except in cases of emergency.
(b) Unauthorized absence from patrol area or work assignment is a Class C violation.
(h) Response to radio dispatches and use of radio.
(a) Commissioned employees shall promptly acknowledge receipt of all dispatches directed to them and, upon receipt of any call for service, shall immediately proceed to the place designated where they shall perform their required duties.
(b) After completing their assignments, they shall immediately call their posts and report their availability for further service.
(c) Commissioned employees shall keep their radios in service at all times and shall not render themselves unavailable for radio calls except in emergencies or when authorized to check out of service by a supervisor.
(d) All messages transmitted by radio and all radio conversations shall conform to the rules and regulations of the Federal Communications Commission.
(e) Profanity and superfluous remarks shall be prohibited.
(f) Improper response to radio dispatches or improper use of the radio is a Class C violation.
(g) Reporting vital information.
(a) A commissioned employee shall not fail to report to his supervisor any information which he becomes aware of which may result in the apprehension of fugitives from the arrest or felony.
(b) In addition, failure of any commissioned employee to promptly relay information of official interest or pertaining to the duties of any other commissioned employee shall constitute a violation of this section.
(c) Failure to report vital information is a Class C violation.
(h) Bail or bond for persons arrested.
(a) A commissioned employee shall not furnish bail or bond for any person, except members of the commissioned employee's immediate family, who has been arrested.
(b) Providing bail or bond for an arrested person is a Class C violation.
(i) Dereliction of duty.
(a) Commissioned employees shall perform their duties in a responsible and attentive manner.
(b) Dereliction of duty may be demonstrated by:
1. A lack of knowledge of the application of the laws to be enforced;
2. Unwillingness or inability to perform assigned tasks;
3. Failure to conform to work standards established for the commissioned employee's rank, grade, or position;
4. Failure to take appropriate action when confronted with a violation of the commissioned employee's scope of authority;
5. Exercise of poor judgment with regard to conformance to the primary mission of the division;
6. Absence without leave;
or
7. Repeated poor evaluations or a written record of repeated infractions of any administrative regulations, policies, or procedures of the Division of Motor-Vehicle Enforcement.
(j) Commissioned employees, while on duty, shall at all times remain alert and in a sufficient state of readiness to quickly respond to any appropriate situation requiring action.
(k) Commissioned employees, while on duty, shall not sleep, conduct personal business, attend to personal pleasures, or engage in any other activities which would cause them to neglect or be inattentive to duty.
(l) Dereliction of duty is a Class C violation.
(m) Dereliction of duty is a Class A violation when the act or omission which forms the basis for the charge is intentionally done for personal gain or for the gain of any person, group, company, or organization, and is detrimental to the operational efficiency of the Division of Motor-Vehicle Enforcement.
(n) Exceeding lawful authority.
(a) Commissioned employees shall at all times perform their duties within the parameters of the law enforcement authority conferred upon them by the department.
(b) Exceeding lawful authority may be demonstrated by the following noninclusive list:
1. Admonishing or lecturing citizens;
2. Making a physical arrest or other enforcement activity which is directed at persons outside the scope of the authority of the Division of Motor-Vehicle Enforcement as defined by the commissioner.
(c) Exceeding lawful authority is a Class C violation.
(o) Reporting criminal investigations.
(a) Whenever any commissioned employee conducts any criminal investigation he shall report in writing, pursuant to established procedures, his activities with respect to the investigation.
(b) Failure to report a criminal investigation is a Class C violation.
(p) Conduct unbecoming.
(a) Commissioned employees shall conduct themselves at all times, both on and off duty, in a manner to reflect favorably on the Division of Motor Vehicle Enforcement.

(b) Conduct unbecoming an commissioned employee shall include any conduct by an employee which brings the Division of Motor Vehicle Enforcement into disrepute or reflects discredit upon the commissioned employee, as a member of the Division of Motor Vehicle Enforcement, or impairs the operation efficiency of the Division of Motor Vehicle Enforcement or the commissioned employee.

(c) Conduct unbecoming is a Class C violation.

(46) Sexual harassment.

(a) Commissioned employees shall not engage in any form of sexual harassment.

(b) Sexual harassment is any attempt by a commissioned employee to obtain sexual favors by means of coercion, intimidation, or any other means, or making unwelcome sexual advances, comments, or gestures, or any other action which can be construed as contributing to a sexually harassing or offensive environment.

(c) Sexual harassment is a Class A violation.


(2) The guidance manual sets forth the policies and procedures to be followed by the Division of Motor Vehicle Enforcement.

(3) The guidance manual may be viewed or copied at the Division of Motor Vehicle Enforcement. It may be obtained from the Division of Management Services for a fee of twelve (12) dollars. Both offices are located at 501 High Street, Frankfort, Kentucky 40622. Their office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

DALE SHROUT, Commissioner
JAMES C. CODELL, III, Secretary
APPROVED BY AGENCY: October 5, 2001
FILED WITH LRC: October 11, 2001 at 11 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be November 21, 2001, at 10 a.m., local prevailing time in the Transportation Cabinet, State Office Building, 10th Floor, General Counsel Conference Room, 501 High Street, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by November 14, 2001. If no notification 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 attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comments hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your need by November 21, 2001. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will be accepted until close of business on November 21, 2001. Send written notification of intent to attend public comment hearing or written comments on the administrative regulation to: Hollie B. Spade, Staff Attorney III, Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Hollie Spade

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the standard for conduct of commissioned employees and the process for taking disciplinary actions.

(b) The necessity of this administrative regulation: It is necessary to define appropriate conduct and set forth procedures to be followed when inappropriate conduct occurs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A.100 and 189.227 provide statutory authority for regulation of these particular employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This provides clear guidelines for commissioned employees and sets forth procedure for appeal of disciplinary action taken.

(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 streamlines the hearing process for officers commissioned pursuant to KRS 281.765 and updates the standards of conduct for both inspectors and officers.

(b) How the amendment will assist in the effective administration of the statutes: This provides clear and current guidelines for officers and inspectors and provides a means for review of disciplinary decision.

(3) List and type the number of individuals, businesses, organization, or state and local governments affected by this administrative regulation: This will affect weighmasters (inspectors) and officers commissioned pursuant to KRS Chapter 281.

(4) The necessity of the amendment to this administrative regulation: The code was updated to conform with current policy, current case law, and existing statute.

(c) How the amendment conforms to the content of the authorizing statutes: This conforms to KRS 281.765, 281.771, 281.772, 189.227 and 13A.100 which authorizes the cabinet to appoint these employees and provide disciplinary standards and procedures for them.

(d) How the amendment will assist in the effective administration of the statutes: This provides clear and current guidelines for officers and inspectors and provides a means for review of disciplinary decision.

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

(a) Initially: No additional cost.

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

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: None

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: None

(9) TIERING: Is tiering applied? Yes. The code of conduct has broken down violations by severity so that more serious violations have more serious penalties.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education (Amendment)

702 KAR 3:020. Bond issue approval.

RELATES TO: KRS 58.150, 156.070, 156.200, 156.210, 162.080, 162.090, 162.100, 162.120 to 162.290, 162.300, 162.385

STATEUTORY AUTHORITY: KRS 58.150, 156.070, 162.150, 162.160, 162.170, 162.180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 58.150 authorizes the Kentucky Board of Education and the State Board for Elementary and Secondary Education to issue revenue bond anticipation notes as an initial financing mechanism; KRS 156.070 gives the Kentucky Board of Education [State Board] the management and control of the common schools; KRS 156.200 and 156.210 require the Commissioner of Education [chief state school officer] to receive all reports and supervise all accounts of local boards of education, and to rectify any improper use of school funds; and, KRS 160.160, 162.080, 162.090, 162.100, 162.120 to 162.290, 162.300, and 162.385 establish [set forth] methods and authorizations for school districts to finance capital construction projects through bonds. This administrative regulation establishes [sets forth] procedures for the approval of bond and bond anticipation note issues by school districts.

Section 1. The Commissioner of Education [chief state school officer] shall determine the financial soundness of all school revenue and bond issues. He shall supervise all phases of school revenue and
voted bonds.

Section 2. The Commissioner of Education [chief-state-school-officer] shall disapprove the sale of any school revenue or school voted bond issue which he deems to be not in accord with Kentucky Board of Education [State Board for Elementary and Secondary Education] administrative regulations or financially unsound for the district in question.

Section 3. Fiscal agents shall be registered with the Department of Financial Institutions in the Commonwealth of Kentucky. The local board of education shall select the fiscal agent for the proposed revenue bond issue. The fiscal agent shall employ appropriate bond counsel subject to approval of the local board of education. The allowable discount on bonds shall not exceed two (2) percent of the par value of the issue under contract.

Section 4. Twenty (20) percent of the fund to Support Education Excellence in Kentucky (SEEK) capital outlay funds shall be set aside as a safety factor in determining the initial bonding potential of a local district. The Commissioner of Education [chief-state-school-officer] may allow safety factors below twenty (20) percent to a minimum of ten (10) percent on a case by case basis dependent upon the financial stability of the individual school district. The following sources of revenue shall be eligible as annual revenues in support of school building revenue bonds or notes:

1. SEEK capital outlay funds (KRS 157.420);
2. Facilities Support Program of Kentucky funds (KRS 157.440);
3. School building funds (KRS 160.473); and
4. [Special voted-building funds (KRS 160.477)]; and
5. Special trust funds (when legal opinion provided by bond counsel).

Section 5. (1) Revenue bond anticipation notes or the reissuance (roll over) of bond anticipation notes shall be issued only upon approval of the Kentucky Board of Education [State Board for Elementary and Secondary Education] on a case by case basis and in accord with KRS 58.150.

(2) Prior to submittal to the Kentucky Board of Education [State Board for Elementary and Secondary Education] for approval, the local school district shall provide the Department of Education the following information:

(a) Sources and annual amounts of revenue available for debt service;
(b) Projected debt service of a comparably-sized bond issue using maximum interest rates that the district could support with current available revenues as reflected in subsection (2)(a) of this section; and
(c) Projected debt service on a comparably-sized bond issue based on the then-current market.

(3) The following criteria shall apply to determining the approval of bond anticipation notes or the reissuance (roll over) of bond anticipation notes:

(a) The district shall show evidence that the available financial resources could support a twenty (20) year revenue bond issue at the then-current market rates plus one and five-tenths (1.5) percent;
(b) The district shall agree to escrow the difference between a regular revenue bond issue at the then-current market rate twenty (20) year amortization schedule, level principal redemption) and the annual net interest cost of the bond anticipation notes. The escrow account shall be used to reduce the principal of the note at the call date, the termination date, or as is stipulated in the terms and conditions of the issue note;
(c) Notes shall be issued for a period not less than two (2) nor more than four (4) years with a one (1) year call provision; and
(d) Bonds may be required to be issued to replace callable notes if [should] market conditions change so [as] that permanent financing is advisable and warranted.

Section 6. The maximum net interest cost for the sale of school revenue bonds established by the Kentucky Board of Education [State Board for Elementary and Secondary Education] shall be a rate no greater than the most current Bond Buyer's 20 - Bond Index plus one and five-tenths (1.5) percent. In the event a bid on an issue of bonds exceeds the maximum interest rate the Commissioner of Education [chief-state-school-officer] may declare an emergency to exist and request the chairman to convene the Kentucky Board of Education [State Board for Elementary and Secondary Education] for the purpose of approving or disapproving his recommendation that the bonds be sold.

GENE WILHOT, Commissioner of Education
ICLEN MOUNTJOY, Chairperson
APPROVED BY AGENCY: October 8, 2001
FILED WITH LRC: October 8, 2001 at 4 p.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 28, 2001, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. 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 Mr. Kevin M. Noland, Deputy Commissioner, Operations and Support Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Kyra Koch
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes procedures for the approval of bond and bond anticipation note issues by school districts.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 158.150.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the specifics for bond issue approval.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific reporting requirements to allow oversight by the Department of Education of local district bond issues.
(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 only changes made by this amendment were to language that was obsolete.
(b) The necessity of the amendment to this administrative regulation: This amendment was necessary to bring the administrative regulation into conformity with current usage.
(c) How the amendment conforms to the content of the authorizing statute: No change was made to the content of the regulation.
(d) How the amendment will assist in the effective administration of the statutes: No change.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All local school districts.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: None
(5) Provide an estimate of how much it will cost to implement this administrative regulation: None
(a) Initially: There will be no additional costs to the agency to implement this administrative regulation. 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: Agency general funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if
new, or by the change if it is an amendment: No increase in fees will be necessary to implement this administrative regulation. 

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 3:070. Teachers’ salary scheduling.

RELATES TO: KRS [156.034] 157.320, 157.390

STATUTORY AUTHORITY: KRS 156.070, 157.320

NECESSITY, FUNCTION, AND CONFORMITY: [KRS 156.034 requires that administrative regulations relating to statutes amended by the 1990 Kentucky Education Reform Act be reviewed, amended if necessary, and resubmitted to the Legislative Research Commission prior to December 30, 1990.] KRS 157.320 defines experience for state funding of teacher salary purposes and the single salary schedule; and KRS 157.390 prescribes the base funding level amounts to be included in each school year’s SEEK Program—Support Education—Excellence in Kentucky Program of a school district for teachers’ salaries. This administrative regulation establishes [defines] procedures for teachers’ salary scheduling and to [define] extra service pay.

Section 1. Each board of education shall adopt and submit for the approval of the Kentucky Board of Education [State Board for Elementary and Secondary Education] a single salary schedule as defined in KRS 157.320.

Section 2. (1) A [It shall be the responsibility of the] local board of education shall [to] validate all experience of professional personnel employed in the school district. The [Such] validation of experience shall be on file in the office of the superintendent.

(2) Professional personnel leaving employment of a local board of education [after June 30, 1996] shall be granted experience credit [when calculating the SEEK Program salary allotment] when the employee’s career was interrupted to perform military duty, voluntarily or involuntarily, and who has been relieved from such duty under conditions other than dishonorable.

Section 3. A [Each] local board of education may allow increments in pay for members of its professional staff who render services beyond those normally expected of other professional members of the staff when these duties rendered extend beyond the regular school year.

Section 4. Expenditures for increments for extra duties classified as extra service [shall be paid from local revenue or funds other than the allotment for instructional salaries in SEEK Program and] shall not be counted toward meeting the requirements of KRS 157.420.

GENE WILHOIT, Commissioner of Education
HELEN MOUNTJOY, Chairperson
APPROVED BY AGENCY: October 8, 2001
FILED WITH LRC: October 8, 2001 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 28, 2001, at 10 a.m. in the State Board Room, 1st Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Deputy Commissioner, Operations and Support Services, Department of Education, 500 Mero Street, First Floor, Capitol Plaza Tower, Frankfort, Kentucky 40601; phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Kyna Koch

(1) Provide a brief summary of: (a) What this administrative regulation does: This administrative regulation establishes procedures for teachers’ salary scheduling and extra service pay.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 157.320 which defines experience for state funding of teacher salary purposes and the single salary schedule.

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the procedures for teachers’ salary scheduling and extra pay service.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specifics for teachers’ salary scheduling.

(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 made language changes to conform to statute.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation contained a number of terms that were no longer valid.

(c) How the amendment conforms to the content of the authorizing statute: The amendment deletes references to a salary component of SEEK, which does not exist in current statute.

(d) How the amendment will assist in the effective administration of the statutes: The amendment simplifies the language of the administrative regulation making it more understandable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All local school districts.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be no impact on local school districts.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There will be no additional costs to the agency to implement this administrative regulation.

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency general funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.
EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 3:100. Data report [form], professional staff.

RELATES TO: KRS 157.320, 157.390, 157.420
STATUTORY AUTHORITY: KRS 156.070, 157.320
NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.320(9) authorizes the Kentucky Board of Education to promulgate administrative regulations recommended by the Commissioner of Education [chief state school officer] that are necessary for carrying out the purposes of KRS 157.310 to 157.440, relating to the Fund to Support Education Excellence in Kentucky (SEEK). [KRS 157.390 requires that the SEEK base funding level of a local school district for teachers' salaries be based on categories of experience established therein.] KRS 157.420 establishes restrictions on a local district's teachers' salaries allotment. This administrative regulation allows the Department of Education to collect salary data on teachers employed by the school district.

Section 1. The Department of Education professional staff data report [form] shall be completed for teachers [a-teacher] paid by or under the supervision of the local school district as of September 15 and shall be submitted to the Department of Education prior to October 1 of each school year.


(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Division of Data Policy Management and Research, 17th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m. An amendment to the professional staff data form shall be submitted to the Department of Education no later than ten (10) days after the close of the school year. The amendment shall include new teacher employees and teacher terminations for the current school year which occurred between September 15 and the close of the school year.

Section 3. The professional staff data form file layout, dated July 1, 1996, is incorporated herein by reference and may be obtained, copied and inspected at the Division of Finance, Attendance and Data Collection Branch, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GENE WILHOIT, Commissioner of Education
HELEN MOUNTJOY, Chairperson
APPROVED BY AGENCY: October 8, 2001
FILED WITH LRC: October 8, 2001 at 4 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 26, 2001, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Deputy Commissioner, Operations and Support Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Agency Contact Person: Kyna Koch
(1) Provide a brief summary of:
(a) What this administrative regulation does: KRS 157.420 establishes restrictions on a local district's teachers' salaries allotment. This administrative regulation allows the Department of Education to collect salary data on teachers employed by the school district.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide clarification to school districts on the timing and content of the report of teachers' salaries.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation requires teachers' salaries information be reported by school districts to the Department of Education for its approval as required by statute.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the specific data that must be reported and the time of those reports in order for the Department of Education to determine if the teachers' salaries meet the statutory restrictions.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation makes language changes to conform to electronic submission of data and eliminates the requirement for a year-end report.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been amended since 1996 and is being amended to conform to actual practice and to eliminate a report that is no longer needed.
(c) How the amendment conforms to the content of the authorizing statute: This amendment does not affect the conformity of the administrative regulation to statute.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will simplify the collection of data necessary for the Department of Education to enforce statutory restrictions on teachers' salaries.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All local school districts.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation will relieve local school districts from data reporting requirements.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional costs to the agency to implement this administrative regulation.
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency general funds.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees will be necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fee.
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
(Amendment)

702 KAR 3:130, Internal accounting.

RELATES TO: KRS 156.160, 156.200
STATUTORY AUTHORITY: KRS 156.070, 156.160
NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.070 gives the Kentucky Board of Education the management and control of the common schools; and KRS 156.200 gives the Kentucky Board of Education [state board] authority over accounting procedures and reports of local school districts. This administrative regulation establishes [it necessary to establish] uniform procedures for the accounting of school activity funds.

Section 1. Definition. "Activity funds" ["internal accounts"] means all school funds including funds derived from fund raising activities sponsored under the auspices of the school. Funds raised or received by organizations which do not come under the direct supervision of school authorities shall not be considered activity funds [internal accounts].

Section 2. A [The] district board of education shall have the responsibility for administration and control of all activity funds [internal accounts].

Section 3. The district board of education shall develop accounting procedures consistent with those set out in the Department of Education's "A Uniform Program of Accounting for School Activity Funds in Kentucky Schools," February 1995, a copy of which is incorporated by reference and which may be inspected, copied, and obtained from the Division of, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. through 4:30 p.m.


(2) This document may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of District Support Services, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. through 4:30 p.m.

GENE WILHOIT, Commissioner of Education
HELEN MOUNTJOY, Chairperson
APPROVED BY AGENCY: October 8, 2001
FILED WITH LRC: October 8, 2001 at 4 p.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 26, 2001, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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 to Mrs. Kevin M. Noland, Deputy Commissioner, Operations and Support Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Agency Contact Person: Kyna Koch
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes uniform procedures for the accounting of school activity funds.

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of KRS 156.200.

(c) How this administrative regulation conforms to the content of the authorizing statute: The administrative regulation conforms to the authorizing statute by providing specificity required to guide school districts in accounting for school activity funds.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specific procedures for the accounting of school activity funds that have been approved to determine if compliance has been achieved.

(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 incorporates all of the procedures of the administrative regulation in a more logical and orderly format. It also adds additional guidance on the separation of duties and handling of cash demands.

(b) The necessity of the amendment to this administrative regulation: The amendment had been amended a number of times before without being reorganized.

(c) How the amendment conforms to the content of the authorizing statute: The amendment does not change the conformity of the regulation.

(d) How the amendment will assist in the effective administration of the statutes: The more orderly amendment will assist local districts and school in following the required procedures and the Department of Education in determining compliance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All local school districts and schools.

(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: Local school districts and schools will be better able to follow the procedures.

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

(a) Initially: There will be no additional costs to the agency to implement this administrative regulation.

(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation of this administrative regulation?: Agency general funds.

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

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

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

EDUCATION, ARTS, AND HUMANITIES CABINET
Kentucky Board of Education
Department of Education
(Amendment)


RELATES TO: KRS 45A.350, 156.031, 156.070, 156.076, 424.260
STATUTORY AUTHORITY KRS 156.070, 156.169
NECESSITY, FUNCTION, AND CONFORMITY: [KRS 156.031 requires that administrative regulations relating to statutes amended by the 2002-2003 Kentucky Education Reform Act be reviewed, amended if necessary, and re-submitted to the Legislative Research Commission prior to December 30, 1999.] KRS 45A.350 authorizes[... inter alia]
VOLUME 28, NUMBER 5 – NOVEMBER 1, 2001

school districts to elect to procure pursuant to KRS 45A.345 through 45A.450 or under KRS 424.260; KRS 156.070 gives the Kentucky Board of Education [State Board for Elementary and Secondary Education] the management and control of the public schools and gives it authority to prescribe such rules and administrative regulations as it deems necessary for the efficient management, control, and operation of the school districts under its jurisdiction; KRS 156.075 allows the board of education, under certain conditions, to advertise for bids and award contracts for supplies and equipment covered by price contracts secured by the Department of Finance at the request of the Kentucky Board of Education [State Board]; and KRS 424.260 requires a school district to make newspaper advertisements for bids for purchases of certain materials, supplies, equipment, or contractual services exceeding $20,000 (KRS 424.260). This administrative regulation standardizes the bidding procedures to be utilized by boards of education when applicable [where such are necessary].

Section 1. For a school district [those school districts] electing not to adopt KRS 45A.345 to 45A.460 the following [requirements] shall apply:

(1) Notices for bidding advertised by boards of education for purchases of materials, supplies, equipment, or contractual services, where advertising for bids is required or allowed by statute, shall describe the materials, goods or services [what is] to be bid [for] and the time and place for the receipt [receiving] and opening of bids; […]

(2) [Section 2.] All bids shall be submitted in writing, typewritten or in ink as to be legible; sealed, and shall be opened and read publicly at the time and place designated for the bid opening. [A legal meeting of the board of education or the authorized agent.]

(3) [Section 3.] No bids shall be changed after they are opened [once submitted]. This shall not prevent [in no way prevents] the acceptance or rejection of alternates which are specified as a part of the regular bid forms and specifications. [However, the full intent of this section is to prohibit] Negotiation of contracts subsequent to the time bids are submitted shall be prohibited. Late bids or proposals shall not be considered.

(4) [Section 4.] In the event the lowest bid is not accepted, the board shall record in the minutes the reasons [reason] for the rejection; […]

(5) [Section 5.] All bids submitted and related information [pertaining thereto] shall be filed and made available for review by interested parties, except for information exempted pursuant to KRS 61.879 and [43].

(6) [Section 6.] Notification of the awarding of the contract shall be given in writing to all bidders. This notice shall include a list of all bidders together with their bid amounts [bids].

Section 2. A bid which does not conform to this administrative regulation or does not conform with the contract specifications shall be rejected as being nonresponsive. A [F-Any] bid which is accepted in noncompliance with this administrative regulation [any of the above sections] shall be [considered null and void].

GENE WILHOIT, Commissioner of Education
HELEN MOUNTJOY, Chairperson

APPROVED BY AGENCY: October 8, 2001
FILED WITH LRC: October 9, 2001 at 4 p.m.

PUBLIC HEARING: A public hearing on the proposed administrative regulation shall be held on November 26, 2001, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Holmes, Deputy Commissioner, Operations and Support Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Kyra Koch

1. Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation standardizes the bidding procedures to be utilized by boards of education when applicable.
(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement the oversight requirements of KRS 424.260 regarding local school district purchasing due to amendment of the statute by the 2000 General Assembly.
(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides the specifics for the bidding procedures.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides the specific criteria that can be measured in order to determine whether compliance has been achieved.

2. If this an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment authorizes a bid opening to be at designated time and place rather than at a local school board meeting and clarifies that late bids or proposals shall not be considered.
(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the language of the administrative regulation and to reasonably accommodate the needs of local districts.
(c) How the amendment conforms to the content of the authorizing statute: The amendment changes the regulation to conform to statute.
(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the bidding procedures and will enhance the ability of the Department of Education to determine compliance.

3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All local school districts.

4. Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The changes provided by the amendment will enhance the local school districts ability to comply with the requirements.

5. Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There will be no additional costs to the agency to implement this administrative regulation.
(b) On a continuing basis: None

6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency general funds.

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

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

9. TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

WORKFORCE DEVELOPMENT CABINET
Department for Technical Education (Amendment)

780 KAR 3:120. Appeals and hearings.

RELATES TO: KRS Chapter 138, 151B.035(3)(l), 151B.055, 151B.085, EO 2001-796 [2001-900]

STATUTORY AUTHORITY: KRS 151B.035(3)(l), EO 2001-796
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035(3)(l) requires the State Board for Adult and Technical Education to promulgate administrative regulations governing employee appeals. EO 2001-796 [2000-993] abolished the State Board and transferred the board's duties and functions to the Department for Technical Education. EO 2001-796 [2000-993] requires the Commissioner of the Department for Technical Education to promulgate comprehensive administrative regulations for an appeal system for aggrieved employees. This administrative regulation establishes the appeals and hearings requirements for employees.

Section 1. Definitions. (1) "Because of sex" or "on the basis of sex" is defined by KRS 344.030(6).
(2) "Qualified individual with a disability" is defined by KRS 344.030(1).
(3) "Reasonable accommodation" is defined by KRS 344.030(6).
(4) "Religion" is defined by KRS 344.030(7).
(5) "Undue hardship" is defined by KRS 344.030(9).

Section 2. An appeal of an action alleged to be based on discrimination shall be governed by the terms defined in Section 1 of this administrative regulation.

Section 3. General Provisions. (1) To file an appeal, an employee shall complete an Appeal Form, and other documents relating to the appeal, with the Kentucky Technical Education Personnel Board [Commission] through the office of the ombudsman of the Department for Technical Education.
(2) An appeal or document relating to an appeal shall be filed within thirty (30) calendar days after receiving notification of the denial or appeal of the decision of the Kentucky Technical Education Personnel Board [Commission].
(3) An appeal shall be heard in Frankfort, Kentucky or in a location mutually acceptable to the hearing officer and the employee. The hearing officer shall make the final determination of the location of the hearing.

Section 4. Continuances. (1) Except as provided by subsection (5) of this section, a party shall request a continuance of a scheduled hearing for good cause by following the procedures established in subsections (2) and (3) of this section.
(2) A request for continuance shall:
(a) Be written;
(b) State the reason for the request;
(c) Include proposed dates for rescheduling the hearing;
(d) Be filed with the board [commission]; and
(e) Be mailed to all parties at least ten (10) days prior to the scheduled hearing.
(3) An objection to a request for a continuance shall:
(a) Be written;
(b) State the reason for the objection to the request for continuance;
(c) Be filed with the board [commission]; and
(d) Be mailed to all parties at least five (5) days prior to the scheduled hearing.

Section 5. Prehearing Procedures. (1) A motion, request or filing shall:
(a) Be in writing;
(b) Be filed with the board [commission] through the office of the ombudsman of the Department for Technical Education; and
(c) Be served on all other parties.
(3) An interlocutory order by the hearing officer shall be executed and transmitted by the board [commission] through the ombudsman of the Department for Technical Education to all parties.
(b) Unless an interim order provides for review by the board [commission] prior to the conclusion of a hearing, the board [commission] shall review an interim order when it considers the recommended order, record, and exceptions.
(3) An employee retains counsel subsequent to filing an appeal, the attorney shall file a written notice of the record, correspondence, and orders regarding the appeal shall be transmitted to the attorney and all future filings and motions on behalf of the employee shall be submitted by that attorney.
(4) Any employee shall notify all parties and the board [commission] in writing of a change of address or a change in counsel.
(5) A deposition may be taken only in an extraordinary circumstance and upon authorization by the hearing officer. A request to take a deposition shall be filed at least seven (7) days prior to the scheduled hearing. An objection to the request shall be filed prior to the scheduled hearing.
(6) Upon agreement of all parties and approval by the hearing officer, two (2) or more appeals which involve the same or similar facts may be consolidated. Upon motion of a party, or upon his own motion, the hearing officer may join other parties as necessary to appropriately consider the matter.
(7) An agreed settlement shall be submitted in writing for the full board's [commission] review and final action.
(8) The ombudsman of the Department for Technical Education, general counsel, and board [commission] staff may participate in ex parte communication concerning pending and impending proceedings before the board [commission] relating to:
(a) Procedural questions; or
(b) Scheduling of hearings.

Section 6. Conduct of Hearing. (1) The hearing shall be conducted pursuant to:
(a) KRS Chapter 13B; and
(b) This administrative regulation.
(b) Unless the appeal is heard by the full board [commission], the hearing officer assigned shall hear the appeal.
(3) A party shall provide three (3) copies of an exhibit that is to be introduced as evidence. Copies shall be prepared prior to the hearing unless otherwise authorized by the hearing officer.

Section 7. Board [Commission] Review and Action. (1) A response to a written objection to a recommended order shall be filed in accordance with KRS 13B.110(4). A response shall be:
(a) In writing; and
(b) Served on all parties.
(2) Exceptions and responses not timely filed shall be noted and made a part of the record, but shall not be considered by the board [commission] in making a final determination.
(3) At the request of a party or on its own motion, the board [commission] may permit oral arguments before the full board [commission]. A request for oral argument shall be:
(a) In writing; and
(b) Filed with the board [commission] within fifteen (15) days of
issue of a recommended order; and
(c) Served on all parties.
(4) The board [commission] shall issue a final order in accordance with KRS 13B.120.
(5) Following consideration by the full board [commission], a final order shall be entered disposing of the appeal. The order shall be prepared, executed, and entered at the direction of the board [commission] by the ombudsman of the Department for Technical Education.

Section 8. Incorporation by Reference. (1) Appeal Form (revised 9/2001) (929060) is incorporated by reference.
(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Technical Education, Capital Plaza Tower, 20th Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

EMIL JEZIK, Commissioner
APPROVED BY AGENCY: October 3, 2001
FILED WITH LRC: October 8, 2001 at 3 p.m.
PUBLIC HEARING: A Public Hearing on this administrative regulation shall be held on November 21, 2001 at 1:30 p.m., prevailing local time in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by November 14, 2001, five work days prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Sherry R. DeStrick, General Counsel, Cabinet for Workforce Development, 500 Mero Street, Second Floor, Frankfort, Kentucky 40601, phone: (502) 564-6606, fax: (502) 564-9990.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. DeStrick, General Counsel
(1) Provide a brief summary of:
(a) the administrative regulation does: This administrative regulation establishes appeals procedures for certified and equivalent employees within the KRS Chapter 151B personnel system.
(b) the necessity of this administrative regulation: The administrative regulation is necessary to comply with EO 2001-796.
(c) how this administrative regulation conforms to the content of the authorizing statute: EO 2001-796 authorizes the Commissioner of the Department for Technical Education to promulgate administrative regulations for personnel policies and procedures for certified and equivalent employees within the KRS Chapter 151B personnel system.
(d) how this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes.
(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 is technical in nature to update the procedures for filling appeals under the KRS Chapter 151B personnel system.
(b) the necessity of the amendment to this administrative regulation: The amendment is necessary to provide a procedure for the appeals process that is consistent with EO 2001-796.
(c) how the amendment conforms to the content of the authorizing statute: The amendment is technical in nature.
(d) how the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes.

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No
2. State what unit, part or division of local government this administrative regulation will affect: None
3. State the aspect or service of local government to which this administrative regulation relates: None
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year after 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 (+/-): Expenditures (+/-): Other Explanation: Not applicable.

WORKFORCE DEVELOPMENT CABINET
Department for Technical Education (Amendment)

780 KAR 3:130. Employee grievances.

RELATES TO: KRS 151B.035(3)(u), 151B.055, EO 2001-796 [2000-990]
STATUTORY AUTHORITY: KRS 151B.035(3)(u), EO 2001-796 [2000-990]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.035(3)(u) requires the State Board for Adult and Technical Education to promulgate administrative regulations governing employee grievances and complaints. EO 2001-796 [2000-990] requires the Commissioner of the Department for Technical Education to promulgate comprehensive administrative regulations consistent with the provisions of KRS 151B.035 which govern the process for a fair and equitable grievance system. This administrative regulation establishes the requirements governing employee grievances.

Section 1. Definition. "Grievance" means a complaint filed by an employee which concerns working conditions over which the Department for Technical Education has control and which has specifically occurred, or of which the employee has become aware, within thirty (30) calendar days prior to filing.

Section 2. General Provisions. (1) An employee in the certified
and equivalent personnel system who believes that he has been subjected to unfair or unjust treatment concerning his conditions of employment may file a grievance in accordance with this administrative regulation.

(2) A grievance concerning an action which is appealable directly to the Kentucky Technical Education Personnel Board [Commission] may be filed with the Department for Technical Education. The filing of a grievance with the department shall not:

(a) Prohibit the employee from filing an appeal with the Kentucky Technical Education Personnel Board [Commission]; or

(b) Extend the thirty (30) calendar day appeal period.

(3) Employees utilizing this procedure shall be entitled to file grievances without interference, coercion, discrimination, or reprisal.

(4) The appointing authority shall inform all employees in the Department for Technical Education of the provisions of this administrative regulation, or any modifications in the levels of review.

(5) The Commissioner of the Department for Technical Education shall make available to employees, through the appointing authority, the "Grievance Form", which shall be used to file a grievance. The form shall contain a notice that, if the grievance concerns an action appealable directly to the Kentucky Technical Education Personnel Board [Commission] pursuant to KRS 151B.055, the employee's right to file an appeal shall not be extended beyond thirty (30) calendar days.

Section 3. Procedures. (1) A grievance shall be filed with the employee's immediate supervisor within thirty (30) calendar days following occurrence, or the employee becoming aware through the exercise of the due diligence, of the action which is the subject of the grievance.

(2) The employee shall set forth in writing the basis of his grievance or complaint together with the corrective action desired. If the employee wishes to submit additional information or documentation, he may attach it to the grievance.

(3) If a grievance is filed that alleges harassment or discrimination on the basis of race, color, religion, national origin, sex, age, or handicap, the recipient shall immediately notify the Commissioner of the Department for Technical Education and the Department Equal Employment Opportunity (EEO) Coordinator to comply with the affirmative action plan.

(4) Interviews to evaluate or investigate the grievance outside of normal work hours with the grievant or other employees shall entitle those employees to compensatory time.

(5) Interviews to evaluate or investigate the grievance held with the grievant or other employees shall not require the use of leave time.

(6) Both parties shall be given the opportunity to have a representative present at each step of the grievance procedure.

Section 4. Grievance Levels. (a) The immediate supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) working days after receipt of the grievance.

(b) If the first line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days after receipt of the decision to the second line supervisor.

(c) The second line supervisor or the division director is the first line supervisor, the request for review shall automatically be requested from the Ombudsman for the Department for Technical Education.

(d) The second line supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) working days after receipt of the grievance. If the second line supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days after receipt of the decision to the ombudsman in the Department for Technical Education.

(e) If the ombudsman is unable to mediate the grievance to the satisfaction of the employee, the employee may request review of the grievance within five (5) working days of receipt of the decision to the Commissioner of the Department for Technical Education for a final determination. The commissioner, upon investigation, shall issue findings and a final determination in writing to the employee within ten (10) working days.

(f) Modification of the procedures set forth in this section necessary to accommodate organizational structure within the Department for Technical Education may be made only upon approval of the Commissioner of the Department for Technical Education.

(5) Failure of supervisory or management personnel to respond within prescribed time limits shall be grounds for the advancement of the grievance to the next review level, unless the time limits have been extended by agreement of the parties.

(6) An intermedial grievance level may be waived by written agreement of the parties.


(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Technical Education, Cabinet for Workforce Development, 900 Madison Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

EMIL JEZIK, Commissioner
APPROVED BY AGENCY: October 3, 2001
FILED WITH LRC: October 8, 2001 at 3 p.m.
PUBLIC HEARING: A Public Hearing on this administrative regulation will be held on November 21, 2001 at 1:30 p.m., prevailing local time in the Cabinet for Workforce Development Board Room at 500 Mero Street, Second Floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify the agency in writing by November 14, 2001, five work days prior to the hearing of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Sherry R. Deatrick, General Counsel, Cabinet for Workforce Development, 900 Madison Avenue, Second Floor, Frankfort, Kentucky 40601, phone: (502) 564-6806, fax: (502) 564-9990.

REGULATORY IMPACT ANALYSIS

Contact: Sherry R. Deatrick, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes grievance procedures for certified and equivalent employees within the KRS Chapter 151B personnel system.

(b) The necessity of this administrative regulation: The administrative regulation is necessary to comply with EO 2001-796.

(c) How this administrative regulation conforms to the content of the authorizing statute: EO 2001-796 authorizes the Commissioner of the Department for Technical Education to promulgate administrative regulations that are necessary to implement a grievance procedure for certified and equivalent employees within the KRS Chapter 151B personnel system.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes.

(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 is technical in nature to replace references to the Technical Education Personnel Commission with the Kentucky Technical Education Personnel Board, and incorporates by reference the grievance form to be used by certified and equivalent employees in the KRS Chapter 151B personnel system.

(b) The necessity of the amendment to this administrative regulation: Technical Education Personnel Commission no longer exists.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment is technical in nature.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide a procedure for the grievance process that is consistent with EO 2001-796.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative
regulation: This administrative regulation affects approximately 525 employees in the KRS Chapter 151B personnel system.

(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 grievance process is not being changed substantively. The amendment is technical in nature.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: No change.
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds.
(d) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No
(f) TIERING: Is tiering applied? Yes. The proposed administrative regulation will affect only certified and equivalent positions in the KRS Chapter 151B system. It does not apply to unclassified positions under KRS Chapter 151B.

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? No
2. State what unit, part or division of local government this administrative regulation will affect: 3. State the aspect or service of local government to which this administrative regulation relates: None
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 (+/-):
   Expenditures (+/-):
   Other Explanation: Not applicable.

WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
Division of Program Services
(Amendment)

781 KAR 1:010. Department of Vocational Rehabilitation appeal procedures.

RELATES TO: KRS 151B.190, 151B.200, 34 CFR Part 361, 29 USC 722

STATUTORY AUTHORITY: KRS 13B.170, 151B.185(2), 151B.195(1)

NECESSITY, FUNCTION, AND CONFORMITY: 29 USC 722(2)

requirements are necessary and required for the review of determinations made by rehabilitation personnel for basic rehabilitation services. Pursuant to KRS 151B.200, the Commonwealth of Kentucky, agreed to comply with all provisions relating to Federal Vocational Rehabilitation Acts. KRS 151B.195(1) authorizes the commissioner to promulgate administrative regulations for the department. This administrative regulation establishes hearing and appeal procedures for a person seeking vocational rehabilitation benefits.

Section 1. Definitions. (1) "Applicant" means an individual who submits an application for vocational rehabilitation services.
(2) "Commissioner" means the Commissioner of the Department of Vocational Rehabilitation.
(3) "Department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(4) "Eligible individual" means an applicant for vocational rehabilitation services who the department determines is an individual with a disability who requires vocational rehabilitation services to prepare for, secure, retain or regain employment.
(5) "Hearing officer" means an individual who:
   (a) Is not an employee of a public agency other than an administrative law judge, hearing examiner, or employee of an institution of higher education;
   (b) Is not a member of the Vocational Rehabilitation Council;
   (c) Has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual;
   (d) Has knowledge of the delivery of vocational rehabilitation services, the federal and state laws and administrative regulations governing the provision of vocational rehabilitation services;
   (e) Has training with respect to the performance of official duties; and
   (f) Has no personal or financial interest that would be in conflict with the objectivity of the individual.

Section 2. Administrative Review. (1) An applicant or eligible individual may request an informal administrative review conducted by a department staff member from the director of program services or a designee.
   (2) The director or designee shall select an administrator from a district not involved in the action in question who shall conduct the administrative review within ten (10) days.
   (3) The administrator shall conduct the administrative review either in person or by teleconference.
   (4) The administrator shall make a determination and forward a copy of the individual and the department within five (5) days.
   (5) The applicant or eligible individual shall attend and may be represented by an advocate or counsel.

Section 3. Mediation. (1) The department and the applicant or eligible individual may agree voluntarily to submit a request concerning the provision or denial of benefits to mediation.
   (2) The department shall maintain a list of qualified mediators.
   (3) The Director of Program Services or a designee shall choose a mediator from the list and schedule a mediation meeting within five (5) days from the receipt of the request for mediation.
   (4) A representative of the department shall attend who is authorized to bind the department to an agreement.
   (5) The applicant or eligible individual shall attend and may be represented by an advocate or counsel.
   (6) Discussions or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or civil proceeding.

Section 4. Right of Appeal and Information. (1) An applicant or eligible individual shall have the right to appeal to the Director of Program Services determinations made by the department affecting:
   (a) Furnishing of vocational rehabilitation benefits; or
   (b) Denial, reduction, suspension or cessation of vocational rehabilitation services;
   (2) An applicant or eligible individual shall:
      (a) Be informed of the:
      1. Entitlements available under this administrative regulation;
      2. Right to appeal;
      3. Right to be represented by an advocate or counsel; and
      4. Names and addresses of department individuals with whom an appeal shall be filed.
      (b) Request an appeal:
      1. In writing;
      2. By telephone through direct contact with the Director of Program Services or a designee; or
      3. On tape, except that a voice-mail message shall not constitute a request for a hearing.
   (3) The director of program services or a designee shall convene a hearing within sixty (60) forty-five (45) days of a request made pursuant to subsection (1) of this section. Reasonable time extensions, not to exceed one (1) year, may be made for good cause with the agreement of both parties. The hearing shall be conducted pursuant to:
      (a) KRS Chapter 13B; and
(b) This administrative regulation.
(4) Pending a final determination of a hearing or other final resolution, the department shall not suspend, reduce, or terminate services provided under the individualized plan for employment unless:
   (a) It has evidence that the service was obtained by an applicant or eligible individual through:
      1. Misrepresentation;
         2. Fraud;
         3. Collusion; or
         4. Criminal conduct;
   (b) The applicant or eligible individual, or an authorized representative, requests this action.

Section 5. Client Assistance Program. The department shall advise an applicant or eligible individual of:
   (1) The existence of the Client Assistance Program, created by KRS 151B.225;
   (2) The services provided by the program; and
   (3) How to contact a program representative.

Section 6. Appeal Time and Hearing Procedures. (1) An applicant or eligible individual shall file an appeal:
   (a) Within sixty (60) days of becoming aware, through the exercise of due diligence, of a department determination affecting the provision or denial of vocational rehabilitation services.
   (b) By contacting the Director of Program Services.
   (2) An applicant or eligible individual shall, at the time of requesting a hearing:
      (a) Identify accommodations required; and
      (b) Submit an issue statement for the hearing.
   (3) A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General approved by the department and Statewide Council for Vocational Rehabilitation.

Section 7. Findings and Decision. (1) The hearing officer shall complete and submit to both parties and the Secretary of the Workforce Development Cabinet the written recommended order within thirty (30) days of receipt of the transcript of the hearing unless both parties agree to a time extension.
   (2) Either party shall have twenty (20) [fifteen (15)] days from the date the recommended order is mailed within which to file exceptions to the Secretary of the Workforce Development Cabinet.
   (3) The Secretary shall notify the Workforce Development Cabinet and the parties of the time to file exceptions and the time period for filing exceptions [of issuance of the recommended order].

SAM SERRAGLIO, Commissioner
APPROVED BY AGENCY: October 12, 2001
FILED WITH LRC: October 12, 2001 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 2001 at 10 a.m. ET in the Department of Vocational Rehabilitation, Training Room B, 209 St. Clair Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by November 14, 2001, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will be made unless a written request for a transcript is made. If you do not wish to 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 the contact person.

CONTACT PERSON: Mindy Yates, Administrator, Division of Program Planning and Development, Department of Vocational Rehabilitation, 209 St. Clair Street, Frankfort, Kentucky 40601, (800) 372-7172 (TTYD), (502) 564-6745 (fax). The meeting facility is accessible to people with disabilities. The department will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in the hearing. If an interpreter or other auxiliary aid or service is needed, please contact Mindy Yates at the address above.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mindy Yates

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation amends the state regulation governing appeals filed by applicants and eligible individuals concerning the provision or denial of benefits available under the Rehabilitation Act Amendments of 1998 to conform the following time frames to the amended federal implementing regulations at 34 CFR 361.57:
      1. 60 days to convene a requested hearing;
      2. 20 days for filing exceptions to the recommended order of the hearing officer; and
      3. 30 days from expiration of the time period for filing exceptions to issue the final order.
   (b) The necessity of this administrative regulation: The federal law requires state agencies to adopt uniform due process procedures for resolving appeals filed by applicants and eligible individuals concerning the provision or denial of available vocational rehabilitation benefits.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: These specified time frames track those prescribed in the federal implementing regulations at 34 CFR 361.57 which must be specified as they deviate from KRS Chapter 138 governing state administrative hearing procedures.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will permit the department to conduct uniform administrative hearings in appeals requested by applicants and consumers of vocational rehabilitation services as required by federal law for receipt of federal funds to operate the vocational rehabilitation program for persons with disabilities in Kentucky.
   (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 changes some enumerated time frames in conformity with new federal requirements as follows: Section 3, the time period for filing exceptions to the Secretary of the Workforce Development Cabinet shall consider the record, including the recommended order and any timely exceptions filed to the recommended order.
      (b) The necessity of the amendment to this administrative regulation: These amended time frames are required for compliance with federal implementing regulations in order for the state agency to receive federal funds for the vocational rehabilitation program.
      (c) How the amendment conforms to the content of the authorizing statutes: These time frames are enumerated in federal implementing regulations but must be specified in state regulations as they deviate from KRS Chapter 138 the state administrative procedures act under which these vocational rehabilitation consumer hearings are conducted.
      (d) How the amendment will assist in the effective administration of the statutes: The state agency must ensure the due process rights of vocational rehabilitation applicants and consumers through the uniform conduct of administrative hearings on appeals in conformity with federal law and regulations.
      (e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any applicant or consumer of vocational rehabilitation services from the Department of Vocational Rehabilitation.
      (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 applicants and consumers of vocational rehabilitation services benefit from the protection of their due process rights through this uniform and federally mandated amended time frames for requested hearings in their appeals.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No change in the amount of funds for appeals which vary annually.
(b) On a continuing basis: Same expenditures dependent upon number of appeal hearings.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. Federal 110 Rehabilitation Funds received by the Department of Vocational Rehabilitation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding necessary to implement this amendment to the existing 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.

TIERING: Is tiering applied? No. The amended regulation enumerates uniform due process rights and time frames for the conduct of requested administrative hearings on applicant or consumer vocational rehabilitation appeals.

FEDERAL MANDATE ANALYSIS COMPARISON

2. State compliance standards. This administrative regulation amends the state regulation governing appeals filed by applicants and eligible individuals concerning the provision or denial of services available under the Rehabilitation Act Amendments of 1998 to conform the following time frames to the amended federal implementing regulations: 1) 60 days to convene a requested hearing; 2) 20 days for filing exceptions to the recommended order of the hearing officer; and 3) 30 days from expiration of the time for filing exceptions for issuing the final order.
3. Minimum or uniform standards contained in federal mandate. The federal mandate requires states to adopt due process procedures for resolution of applicant and consumer appeals concerning the provision or denial of vocational rehabilitation services.
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 or imposition of the stricter standards, or additional or different responsibilities or requirements. The federal law requires each state vocational rehabilitation agency to establish procedures by which applicants and eligible individuals may appeal decisions affecting their individualized plan for employment. This regulation delineates the time frames for convening a requested hearing, filing exceptions to the recommended order, and issuance of the final order concerning the provision or denial of vocational rehabilitation services. It is not more rigorous; but rather, simply conforms state requirements to federal time frames.

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? No
2. State what unit, part or division of local government this administrative regulation will affect. State the aspect or service of local government to which this administrative regulation relates.
4. Estimate the effect of this administrative regulation on 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 (+/-):
Expenditures (+/-)
Other Explanation:

WORKFORCE DEVELOPMENT CABINET
Division of Client Services
(AMENDMENT)

782 KAR 1:040. Appeal procedures.

RELATES TO: KRS 163.450 to 163.470, 29 USC 722, 34 CH.
Part 351
STATUTORY AUTHORITY: KRS 138.170, 163.470(5)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(5)
requires the Department for the Blind to implement policies and procedures for carrying out programs of services for persons of the Commonwealth who are blind or visually impaired. Under its State Plan for Vocational Rehabilitation authorized under Title I of the Rehabilitation Act of 1973, as amended, the department is required to establish procedures so that a person seeking vocational rehabilitation services who is dissatisfied with determinations made by the staff of the department concerning the furnishing or denial, reduction, suspension or cessation of services may request a timely review of those determinations.

Section 1. Hearing Office: To conduct a hearing under this administrative regulation, a hearing officer shall:
(1) Be trained with respect to the performance of official duties;
(2) Have knowledge of:
(a) The delivery of vocational rehabilitation services;
(b) Federal and state laws and regulations governing the provision of vocational rehabilitation services;
(3) Not:
(a) Be an employee of a public agency other than an:
1. Administrative law judge;
2. Hearing examiner; or
3. Employee of an institution of higher education;
(b) Be a member of the Department for the Blind State Rehabilitation Council;
(c) Have been involved in a previous decision regarding the vocational rehabilitation of the applicant or eligible individual;
(d) Have a personal or financial interest that would conflict with the objectivity of the individual.

Section 2. Mediation. (1) The department and the applicant or eligible individual may agree voluntarily to submit a request concerning the provision or denial of rehabilitation services to mediation. (2) The department shall maintain a list of qualified mediators. (3) The director of client services or a designee shall choose a mediator from the list and schedule a mediation meeting within five (5) days from the receipt of the request for mediation. (4) A representative of the department shall attend who is authorized to bind the department to an agreement. (5) The applicant or eligible individual shall attend and may be represented by an advocate or counsel. (6) Discussions or agreements arising from the mediation process shall not be used as evidence in any subsequent hearing or civil proceeding.

Section 3. Right of Appeal and Information. (1) An applicant or eligible individual shall have the right to appeal to the director of client services determinations made by the department concerning:
(a) Furnishing of vocational rehabilitation benefits; or
(b) Denial, reduction, suspension or cessation of vocational rehabilitation services.
(2) An applicant or eligible individual shall:
(a) Be informed of his:
1. Entitlements available under this administrative regulation;
2. Right to appeal;
3. Right to be represented by an advocate or counsel; and
4. Names and addresses of department individuals with whom an appeal shall be filed.
(b) Request an appeal:
1. In writing;
2. By telephone through direct contact with the director of client services or a designee; or
3. On tape, except that a voice mail message shall not constitute a request for a hearing.

(3) The director of client services or a designee shall convene a hearing within sixty (60) [forty-five-(45)] days of the request. Reasonable time extensions, not to exceed one (1) year, may be made for good cause with the agreement of both parties. The hearing shall be conducted pursuant to:

(a) KRS Chapter 13B; and
(b) This administrative regulation.

(4) Pending a final determination of a hearing or other final resolution, the department shall not suspend, reduce, or terminate a service provided under the individualized plan for employment unless:

(a) It has evidence that the service was obtained by an applicant or eligible individual through:
   1. Misrepresentation;
   2. Fraud;
   3. Collusion; or
   4. Criminal conduct; or
(b) This action is requested by an:
   1. Applicant;
   2. Eligible individual; or
   3. Authorized representative of an applicant or eligible individual.

Section 4. Client Assistance Program. The department shall advise an applicant or eligible individual of:

(1) The existence of the Client Assistance Program, created by KRS 151B.225;
(2) The services provided by the program; and
(3) How to contact a program representative.

Section 5. Appeal Time and Hearing Procedures. (1) Only within sixty (60) days of becoming aware, through the exercise of due diligence, of a department determination affecting the provision or denial of vocational rehabilitation services, an applicant or eligible individual may appeal by contacting the director of client services, pursuant to Section 3(1) of this administrative regulation.

(2) An applicant or eligible individual shall, at the time of requesting a hearing:

(a) Identify accommodations required; and
(b) Submit an issue statement for the hearing.

(3) A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General approved by the department and the State Rehabilitation Council.

(4) The applicant or eligible individual may disqualify for cause up to three (3) hearing officers randomly assigned by the Administrative Hearings Division of the Office of the Attorney General.

Section 6. Findings and Decision. (1) The hearing officer shall complete and submit to both parties and the Secretary of the Cabinet for Workforce Development the written recommended order within thirty (30) days of receipt of the transcript of the hearing unless both parties agree to a time extension.

(2) Either party shall have twenty (20) [fifteen-(15)] days from the date the recommended order is mailed within which to file objections to the recommendations with the Secretary of the Cabinet for Workforce Development.

(3) The Secretary of the Cabinet for Workforce Development shall consider the record including the recommended order and any timely objections filed to the recommended order.

(4) The Secretary of the Cabinet for Workforce Development shall issue the final order within thirty (30) days from expiration of the time period for filing exceptions [issuance of the recommended order].

DENISE M. PLACIDO, Commissioner
APPROVED BY AGENCY: October 12, 2001
FILED WITH LRC: October 12, 2001 at 11 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 2001 at 10 a.m. EST in the first floor conference room at the Charles W. McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242. Individuals interested in being heard at this hearing shall notify this agency in writing by Thursday, November 15, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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: Sue G. Simon, Staff Assistant, Department for Community Based Services, 209 St. Clair Street, PO Box 757, Frankfort, Kentucky 40602-0757, Voice (502) (800) 321-6686, TTY (502) 564-2929, Facsimile (502) 564-2951.

The meeting facility is accessible to people with disabilities. The department will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in the hearing. If an interpreter or other auxiliary aid or service is needed, please contact Sue G. Simon at the address above.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Sue G. Simon, Staff Assistant

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends the state regulation governing appeals filed by applicants and eligible individuals concerning the provision or denial of benefits available under the Rehabilitation Act Amendments of 1998 to conform the following time frames to the amended federal implementing regulations at 34 CFR 361.57:

   1. 60 days to convene a requested hearing;
   2. 20 days for filing exceptions to the recommended order of the hearing officer; and
   3. 30 days from expiration of the time period for filing exceptions to issue the final order.

(b) The necessity of this administrative regulation: The federal law requires state agencies to adopt uniform due process procedures for resolving appeals filed by applicants and eligible individuals concerning the provision or denial of available vocational rehabilitation benefits.

(c) How this administrative regulation conforms to the content of the authorizing statutes: These specified time frames track those prescribed in federal implementing regulations at 34 CFR 361.57 which must be specified as they deviate from KRS Chapter 13B governing state administrative hearing procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will permit the department to conduct federal implementing hearings in appeals requested by applicants and consumers of vocational rehabilitation services as required by federal law for receipt of federal funds to operate the vocational rehabilitation program for persons with disabilities in Kentucky.

(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 changes some enumerated time frames in conformity with new federal requirements as follows: Section 3, the time frame for convening a requested hearing is extended from 45 days to 60 days; Section 6, the time frame for filing exceptions by either party to the recommended order is extended from 15 days to 20 days; and Section 8, the time frame for issuance of the final order is changed from 30 days from issuance of the recommended order to 30 days from expiration of the time period for filing exceptions.

(b) The necessity of the amendment to this administrative regulation: These amended time frames are required for compliance with federal implementing regulations in order for the state agency to receive federal funds for the vocational rehabilitation program.

(c) How the amendment conforms to the content of the authorizing statutes: These time frames are enumerated in federal implementing regulations but must be specified in state regulations as they deviate from KRS Chapter 13B the state administrative procedures act under which these vocational rehabilitation consumer hearings are conducted.

(d) How the amendment will assist in the effective administration
of the statutes: The state agency must ensure the due process rights of vocational rehabilitation applicants and consumers through the uniform conduct of administrative hearings on appeals in conformity with federal law and regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. Any applicant or consumer of vocational rehabilitation services from the Department for the Blind.

(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 applicants and consumers of vocational rehabilitation services benefit from the protection of their due process rights through these uniform and federally mandated amended time frames for requested hearings in their appeals.

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

(a) Initially: No change in the amount of funds for appeals which vary annually.

(b) On a continuing basis: Some expenditures dependent upon number of appeal hearings.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal 110 Rehabilitation Funds received by the Department for the Blind.

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

(9) TIERING: Is tiering applied? No. The amended regulation enumerates uniform due process rights and time frames for the conduct of requested administrative hearings on applicant or consumer vocational rehabilitation appeals.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. This administrative regulation amends this section, aligning appeals filed by applicants of eligible individuals concerning the provision or denial of benefits available under the Rehabilitation Act Amendments of 1998 to conform the following time frames to the amended federal implementing regulations: 1) 60 days to convene a requested hearing; 2) 20 days for filing exceptions to the recommended order of the hearing officer; and 3) 30 days form expiration of the time period for filing exceptions for issuing the final order.

3. Minimum or uniform standards contained in federal mandate. The federal mandate requires states to adopt due process procedures for resolution of applicant and consumer appeals concerning the provision or denial of available vocational rehabilitation benefits.

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 or imposition of the stricter standards, or additional or different responsibilities or requirements. The federal law requires each state vocational rehabilitation agency to establish procedures by which applicants and eligible individuals may appeal decisions affecting their individualized Plan for Employment. This regulation delineates the time frames for convening a requested hearing, filing exceptions to the recommended order, and issuance of the final order concerning the provision or denial of vocational rehabilitation services. It is not more rigorous; but rather, it simply conforms state requirements to federal time frames.

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? No.

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on 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 (+/-)
Expenditures (+/-)
Other Explanation:

WORKFORCE DEVELOPMENT CABINET
Department for Adult Education and Literacy
(AMENDMENT)

785 KAR 1:010. GED testing Program.

RELATES TO: KRS 151B.023, 151B.125[,-EO 98-837]
STATUTORY AUTHORITY: KRS 151B.023, 151B.125[,-EO 98-837]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.023 requires the Department for Adult Education and Literacy to be responsible for adult education programs and services in Kentucky. [EO 98-837 grants the Commissioner of the Department for Adult Educa-

tion and Literacy (commissioner) authority to promulgate administrative regulations and administer all adult education and literacy programs.] KRS 151B.125 recognizes the General Educational Development (GED) test for high school equivalency purposes in Kentucky. This administrative regulation establishes the procedure for testing an adult for the GED diploma at an official GED testing center to determine his eligibility for receiving a high school equivalency diploma.

Section 1. Test Subjects. (1) The GED test shall provide a valid means of measuring the educational achievement of an adult who is a nonhigh school graduate and of comparing the adult's competency with that of high school graduates. The test shall be a high school level battery consisting of five (5) comprehensive examinations covering:

(1) Language arts, writing;
(2) Social studies;
(3) Science;
(4) Language arts, reading; and
(5) Mathematics.

(a) Test 1: Writing Skills-test (Parts I and II);
(b) Test 2: Social Studies Test;
(c) Test 3: Science Test;
(d) Test 4: Interpreting Literature and the Arts Test; and
(e) Test 5: Mathematics Test.

(2)(a) Except as provided in paragraph (b) of this subsection, an applicant shall be certified as test-ready by a local adult education provider. To be certified as test-ready, an applicant shall:
1. Contact a local Department for Adult Education and Literacy adult education provider; and
2. Successfully complete the official GED Practice Test, which shall require:
   a. A standard score of at least forty (40) on each subtest; and
   b. An average of forty-five (45) on the practice test.
(b) An applicant presenting a GED on-TV voucher from Kentucky Educational Television study shall not be required to meet the test-readiness prerequisite.

(3) Except as provided in subsection (4), (5), or (6) of this section, the GED test shall be administrated to an applicant with a Kentucky address who has officially withdrawn from public or private school as certified by the local school district; and

(a) Has reached his 19th birthday;
(b) Is at least seventeen (17) years of age, if
   1. His last enrolled class has graduated; or
2. He has been out of formal instruction for a period of one (1) year, or
   (c) Is sixteen (16) years of age, if the applicant has:
   1. Been committed or placed in a state corrections facility; or
2. Completed the Job Corps Program of Instruction.

(4)(a) An applicant at least sixteen (16) years of age who believes that he is a high school graduate must present a certificate of completion of an equivalent educational program to the local school superintendent or designee in the district where the applicant resides.

(b) An exemption granted on the basis of a course taken by an applicant shall be in writing. A copy of the decision shall be mailed or faxed to the state GED administrator. Dissatisfaction resulting from an exemption may be appealed to the commissioner.

(c) An exemption granted on the basis of a course taken by an applicant shall be in writing. A copy of the decision shall be mailed or faxed to the state GED administrator. Dissatisfaction resulting from an exemption may be appealed to the commissioner.

2. Admission to a postsecondary program which is contingent upon earning a high school equivalency diploma (GED).

(5) The GED test shall be administered to an applicant who is a Kentucky resident who has not officially withdrawn from school if the applicant:

(a) Is considered a state agency child, as defined by KRS 158.135(4)(a);

(b) Is at least sixteen (16) years of age; and

(c) Has received approval for special education services or is a Kentucky resident who has not officially withdrawn from school if the applicant:

(a) Is at least sixteen (16) years of age;

(b) Is a juvenile delinquent or is in a juvenile holding facility;

(c) Has been under the care of the juvenile court for at least one (1) year; and

(d) Has a minimum stay of ten (10) days in a juvenile detention center or juvenile holding facility;

(e) Is approved for the GED test by the local school superintendent.

Section 2. Test Centers. (7) An official GED testing center shall be established under contract with the GED Testing Service on the basis of Commission on Accreditation with the location authorized by the Commissioner of the Department of Adult Education and Literacy. A GED testing service for an individual confined to a state correctional or health institution shall be approved by the commissioner.

Section 3. Test Scores. (1) The Department for Adult Education and Literacy shall:

(a) Administer the score of the test;

(b) Accept scores as official if reported by:

1. A state territorial, or local education agency;

2. A GED testing center;

3. The GED Testing Service;

4. DANTES as the repository of scores reported by the United States Armed Forces Institute.

(2) An applicant must score the minimum standard score on each subtest and the minimum overall score on the Official GED Test as set by GED Testing Service. If an applicant passes the five (5) subtests with a minimum standard test score on each subtest, but does not attain an overall average score, he shall be eligible to retake a subtest(s) in an attempt to raise the overall standard score.

Section 4. GED Diploma. The Department for Adult Education and Literacy shall provide a high school equivalency diploma to an applicant who meets all the provisions of this regulation and the eligibility requirements as set by 785 KAR 1:130.

Section 5. Test Fees. (1) [69] The testing fee shall be a uniform fee of at least thirty (30) dollars or six (6) dollars per subtest. [The Department for Adult Education and Literacy shall not charge a fee for testing services provided to an individual confined to a state correctional or health institution.]

(2) A five (5) dollar fee shall be collected for the issuance of a duplicate GED diploma or transcript. A request for a score shall be in writing and shall carry the signature, birth date, and Social Security number of the examinee.

(9)(a) An applicant seeking a high school equivalency diploma shall complete the GED Testing Application Form prior to taking the GED test. This form shall be available from a local adult education provider, local school superintendent or the Department for Adult Education and Literacy.

(b) Military personnel shall:

1. Not be required to complete the GED Testing Application Form prior to taking the test; and

2. Complete the Military GED Application Form (Form 300-M) before the high school equivalency diploma shall be issued.

(10) If an applicant passes the five (5) subtests with a minimum standard test score of forty (40) and does not attain an overall average standard score of forty-five (45), he shall be eligible to retake a subtest in an attempt to raise the overall standard score. The testing center proctor shall recommend which subtest may be retaken.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference.

(a) "GED Testing Application (DAEL-6)", revised 7/1999 edition, Cabinet for Workforce Development, Department for Adult Education and Literacy; and

(b) "Application for High School Equivalency Diploma or Certificate (Military GED Application) (Form 300-M)", revised 7/88 edition, GED Testing Service, Washington, D.C.

(2) This material may be inspected, copied, or obtained at the Department for Adult Education and Literacy, Capitol Plaza Tower, Third Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHERYL D. KING, Commissioner
APPROVED BY AGENCY: October 12, 2001
FILED WITH LRC: October 15, 2001 at 8 a.m.
PUBLIC HEARING. A public hearing on this administrative regulation shall be held on November 26, 2001, at 10 a.m. at Department for Adult Education and Literacy, 3rd Floor Capitol Plaza Tower, Training Room. Individuals interested in attending this hearing shall notify this agency in writing by November 15, 2001, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the 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.

CONTACT PERSON: B. J. Helton, Assistant Principal, Department for Adult Education and Literacy, 3rd Floor Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Phone: (502) 564-5114, Fax: (502) 564-5436, e-mail address: brendahelton@mail.state.ky.us.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. J. Helton

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation amends 785 KAR 1:010.

(b) The necessity of this administrative regulation: These amendments comply with changes in the 2002 GED Test and reorder the provisions of the regulation to more clearly delineate all aspects of the testing process.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Department for Adult Education and Literacy has the responsibility for all administrative functions of the state in relation to the management, control, and operation of programs and services in adult education and literacy (KRS 151B.023(4)). KRS 151B.125(a) provides for the issuance of a high school equivalency diploma by passing the GED test. Administering the GED test is a service of the Department for Adult Education and Literacy in order to issue the GED diploma.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation cur-
rently provides for the testing of an adult for the GED test, one of the program services of the adult education system. These amendments change provisions of the regulation, but not the process. Therefore, the regulation still conforms to the statutes and aids in administering the statutes.

(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: These amendments reflect changes in the GED test made at the national level. These amendments more clearly differentiate aspects of the testing program itself from eligibility requirements to take the test. The eligibility requirements will be contained in a new regulation 785 KAR 1:150.
(b) The necessity of the amendment to this administrative regulation: The amendments are necessary to reflect changes in the GED test. The amendments also reorder the provisions of the existing regulation related to the test in a more logical order and provide clarity.
(c) How the amendment conforms to the content of the authorizing statutes: The Department for Adult Education has the responsibility for administering adult education services. The GED test is one of those services. The GED test provides an alternate means to obtain a high school diploma as provided by the statutes.
(d) How the amendment will assist in the effective administration of the statutes: These amendments will more clearly define how the test is administered and the diploma obtained.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. This regulation relates to the testing program, but do not affect an individual's eligibility to take the test. The amendments do not change the process for taking the test or issuing the diploma. Therefore, no individual, business, organization, or governmental entity will 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: The changes will not affect any individual, business, organization, or governmental entity. The amendments will bring the regulation in line with the national test and make the regulation easier to follow and administer.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No new costs will be incurred by this regulation.
(b) On a continuing basis: No new costs will be incurred by this regulation.
(6) What is the source of the funding to be used by the implementation and enforcement of this administrative regulation: No funding is required for implementation and enforcement of 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 will be required to implement the change made by this 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 or directly or indirectly increase any fees.
(9) TIERING: Is tiering applied? Since tiering was not applied in the existing regulation, the amendment of the regulation will affect no individual, business, organization or state or local government.

LABOR CABINET
Department of Workers' Claims
(Amendment)


RELATES TO: KRS 342.0011, 342.125, 342.260, 342.265, 342.270(7), 342.310, 342.710, 342.715, 342.760

STATUTORY AUTHORITY: KRS 342.260, 342.270

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 requires the commissioner to promulgate an administrative regulation establishing procedures for the resolution of claims. This administrative regulation establishes the procedure for the resolution of claims before an administrative law judge or Workers' Compensation Board.

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).
(2) "Board" is defined by KRS 342.0011(10).
(3) "Civil rule" means the Kentucky Rules of Civil Procedure.
(4) "Commissioner" is defined by KRS 342.0011(9).
(5) "Date of filing" means the following:
(a) The date a pleading, motion, or other document is received by the Commissioner at the Department of Workers' Claims in Frankfort, Kentucky, except:
1. Final orders and opinions of administrative law judges which shall be deemed "filed" three (3) days after the date set forth on the final order or opinion; and
2. Documents delivered to the offices of the Department of Workers' Claims after the office is closed at 4:30 p.m. or on the weekend which shall be deemed filed the following business day.
(b) The date a document is transmitted by United States registered (not certified) or express mail, or by other recognized mail carriers, and the date the transmitting agency receives said document from the sender as noted on the outside of container used for transmitting, within the time allowed for filing.
(c) "Employer" means and includes individuals, partnerships, voluntary associations and corporations.
(7) "An employer who has not secured payment of compensation" means any employer who employs an employee as defined by KRS 342.640 but has not complied with KRS 342.340.
(8) "Special defenses" 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 pleaded are defenses arising under:
(a) KRS 342.035(3) unreasonable failure to follow medical advice;
(b) KRS 342.165 failure to comply with safety administrative regulations;
(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(6) refusal to accept rehabilitation services; and
(g) Running of periods of limitations or repose under KRS 342.165, 342.270, 342.316, or other applicable law.
(9) "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.

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 or 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)(a) 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 administrative law judge may order, upon a proper showing, that a party be joined or dismissed.
(b) 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.
(c) Joinder shall be sought by motion as soon as practicable after the trial grounds for joinder are known. Notice of joinder and a copy of the claim file shall be served in the manner ordered by the administrative law judge.
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 on any first class mail. Incomplete applications may be rejected and returned to the applicant if the application is refused [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 administrator or adjudicator, the claim shall include, within the style of the claim and immediately before the claim number, "Before administrative law judge [name]." Upon consolidation of claims, the most recent claim number shall be listed first.

(5)(a) All documents involved in an appeal to the Workers' Compensation Board shall include the language "Before Workers' Compensation Board" before the claim number within the style of the claim.

(b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of the envelope containing these documents.

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 by the evidence or are allowed 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) A motion to reopen shall be accompanied by such 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. A copy 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.

(b) A designation of evidence from the original record specifically identifying the relevant items of proof which are to be considered as part of the record during reopening.

7. A certification of service that the motion was served on all parties as well as counsel for the parties.

8. A designation of evidence made by a party shall list only those items of evidence from the original record that are relevant to the matters raised on reopening.

2. The burden of completeness of the record shall rest with the parties to include so much of the original record up to and including the award or order on reopening, as is necessary to permit the administrative law judge to compare the relevant evidence that existed in the original record with all subsequent evidence submitted by the parties.

Exception for good cause shown at the time of the filing of the designation of evidence, a party shall not designate the entire original record from the claim for which reopening is being sought.

(c1) A motion to reopen shall not be considered until twenty-five (25) days after the date of filing.

2. Any response shall be filed within twenty (20) days of filing the motion to reopen.

3. A response may contain a designation of evidence specifically identifying evidence from the original record not already listed by the moving party that is relevant to matters raised in a response.

(d)(b) 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 notice of non-service.

(e)(b) 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.

(7) Motion for allowance of a plaintiff's attorney fee shall be made within thirty (30) days following the decision of the award, settlement or agreed resolution upon which the fee request is based and shall be served upon the adverse parties and the attorney's client. The motion shall set forth the fee requested and mathematical computations establishing that the request is within the limits set forth in KRS 342.320. 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 108 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 filed within thirty (30) days following the decision of the claim. 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.

(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 and Response. (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, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities 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 which shall include the following:

1. A description of [describing] the injury which is the basis of the claim;

2. A medical opinion establishing a causal relationship between the work-related events or the medical condition which is the subject of the claim;

3. [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 healing physician.

(e) Documentation substantiating the plaintiff's pre-injury and post-injury wages;

(f) Documentation establishing additional periods for which temporary total disability benefits are sought.

(2)(a) Defendant shall file a notice of claim denial or acceptance on a Form 111 [(Form-111)] within forty-five (45) days after the [date of issuance of] notice of filing of [that] an application for resolution of claim has been filed, or within forty-five (45) days following an order sustaining a motion to reopen a claim.

(b) If a Form 111 [none] is not filed, all allegations of the application shall be deemed admitted.

(c) The Form 111 [notice of claim denial or acceptance] shall set forth the following:
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1. All pertinent matters which are admitted and those which are denied.

2. If a claim is denied in whole or in part, [a defendant shall set forth] a detailed summary of the basis for denial;

3. [And] the name of each witness whose testimony may be relevant to that denial;

4. [And] the name, address and telephone number of the individual responsible for gathering this information for the employer and its insurer.

5. (This requirement of filing a Form 111 [notice of admission or denial] shall be in addition to the requirement to file a special answer in accordance with Section 1(6) of this administrative regulation although a denial may incorporate special defenses which have been timely answered.)

6. (Proof taking and discovery for all parties shall proceed beginning with the date of issuance of an order of assignment by the commissioner. All parties shall take proof for a period of sixty (60) days from the date of the order; the defendants shall take proof for an additional thirty (30) days; and, thereafter, the plaintiff shall take rebuttal proof for an additional fifteen (15) days;

7. (During the pendency of a claim, any medical or vocational report shall be exchanged in accordance with Section 5(4) of this administrative regulation.)

Section 8. Discovery, Evidence, and Exchange of Records. (1) Proof taking and discovery for all parties shall begin from the date of issuance by the commissioner of the order of assignment.

(a) Plaintiff and defendants shall take proof for a period of sixty (60) days from the date of the order of assignment;

(b) After the sixty (60) day period, defendants shall take proof for an additional thirty (30) days; and

(c) After the defendant's thirty (30) day period, the plaintiff shall take rebuttal proof for an additional fifteen (15) days.

2(a) Plaintiff and defendants shall take proof for a period of sixty (60) days from the date of the order of assignment;

(b) After the sixty (60) day period, defendants shall take proof for an additional thirty (30) days; and

(c) After the defendant's thirty (30) day period, the plaintiff shall take rebuttal proof for an additional fifteen (15) days.

(3) During the pendency of a claim, any party obtaining or possessing a medical or vocational report or records shall serve a copy of the report or record upon all other parties within ten (10) days following receipt of those reports or records or within ten (10) days of receipt of notice if assigned to an administrative law judge.

4) All medical reports filed with Forms 101, 102, and 103 shall be submitted in evidence without further order if an objection is not filed within ten (10) days of the scheduling order. [Medical Evaluations Pursuant to KRS 342.315. (1) All persons claiming benefits for coal pneumoconiosis and for KRS 342.732, hearing loss, or occupational disease shall be referred by the commissioner for a medical evaluation in accordance with contracts entered into between the commissioner and the University of Kentucky and University of Louisville medical schools;

(2) Upon all other claims, the commissioner or an administrative law judge may direct appointment by the commissioner of a university medical evaluator.

(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 evaluator 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 6(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 service;

(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.)
Section 9. Vocational Reports. (1) A vocational report may be filed by notice and shall be admitted into evidence without further order and without the necessity of a deposition, if an objection is not filed.

(2) Vocational reports shall be signed by the individual making the report.

(3) Vocational reports shall include within the body of the report or as an attachment a statement of the qualifications of the person making the report.

(4) An objection to the filing of a vocational report shall be filed within ten (10) days of the filing of the notice or motion for admission and the grounds for the objection shall be stated with particularity. The administrative law judge shall rule on the objection within fifteen (15) days.

(5) If a vocational report is admitted as direct testimony, any adverse party may depose the reporting physician in a timely manner as if on cross-examination at its own expense.

Section 10. Medical Reports. (1) A party shall not introduce direct testimony from more than two (2) physicians by medical report except upon a showing of good cause and prior approval by an administrative law judge.

(2) Medical reports shall be submitted on Form 107-I (injury), Form 107-P (psychological) or Form 106-OD (occupational disease), Form 108-WP (coal workers’ pneumoconiosis), or Form 108-HL (hearing loss), as appropriate, except that an administrative law judge may permit the introduction of other reports.

(3) Medical reports shall be signed by the physician making the report, or be accompanied by an affidavit from the physician or submitting party or representative verifying the authenticity of the report.

(4) Medical reports shall include within the body of the report or as an attachment, a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician has been assigned a medical qualifications index number, reference may be made to the physician’s index number in lieu of attaching qualifications.

(5) Narratives in medical reports shall be typewritten. Other portions, including spirometric tracings, shall be clearly legible.

(a) Upon notice, a party may file the testimony of two (2) physicians, either by deposition or medical report, which shall be admitted into evidence without further order if an objection is not filed.

(b) Objection to the filing of a medical report shall be filed within ten (10) days of the filing of the notice or motion for admission.

(c) Grounds for the objection shall be stated with particularity.

(d) The administrative law judge shall rule on the objection within fifteen (15) days of filing.

(7) If a medical report is admitted as direct testimony, any adverse party may depose the reporting physician in a timely manner as if on cross-examination at its own expense.

Section 11. Medical Evaluations Pursuant to KRS 342.315. (1) All persons claiming benefits for coal workers’ pneumoconiosis pursuant to KRS 342.730, hearing loss, or occupational disease shall be referred by the commissioner for a medical evaluation in accordance with contracts entered into between the commissioner and the University of Kentucky and University of Louisville medical schools.

(2) Upon all other claims, the commissioner or an administrative law judge may direct appointment by the commissioner or a university medical evaluator.

(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. Additional information shall not be filed of record. The additional medical information shall be:

(a) Submitted to the university within fourteen (14) days following an 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 evaluation may be grounds for imposition of sanctions.

Section 12. [49.] Interlocutory Relief. (1) At any time during a claim, a party may seek any or all of the following (3) forms of interlocutory relief:

(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(a);

(b) Medical benefits pursuant to KRS 342.020;

(c) Rehabilitation services pursuant to KRS 342.710;

(2) Any response to a request for interlocutory relief shall be served within twenty (20) days from the date of the request and thereafter the request shall be ripe for a decision.

(3) Entitlement to interlocutory relief shall be shown by means of affidavit, deposition, or other evidence of record demonstrating the requesting party is eligible under KRS Chapter 342 and will suffer irreparable injury, loss or damage pending a final decision on the application. Rehabilitation services may be ordered while the claim is pending upon showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.

(4) If interlocutory relief is awarded in the form of income benefits, the application shall be placed in abeyance unless a party shows irreparable harm will result. The administrative law judge may require periodic reports as to the physical condition of the plaintiff. Upon motion and a showing of cause, or upon the administrative law judge’s own motion, interlocutory relief shall be terminated and the claim removed from abeyance.

(5) An attorney’s fee in the amounts authorized by KRS 342.320 that does not exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The agreed fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.

(6) A party seeking interlocutory relief may use the following forms:

(a) Motion for interlocutory relief;

(b) Affidavit for payment of medical expenses;

(c) Affidavit for payment of temporary total disability; and

(d) Affidavit regarding rehabilitation services.

Section 13. [44.] Benefit Review Conferences. (1) A benefit review conference shall be held not less than forty-five (45) days and not more than seventy-five (75) days after the notice of filing is issued by the commissioner.

(2) 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.

(3) [29] The benefit review conference shall be an informal proceeding.

(4) The plaintiff and the defendant, or their representatives, and the representatives of all other parties shall attend the conference.

(5) If the defendant is insured or a qualified self-insured, a representative of the carrier or settlement authority shall be present or
available by telephone during the benefit review conference.

(9) [42] The administrative law judge may upon motion waive the plaintiff's attendance at the benefit review conference for good cause shown.

(12) [51] A transcript of the benefit review conference shall not be made.

(9) [46] Representatives of all parties shall have authority to resolve disputed issues and settle the claim at the benefit review conference.

(9(a) Defeendant shall provide a completed Form AWW.
(b) Plaintiff shall bring copies of unpaid medical bills and documentation of out-of-pocket expenses including travel for medical treatment.
(c) Each defendant shall bring copies of disputed medical bills and medical expenses.

(10) [72] 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.

(9(b) 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.

(11) [99] 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.

(12) [140] If at the conclusion of the benefit review conference the parties have not reached agreement on all the issues, the administrative law judge shall:
(a) Schedule a final hearing; and
(b) 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.

(b) May schedule a prehearing conference to be held at the conclusion of the presentation of proof; and
(c) If a prehearing is not scheduled, a hearing shall be scheduled.

(12) [144] 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 14. [122] Evidence—Rules Applicable. (1) The Rules of Evidence prescribed by the Kentucky Supreme Court shall apply in all proceedings before an administrative law judge except as varied by specific statute and this administrative regulation.

(2) Any party may file as evidence before the administrative law judge pertinent material, and only relevant portions of hospital, educational, Office of Vital Statistics, Armed Forces, Social Security, and all public records. An opinion of a physician which is expressed in these records shall not be considered by an administrative law judge in violation of the limitation on the number of physician's opinions established in KRS 342.033.

Section 15. [143] Extensions of Proof Time. (1) Extensions of time for producing evidence may be granted upon showing of circumstances that prevent timely introduction.

(2) Motions for extension of time shall be filed no later than five (5) days before the deadline sought to be extended.

(3) The motion 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.

(4) 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 by deposition.

(5) [143] 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 16. [144] Stipulation of Facts. (1) Refusal to stipulate facts which are not genuinely in issue shall warrant imposition of sanctions as established in Section 23 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.

(3) Upon granting relief from a stipulation, the administrative law judge may grant a continuance of the hearing and additional proof time.

Section 17. [145] 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.

(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 the 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) 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.

(a) An index number shall be assigned to a physician upon the filing of the physician's qualifications.
(b) Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications.
(c) Qualifications shall be revised or updated by submitting revisions to the commissioner.
(d) Nothing in this administrative regulation shall preclude any party from inquiring further into the qualifications of a physician.

[Section 16.-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 18. Prehearings. (1) If an administrative law judge determines it is necessary, a prehearing may be held at the conclusion of the proof time.

(2a) Ten (10) days prior to the prehearing, the plaintiff shall convey in writing to the defendant a reasonable settlement proposal.

(b) Five (5) days prior to the prehearing, the defendant shall respond in writing to the plaintiff concerning the plaintiff's settlement proposal.

(3) Ten (10) days prior to the prehearing, parties shall exchange final stipulations and lists of known exhibits and witnesses that:
(a) Identify each exhibit and witness;
(b) Summarize the anticipated testimony of each witness;
(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 permanent impairment rating as defined in KRS 3:2.081(1)(5); and
4. Describe any work-related restrictions imposed.
(d) The stipulations shall contain a certification that the plaintiff has
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 administrative law judge shall act upon the petition within ten (10) days after the response is due.

Section 21. [14.] 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. This 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 paragraphs (b)2 and 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 initial 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).


(a) Pursuant to KRS 342.265, decisions of administrative law judges shall be subject to review by the Workers' Compensation Board in accordance with the procedures set out in this administrative regulation.

(b) Parties shall insert the language "Appeals Branch" or "Workers' Compensation Board" on the outside of an envelope containing documents filed in an appeal to the board.

(2) Time for petition.

(a) Within thirty (30) days of the date upon which the administr-
tive law judge enters a final decision pursuant to KRS 342.275(2), any party aggrieved by that decision may file a petition for appeal to the Workers’ Compensation Board.

(b) Failure to file the petition within the time allowed shall require dismissal of the petition.

(c) The commissioner shall issue an acknowledgement to all parties of the filing of a petition for review or any cross-petition.

(d) Number of copies and format.

(a) An original and two (2) copies of the petition shall be filed with the Commissioner of the Department of Workers’ Claims.

(b) The petition shall conform in all respects to Civil Rule 7.02(4).

(c) Petition. The petition shall designate the parties as petitioner(s) and respondent(s) and shall be drafted in the following manner:

(a) The name of each petitioner and each respondent shall be included in the petition.

(b) The administrative law judge who rendered the order appealed from shall be named as a respondent.

(c) The petition shall not set forth all parties to the case.

(d) The petition shall state whether any matters remain in litigation between the parties in any forum or court other than those for which an appeal is being sought.

(e) The petition shall include a “Need for Oral Argument” designating whether the party requests an argument to be heard orally before the board and, if so, a brief statement setting out the reason(s) for the request.

(f) The petition shall include a “Statement of Benefits Pending Review” which shall set forth whether some or all benefits, if any, designated to be paid by the opinion, award or order for which review is being sought have been instituted pursuant to KRS 342.300.

(g) The organization and contents of the petition for review shall be as follows:

1. A brief “Introduction” indicating the nature of the case.

2. A “Statement of Points and Authorities” shall set forth, succinctly and in the order in which they are discussed in the body of the argument, the petitioner’s contentions with respect to each issue of law on which he relies for a reversal, listing under each authority cited on that point and the respective pages of the brief on which the argument appears and on which the authorities are cited.

3. A “Statement of the Case” consisting of a chronological summary of the facts, procedural events necessary to an understanding of the issues presented by the appeal, with ample reference to the specific pages of the record supporting each of the statements narrated in the summary.

4. An “Argument” conforming with the statement of points and authorities, with ample supportive references to the record and citations of authority pertinent to each issue of law and which shall contain at the beginning of the argument, a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.

5. A “Conclusion” setting forth the specific relief sought from the board.

6. An “Appendix” containing copies of the final award or order of the administrative law judge from which review is sought, any petition for reconsideration filed by the parties, KRS 342.281; the administrative law judge’s order addressing any petitions for reconsideration; copies of cases cited from federal courts and foreign jurisdictions, if any, upon which reliance is made; and, copies of prior board opinions or nonfinal or unpublished opinions of the Court of Appeals or Supreme Court as provided for in subsection (10) of this section.

(d) Respondent’s counter-argument shall follow the organization and content of the petition for review as set forth in subsection (4)(a) of this section.

(e) Reply brief.

(a) If applicable, the petitioner may file a reply brief within ten (10) days after the date on which the last response was served or, if no response was served, within one (1) day after service of the petition for review.

(b) The organization and contents of the reply brief shall be as provided in Civil Rule 76.12(4)(e), except that an index, or contents page shall not be required.

(f) Certification. The petition, response, and reply brief shall be signed by each party or his counsel and that signature shall constitute a certification that the statements contained therein are true and made in good faith.

(g) Service of petitions for review, cross-petitions, responses and reply briefs on adverse parties.

(a) Before filing any petition for review, cross-petition, response, or reply brief with the Commissioner of the Department of Workers’ Claims, a party shall serve, in the manner provided by Civil Rule 5.02, a copy of it on each adverse party.

(b) Every petition for review, cross-petition, response, or reply brief shall bear, on the front cover, a signed statement, in accordance with Civil Rule 5.03 by the attorney or party that service has been made as required by this administrative regulation, which statement shall identify by name(s) of the person(s) so served.

(c) The name(s) of the attorney(s) submitting a petition for review, cross-petition, response, or reply brief with a current address and telephone number shall appear following its “conclusion”.

(f) Cross-petition.

(a) Any party designated as a respondent may file a cross-petition within twenty (20) days following the filing of the petition.

(b) The cross-petition shall state the name of each cross-petitioner and each cross-respondent and the names, addresses, and telephone numbers of their respective counsel.

(c) If the respondent is also a cross-petitioner, a combined brief shall address issues raised by the cross-appeal.

(d) The cross-petition shall require the same organization and contents as a petition for review.

2. The cross-petition shall be signed in accordance with subsection (7) of this section, and shall be served in accordance with subsection (8) of this section.

3. Responses to cross-petitions for review shall be filed within twenty (20) days of the filing of the cross-petition and shall require the same organization and contents as a response pursuant to subsection (5) of this section.

(e) If a cross-appeal has been filed, the cross-petitioner’s reply brief may be served within ten (10) days after the date on which the last cross-respondent’s brief was served or, which ever is earlier.

(f) Form of citations.

(a) All citations of Kentucky statutes and reported decisions of the Court of Appeals and Supreme Court shall conform to the requirements of Civil Rule 76.12(4)(g).

(b) If a party believes that a prior decision of the board or an unpublished decision by the Court of Appeals or Supreme Court has precedential value in relation to a material issue in the case being reviewed and there is no published opinion that would serve as well, that decision may be cited if that party serves a copy on all other parties in the case and on this board.

(c) Service of an unpublished decision shall be accomplished by including a copy of the decision in the appendix to the petition for review, cross-petition, response, or reply brief.

(d) Citations for prior decisions of the board or unpublished decisions of the Court of Appeals or Supreme Court shall include the style of the case, the appropriate claim or case number, and the date the decision was rendered.

11. Number of pages.

(a) The petition for review and the response shall be limited to twenty (20) pages each.

(b) Reply briefs shall be limited to five (5) pages.

(c) Combined briefs shall be limited to twenty-five (25) pages.

(d) The parties shall make every effort to comply with the above page limitations.
(e) Permission to increase the length of a brief shall be sought by motion, but shall only be granted upon a showing of good cause.

(12) Sanctions. Failure of a party to file a petition, cross-petition, or response conforming to the requirements of this administrative regulation or failure of a party to timely file a response may be grounds for the imposition of one (1) or more of the following sanctions:
(a) Affirmation or reversal of the final order;
(b) Rejection of a petition, cross-petition or response that does not conform as to organization or content, with leave to refile in proper form within ten (10) days of the date returned. If timely refiled occurs, the filing shall date back to the date of the original filing;
(c) Striking of an untimely response;
(d) A fine of not more than $500;
(e) Dismissal.

(13) Motions. All other motions and pleadings shall require only the original to be filed with the Commissioner of the Department of Workers' Claims.

(b) The style of the case, including the claim number and title of the petition or pleadings shall appear on the first page of the petition or pleadings.

(c) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in response. To be considered, a response shall be filed within ten (10) days of the motion. Further responses shall not be filed.

(d) Every motion and response, the grounds of which depend upon the existence of facts not in evidence shall be supported by affidavits or other proof of such facts.

(e) Every motion and response, the grounds of which depend upon the existence of facts which the moving or responding 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.

(f) Before filing any other motion or pleading with the Commissioner of the Department of Workers' Claims, a party shall serve, in the manner provided by Civil Rule 5:02, a copy of it on each adverse party.

(g) The filing of a motion to dismiss a petition for appeal shall stay the remaining time for the filing of a responsive petition. In the event the motion to dismiss is overruled, respondents shall have fifteen (15) days from and after the date of the order overruling in which to file a responsive petition.

(h) Except for motions that call for final disposition of an appeal, any board member designated by the chairman may dispose of any motion; and any intermediate order may be issued on the signature of any board member.

(14) Oral arguments. Upon motion of any party or upon the board's own motion, the board may order oral arguments on the merits in all cases appealed from an opinion, award or order of an administrative law judge.

(15) Oral arguments shall occur on a date and at a time and location specified by the board.

(c) Appeals designated for oral argument shall be held in abeyance and all subsequent appeal time in the case shall be calculated from the date of the oral argument instead of the date of the filing of the petition for review.

(16) Continuation of benefits pending appeal. Benefits awarded by an administrative law judge which are not contested shall be paid during the pendency of any appeal and no motion requesting the payment of these benefits need be made. This includes income benefits at an amount lesser than what was awarded in the event the issue on appeal addresses the amount of benefits to be awarded as opposed to the entitlement to income benefits.

(b) Upon the motion of a party pursuant to KRS 342.300, the board may order payment of benefits pending appeal in conformity with the award, judgment, or order appealed from.

(c) Entitlement to relief pursuant to KRS 342.300 shall be granted only upon motion establishing a sufficient showing of reason and necessity which includes the following:

1. The probability of the existence in fact of financial loss; privation, suffering, or adversity resulting from insufficient income; or derangement of the moving party's property or health should payment of benefits not be instituted; and
2. There exists a reasonable likelihood that the moving party will prevail on appeal.

(d) Any response to a motion for continuation of an award pending appeal shall be served within ten (10) days from the date of the request and, thereafter, the request shall be ripe for a decision.

(e) Entitlement to relief of the moving party and responses shall be shown by means of affidavit if the grounds for the motion or response depend upon the existence of facts not in evidence, or supporting memorandum citing to evidence existing within the record and making reference to the place in the record where that evidence is found.

(f) The continuation of benefits pending appeal, if granted, shall be suspended upon the execution of a supersedeas bond for appeal to the Court of Appeals. The amount and sufficiency shall be determined by the board pursuant to Civil Rules 73.04, 73.06 and 75.07.

(16) Decisions.

(a) The board shall enter its decision affirming, modifying, or setting aside the order appealed from or may remand the claim to an administrative law judge for further proceedings. Motions for reconsideration shall not be permitted.

(b) If, due to a board member not sitting or being unable to sit on a decision and the remaining two (2) board members cannot reach an agreement on a final disposition, the decision of the administrative law judge shall be affirmed.

(17) Appeal from board decisions. If applicable, pursuant to KRS 342.290, the decision of the board shall be appealed to the Kentucky Court of Appeals as provided in Civil Rule 76.25.

Section 20. 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 designating 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 342.124(2). The workers' compensation claim number shall be set forth in all pleadings before the trial of the appeal.

(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 notice of appeal.

(5) If a ground for the appeal is fraud or misconduct pursuant to KRS 342.285(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 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 $500; or
(d) Dismissal of appeal of petitioner's original brief.

(9) If applicable, the petitioner's reply brief shall be served within
fifteen (15) days after the date on which the last respondent's brief was served or due, whichever is earlier. The organization and contents of the petitioner's reply brief shall be as provided in Civil Rule 76.12(4)(e), except that an appendix, index, or contents page shall not be required. If the petitioner is also a cross-respondent, a combined brief shall address issues raised by the cross-petitioner's brief.

(4) If a cross-appeal has been filed, the cross-petitioner's reply brief may be served within fifteen (16) days after the date or the last cross-respondent's brief was served or due, whichever is earlier. The organization and contents of the cross-petitioner's reply brief shall be as provided in Civil Rule 76.12(4)(e) except that an appendix, index, or contents page shall not be required.

(11) Petitioner's brief and the respondent's brief shall be limited to fifteen (15) pages, reply briefs to five (5) pages, and combined briefs to twenty (20) pages. Permission to increase the length of a brief shall be sought by motion.

(12) All pleadings shall conform to the requirements set forth in Civil Rule 7.02(4) and shall be filed without covers. The style of the case, including the claim number and title of the pleading, shall appear on the first page of the pleading.

(13) The board shall enter its decision affirming, modifying, or selling out the order appealed from, or may remand the claim to an administrative law judge for further proceedings. Motions for reconsideration shall not be permitted.

(14) If applicable, the decision of the board shall be appealed to the Kentucky Court of Appeals as provided in Civil Rule 76.25.

(15) Except for motions that call for final disposition of an appeal, any board member designated by the chairman may dispose of any motion, and any intermediate order may be issued on the signature of any board member.

Section 23. [24.] Coverage - Insured Status. Upon the filing of an application for resolution of claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.850 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. If an employer does not have insurance coverage or qualify as a self-insurer, the commissioner shall notify the administrative law judge and all parties by service of a certification of no coverage.

Section 24. [25.] Withdrawal of Records. (1) A portion of any original record 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 25. [26.] Sanctions. (1) Pursuant to KRS 342.310, an administrative law judge, and the board may assess costs upon determination that proceedings have been brought, prosecuted, or defended without reasonable grounds.

(2) A sanction may be assessed against an offending attorney or representative rather than against the party.

(3) 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.

(4) Failure of a party to timely file any pleading or document or failure to comply with the procedures required by this administrative regulation may be treated by an administrative law judge, or the board as prosecuting or defending without reasonable grounds.

(5) In addition to assessment of costs pursuant to KRS 342.310, failure to comply with the procedures set forth by this administrative regulation may also result in one (1) of the following:

(a) Striking of untimely or inappropriate documents or evidence; or

(b) A fine not to exceed $500.

Section 26. [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 administrative law judge that the responsible employer failed to secure payment of compensation as provided by KRS 342.340 and:

(a) Thirty (30) days have expired since the finality of an award or issuance of an interlocutory relief order 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.

(2) The plaintiff may by motion and affidavit demonstrate compliance with this section and request an 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 27. [28.] Use of American Medical Association Guidelines in Coal Workers' Pneumociosis 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 28. [29.] Request for Participation by the Kentucky Coal Workers' Pneumociosis 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 after the date of filing and upon a form supplied by the Director of the Kentucky Coal Workers' Pneumociosis fund 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 opinion, or order of an 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 retraining 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.

(2) Within thirty (30) days following receipt of a completed request for participation, the director shall notify the employer and all other parties of the acceptance or denial of the request.

(3) A denial shall be made upon a finding by the director that the employer failed to defend the claim or enter 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.

(4) 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 administrative law judge in an award.

(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 29. [27.] Forms. 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 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 30. [28.] Incorporation by Reference. (1) The following materials are incorporated by reference:
   (a) Form 101, "Application for Resolution of Injury Claim", (revised June, 2000), Department of Workers' Claims;
   (b) Form 102, "Application for Resolution of Occupational Disease Claim", (revised June, 2000), 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), Department of Workers' Claims;
   (h) Form 108, "Medical Report - Psychological", (revised June, 2000), 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;
   (k) Form 108-IL, "Medical Report - Hearing Loss", (revised June, 2000), 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, 2000), Department of Workers' Claims;
   (n) Form 110-0, "Agreement - Occupational Disease", (revised June, 2000), Department of Workers' Claims;
   (o) Form 111-Injury and Hearing Loss, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), Department of Workers' Claims;
   (p) Form 111-OD, "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);
   (u) Form MIR-1, Motion for Interlocutory Relief (May 29, 1997 Edition);
   (v) Form MIR-2, Affidavit for Payment of Medical Expenses (May 29, 1997 Edition);
   (w) Form MIR-3, Affidavit for Payment of Temporary Total Disability (May 29, 1997 Edition);
   (x) Form MIR-4, Affidavit Regarding Rehabilitation Services (May 29, 1997 Edition);
   (y) Form VRT, Petition for Vocational Rehabilitation Training (May 29, 1997 Edition);
   (z) Form MTR-1, Motion to Reopen by Employee (May 29, 1997 Edition);
   (aa) Form MTR-2, Motion to Reopen KRS 342.732 Benefits (May 29, 1997 Edition);
   (bb) Form MTR-3, Motion to Reopen by Defendant (May 29, 1997 Edition);
   (cc) Form WVR, Joint Motion and Agreement to Waive Vocational Rehabilitation Evaluation (May 29, 1997 Edition);
   (dd) Form UEP-F, Motion for Payment From Uninsured Employer's Fund (May 29, 1997 Edition).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims Monday through Friday, 9 a.m. to 4 p.m. at the following locations:
   (a) Frankfort - Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;
   (b) Paducah - 2200 North 9th Street, Paducah, Kentucky 42001; and
   (c) Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

CHED JENNINGS, Commissioner
APPROVED BY AGENCY: October 15, 2001
FILED WITH LRC: October 15, 2001 at noon

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on November 21, 2001, at 10 a.m. (ET) in the offices of the Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2001, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on November 21, 2001, in order to receive consideration. 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: Carla H. Montgomery, Counsel, Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, phone: (502) 564-5550, ext. 464, fax: (502) 564-5334.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Carla H. Montgomery
(1) Provide a brief summary of:
   (a) What this administrative regulation does: Sets forth procedures for workers compensation claims for injured workers.
   (b) The necessity of this administrative regulation: KRS 342.270 requires the Commissioner of the Department of Workers' Claims to promulgate an administrative regulation to establish the procedures for the resolution of claims.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: It sets forth the procedures for a workers compensation claims.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It is essential to the adjudication of injured workers' claims.
(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 benefit review conference will be held earlier. There are requirements for information to be available at the benefit review conference to assist with earlier resolution of claims. There will be new procedures for appealing to the board.
   (b) The necessity of the amendment to this administrative regulation: It will assist the department in streamlining cases so that claimants will get prompt attention to their cases.
   (c) How the amendment conforms to the content of the authorizing
statutes: These are amendments to the procedures required by KRS 342.207.
   (d) How the amendment will assist in the effective administration of the statutes: These amendments continue the processing of workers compensation claims and hopefully focus issues and promote early settlement and timelier appeals.
   (3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect the parties to workers compensation claims. Employers, employees, insurers, the uninsured fund, and attorney representing these persons or entities will be affected. Over 5,000 contested workers compensation claims are filed with the Department of Workers' Claims each year.
   (4) Provide an assessment of whether the above group of organizations will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Claimants will need to have the appropriate information at the early benefit review conference. Employers and carriers will be required to have wage information available. Attorneys must prepare their brief with the filing of an appeal to the board.
   (5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: There should be no cost to implement these changes.
   (b) On a continuing basis: There should be no cost to implement these changes.
   (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The usual budget for the Department of Workers' Claims will be used.
   (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: There are no fees established.
   (9) TIERING: Is tiering applied? Tiering is not appropriate since multiple classes are not involved. The proposed amendments apply equally to all litigants before administrative law judges and the Workers' Compensation Board.

LABOR CABINET
Department of Workers' Claims
(Amendment)


RELATES TO: KRS 342.019, 342.020, 342.035, 342.735
STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.735
NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges and reimbursements for medical services under KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insures. This administrative regulation establishes the medical fee schedule for physicians.

Section 1. Definitions. (1) "Medical fee schedule" means the Workers' Compensation Medical Fee Schedule for Physicians.
   (2) "Physician" is defined by KRS 342.0011(32), and shall include other health care or medical services providers to whom a procedure code listed in the medical fee schedule is applicable if another fee schedule of the Department of Workers' Claims does not apply.

Section 2. Services Covered. (1) The medical fee schedule shall govern all medical services provided to injured employees by physicians under KRS Chapter 342; and
   (2) The medical fee schedule shall also apply to other health care or medical services providers to whom a listed code is applicable unless:
   (a) Another fee schedule of the Department of Workers' Claims applies; or
   (b) A lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to 803 KAR 25:110.

Section 3. Fee Computation. (1) The appropriate fee for a procedure covered by the medical fee schedule shall be obtained by multiplying a relative value unit by the applicable conversion factor.
   (2) The resulting fee shall be the maximum fee allowed for the service provided.

   (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHED JENNINGS, Commissioner
APPROVED BY AGENCY: October 15, 2001
FILED WITH LRC: October 15, 2001 at noon
PUBLIC HEARING: A public hearing on the administrative regulation shall be held on November 21, 2001, at 10 a.m. (ET) in the offices of the Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2001, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on November 21, 2001, in order to receive consideration. 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: Carla H. Montgomery, Counsel, Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, phone: (502) 564-5550, ext. 464, fax: (502) 564-5534.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: Carla H. Montgomery
(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation governs the certification and activities of managed health care systems providing medical services to injured workers.
   (b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that entities providing medical services to injured workers in the managed care environment are providing such services in accordance with requirements of KRS Chapter 342.
   (c) How this administrative regulation conforms to the content of the enrolling statutes: KRS 342.020 provides for the commissioner to promulgate administrative regulations governing provision of medical services by managed health care systems. This administrative regulation sets forth the requirements for departmental certification of managed health care systems.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the administration of medical benefits by setting forth standards and procedures for managed health care systems.
   (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 drop the requirement that utilization review should be certified to health review agents pursuant to 906 KAR 1:080 which encompasses KRS 211.461-466.
      (b) The necessity of the amendment to this administrative regula-
tion: This amendment is necessary because of recent legislative changes made in HB 390. Private review agents conducting utilization review are to be certified by the Kentucky Department of Insurance rather than the Cabinet for Health Services. The certification for utilization review providers found in HB 390 applies only to health insurance plans. This regulation is in direct conflict with the statutory provisions and must be amended.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 342.020 provides for the commissioner to promulgate administrative regulations governing provision of medical services by managed health care systems. This amendment eliminates the statutory conflict.

(d) How the amendment will assist in the effective administration of the statutes: This regulation assists in the administration of medical benefits within worker compensation by clarifying requirements for managed health care systems providing medical services to injured workers.

(3) List the type and number of individuals, business, organizations, or state and local governments affected by this administrative regulation: Employers, injured workers, workers compensation insurance carriers, self-insurance groups, self-insured employers, and workers compensation managed health care systems are 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: Managed health care systems will no longer be required to seek separate certification as private review agents as part of the managed health care certification process. Such entities will continue to be required to submit managed care plans which include a description of the utilization review procedures for review prior to certification as a managed health care system.

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

(a) Initially: No cost associated with implementation.
(b) On a continuing basis: The department is currently staffed with appropriate personnel to review and approve managed health care plans and has been conducting such review since 1995. No additional cost associated with implementation of this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Normal budget 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 or funding will be required 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 any fee or increase any fee.

(9) TIERING: Is tiering applied? Tiering is not applied because the requirements are applied equally to all managed care providers.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
Division of Health Insurance Provider and Managed Care
(Amendment)

806 KAR 17:180. Standard health benefit plan and comparison format.

RELATES TO: KRS 304.17A-080, 304.17A-200 through 304.17A-250, 304.17A-420
STATUTORY AUTHORITY: KRS 304.2-110(1), 304.17A-250(1), 304.17A-25(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.17A-250(1) requires the commissioner to define by administrative regulation one (1) standard health benefit plan that shall provide health insurance coverage in the individual and [nonsense] small group markets. KRS 304.17A-250(7) requires the commissioner to prescribe a standard format for comparison of the standard plan benefits to other offered comparable plans and requires that the benefit comparison format include style, arrangement, overall appearance, and content of the benefit comparisons.

Section 1. Definitions. (1) "FFS" means a fee-for-service product type.
(2) "HMO" means a health maintenance organization product type.
(3) "POS" means a point-of-service product type.
(4) "PPO" means a preferred provider organization product type.
(5) "Standard health benefit plan" means the format, cost-sharing levels, definitions, benefits, exclusions, and supplemental benefit riders established by the Department of Insurance and the Health Insurance Advisory Council in accordance with KRS 304.17A-250 and any other health insurance benefit mandated by the General Assembly.

Section 2. Standard Benefits Comparison Format. (1) At the time of initial solicitation of health insurance coverage in the individual or nonemployer small group markets, the person soliciting the product shall complete and deliver a benefit comparison form applicable to the product being solicited as follows:

(a) A FFS health benefit plan shall be compared to the FFS standard benefit plan by using the Fee-for-Service Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation;
(b) A HMO health benefit plan shall be compared to the HMO standard benefit plan by using the HMO Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation;
(c) A POS health benefit plan shall be compared to the POS standard benefit plan by using the POS Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation;
(d) A PPO health benefit plan shall be compared to the PPO standard benefit plan by using the PPO Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation;

(2) An insurer shall produce each form required by subsection (1) of this section and supply each form to each person who solicits health insurance coverage for the insurer in the individual and nonemployer small group markets.

(3) In lieu of using a form required by subsection (1) of this section, an insurer may use a form that is substantially similar to a comparison form incorporated by reference into this administrative regulation.

(4) For each product type listed in subsection (1) of this section:

(a) The person soliciting health insurance coverage shall compare the exclusions contained in "The Kentucky Standard Health Benefit Plan", which is incorporated by reference into this administrative regulation to the exclusions in the health benefit plan being solicited by using the "Kentucky Standard Health Benefit Plan Comparison Form: Exclusions", which is incorporated by reference into this administrative regulation. In lieu of using the exclusion comparison form incorporated by reference, the insurer may use a form that is substantially similar to the "Kentucky Standard Health Benefit Plan Comparison Form: Exclusions."
(b) With respect to the exclusions comparison form required pursuant to subsection (4)(a) of this section, the person soliciting health insurance coverage shall:

1. Witness the signature of the prospective applicant on the exclusions comparison form;
2. Sign the exclusions comparison form;
3. Date the exclusions comparison form as of the date of solicitation; and
4. Attach the exclusions comparison form to the applicable product comparison form completed pursuant to subsection (1) of this section.
(c) The person soliciting health insurance coverage shall deliver a copy of each completed benefit comparison form, together with a copy of the completed and signed exclusions comparison form, to the prospective applicant and to the insurer whose product is being solicited.
(d) Paragraph (b) of this subsection shall not apply to a direct response solicitation. The exclusions comparison form for a direct response solicitation shall be presented to the prospective applicant in accordance with KRS 304.17A-250(7)(a)3.

(5) A benefit comparison form shall not be required if an insurer is marketing only the standard health benefit plan.

Section 3. Modification Process. (1) The standard health benefit plan and each comparison form shall remain in effect until [July 15, 1999, and thereafter until such time as] the plan or any form is modified in accordance with the procedures established by this section.

(2) The standard health benefit plan and each comparison form may be modified each [successive] year and each [after July 15, 1999. Each modification shall apply to each policy or certificate issued or renewed on or after July 15 of each year.

(3) Any interested person wishing to make a recommendation for modification of the standard plan shall:
   (a) Submit their recommendation, in writing, to the Kentucky Department of Insurance, Division of Health Insurance Policy and Managed Care, by August 31 of the year preceding the year in which each modification is recommended for implementation;
   (b) Explain the need for each recommended modification; and
   (c) Provide a statement regarding the cost effect of each recommended modification.

(4) Within a reasonable time after August 31 of each year:
   (a) The department shall present each recommendation for modification received pursuant to subsection (3) of this section to the Health Insurance Advisory Council for consideration;
   (b) The Health Insurance Advisory Council shall review and discuss each recommendation for modification of the standard health benefit plan in accordance with KRS 304.17A-080(3);
   (c) The Health Insurance Advisory Council shall make a final recommendation for modification of the standard health benefit plan based on the recommendations presented by the department pursuant to paragraph (a) of this subsection; and
   (d) After considering the final recommendation for modification from the Health Insurance Advisory Council, the department shall either accept or decline, in writing, to modify the standard health benefit plan.

(5) Each insurer issuing, delivering, or renewing a health benefit plan shall:
   (a) Implement each modification to the standard health benefit plan and each benefit comparison form as soon as practicable; by the department;
   (b) Amend each policy form and rate filing to include every modification to the standard health benefit plan and each benefit comparison form; and
   (c) Complete and attach Form HIPMC-F35, "Health Benefit Plan Summary Sheet - Form Filings" to each health benefit plan filed with the department.

Section 4. Material Incorporated by Reference. (1) The following material is incorporated by reference:
(a) "Fee-for-Service Health Benefit Plan Comparison Form (2001 [1998] Edition);"
(b) "HMO Health Benefit Plan Comparison Form (2001 [2000] Edition);"
(c) "POS Health Benefit Plan Comparison Form (2001 [2000] Edition);"
(d) "PPO Health Benefit Plan Comparison Form (2001 [1998] Edition);"
(e) "Kentucky Standard Health Benefit Plan Comparison Form: Exclusions (2000 Edition);"
(f) Form HIPMC-F35 (10/00), "Health Benefit Plan Summary Sheet - Form Filings"; and
(g) "The Kentucky Standard Health Benefit Plan", HIPMC-SP1 (09/01 [10/00]).

(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. Forms may also be obtained on the department's Internet web site at www.doi.state.ky.us.

JANIE MILLER, Commissioner
RONALD B. MCCLOUND, Secretary

APPROVED BY AGENCY: October 4, 2001
FILED WITH LRC: October 11, 2001 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 2001, 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 November 21, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. 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, P.O. Box 517, Frankfort, Kentucky 40602, phone: (502) 564-6032, ext. 293, FAX: (502) 564-1458.

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 defines one standard health benefit plan that shall provide health insurance coverage in the individual and nonemployer small group markets. The regulation prescribes a standard format for comparison of the standard plan benefits to other offered comparable plans.
(b) The necessity of this administrative regulation: KRS 304.17A-250(1) requires the commissioner to define by administrative regulation one standard health benefit plan that shall provide health insurance coverage in the individual and nonemployer small group markets. KRS 304.17A-250(7) requires the commissioner to prescribe a standard format for comparison of the standard plan benefits to other offered comparable plans and requires that the benefit comparison format include style, arrangement, overall appearance, and content of the benefit comparisons.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation specifies the standard benefit plan and benefit comparison format pursuant to the requirements of KRS 304.17A-250(1) and (2).
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will require persons soliciting health insurance coverage in the state of Kentucky to complete comparison forms and deliver the forms to the prospective applicant and the insurer. In addition, insurers will be required to offer the standard health benefit plan established by this administrative regulation. Insurers will also be required to complete and attach HIPMC-F-35 to each health benefit plan filed with the department. The department currently receives and reviews health benefit plan form filings submitted by insurers. HIPMC-F-35, which is required by this administrative regulation, will assist the department in this review. This administrative regulation will assure that consumers of health insurance coverage in the state of Kentucky are informed about the benefits contained in the standard health benefit plan as opposed to the benefits in other comparable plans offered by insurers. In addition, this administrative regulation provides a process for modifying the standard health benefit plan and the format for the comparison of benefits and exclusions.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment changes the existing regulation in that it amends the "Kentucky Standard Health Benefit Plan" to permit a fee for service or preferred provider organization to combine the deductible for medical and pharmacy services or split the deductible with a set amount for medical services and pharmacy services; defines administrative determination, coverage denial, intraoperative surgical care, ptysician assistant, advanced registered nurse practitioner, licensed psycho-
logical associate, licensed psychological practitioner and physician assistant to the definition of "provider;" deletes registered nurse practitioner, midwife, regulated physicians assistant and certified psychological associate from the definition of "provider;" deletes chemotherapy treatment for proven malignant disease, radiation therapy, treatment by x-ray, bone marrow and blood stem cell transplantation, for patients with Acute Myeloid Leukemia, Prostate Cancer, Bladder Cancer, Breast Cancer, or Melanoma and renal dialysis treatment for acute or chronic kidney ailment, which may include the supportive use of an artificial kidney machine, from the list of ancillary hospital services furnished to an outpatient; permits an assistant at surgery to be a physician assistant and requires that an assistant be properly credentialed by the facility at which the surgery is performed; provides that chemotherapy treatment for proven malignant disease, radiation therapy, treatment by x-ray, bone marrow and blood stem cell transplantation, for patients with Acute Myeloid Leukemia, Prostate Cancer, Bladder Cancer, or Melanoma and renal dialysis treatment for acute or chronic kidney ailment, which may include the supportive use of an artificial kidney machine be provided as an outpatient service; clarifies that the plan will cover certain bone marrow and small bowel transplants and does not cover human organ or tissue transplants which are not medically necessary; clarifies that benefits for liver transplants are provided for inborn errors of metabolism that are life threatening, progeria, Scleroderma, Alagille's Syndrome, cystic fibrosis, diseases caused by external agents including trauma, chronic viral hepatitis due to Hepatitis A, B, or C, cryptogenic cirrhosis, toxic reactions, Budd-Chiari syndrome, Atalig's syndrome, myelosclerosis, polyvesiculosis disease and familial amyloid polyneuropathy; provides that benefits are not provided for liver transplants for cholangiocarcinoma or metastatic carcinomas, provides that benefits are provided for medically necessary transplants for liver adult-to-adult, liver adult-to-recipient under certain circumstances; provides that benefits are provided for heart, lung, heart/lung transplants that are medically necessary and not experimental or investigational; identifies for what conditions, if medically necessary, benefits for bone marrow transplants (including cord blood) will be provided; and provides that the plan may amend the covered transplant procedure list to include additional diagnoses; amends transplant eligible expenses to include inpatient and outpatient hospital, professional fees, and emergency room services; and codifies the inclusion of transplantation expenses for the bone marrow, heart, lung, heart/lung, liver, kidney, and pancreas in the definition of "Medicare.

(2) The necessity of the amendment to this administrative regulation: The amendments were necessary to update language to modern standards, to reduce patient costs and to conform with legislative changes.

(c) How the amendment conforms to the content of the authorizing statutes: These amendments revise the regulation to conform with legislative changes and to establish the standard benefit plan and benefit comparison format pursuant to the requirements of KRS 304.172(230)(1) and (2).

(d) How the amendment will assist in the effective administration of the statutes: These amendments were necessary to update language to modern standards, to reduce patient costs and to conform with legislative changes. The administrative regulation will continue to require persons soliciting health insurance coverage in the state of Kentucky to complete comparison forms and deliver the forms to the prospective applicant and the insurer. In addition, insurers will be required to offer the standard health benefit plan established by this administrative regulation. Insurers will also be required to complete and attach HIPMC-F-35 to each health benefit plan filed with the department. The department currently receives and reviews health benefit plan form filings submitted by insurers. HIPMC-F-35, which is required by this administrative regulation, will assist the department in this review. This administrative regulation will assure that consumers of health insurance coverage in the state of Kentucky are informed about the benefits contained in the standard health benefit plan as opposed to the benefits in other comparable plans offered by insurers. In addition, this administrative regulation provides a process for modifying the standard health benefit plan and the format for the comparison of benefits and exclusions.

SEC. 3. The purpose of this act is to amend the Kentucky Unemployment Insurance Law to provide health insurance coverage to the individual and nonemployer small group markets. Currently, there are 35 insurers authorized by the department to engage in health insurance activities in the individual and small group markets in this state. This administrative regulation will also affect those who solicit health insurance coverage in the individual and small group markets. Currently there are approximately 29,000 agents who are authorized to solicit health insurance coverage in the state of Kentucky.

(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. This administrative regulation will require persons soliciting health insurance coverage in the state of Kentucky to complete comparison forms and deliver the forms to the prospective applicant and the insurer. In addition, insurers will be required to offer the standard health benefit plan established by this administrative regulation. Lastly, insurers will be required to complete and attach HIPMC-F-35 to each health benefit plan filed with the department. These amendments update the administrative regulation to conform with legislative requirements and reduce cost for patients. Because insurers are currently required to file information under 806 KAR 17:180, the cost to insurers for filing under this administrative regulation should not increase dramatically, if at all.

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

(a) Initially: First year: The department currently collects and reviews recommendations for additions, deletions, or corrections to the standard health benefit plan and the benefits comparison format. The department will be required to either accept or decline the recommended modifications to the plan and comparison formats. The department does not anticipate that this amendment to the administrative regulation will increase costs dramatically, if at all.

(b) On a continuing basis: The department will be required to review recommended modifications for additions and comparisons to the plan and comparison format on an annual basis.

(c) The necessity of the amendment to this administrative regulation: The amendments were necessary to update language to modern standards, to reduce patient costs and to conform with legislative changes.

(d) How the amendment conforms to the content of the authorizing statutes: These amendments revise the regulation to conform with legislative changes and to establish the standard benefit plan and benefit comparison format pursuant to the requirements of KRS 304.172(230)(1) and (2).

(e) How the amendment will assist in the effective administration of the statutes: These amendments were necessary to update language to modern standards, to reduce patient costs and to conform with legislative changes. The administrative regulation will continue to require persons soliciting health insurance coverage in the state of Kentucky to complete comparison forms and deliver the forms to the prospective applicant and the insurer. In addition, insurers will be required to offer the standard health benefit plan established by this administrative regulation. Insurers will also be required to complete and attach HIPMC-F-35 to each health benefit plan filed with the department. The department currently receives and reviews health benefit plan form filings submitted by insurers. HIPMC-F-35, which is required by this administrative regulation, will assist the department in this review. This administrative regulation will assure that consumers of health insurance coverage in the state of Kentucky are informed about the benefits contained in the standard health benefit plan as opposed to the benefits in other comparable plans offered by insurers. In addition, this administrative regulation provides a process for modifying the standard health benefit plan and the format for the comparison of benefits and exclusions.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(5)

810 KAR 1:025. Licensing thoroughbred racing.

RELATES TO: KRS 230.280, 230.290, 230.300, 230.310, 230.320

STATUTORY AUTHORITY: KRS 230.215

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 the licensing procedures and requirements for participation in thoroughbred racing.

Section 1. (1) Representations made on or with license application shall be complete and correct.

(2) Licensee shall abide by all rulings, and decisions of the stewards and all decisions by the stewards shall remain in force unless
reversed or modified only by the commission upon proper appeal.

(a) Rulings and decisions of the stewards may be appealed to the commission, except those made by the stewards as to:

1. Findings of fact as occurred during and incident to the running of a race; and

2. A determination of the extent of disqualification of horses in a race for fouls committed during the race.

(b) Excepted rulings and decisions by the stewards shall be final with no right of review by the commission.

(3)(a) A licensee shall consent to a reasonable search of his property in his possession by the commission or its representatives, the property being restricted to that on association grounds and including tack rooms, living or sleeping quarters, motor vehicles, trunks, boxes, and containers of any sort.

(b) Licensees shall consent to seizure of any object which may be evidence indicating a violation of an administrative regulation.

(c) A licensee shall cooperate in every way with the commission or its representatives during the conduct of an investigation, to include responding correctly under oath to the best of his knowledge to all questions asked by the commission or its representatives pertaining to races.

(4)(a) A licensed trainer shall be responsible for the condition of horses in his charge and shall be held to a high standard of care in taking all precautions as are reasonable and necessary to safeguard the horses from tampering.

(b) Upon a finding of a positive test result for a prohibited medication, stimulant, sedative, depressant, local anesthetic, or any foreign drug, poison, or substance, in a saliva, urine, blood, or other specimen taken from a horse, the trainer of the horse shall have the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding the horse from tampering.

Section 2. The commission may issue a license to an association which applies for a license to conduct a thoroughbred race meeting on days as the commission may deem appropriate.

Section 3. Grounds for Refusal, Suspension, or Revocation of a License. The commission in its discretion may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order other disciplinary measures, on the following grounds:

1. Denial of a license to an applicant, or suspension or revocation of a license in another racing jurisdiction; the commission may require reinstatement in the original racing jurisdiction where the applicant was denied a license or where his license was suspended or revoked.

2. Conviction of a crime or violation of any statute or administrative regulation [dealing with a controlled substance];

3. Falsification, misrepresentation, or omission of required information in a license application to the commission.

(a) Failure to disclose to the commission complete ownership or beneficial interest in a horse entered to be raced; or

(b) Misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of thoroughbreds;

4. Making false or misleading statements to the commission or the stewards in an application for a license or in the course of an investigation;

5. Failure to comply with any order or ruling of the commission, stewards, or racing official [pertaining to a racing matter];

6. Ownership of any interest in, or participation by any manner in, any bookmaking, pool-selling, betting, bet solicitation, or illegal enterprise, or association with any person so engaged in these activities;

7. Person less than sixteen (16) years of age;

8. Person unqualified by experience or competence to perform the activity permitted by license as determined by standard examinations prescribed by the stewards;

9. Intoxication, use of profanity, fighting or any conduct of a disorderly nature on association grounds;

10. Employment or harboring of unlicensed persons required by these administrative regulations to be licensed;

11. Discontinuance of or ineligibility for activity for which license was issued;

12. Possession on association grounds, without written permission from the commission or stewards, of:

(a) Firearms;

(b) Battery, buzzer, or electrical device; or

(c) Other appliance other than an ordinary whip which could be used to alter the speed of a horse in a race or workout;

13. Possession on association grounds by a person other than a licensed veterinarian of:

(a) Hypodermic needle, or hypodermic syringe, or other device which could be used to administer any substance to a horse; or

(b) Medication, sedative, depressant, local anesthetic, or any foreign substance prohibited by the commission [Narcotics, medication, or drugs, or substance which could be used to alter the speed of a horse in a race];

14. Use of profane, abusive, or insulting language to or interference with a commissioner, member of the commission staff, or racing official, while these persons are in the discharge of their duties;

15. Cruelty to a horse or neglect of a horse entrusted to a licensee's care;

16. Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person having any connection with the outcome of a race, or failure to report knowledge of same immediately to the stewards;

17. Causing, or attempting to cause, or participation in any way in any attempt to cause the prearrangement of a race result, or failure to report knowledge of same immediately to the stewards;

18. Entering, or aiding and abetting the entering of, a horse ineligible or disqualified for the race entered;

19. Drug addiction, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, or involvement in a subject of public notice as involved in any activity which, in the opinion of the commission, may be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing, or association with persons so characterized; or

20. Violation of any administrative regulation of the commission, or Aiding or abetting any person in violation of any administrative regulation.

21. A licensee's failure to satisfy a judgment rendered against him, for goods, supplies, services or fees furnished him and used in the course of his licensed activity, constitutes a failure to meet the financial responsibility requirements of KRS 230.310. Lack of a showing of legal and just cause for not satisfying said judgment is inconsistent with the best interests of racing and the maintenance of honesty, integrity and high quality thereof and is cause for suspension of the license and denial of any renewal of same.

Section 4. License Applications for Associations. Persons or legal entities desiring to conduct thoroughbred racing in the Commonwealth shall apply to the commission for an association license. The application shall be made in writing on application forms prescribed by the commission. Applications shall be filed at the commission general office on or before September 1 of the year preceding the calendar year in which the license is to be in force. Applications shall not be acted upon by the commission until the commission is satisfied a full disclosure has been made. The application shall contain:

1. Name and location of track. Initial applications shall be accompanied by other physical information as the commission may require;

2. Names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the association with the degree of ownership or type of interest shown;

3. Names and addresses of persons capable of exercising any control over affairs of the association as trustee or guardian or lessor, or mortgagee, or fiduciary;

4. Corporations, partnerships, or other legal entities which own or control a beneficial interest in the association directly, or through other corporations or legal entities, shall similarly file with the application lists showing the names and addresses of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the legal entities with the degree of ownership or type of interest pertaining to the ownership or interest;

5. Days and hours on which racing is requested to be conducted; and number of races to be run on each day;

6. Names of racing officials and persons responsible for track security and fire protection;

7. Proposed purse schedule, showing minimum purse, average daily distribution, added money for each stake, if any;

8. An operating report on forms prescribed by the commission if
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the applicant is currently licensed; or
(9) Other information as the commission may from time to time require to ascertain the fitness of the applicant to conduct racing.

Section 5. License Application for Participants in Racing. (1)(a) Any person other than an association required to be licensed by Section 1 of this administrative regulation and desiring to participate in thoroughbred racing in the Commonwealth may apply to the commission for a license.
(b) The application shall be made in writing on application forms prescribed by the commission and filed at the commission general office or with the commission license administrator at the association on or after January 2 of the calendar year in which the license is to be in force, but not later than twenty-four (24) hours after applicant has arrived on association grounds.
(2) Applications from persons not previously licensed in Kentucky shall include the names of two (2) reputable persons who shall attest to the good reputation of the applicant and to the capability and general fitness of the applicant to perform the activity permitted by the license.
(3) Applications from persons whose age is not readily ascertainable by the licensing committee shall be accompanied by an attested copy of birth certificate or work permit showing applicant is sixteen (16) years or older.
(4)(a) Applications from persons, corporations, partnerships, lessors, or other legal entities involving more than one (1) individual person designated to race horses in the Commonwealth shall, in addition to designating the person or persons to represent the entire ownership of the horses, be accompanied by documents which fully disclose the identity and degree and type of ownership held by all individual persons who own or control a present or reversionary interest in the horses.
(b) Applications shall not be acted upon by the commission until the information is satisfied a full disclosure has been made.
(5)(a) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a practicing veterinarian, shall be accompanied by evidence that the person is currently licensed as a veterinarian by the Commonwealth of Kentucky.
(b) An accredited practicing veterinarian not licensed by the commission or the Commonwealth, however, may with permission of the stewards in an emergency be called in as a consultant, or to serve as a veterinarian for one (1) horse on a temporary basis, and shall not be considered as participating in racing in this state.
(6) Applications from persons desiring to treat, or prescribe for, or attend any horse on association grounds as a dental technician shall be accompanied by the name of a licensed veterinarian who shall attest to the technical competence of the applicant and under whose sponsorship and direction the applicant shall work on association grounds.
(7) Applications from persons not previously licensed in the capacity of farrier shall not be forwarded with recommendation to the commission by the licensing committee until the applicant has successfully completed a standard examination by an experienced farrier known to the stewards so as to provide the licensing committee a reasonable basis for recommendation as to the technical proficiency of the applicant for a farrier's license.
(8) The following annual fees shall accompany the application and shall not be refundable:
(a) $100 [Thirty-five $(35) dollars - owner [licensee], trainer, assistant trainer, veterinarian, [dental technician, blacksmith] farrier, or apprentice farrier [licensee], jockey, jockey agent, farm manager, agent, racing official, steward, testing laboratory employee, racing department employee [licensee], racing secretary, assistant racing secretary, director of racing, starter and assistant starter, paddock judge, patrol judge, placing judge, timer, claiming license, and temporary license;]
(b) Seventy-five $(75) dollars - jockey apprentice;
(c) Fifty $(50) Twenty-five $(25) dollars - veterinarian assistant, dental technician, stable-area supplier license [suppliers of horse feed, tack, medication, or food vendors], stable manager [licensee], farm manager, farm agent;
(d) Twenty-five $(25) dollars - person employed by a concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting, jockey apprentice;
sonable, unlawful, or contrary to these administrative regulations, the commission shall so advise all parties in interest and shall take appro-
priate action against offending parties.

4) If the commission finds that the cause of termination is rea-
sensible, lawful, and not contrary to these administrative regulations, the commission shall so advise all parties in interest and shall use its best efforts to settle the dispute.

Section 11. Incorporation by Reference. (1) "Licensing Applica-
tion" (KRC 15(10)(2)) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Racing Commission, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, Monday through Friday: 8 a.m. to 4:30 p.m.

C. FRANK SHOOP. Chairman
APPROVED BY AGENCY: October 12, 2001
FILED WITH LRC: October 12, 2001 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regu-
lation shall be held on November 21, 2001, 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 November 14, 2001 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: Rena Elswick, Kentucky Racing Commis-
sion, 4063 Iron Works Parkway, Building B, Lexington, Kentucky
40511, Phone: (859) 246-2040, Fax: (859) 246-2039.

REGULATORY IMPACT ANALYSIS

Contact Person: Rena Elswick

(1) Narrative summary of:

(a) What the regulation does: This regulation estab-
lishes the conditions under which thoroughbred racing is to be con-
ducted in Kentucky. Included within those conditions are fees to be
paid by applicants for licenses, requirements to be satisfied to become
licensed, and conditions that if violated could result in the denial, sus-
pension, or revocation of a license.

(b) The necessity of the administrative regulations: In order to
place individuals on notice of the conditions and fees applicants shall
pay to become licensed and the conditions upon which their license
may be granted, denied, suspended, or revoked.

(c) How the administrative regulation conforms to the content of
authorizing statutes: Various statutes authorize the commission to
enact administrative regulations for issuing and regulating horse rac-
ing in this state. KRS 230.260(4) authorizes the commission to deter-
mine the fees to be paid for licenses to participate in horse racing.
That same provision enables the commission to require applications in
the form and contain information as required by the commission. KRS
230.290(3) authorizes the commission to place conditions on licenses.

(d) How the administrative regulations currently assists or will
assist in the effective administrative of the statutes: The regulation
establishes the amount of the fees and conditions to become licensed.

(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: All fees of individuals seeking a license will be increased.
A few of the conditions contained in the present regulation will be de-
leted since the conditions have been placed in the statutes. A few of
the existing conditions to receive a license or to take disciplinary action
against a license are also being amended.

(b) The necessity of the amendment to the administrative regu-
lation: Most license fees have not been increased in several years. This
amendment is being proposed in order for the commission to continue
to meet its proposed budget.

(c) How the amendment conforms to the content of the authorizing
statutes: KRS 230.310 states that all individuals participating in any
manner of racing that requires their presence on the track must be
licensed by the commission. KRS 230.260(4) authorizes the commis-
sion to prescribe license fees by administrative regulation. That same
provision authorizes the commission to set conditions on licenses.
KRS 230.290(2) authorizes the commission to subject all licenses to
conditions as set forth in administrative regulations.

(d) How the amendments: will assist in the effective administra-
tion of the statutes: By listing the amount of the fees to be charged by
the commission for each license. The amendment will also list all of the
current conditions to become licensed and for disciplinary action to be
taken against a license.

(3) The type and number of individuals, businesses, organizations,
or state and local governments affected by the administrative
regulation: In 2000 the commission issued over 13,000 licenses to
individuals to participate in thoroughbred racing. Each of those li-
izenses will be affected if they choose to renew their license in These
licenses include owners, trainers, jockeys, exercise riders, grooms,
plus a large number of the individuals licensed at a racetrack by the
commission. Associations that represent large numbers of some of
these licenses include the Kentucky Thoroughbred Association and
the Horseman's Benevolent and Protection Association.

(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 administra-
tive regulation: Each of these individuals will be required to pay an
additional amount in order to be licensed.

(5) An estimate of how much it will cost to implement this adminis-
trative 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: There will be no
additional costs to the commission for implementing the amendment.

(7) An assessment of whether an increase in fees or funding will be
necessary to implement this administrative regulation or amend-
ment to an existing administrative regulation: No, these proposed
amendments are to increase the individual license fees.

(8) A statement as to whether or not this administrative regulation
establishes any fees or directly or indirectly increases any fees: These
proposed amendments in general will increase the yearly indi-
vidual license fees for approximately 13,000 individuals that work at
Kentucky race tracks.

(9) TIERING: Is tiering applied? In regards to license fees there
are different amounts charged based upon the type of license being
issued. Tiering is not applied in regard to the granting or denial of a
license.

PUBLIC PROTECTION AND REGULATION CABINET
Kentucky Racing Commission
(Amendment)

811 KAR 1:180. Personnel to be licensed, fees.

STATUTORY AUTHORITY: KRS 230.260
NECESSITY, FUNCTION, AND CONFORMITY: To regulate
conditions under which harness racing shall be conducted in Ken-
tucky. The function of this administrative regulation is to provide for the
licensing of personnel and the fees to be charged for licensing.

Section 1. The following persons or entities shall furnish the com-
misio, on demand, for its fees, their fingerprints and photograph:

(1) A person who holds a permit to conduct pari-mutuel wagering
in this state;

(2) A person who is a member of an association holding a permit
and every person who is an officer of a corporation which holds such a
permit;

(3) An employee of the holder of a permit in any capacity con-
nected to any extent with the pari-mutuel wagering business in this state;
and
(4) Owners, trainers, drivers, grooms, managers, agents, farriers [blacksmiths], veterinarians, and like persons who actively participate in the racing activities of any such permit holders.

Section 2. A person shall not be permitted to enter in or about the grounds, stables or stable enclosures which does not have in his possession a license issued by the commission as owner, trainer, driver, apprentice, agent, stable foreman, groom, veterinarian, or proper credentials issued by the association, and a full record of these credentials shall be compiled and open to inspection at all times.

Section 3. At a pari-mutuel racing meeting persons listed in subsection (2) of this section shall procure a license from the commission.

(2) The following annual fees shall accompany the application, which is incorporated by reference in 810 KAR 1:025, Section 10, and shall not be refundable:

(a) $100 - owner, owner/trainer, owner/driver, owner/trainer/driver, trainer, assistant trainer, limited trainer, apprentice, driver, veterinarian, farrier, apprentice farrier, farm manager, farm agent, racing officials, racing secretary, assistant racing secretary, director of racing, starter, assistant starter, paddock judge, presiding judge/warden, associate judge/steward, testing, patrol judge, timer, claiming license, and temporary owner's license;

(b) Fifty (50) dollars - veterinarian assistant dental technician, stable area supplier (suppliers of horse feed, tack, medication, or food vendors), mutual employee, farm manager, and farm agent;

(c) Twenty-five (25) dollars - association employee, occupational employee, vendor employee or any person employed by a concern contracting with the association to provide a service or commodity and which employment requires their presence on association grounds during a race meeting. Photofin finish operator, film patrol, television production employees, announcer, association security, department including personnel watchmen, firemen, ambulance drivers, emergency medical technicians, track superintendent, maintenance department staff, watchman, admissions department manager and employees, association concessions manager and employees, parking manager and employees, association clerical staff, all other persons employed by the association, and any duplicate license;

(d) Ten (10) dollars - stable foreman, exercise personnel, groom, and watchman. The annual fee for a license shall be paid at the time of the filing of the application and shall be as follows:

<table>
<thead>
<tr>
<th>Owner</th>
<th>$36</th>
<th>Occupationally</th>
<th>$10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Driver</td>
<td>$36</td>
<td>Announcer</td>
<td>$10</td>
</tr>
<tr>
<td>Driver-trainer</td>
<td>$38</td>
<td>Assistant race secretary</td>
<td>$35</td>
</tr>
<tr>
<td>Trainer</td>
<td>$35</td>
<td>Assistant starting/judge/gate driver</td>
<td>$35</td>
</tr>
<tr>
<td>Judges-associate</td>
<td>$35</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Judges-paddock</td>
<td>$35</td>
<td>Charter</td>
<td>$10</td>
</tr>
<tr>
<td>Judges-patrol</td>
<td>$35</td>
<td>Clerk-of-court</td>
<td>$10</td>
</tr>
<tr>
<td>Judges-presiding</td>
<td>$35</td>
<td>Farrier</td>
<td>$35</td>
</tr>
<tr>
<td>Judges-starting</td>
<td>$35</td>
<td>Mutual employees</td>
<td>$35</td>
</tr>
<tr>
<td>Race-secretary</td>
<td>$35</td>
<td>Timer</td>
<td>$35</td>
</tr>
<tr>
<td>Security-guard</td>
<td>$10</td>
<td>Veterinarian</td>
<td>$35</td>
</tr>
<tr>
<td>Director-of-Security</td>
<td>$10</td>
<td>Groom</td>
<td>$5</td>
</tr>
<tr>
<td>Mutuel-Manager</td>
<td>$20</td>
<td>Vendor/Vendor Employee</td>
<td>$26</td>
</tr>
</tbody>
</table>

Section 4. Owners are not required to have a color photograph included on their license.

Section 5. Should a licensee lose a permit or should a permit in some manner be destroyed, the licensee shall apply for a duplicate permit for a fee of twenty-five (25) [five (5)] dollars.

Section 6. If the commission, in its discretion, shall find that the experience, character and general fitness of the applicant are such that the participation of the person in harness horse race meets will not be consistent with the public interest, convenience and necessity and with the best interests of racing generally in conformity with the purposes of the harness racing act, it shall thereupon deny a license.

Section 7. Incorporation by Reference. (1) "Licensing Application" (KRC-15[1062]) is incorporated by reference.
pipes, fittings and appurtenances from the drain outlet of the mobile home to the inlet of the corresponding sewer riser pipe of the sewer system serving the mobile home park.

70 (69) "Water connection" means the connection consisting of all pipes, fittings and appurtenances from the water riser pipe to the water inlet pipe of the distribution system within the mobile home.

Section 2. Application for Construction Permit. Application for a permit to construct or alter a mobile home park shall be made in writing on a form provided by (a form DFS-317 - Application for a Permit to Construct or Alter a Mobile Home Park or Recreational Vehicle Park) the cabinet and shall contain:

(a) The name and address of the applicant;
(b) The name and address of the park;
(c) The number and size of all mobile home lots;
(d) The number of lights and waterage;
(e) The source of water supply;
(f) The type of sewage disposal;
(g) The method of solid waste disposal;
(h) The source of electrical service;
(i) Evidence of compliance with local zoning laws; and
(j) Be accompanied by a fee established by 902 KAR 45:120, Inspection fees; permit fees; food service establishments, hotels, mobile home and recreational vehicle parks.

Section 3. Submission of Construction Plan. Each application for a permit to construct or alter a mobile home park shall be accompanied by a complete plan, drawn to scale, submitted in triplicate, of the proposed park or alteration. If the park is located within a floodplain, the plan shall be submitted in an 1:120, quadruplicate. The plan shall show (all) existing and proposed facilities including:

1. The area and dimensions of the tract of land being developed;
2. The number, location and size of all mobile home lots;
3. The area within each mobile home lot intended for location of a mobile home and setback distances;
4. A detailed drawing of the mobile home footer foundation for the placement of the mobile home stand within the mobile home lot;
5. The location and width of roadways, driveways and walkways;
6. The number, location and size of all off-street automobile parking spaces;
7. The location of park street lighting and electrical system;
8. A detailed drawing of the water supply, if source is other than public;
9. A detailed drawing of the sewage disposal facilities, including specifications;
10. A detailed drawing of the refuse storage facilities;
11. The location and size of water and sewer lines, and riser pipes;
12. The size and location of any playground areas within the park, if provided; and
13. A separate floor plan of all buildings and other improvements constructed or to be constructed within the mobile home park including a plumbing riser diagram.

Section 4. Location and General Layout Standards. (1) Every mobile home and mobile home park shall be located on a well-drained area, subject to being reclassified as part of a mobile home and appurtenant structures or additions.

(2) "Mobile home footer [found]" means that part of a mobile home lot which supports the foundation [has been reserved] for the placement of a mobile home and appurtenant structures or additions.

(3) "Park driveway" means a private driveway which affords principal means of access between the park street and individual mobile home lots.

(d) "Park street" means the paved portion of a roadway between curbs or, if not paved, the surfaced area separating lots.

(3) "Sewer connection" means the connection consisting of all...
within less than fifteen (15) feet of the mobile home shall, for purposes of all separation requirements, be considered to be part of the mobile home.)

(6) [69] All mobile homes shall be located at least twenty-five (25) feet from any park property boundary line abutting upon a public street or highway and at least ten (10) feet from other park property boundary lines.

(7) [69] There shall be a minimum distance of twenty (20) feet between an individual mobile home and the adjoining surface pavement of a park street, or common parking area or other common area.

(8) [73] If a park provides a playground area, it shall be easily accessible to all park residents and fenced or otherwise rendered free of traffic hazards.

(9) [86] Lots shall abut upon a park street.

(a) The minimum width for a two (2) way park street with no parking shall be eighteen (18) feet;

(b) The minimum width for a two (2) way park street with one (1) side parking shall be twenty-two (22) feet;

(c) The minimum width for a two (2) way park street with both sides parking shall be thirty-six (36) feet;

(d) The minimum width for a one (1) way park street with no parking shall be fourteen (14) feet;

(e) The minimum width for a one (1) way park street with one (1) side parking shall be twenty-three (23) feet;

The minimum width for a one (1) way park street with both sides parking shall be thirty-two (32) feet. For a two (2) way park street the minimum width shall be eighteen (18) feet and, if parking permitted, the width shall be at least twenty-seven (27) feet for one (1) side parking and thirty-six (36) feet for both side parking. For a one (1) way park street the minimum width shall be fourteen (14) feet and, if parking permitted, the width shall be at least twenty-three (23) feet.

(10) [99] Park streets, driveways and walkways shall be all weather construction, maintained in good condition, have natural drainage, relatively free of dust and shall be [maintained] free of holes.

(11) [101] The area of the mobile home footer [island] shall be improved to provide the necessary base [adequate foundation] for the placement of the mobile home foundation in accordance with the Public Protection and Regulation Cabinet. KRS 277.670(3) and 315 KAR 28:010 et seq. The mobile home footer [island] shall not heave, shift or settle unevenly under the weight of the mobile home due to frost action, inadequate drainage, vibration or other forces acting on the superstructure.

Section 5. Lighting within Park. A minimum equivalent to a 175 watt mercury vapor type light shall be provided at park entrances, intersections and at intervals of 200 feet within the park.

Section 6. Park Water Supply. (1) The water supply shall be potable, adequate and from an approved public supply of a municipality or water district, if available. If a public water supply of a municipality or a water district is not available, the supply for the park shall be developed and approved pursuant to applicable requirements of the Natural Resources and Environmental Protection Cabinet; except, if a public water supply of a municipality or water district subsequently becomes available, connections shall be made to it and the park supply shall be discontinued.

(2) The water supply shall be capable of supplying a minimum of 150 gallons per day per mobile home lot.

(3) No physical connection shall be made between an approved public water supply and unapproved water supply.

(4) Water distribution lines and connections shall comply with the state plumbing code.

Section 7. Park Sewage and Waste Disposal. (1) All sewage and waste matter shall be disposed of into a public sewer system, if available. If a public sewer system is not available, disposal shall be made into a private septic tank, disposal or septic system designed, constructed and operated in accordance with the requirements of the cabinet or the Natural Resources and Environmental Protection Cabinet; except if a public sewer system subsequently becomes available, connections shall be made to it and the park sewer system shall be discontinued.

(2) The sewer service connection between the mobile home and the sewer riser opening shall have a nominal inside diameter of at least three (3) inches with a slope of at least one-fourth (¼) inch per foot. All joints shall be watertight.

(3) The sewer outlet shall be capped when not in use.

(4) Mobile home park sewer systems and connections shall comply with the state plumbing code.

Section 8. Storage, Collection and Disposal of Park Refuse. (1) The permit holder shall be responsible for storage and disposal of refuse in common containers.

(2) The storage, collection and disposal of refuse in the park area shall be conducted in a manner not to [neat] create a health, safety or fire hazard, rodent harborage, insect breeding area, or cause air pollution, or other public or private nuisance.

(3) [101] Refuse shall be stored in flylight, watertight, rodent-proof common containers, which shall be [neatly] located near each mobile home lot. Common containers shall be provided in sufficient number and capacity to properly store all refuse deposited by mobile home park residents.

(4) A common [Approved] container storage location shall be provided, [and shall be] designed and maintained not to [neat] create a nuisance.

(5) [101] Refuse containing garbage shall be collected at least once a week or more often, if necessary. If suitable collection service is not available from municipal or private agencies, the owner or operator of the park shall provide this service. All refuse shall be collected and transported in covered, leak-proof containers or vehicles.

(6) [101] Refuse and waste collected at a park shall be disposed in a safe and sanitary manner approved by the Natural Resources and Environmental Protection Cabinet in accordance with 401 KAR Chapter 47.

Section 9. Insect and Rodent Control within the Park. (1) Grounds, buildings and structures shall be maintained free of insect and rodent harborage and infestation. Approved extermination methods and other measures to control insects and rodents shall be used.

(2) Parks shall be maintained free of accumulations of debris which may provide rodent harborage or breeding places for flies, mosquitoes and other pests.

(3) Storage areas shall be maintained to prevent rodent harborage: lumber, pipe and other building materials shall be stored at least one (1) foot above the ground.

(4) For safety and prevention of insect and rodent infestations mobile homes shall have underskirting of vinyl, metal, masonry, or pressure-treated lumber within forty-five (45) days of placement in the park. [If the potential for insect and rodent infestation exists, all exterior openings in or beneath any structure shall be appropriately screened with wire mesh or other suitable materials.]

(5) Parks shall be maintained to prevent the growth of ragweed, poison ivy, poison oak, poison sumac and other noxious weeds considered detrimental to health. Parks shall be maintained free of heavy vegetative growth of any description.

Section 10. Park Electrical Distribution Systems. Every park shall contain an electrical system consisting of wiring, fixtures, equipment and appurtenances installed and maintained pursuant to the requirements of the Public Protection and Regulation Cabinet.

Section 11. Park Fire Protection. All parks shall comply with applicable administrative regulations, to include spacing and setback requirements for accessory buildings or structures which are either attached or unattached to the mobile home, of the State Fire Marshal and applicable local fire codes pertaining to fire safety, fuel supply storage and fuel connections.

Section 12. Park Maintenance and Registration of Occupants. (1) The person to whom a permit to operate a park is issued shall at all times operate in compliance with this administrative regulation. The permittee shall maintain the park, its facilities and equipment in good repair and in a clean and sanitary condition.

(2) The permittee shall notify park occupants of all applicable provisions of this administrative regulation and of their duties and responsibilities under this administrative regulation.

(3) The permittee shall be responsible for the orientation and loca-
tion of the homes in the park. The proper installation and set up of a manufactured or mobile home shall be in accordance with the Public Protection and Regulation Cabinet, KRS 227.570(3) and 815 KAR 23:010 et seq. [proper placement of each mobile home on its mobile home pad, and for securing its stability and installing all utility connections.]

4. The permittee shall maintain a register containing the names of all park occupants. Such register shall be available to any authorized person inspecting the park.

Section 13. Parks Holding a Valid Operation Permit and Constructed Prior to the Adoption of the Administrative Regulation. (1) Mobile home parks holding a valid operating permit between January 12, 1973 and the adoption of this administrative regulation shall be eligible for a permit to continue to operate providing they meet the requirements of the 1973 administrative regulations or the site plan which was approved by the cabinet at the time of issuance of an operating permit.

(2) All mobile home parks holding a valid operating permit and constructed on or before January 12, 1973, shall be eligible for a permit to continue to operate notwithstanding that the parks do not meet the design and construction requirements of this administrative regulation if the park facilities are capable of being maintained in a safe and sanitary manner pursuant to the operational requirements of this administrative regulation; and that no public health nuisance exists.

(3) All mobile home parks holding a valid operating permit and constructed on or before January 1, 1957, shall be eligible for a permit to continue to operate notwithstanding that the parks do not meet the design and construction requirements of this administrative regulation if the park facilities are capable of being maintained in a safe and sanitary manner pursuant to the operational requirements of this administrative regulation; and that no public health nuisance exists.

(4) Notwithstanding the provisions of subsections (1), (2), and (3) of this section, any mobile homes in existence at a park shall be allowed to continue to be situated on that lot. In event the home is removed it shall only be replaced by a home the same size as the present home or a home which preserves the set back and spacing requirements which were in effect at the time the park was constructed. Any set backs from the interior streets shall be the maximum achievable with respect to the replacement home. [Parks Constructed-Prior to January 12, 1973. All mobile home parks in existence and holding a valid construction or operating permit on January 12, 1973 may be eligible for a permit to operate notwithstanding the parks do not fully meet the design and construction requirements for this administrative regulation if the park facilities are capable of being maintained in a safe and sanitary manner pursuant to the operational requirements of this administrative regulation; and that no public health nuisance exists.]

Section 14. Inspection of Parks. (1) At least once every twelve (12) months, the cabinet shall inspect each park and shall make as many additional inspections and re-inspections as are necessary for the enforcement of this administrative regulation.

(2) If an agent of the cabinet makes an inspection of a park, he shall record his findings in writing and a copy of which shall be served on the permit holder or his designee. [on an official cabinet inspection report form DFS-318 Mobile Home and Recreational Vehicle Park Inspection Report and provide the permit holder or operator with a copy.] The findings [inspection report] shall:

(a) Set forth the specific violations if found;
(b) Establish a specific and reasonable period of time for the correction of the violations found; and
(c) State that failure to comply with any notice issued pursuant to the provisions of this administrative regulation may result in suspension or revocation of the permit.

Section 15. Suspension of Permits. (1) If the cabinet has reason to believe that an imminent public health hazard exists, or if the permit holder or his designee has interfered with the cabinet in the performance of its duties, the permit may be suspended immediately upon notice to the permit holder (without a hearing on form DFS-242—Request for Hearing.) The permit holder may request a hearing which shall be in accordance with 902 KAR 1-400.

(2) In all other instances of violation of the provisions of this ad-

ministrative regulation the cabinet shall serve upon the holder or his designee a written notice specifying the violation(s) in question and afford the holder a reasonable opportunity to correct them. If a permit holder or operator has failed to comply with any written notice issued under the provisions of this administrative regulation, the permit holder or operator shall be notified in writing that the permit shall be suspended at the end of ten (10) days following service of the notice, unless a written request for a hearing is filed with the cabinet, by the permit holder, within the ten (10) day period.

(3) All administrative hearings shall be conducted in accordance with 902 KAR 1-400.

Section 16. Reinstatement of Suspended Permits. Any person whose permit has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the permit on form DFS-215—Application for Reinstatement of Suspended Permits. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that [in his opinion] the conditions causing suspension of the permit have been corrected, the cabinet shall make a reinspection. If the applicant is found to comply [in compliance] with the requirements of this administrative regulation, the permit shall be reinstated.

Section 17. Revocation of Permits. For serious or repeated violations of any of the requirements of this administrative regulation or for interference with the agents of the cabinet in the performance of their duties, the cabinet may, by permanently revoked [after an opportunity for a hearing has been provided by the cabinet]. Prior to the action, the cabinet shall notify the permit holder or his designee, in writing, stating the reasons for which the permit is subject to revocation and advising that the permit shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for a hearing is filed with the cabinet by the permit holder, within the ten (10) day period.

Section 18. Permit Renewal. (1) Permits to operate a mobile home park shall be renewed annually. In the month of July, Permit fees will be assessed pursuant to 902 KAR 45-129. Section 2.

(2) Notwithstanding other provisions of this administrative regulation, if the cabinet or its agent is on notice that a mobile home park is in violation of another agency's administrative regulation requiring the mobile home park, a permit shall not be renewed until the permit holder or his designee demonstrates to the cabinet or its agent that the violation has been corrected.

Section 19. Appeals. (1) After receipt of a violation notice, a notice to suspend or revoke a permit or denial for an initial application for a permit, the permit holder, his designee, or the applicant, shall have ten (10) days within which to request an appeal either by conference hearing or an administrative hearing.

(2) Conference hearings.

(a) A conference hearing is a less formal hearing where the matter will be discussed with the cabinet agent and the permit holder, his designee, or the applicant before a representative of the Department for Public Health. The conference hearing would be conducted pursuant to 902 KAR 1-400.

(b) The request for a conference hearing shall be in writing and should be addressed to the cabinet's agent at the local health department that issued or gave notice of the violation, notice of suspension or revocation.

(c) If the permit holder, his designee, or the applicant does not agree with the conference report issued after the conference hearing, an appeal may be taken by requesting an administrative hearing.

(3) Administrative hearing.

(a) If an administrative hearing is requested, the permit holder, his designee, or the applicant waive their right to request a conference hearing.

(b) Conduct of the administrative hearing will be pursuant to KRS Chapter 136.

(c) The request for an administrative hearing shall be in writing and addressed to the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky, 40621. A copy of the violation notice to suspend or revoke, letter denying an application, or the conference hearing report should be included with the request for an 1236
VOLUME 28, NUMBER 5 – NOVEMBER 1, 2001

NICHOLAS Z. KAFOGLOUS, M.D., Chairman
RICE C. LEACH, M.D., Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: September 25, 2001
FILED WITH LRC: September 25, 2001 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 2001, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2001. 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 Brown, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street-5-W-B, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Contact person: Samuel J. Burnette, Assistant Director, Division of Public Health Protection and Safety

(1) Provide a brief summary of:
(a) What this administrative regulation does: Establishes standards for park construction and layout; sanitary standards for operation and other matters necessary to insure a safe and sanitary mobile home park operation.
(b) The necessity of this administrative regulation: Establishes standards for park construction and layout; sanitary standards for operation and other matters necessary to insure a safe and sanitary mobile home park operation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 219.310 to 219.410 and 219.991.
(d) How this administrative regulation will further achieve the purposes of the enabling legislation: 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: More clarification and clean-up of words. The construction of mobile homes is getting larger than what they once were and updating the regulation will assist in the inspection of parks in the state. Updating codes in the regulation involving other agencies. The regulation is being bought up-to-date with current construction permits and operating permits.
(b) The necessity of the amendment to this administrative regulation: Establishes standards for park construction and layout; sanitary standards for operation and other matters necessary to insure a safe and sanitary mobile home park operation.
(c) How the amendment conforms to the content of the authorizing statutes: New developments of parks.
(d) How the amendment will assist in the effective administration of the statutes: Establishes standards for park construction and layout; sanitary standards for operation and other matters necessary to insure a safe and sanitary mobile home park operation.
(e) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Mobile home parks and permit operators: 2100; 120 local health department counties; 4 state government agencies.

(4) Provide an assessment of how the above group or groups will be involved in the implementation of this administrative regulation, if new, or by the change if it is an amendment: Establishes standards for park construction and layout; sanitary standards for operation and other matters necessary to insure a safe and sanitary mobile home park operation.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initial:
(b) On a continuing basis:
(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Operating permit fees.
(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: N/A
(e) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: N/A.
(f) TIERING: Is tiering applied? N/A

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 whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation affects the general sanitation program carried out by local departments statewide.
3. State the aspect or service of local government to which this administrative regulation relates. Surveillance, fee collection, record keeping, compliance, construction plan review, enforcement and publicity for the general sanitation programs.
4. How does this administrative regulation affect the local government or any service it provides. Establishes administration and enforcement procedures.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Long Term Care
(5) Statutes

907 KAR 1:031, Payments for home health services.

RELATES TO: 42 CFR 440.70, 447.325, 42 USC 1396a-d
STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 205.520
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Kentucky Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizen. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for home health agency services that are provided to Kentucky's Medicaid eligible recipients.

Section 1. Definitions. (1) "Allowable cost" means that portion of the home health agency's cost that shall be allowed by the department in establishing reimbursement.
(2) "Cost report" means the Annual Medicaid Home Health/HCB Cost Report.
(3) "Cost report instructions" means the Annual Medicaid Home Health/HCB Cost Report Instructions.
(4) "Department" means the Department for Medicaid Services or its designee.
(5) "Home health agency" or "HHA" means an agency defined pursuant to 42 CFR 440.70(d).
(6) "Interim rate" means a rate set for a provider for tentative reimbursement, based on reasonable allowable cost of providing a covered service, which may result in reimbursement adjustments after an audit or review determines the actual allowable cost during an accounting period.
(7) "Medicaid upper limit" means the maximum amount the Medicaid Program shall reimburse, on an individual basis, for a facility-by-facility basis, for a unit of service.
(8) "Medicare upper limit" means the maximum reimbursement amount allowed by Medicare specific to:
(a) Each Medicare participating provider;
(b) Each category of service; and
(c) A unit of service.

(9) "Necessary function" means that if an owner of an agency had not provided the services essential to perform the operation of an HHA, an agency [a facility] would have had to employ another person to perform the service.

(10) "Owner" means a person and a related family member with a cumulative ownership interest of five (5) percent or more.

(11) "Projected cost report" means an Annual Medicaid Home Health/HCB Cost Report that reflects costs that can reasonably be expected to be incurred by a provider for a specific period of time ending in the future.

(12) "Publicly-operated HHA" [Public agency] means a local health department [an agency operated by a federal, state, county, city or other local governmental agency or instrumentality].

(13) "Rate year" means a twelve (12) month period beginning July 1 and ending the following June 30.

(14) "Related family member" means:
(a) Husband or wife;
(b) Natural or adoptive parent, child, or sibling;
(c) Stepsister or stepsister, stepbrother, stepsister;
(d) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law;
(e) Grandparent or grandchild;
(f) Spouse of grandparent or grandchild;
(g) Aunt or uncle; or
(h) Spouse of aunt or uncle.

(15) "Settled" or "settlement" means an amount by which a provider's interim Medicaid payment for a specified period of time is adjusted based on an audited or desk reviewed cost report for that same period of time.

(16) "Uniform desk review (UDR)" means an analysis of the provider's Annual Medicaid Home Health/HCB Cost Report to determine if data is adequate, complete, accurate, and reasonable.

(17) "Usual and customary charge" means the amount at which a medical provider charges [in the public [majority-of-cases] for a specific procedure or service.

Section 2. Payment to an In-state HHA. (1) The department shall reimburse a Medicaid participating in-state HHA on the basis of an interim rate established pursuant to subsection (2) of this section for the following services:
(a) Speech therapy;
(b) Physical therapy;
(c) Occupational therapy;
(d) Medical social services;
(e) Home health aide services; and
(f) Skilled nursing services.

(2) The interim rate for a service pursuant to subsection (1) of this section shall be determined for each individual HHA provider as follows:
(a) The department shall use cost data for each category of service from an HHA's most recent available Annual Medicaid Home Health/HCB Cost Report, incorporated by reference, as of May 31 immediately preceding the rate year to set the interim rate.
(b) Medicaid specific data for its units of service shall be adjusted using the Medicaid paid claims database.
(c) Total cost data shall be increased for inflation using the most recent available HHA Market Basket National Forecast, as published by Standard and Poor's, by:
(i) Trending the total cost data to the beginning of a rate year; and
(ii) Indexing cost data established pursuant to clause (a) of this subparagraph for inflationary cost increases projected to occur during the rate year.
(d) An average unit cost for a category of service shall be established by dividing the indexed cost established pursuant to paragraph (a)(2) of this subsection by the total number of units of service that are reflected in the cost report pursuant to paragraph (a) of this subsection.
(e) If a nonpublicly-operated HHA provider is eligible to receive a cost containment incentive payment pursuant to Section 4 of this administrative regulation, the department shall determine the "average unit cost plus incentive" by adding the "incentive payment per visit amount" pursuant to Section 4(1) of this administrative regulation to the average unit cost established pursuant to paragraph (b) of this subsection.

(d) The interim rate for a publicly-operated HHA shall be the lesser of:
1. The average unit cost pursuant to paragraph (b) of this subsection;
2. The Medicare upper limit as issued to the provider through a Medicare letter.

(e) The interim rate for a nonpublicly-operated HHA shall be the lesser of:
1. Maximum average unit cost as established pursuant to paragraph (b) or (c) of this subsection that the provider is eligible to receive;
2. Medicaid upper limit pursuant to Section 6 of this administrative regulation; or

(3) The department shall establish an interim payment not to exceed the allowable billed charge for an item pursuant to paragraphs (a) and (b) of this subsection by multiplying the provider's total cost to charge ratio for the items as reflected in the provider's most recent available cost report as of May 31 immediately preceding the rate year by the provider's billed charge for:
(a) Disposable medical supplies; and
(b) Enteral nutritional products.

(4) Within eighteen (18) months following the end of an HHA's [a facility's] fiscal year, payments made pursuant to subsections (2) and (3) of this section shall be settled:
(a) Settled) To the lesser of the allowable:
1. [Allowable] Medicaid cost, as established in an HHA provider's cost report that the department has audited or desk reviewed; or
2. [Billed] Medicaid cost, as reported in an HHA provider's cost report that the department has audited or desk reviewed;

(b) [Settled] Utilizing aggregation of costs in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions, incorporated by reference.

(5) A publically-operated HHA furnishing services free of charge or at a nominal charge pursuant to 42 CFR 413.13(f) shall be settled pursuant to paragraph (a)(1) of this subsection.

(b) [Settled] Utilizing aggregation of costs in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions, incorporated by reference.

Section 3. Payment to a New In-state HHA Provider. (1) An HHA that undergoes a change of ownership during the rate year shall continue to be reimbursed at the rate established for the previous owner for the remainder of the rate year.

(2) An HHA pursuant to subsection (1) of this section shall be reimbursed pursuant to Section 2 of this administrative regulation after the provider submits a cost report pursuant to Section 7 of this administrative regulation.

(3) An HHA that had not previously participated in the Medicaid Program under the current ownership or a previous ownership during the rate year shall be:
(a) Considered a new HHA; and
(b) Reimbursed at the interim rate equal to the lesser:
1. Seventy (70) percent of the current Medicaid upper limit as established pursuant to Section 6(2)(e) of this administrative regulation; or
2. The current Medicare upper limits.

(4) A new HHA shall be reimbursed pursuant to subsection (3) of this section until a cost report is:
(a) Submitted pursuant to Section 7 of this administrative regulation; and
(b) Received by the department by May 31 preceding the rate year.

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(5) If during the initial period, a provider pursuant to subsection (3) of this section requests a rate adjustment, the department may grant a rate change if the provider:
(a) Submits documentation indicating that the cost of providing services is significantly higher than the reimbursement rate that the provider is receiving; and
(b) Submits a projected cost report.
(6) When a new HHA provider's first cost report is received, interim payments for the cost report period shall be adjusted pursuant to Section 2(4) of this administrative regulation.

Section 4. Incentive Payment. (1) If a nonpublicly-operated HHA's nonaggregated base year costs are below the Medicaid upper limits pursuant to Section 6 of this administrative regulation for the corresponding period of time, the HHA shall receive a cost containment incentive payment, pursuant to Section 2(2)(c) of this administrative regulation, in accordance with the following payment schedule:

<table>
<thead>
<tr>
<th>PERCENTAGE OF PER UNIT COST TO UPPER LIMIT</th>
<th>INCENTIVE PAYMENT PER VISIT AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>95.01% - 100%</td>
<td>--</td>
</tr>
<tr>
<td>90.01% - 95%</td>
<td>$1.00</td>
</tr>
<tr>
<td>85.01% - 90%</td>
<td>$1.50</td>
</tr>
<tr>
<td>80.01% - 85%</td>
<td>$2.00</td>
</tr>
<tr>
<td>80% and below</td>
<td>$2.50</td>
</tr>
</tbody>
</table>

(2) The incentive payment shall:
(a) Be subject to verification of visits;
(b) Bear an inverse relationship to the current year basic per visit cost; and
(c) Be adjusted each July 1 during the interim rate setting process pursuant to Section 2 of this administrative regulation for the rate year.
(3) The portion of the interim rate equal to the “Incentive payment per visit amount” shall not be subject to retrospective settlement pursuant to Section 2(4) of this administrative regulation.

Section 5. Payment to an Out-of-state HHA. (1) An out-of-state HHA that provides a covered service inside the Commonwealth of Kentucky to an eligible Kentucky Medicaid recipient shall be paid pursuant to Section 2 of this administrative regulation.
(2) Except as provided for in subsection (3) of this section, an out-of-state HHA that provides a covered service to an eligible Kentucky Medicaid recipient while the recipient is outside the Commonwealth of Kentucky shall be reimbursed the lesser of the agency's:
(a) Usual and customary billed charge;
(b) Medicare upper limit; or
(c) Medicaid upper limit.
(3) If an out-of-state HHA provides disposable medical supplies and enteral nutritional products [the following items] to an eligible Kentucky Medicaid recipient while the [a] recipient is outside the Commonwealth of Kentucky, reimbursement shall be paid at eighty (80) percent of the HHA's usual and customary actual billed charges for:
(a) Disposable medical supplies; and
(b) Enteral nutritional products.

Section 6. Establishment of Medicaid Upper Limits. (1) Medicaid upper limits for the services pursuant to Section 2(1)(a) through (e) of this administrative regulation shall be established each year to be effective on July 1 for a nonpublicly-operated HHA.
(2) Medicaid upper limits shall be determined by the department as follows:
(a) Based on the Standard Metropolitan Statistical Area (SMDA) designation, a nonpublicly-operated HHA shall be classified as urban or rural; [i]
   1. Urban;
   2. Rural.[i]
(b) Two (2) sets of arrays pursuant to paragraph (a) of this subsection shall be established for each category of service pursuant to subsection (1) of this section; [i]
(c) Each HHA's average unit cost per service as established pursuant to Section 2(2)(b) of this administrative regulation shall be grouped pursuant to paragraph (b) of this subsection and arrayed from lowest to highest; [i]
(d) Median per unit cost of each of the ten (10) arrays pursuant to paragraph (c) of this subsection shall be based on the median number of Medicaid units pursuant to Section 2(2)(g) of this administrative regulation; and [i]
(e) Medicaid upper limits for a nonpublicly-operated HHA shall be set at 105 percent of the median per unit cost as established pursuant to paragraph (d) of this subsection.
(3) The following HHA providers shall be exempt from the Medicaid upper limits, but shall be subject to the Medicare upper limits:
(a) A publicly-operated HHA; and
(b) A new HHA provider who does not have two (2) full agency fiscal years of operation.
(4) The Medicaid upper limit for skilled nursing services shall be the Medicare upper limit for skilled nursing services.

Section 7. Financial Data and Cost Reporting Requirements. (1) Except for a provider identified in Section 5(2) of this administrative regulation, an HHA shall submit a completed cost report:
(a) That includes workpapers utilized to prepare the cost report including:
   1. Detail of how a recategorization and an adjustment was calculated;
   2. A working trial balance; and
   3. Schedules tying the trial balance to the cost report; [i]
(b) On an annual basis, within five (5) months after the close of the HHA's fiscal year;
(c) Prepared in accordance with the Annual Medicaid Home Health/HCB Cost Report Instructions, incorporated by reference; and
(d) Pursuant to 42 CFR 413.24(a), (b), (c), and (e).
(2) A thirty (30) day extension of time for submitting the cost report pursuant to subsection (1) of this section may be granted by the Director of the Division of Long Term Care or his designee if:
(a) A provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control; and
(b) The provider submits a request for the extension in writing; and
(c) The request is received by the department within five (5) months after the close of the HHA's fiscal year.
(3) An HHA's payment shall be suspended if:
(a) 1. Time for submitting a cost report pursuant to subsection (1) or (2) of this section has lapsed; and
(b) A cost report has not been submitted to the department;
(c) The department determines that a provider does not maintain or no longer maintains records pursuant to subsection (4) of this section;
(d) The provider fails to provide the department with access to records pursuant to:
   1. 907 KAR 1:672, Section 2(6); and
   2. Subsection (4) of this section.
(4) For a period of five (5) years from the date that the department issues a letter to an HHA detailing the Medicaid final settlement of a cost report, an HHA shall retain and make available to the department:
(a) Records and documents pursuant to 42 CFR 413.20(a), (c), and (d);
(b) Documentation of work or services performed if compensation is claimed by the:
   1. Owner; or
   2. A related family member of the owner or administrator; [i]
   a. Owner; or
   b. Administrator.
(5) If during a twelve (12) month period an HHA provider contracts with a subcontractor for the provision of goods and services established pursuant to 907 KAR 1:030 costing or valued at $10,000 or more, an HHA provider shall include a clause in a contract that requires a subcontractor to make available to the department records and documents related to the provision of services consistent with the requirements pursuant to subsection (4) of this section.
(6) If the department is denied access to the subcontractor's records pursuant to subsection (4) of this section, the cost of goods or services furnished by the subcontractor shall become a nonallowable cost reported on a cost report.
(7) If an HHA provider has been voluntarily or involuntarily terminated from the Medicaid Program, reimbursement payments shall be
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withheld until:
(a) A cost report is received from an HHA provider for the period of time a provider participated in the Medicaid Program;
1. Beginning with the first day of the provider’s fiscal year immediately preceding the provider’s termination date; and
2. Ending on the date of termination of its provider agreement with the Medicaid Program; and
(b) A final settlement pursuant to Section 2(4) of this administrative regulation is completed by the department.

Section 8. Allowable HHA Cost. (1) Except as limited pursuant to Section 9 of this administrative regulation, cost pursuant to subsection (2) of this section shall be allowable and eligible for reimbursement pursuant to this administrative regulation if costs are:
(a) Reflective of a provider’s actual expenses of providing a service; and
(b) Related to Medicaid patient care pursuant to 42 CFR 413.9.
(2) Except as limited by Section 9 of this administrative regulation, and subsection (1) of this section, the following cost shall be allowable:
(a) Allowable cost to related organizations pursuant to 42 CFR 413.17;
(b) Costs of educational activities pursuant to 42 CFR 413.85;
(c) Research costs pursuant to 42 CFR 413.90;
(d) Value of services of nonpaid workers pursuant to 42 CFR 413.94;
(e) Purchase discounts and allowances, and refunds of expenses pursuant to 42 CFR 413.98;
(f) Therapy and other services pursuant to 42 CFR 412.106.

Section 9. Limitations on Allowable HHA Cost. (1) Board of directors’ fees shall be limited annually to:
(a) The cost of five (5) meetings for a single-facility organization or twelve (12) meetings for a multiple-facility organization; and
(b) The cost of board of director’s fees shall be limited annually to:
1. Five (5) meetings for a single-facility organization; and
2. Twelve (12) meetings for a multiple-facility organization; and
(b) [2] $200 for each director of the board attending each meeting, including the cost of attending the meeting.

(2) [b] The cost associated with a private club membership shall not be an allowable cost.
(3) Allowable (3) motor vehicle costs shall be:
(a) An allowable motor-vehicle cost shall be:
1. [1] Limited to cost related to patient care; and
2. Documented sufficiently to support business use.
(b) An allowable Cost associated with HHA facility-owned vehicles; and
(c) Mileage allowances which shall be limited to the mileage allowance for federal income tax purposes.
(4) [a] The costs associated with personal use of a facility-owned motor vehicle shall not be an allowable cost unless the value of the personal use of the vehicle is:
(a) [1] Included in the employee’s W-2 statement; or
(b) [2] Reported on a Form 1099 in accordance with Internal Revenue Service regulations.
(5) [d] An allowable cost pursuant to subsection (3) of this section paragraph (c) of this subsection shall be considered compensation to the extent that:
(a) [ ] Compensation to an owner does not exceed owner’s compensation limits pursuant to Section 10 of this administrative regulation; and
(b) [2] The total compensation package to a nonowner is reasonable pursuant to 42 CFR 413.9(b).
(6) [d] The cost associated with political contributions shall not be allowable.
(7) Allowable cost associated with legal fees shall exclude cost:
(a) [ ] Associated with unsuccessful lawsuits against the Cabinet for Health Services or the department;
(b) [5] Incurred by the provider in an attempt to block the approval of a certificate of need for another provider;
(c) [3] Associated with the acquisition of another HHA;
(d) [4] Resulting from the commission of an illegal act by an HHA or the HHA’s owner or agent or:
(a) HHA;
(b) HHA’s owner; or
(c) HHA’s agent; or
(d) [5] Unrelated to patient care.
(8) [b] Legal fees associated with successful lawsuits against the cabinet shall be limited to inclusion as allowable cost in the period in which a suit’s settled after a final decision has been issued that the lawsuit is successful;
(b) [2] Agreed to by involved parties; or
(c) [8] As ordered by the court.
(9) [§] Travel expenses. The cost of travel expenses shall be limited to:
(a) Activities related to the educational needs of the agency owners, directors or staff; i.e.
1. Agency owners;
2. Directors; or
3. Staff;
(b) Reasonable and necessary cost pursuant to 42 CFR 413.9(b) as determined in evaluating the:
1. Number of trips taken;
2. Expense associated with each trip;
3. Number of persons attending each function; and
4. Appropriateness of a training; and
(c) Trips taken within the forty-eight (48) contiguous United States.

Section 10. Owner’s Compensation Limits. (1) Compensation to an owner who is not an administrator shall:
(a) Be considered an allowable cost pursuant to 42 CFR 413.102; and
(b) Exclude:
1. Board of directors’ fees; and
2. Fringe benefits routinely provided to all employees.
(2) Compensation of a part-time owner-employee performing managerial functions shall not exceed the percent of time worked times eighty (80) percent of the applicable compensation limits for an owner administrator.
(3) A full-time owner-administrator and full-time owner-employee who performs nonmanagerial functions in an HHA other than the HHA with which he is primarily associated with shall be limited to:
(a) Reasonable compensation from the nonprimary agency for not more than fourteen (14) hours per week supported by:
1. The owner’s proof of performance of a necessary function; and
2. Documentation of time claimed for compensation; and
(b) A salary from the agency with which they are primarily associated.
(4) Managerial functions performed in a nonprimary agency by a full-time owner-administrator or a full-time owner-employee of another agency shall not be considered an allowable cost.
(5) Compensation to an owner-administrator of a rural or urban HHA shall be:
(a) Limited to $60,579 beginning July 1, 1999;
(b) Increased on July 1 of each year by the inflation factor index for wages and salaries of the Home Health Agency Market Basket of Operating Cost as indicated by the National Forecasts supplied by Standard and Poor’s, Inc., and
(c) Published annually through a notification to all providers to advise of the revised limits for owner’s compensation to be effective July 1 of each year.

Section 11. Audit Functions. (1) All HHA provider cost applicable to a Medicaid beneficiary shall be subject to:
(a) Review or audit by the department; and
(b) A final retroactive settlement based upon an adjustment to an HHA provider’s costs reported in a cost report for any reporting period under review or audit.
(2) The department shall perform a uniform desk review (UDR).
(3) A summary of the UDR shall be used:
(a) To settle the cost report without audit; or
(b) To determine the extent to which audit verification is required.
(4) If indicated by the uniform desk review (UDR), an audit shall be conducted in accordance with the “Government Auditing Standards,” incorporated by reference.
Section 12. Payment Amounts for State Fiscal Year (SFY) 2002. Effective July 1, 2001, the payment rate that was in effect on June 30, 2001 for a home health service shall remain in effect.

Section 13. 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 1:590.
(3) An appeal of a negative action taken by the department regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 14. Reimbursement Review and Appeal. A participating HHA may request an appeal of a departmental decision pursuant to 907 KAR 1:671.

Section 13 Incorporation by Reference. (1) The following material is incorporated by reference:
(b) "The Annual Medicaid Home Health/HCB Cost Report Instructions", Department for Medicaid Services, October 1999 edition; and
(c) The "Government Auditing Standards", 1994 edition, as issued by the Comptroller General of the United States.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

ELLEN M. HESSEN, Interim Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: October 9, 2001
FILED WITH LRC: October 12, 2001 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 2001, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the agency in writing by November 14, 2001, five working days prior to the hearing, of their intent to attend. If no notification 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 to Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counselor, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Agency Contact Person: Duane Dringenburg
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for home health services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the reimbursement methodology for home health services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the reimbursement methodology for home health services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists the administrative regulation of the statutes by establishing the reimbursement methodology for home health services.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation implements an interim reimbursement methodology to maintain the home health reimbursement rate for State Fiscal Year (SFY) 2002 at the same rate in effect on June 30, 2001.
(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary in order to ensure that necessary funds will be available for the continued operation of the Medicaid Program.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing an interim reimbursement methodology for home health services in order to ensure that necessary funds will be available for the continued operation of the Medicaid Program.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by implementing an interim reimbursement methodology for home health services in order to ensure that necessary funds will be available for the continued operation of the Medicaid Program.
(e) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The amendment to this administrative regulation only applies to SFY 2002.
(f) What are the benefits of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement the amendment to this administrative regulation.
(g) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The amendment to this administrative regulation does not increase any fee nor does it require any funding.
(h) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation does not establish or directly or indirectly increase any fee.
(i) Tiering: Is tiering applied? Tiering was not appropriate for 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 of Long Term Care
(Amendment)
907 KAR 1:170. Payments for home and community based waiver services.
RELATES TO: 42 CFR 441 Subparts B, G, 42 USC 1396a b, d, n
STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1)
205.520(3)
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for
Health Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. 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 902 KAR 20:060[E], Section 4; and
(b) Certified for Medicaid participation by the department.
(3) “DD” 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.
(5) “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 an ADHC center to an individual designated as an HCB waiver recipient.
(8) “Level II” means a reimbursement rate of up to thirty-four (34) dollars paid to an ADHC center for a basic unit of service provided by the ADHC center to an individual designated as an HCB waiver recipient 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 is determined to be needed in accordance with 907 KAR 3:130, [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) Necessary if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the condition, diagnosis, or treatment (PPDS) criteria established in 42 USC 1396d(r) and 42 CFR Part 441-Subpart B-Individually under twenty-one (21) years of age;
(10) “Peer review organization” or “PRO” is defined in 42 CFR 475.101 [462.404].
(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.

(2) An HCB waiver provider shall be reimbursed in accordance with 907 KAR 1:031 for the following HCB waiver services:
(a) Assessment, which shall be established in 907-KAR-1-460[E], shall consist of one (1) unit;
(b) Reassessment;
(c) Case management;
(d) Homemaker; or
(e) Personal care.
(3) An HCB waiver provider shall be reimbursed based on a prospectively set upper limit, which shall be set at 130 percent of the weighted median of an array of service costs.
(4) The department shall:
(a) Use the ICD waiver provider’s most recent cost report data available as of May 31 to determine the rate for the next state fiscal year, which begins July 1;
(b) Update upper limits each July 1;
(c) Except as provided in paragraph (d) of this subsection, not apply upper limits until a provider has participated in the program for two (2) full agency fiscal years;
(d) For rates determined in accordance with 907 KAR 1:031, apply upper limits in accordance with 907 KAR 1:034 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, until receipt of an acceptable cost report.
(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 by the department by an HCB waiver provider pursuant to 907 KAR 1:673.
(7) A minor home adaptation to an HCB recipient’s home shall comply with 907 KAR 1:160 and subsection (8) of this section.
(8) Payment for a minor home adaptation to an HCB recipient’s home shall:
(a) Be made on the basis of actual billed charges;
(b) Include overhead cost which shall not exceed twenty (20) percent of actual cost; [Be for the actual cost of the minor home adaptation, including actual overhead cost which shall not exceed twenty (20) percent of actual costs]
(c) Not exceed a maximum of $500 per calendar year per HCB recipient beginning January 1 and
(d) Be subject to a year-end cost settlement by the department:
1. To actual cost up to $500; or
2. To charges, if lower.
(9) An attendant care service shall:
(a) Be reimbursed on a fee for service basis at usual and customary charges [the lower of reasonable cost or charges] 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 1:160.
(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 shall not be 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 HCB Waiver Providers. HCB waiver cost reports shall be audited:
(1) As deemed necessary by the department; and
(2) 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 for the lesser of the usual and customary charges or at the upper limit per unit of service. 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 or minimum of two (2) hours if the HCB recipient has occupied the ADHC center for two (2) hours prior to leaving the center due to a documented illness or emergency. (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 the requirements for DD as established in Section 6(2) of this administrative regulation;

(c) The criteria established in paragraph (a) of this subsection; and

(d) 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 established 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 I reimbursement, an ADHC center that was a Medicaid provider before July 1, 2000 shall:

(a) Have an average daily census of at least twenty (20) individuals who meet the criteria established in subsection (4)(a) of this section; and

(b) Have a minimum of eighty (80) percent of its individuals meet the definition of DD as established in 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) Limited to: [Provided by a qualified therapist as defined in 907 KAR 1:160 and limited to] 1. Physical therapy provided by a physical therapist who meets the definition in 907 KAR 1:160, Section 1(17);

2. Occupational therapy provided by an occupational therapist who meets the definition in 907 KAR 1:160, Section 1(16); or

3. Speech therapy provided by a speech pathologist who meets the definition in 907 KAR 1:160, Section 12(2).

8. Ancillary therapy service reimbursement shall be:

(a) Per HCB recipient per encounter; and

(b) At the lesser of the usual and customary charges not to exceed [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; and

(b) Be provided pursuant to 907 KAR 1:160.

10. One (1) respite service unit shall equal one (1) hour to one (1) hour and fifty-nine (59) minutes.

11. The length of time an HCB recipient receives a respite service shall be documented.

(a) Documented; and

(b) Pursuant to the HCB recipient's respite service hours limit established in 907 KAR 1:160.

12. Payment for a covered respite service shall be reimbursed as established in Section 6(6) of this administrative regulation.

Section 6, Criteria for DD ADHC Level II Reimbursement. To qualify for Level II reimbursement:

1. 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; and

(b) A disability that shall be attributable to mental retardation or a related condition which shall include:

1. Cerebral palsy;

2. Epilepsy;

3. Autism;

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 skill [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 the center wants 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 6 of this administrative regulation;

2. Submit the 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 the 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, Sections 8 and 9 [Section 8].

Section 8, Payment Rate for State Fiscal Year (SFY) 2002. Effective July 1, 2001, the payment rate that was in effect on June 30, 2001 for a home and community based waiver service shall remain in effect.

Section 9, 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 10, [98] 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 and 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, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

ELLEN M. HESSEN, Interim Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: October 11, 2001
FILED WITH LRC: October 12, 2001 at 2 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 21, 2001, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2001, 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 rule. 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 Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - SV-5, Frankfort, Kentucky 40621, (502) 564-7959, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Agency Contact Person: Wanda Fowler or Teresa Goodrich
(1) Provide a brief summary of:
(a) What the administrative regulation does: This administrative regulation establishes the reimbursement methodology for home and community based waiver services.
(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to establish the reimbursement methodology for home and community based waiver services.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the reimbursement methodology for home and community based waiver services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by establishing the reimbursement methodology for home and community based waiver services.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation implements an interim reimbursement methodology to maintain the home and community based waiver reimbursement rate for state fiscal year (SFY) 2002 at the same rate in effect on June 30, 2001.
(b) The necessity of the amendment as an administrative regulation: The amendment to this administrative regulation is necessary in order to ensure that necessary funds will be available for the continued operation of the Medicaid Program.
(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by implementing an interim reimbursement methodology for home and community based waiver services in order to ensure that necessary funds will be available for the continued operation of the Medicaid Program.
(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the statutes by implementing an interim reimbursement methodology for home and community based waiver services in order to ensure that necessary funds will be available for the continued operation of the Medicaid Program.
(3) List the type and number of individuals, businesses, organiz-


RELATES TO: KRS 205.3451, 205.8477, 42 CFR 441 Subpart G, 455 Subpart B, 42 USC 1396a, b, d, n, 1998-Ky. Acts ch. 615, Part IX, Sec. 25 (h)

STATUTORY AUTHORITY: KRS 194A.030(1), 194A.050(1), 205.3451, 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services. The purpose of acquired brain injury waiver services is to rehabilitate and retain an individual with an acquired brain injury to reenter and function independently within a community, given the community's existing resources. [for the purpose of rehabilitation and retaining for reentry into the community with existing resources.]

Section 1. Definitions. (1) "Acquired brain injury (ABI) waiver services" means home and community-based waiver services provided to a Medicaid eligible person aged twenty-one (21) to sixty-five (65) who has acquired a brain injury to his or her central nervous system of the following nature:
(a) Injury from a physical trauma;
(b) Damage from anoxia or a hypoxic episode; or
(c) Damage from an allergic condition, toxic substance or another
Section 2. Exclusions of the Acquired Brain Injury Waiver Program. A condition included in the following list shall not be considered an acquired brain injury [injuries] requiring specialized rehabilitation:
1. A stroke treatable in a nursing facility providing routine rehabilitation services;
2. A spinal cord injury in which there is no known or obvious injury to the intracranial central nervous system;
3. Progressive dementia or another mentally impairing condition of a chronic degenerative nature such as, senile dementia, organic brain disorder, Alzheimer's Disease, alcoholism or another addiction;
4. A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage;
5. A birth defect;
6. Mental retardation without an etiology to an [the] acquired brain injury; or
7. A condition which causes an individual to pose a level of danger or an aggression which is unable to be managed and treated in a [the] community.

Section 3. General Coverage Provisions [Provision]. (1) The aggregate cost of an individual receiving ABI waiver services [the ABI Waiver Program] shall not exceed the aggregate cost of corresponding care for the individual that would otherwise be provided in a nursing facility [cost of care in a nursing facility as established in the 1998 Ky. Acts ch. 615, Part IX, 25.9].
(2) ABI waiver services shall be provided to an individual eligible for Medicaid who:
(a) Is twenty-one (21) to sixty-five (65) years of age with an impairment that involves cognition, behavior, or a physical function which necessitates supervised and supportive services;
(b) Meets the level of care criteria established in 907 KAR 1:022 for nursing facility services, including nursing facility services for brain injuries; and
(c) Meets the following conditions:
1. Has a primary diagnosis that indicates an acquired brain injury with structural, nondegenerative brain damage;
2. Is medically stable;
3. Exhibits cognitive, behavioral, motor or sensory damage with indications for rehabilitation and retainer potential; and
4. Has a rating of at least four (4) on the Rancho Los Amigos Level of Cognitive Function Scale, which is included as Appendix III to the Acquired Brain Injury Services and Reimbursement Program Manual.
(3) An individual shall not remain in the ABI Waiver Program for an indefinite period of time. Upon discharge from the program, an individual shall:
(a) Remain in a community setting with existing community resources; and
(b) Not remain in the Acquired Brain Injury Waiver Program for an indefinite period of time.
(4) The basis of an eligibility determination for participating [the determination for eligibility] in the ABI Waiver Program shall be:
(a) The presenting problem;
(b) The plan of care goals;
(c) The expected benefits of the admission;
(d) The expected outcome; and
(e) The initial estimated time frames for achieving the plan of care goals;
(f) The services required; and
(g) The cost-effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.
(5) ABI waiver services shall not be furnished to an individual if he or she is:
(a) An inpatient of a hospital, nursing facility, or an intermediate care facility for persons with mental retardation or a developmental disability; or
(b) Receiving services in another home and community based waiver service program.
(6) The department shall make:
(a) An initial evaluation regarding whether an individual meets the nursing facility level of care criteria established in 907 KAR 1:022; [for level of care]
(b) A periodic nursing facility level of care reevaluation at least once every six (6) months and more frequently if necessary depending upon {a} level of care determination, which shall be made at least once every six (6) months, and may be more frequent depending on {the} individual's progress; and
(c) A determination of whether to admit an individual into [admission] to the ABI Waiver Program.

Section 4. Recipient Participation Termination. (1) An individual with an approved plan of care who receives ABI waiver services may withdraw from the ABI Waiver Program at any time without cause.
(2) Continued coverage for an ABI waiver service [Program] recipient shall be terminated if the department determines that the individual does not have the potential for reentry into the community [in accordance with Section 3(b) of this administrative regulation] without the continued availability of [continued] ABI waiver services.

Section 5. Conditions for Agency and Service Provider Participation. (1) An ABI waiver service provider shall: [A participating provider agency shall meet the following requirements:
(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:672;
(b) Be a "case-management-provider" shall be a legally-constituted entity in the Commonwealth of Kentucky and have documenting evidence of its operating authority, including:
1. If it is a governmental entity, the administrative framework of the governmental department of which it is a component;
2. If it is a private agency [shall have]:
   a. A chart or articles of incorporation;
   b. A constitution; and
   c. By-laws;
(c) Have an executive director who shall:
1. Manage the agency and its affairs in accordance with written policies and procedures;
   2. Be responsible for the overall operation of the agency, including the recruitment and direction of staff and the control, utilization, and conservation of the agency's physical and financial assets; and
   3. Possess at least a bachelor's degree in administration or human services and at least one (1) year of experience working in an organization serving individuals with disabilities;
(d) Be a "case-management-provider" shall be an agency licensed in the Commonwealth of Kentucky, in accordance with 902 KAR 20:008, except that a free-standing case management agency shall not be required to obtain a license;
(e) A participating brain injury service provider agency, including a free-standing case management agency, shall:
1. Be subject to the financial sanctions as established in 907 KAR 1:571;
2. Have a crisis prevention and response plan which shall:
   1. Address any potential crisis situation which may affect the health, welfare, or safety of an ABI waiver service recipient;
2. Be developed by a case manager in cooperation with other relevant service providers within thirty (30) days of an ABI waiver service recipient's admission; and
4. Be readily accessible to all staff working with an ABI waiver service recipient;
(f) Comply with the following medication requirements:
1. Staff administering medication shall possess appropriate training regarding the administration, storage, and cause and effect of medications;
2. All medication administered shall be documented on a medication log and medication administration form, and properly disposed of if discontinued;
3. All medication shall be stored in a locked container; and
4. If necessary, medication shall accompany and be administered to an ABI waiver service recipient at a program site other than his or her residence;
   (g) Establish and comply with written guidelines requiring the maintenance of sanitary conditions for an ABI waiver service recipient.
(h) Ensure that a residence operated by an ABI provider is equipped with the following:
  1. Operational smoke detectors strategically located; and
  2. A minimum of two (2) correctly charged, strategically-located fire extinguishers in each service site, one (1) of which shall have a rating of 1A10BC and be capable of extinguishing a grease fire;
(i) Ensure that the nutritional needs of an ABI waiver service recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as otherwise specified by a physician;
(j) [2:] Have written policies and procedures that comply with the conditions for participation in the Acquired Brain Injury Services and Reimbursement Program Manual; and
(k) [3:] Comply with applicable federal and state statutes and regulations relating to the provision of services under the Kentucky Medicaid Program; and
(l) [1:] A participating ABI-waiver-service-provider-shall meet the applicable certification requirements for providing ABI waiver services in accordance with 907 KAR 1:672, KRS 205.8477 and 42 CFR 455 Subpart B;
(m) [2:] An ABI-waiver-provider-agency-or-service-provider-shall Comply with the conditions established in the Acquired Brain Injury Services and Reimbursement Program Manual; and
(n) [4:] Prior to employing an individual to provide ABI waiver services, an ABI-waiver-provider-agency-shall verify that all requirements of subsections (2) and (3) [6a] and (6b) of this section have been met.
(2) [6a:] Professional direct service and paraprofessional staff shall:
(a) Have a high school diploma or GED;
(b) Be CPR certified;
(c) Not have a criminal record as defined in Section IV of the Acquired Brain Injury Services and Reimbursement Program Manual;
(d) Not have a history of perpetrating fraud, abuse, neglect, or exploitation;
(e) Unless having 2000 hours of experience in serving individuals with a primary diagnosis of brain injury within the prior five (5) years, complete a sixteen (16) hour ABI orientation and training program; and
(f) Complete six (6) hours of continuing education in brain injury annually; and
(g) [6b:] Meet other requirements pertinent to the service they shall provide as specified in the Acquired Brain Injury Services and Reimbursement Program Manual.
(3) [6c:] All professional direct service staff shall meet:
(a) The requirements established in subsection (2) [6a] of this section; and
(b) Appropriate licensing, certification, and degree requirements necessary to practice in the Commonwealth of Kentucky.
(4) For an individual whom the following provider types are considering hiring, the following provider types shall check the nurse aide abuse and neglect registry maintained by the Kentucky Board of Nursing, and any other applicable registry to determine if the individual has a history of perpetrating abuse or neglect:
(a) Personal care services;
(b) Respite care services;
(c) Companion services;
(d) Structured day program services; and
(e) Community residential services.
(5) [7f:] A provider terminated from another Medicaid Program shall not be eligible for participation in the ABI Waiver Program in accordance with 907 KAR 1:672.

Section 6. Provider Incident Reporting Procedure. (1) An incident shall be documented on an incident report form.
(2) Following are incident classifications and reporting requirements:
(a) A Class I incident shall:
  1. Be minor in nature;
  2. Not require an investigation by the provider agency;
  3. Be reported to the case manager within twenty-four (24) hours; and
  4. Be retained on file at the provider, as well as case management agency;
(b) A Class II incident shall:
  1. Be serious in nature including:
    a. Personal injury or illness of an ABI waiver service recipient or ABI service provider staff person which requires emergency treatment or admission to a hospital or other treatment facility;
    b. An involuntary sexual contact requiring medical attention;
    c. A criminal act; or
    d. Significant property damage;
  2. Require an investigation initiated by the provider agency within twenty-four (24) hours of discovery and shall involve the case manager;
  3. Be reported to the following by the provider agency:
    a. The case manager within twenty-four (24) hours of discovery;
    b. The guardian within twenty-four (24) hours of discovery followed by a complete written report of the incident investigation and follow-up within ten (10) calendar days of discovery; and
    c. The Department for Mental Health and Mental Retardation's (DMHMR) Division of Mental Health, Brain Injury Services Unit, within twenty-four (24) hours of discovery followed by a complete written report of the incident investigation and follow-up within ten (10) calendar days of discovery;
(c) A Class III incident shall:
  1. Be grave in nature including:
    a. Death;
    b. An event made controversial due to media exposure, even if unrelated to a specific incident; or
    c. Suspected or actual abuse, neglect, or exploitation;
  2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager;
  3. Be reported to the following by the provider agency:
    a. The case manager within eight (8) hours of discovery;
    b. The Cabinet for Health Services, Department for Community Based Services within eight (8) hours of discovery;
    c. The guardian within eight (8) hours of discovery, followed by a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery;
    d. The Department for Mental Health and Mental Retardation's (DMHMR) Division of Mental Health, Brain Injury Services Unit within eight (8) hours of discovery, followed by a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery.

Section 7. Provider Participation Termination. A provider's participation shall be terminated by the provider or the department in accordance with 907 KAR 1:672.

Section 8. [7a:] Covered Services. (1) Except as limited in Section 9 [8] of this administrative regulation, the following shall be considered Medicaid covered services:
(a) Case management services;
(b) Personal care services [service];
(c) Respite care;
(d) Companion services [service];
(e) Structured day program services [service];
(f) [Pre]vocational service;
(g) Supported employment services [service];
(g) [fha] Behavior programming services;
(h) [fi] Counseling services [and-training];
(i) [gi] Occupational therapy, speech, hearing, and language services [service];
(j) [kk] Specialized medical equipment and supplies;
(k) [li] Environmental modification; and
(l) [mi] Community-residential services [service].
(2) ABI Waiver Program services and services established in 42 USC 1396a, b, d, and n shall be available to an ABI waiver service recipient to prepare him or her to reside in the community without the need for continued ABI waiver services.
(3) The ABI waiver services listed in subsection (1) of this section are described in the Acquired Brain Injury Services and Reimbursement Program Manual, which is incorporated by reference.]
(a) A certified case manager (CCM), certified disability management specialist (CDMS), certified rehabilitation registered nurse (CRRN), or a certified life care planner; and

(b) Employed by or under contract with the case management provider agency,

(2) Case management services shall be provided by:

(a) A registered nurse;

(b) A licensed practical nurse; or

(c) An individual with a bachelor's or master's degree in a human services field who meets all applicable requirements of his or her particular field including an individual with a degree in:

1. Psychology;

2. Sociology;

3. Social work;

4. Special education;

5. Rehabilitation counseling;

6. Occupational therapy;

7. Physical therapy; or

8. Speech language pathology.

(3) Case management services include:

(a) Coordinating the assessment and reassessment process of an individual's condition to determine his or her eligibility, including continued eligibility, to receive ABI waiver services. An assessment or reassessment shall include the development of a transition plan which shall include:

1. An indication of an estimated discharge date from the ABI Waiver Service Program, of the individual;

2. Estimated skills and supports the individual, upon discharge from the ABI Waiver Service Program, will possess as a result of receiving ABI waiver services;

3. A listing of ongoing formal and informal community supports anticipated to be available to the individual upon discharge from the ABI Waiver Service Program; and

4. A listing of additional resources necessary for the individual to function independently upon discharge from the ABI Waiver Service Program;

(b) Ensuring a potential ABI waiver service recipient exercises his or her freedom of choice regarding receiving services in an institution or via a home and community based waiver program;

(c) Furnishing a potential ABI waiver service recipient and his or her legal representative written information describing services of all available providers within the individual's service area and ensuring that all questions related to his or her service options are addressed;

(d) Maintaining written documentation, signed by an ABI waiver service recipient or his or her legal representative, of a provider change including the reason for the change;

(e) Being responsible for the overall development of an ABI waiver service recipient's plan of care developed in conjunction with:

1. An interdisciplinary team; and

2. The ABI waiver service recipient and his or her family members, legal representative, or another individual chosen by the ABI waiver service recipient;

(f) Maintaining proper documentation related to an ABI waiver service recipient and ensuring that interdisciplinary team members receive copies of that documentation;

(g) Meeting with an ABI waiver service recipient in person every two weeks with at least one (1) visit per quarter occurring in the ABI waiver service recipient's home or place of residence;

(h) Reviewing the provision of services to an ABI waiver service recipient and ensuring that services are delivered to the ABI waiver service recipient in accordance with his or her plan of care;

(i) Ongoing monitoring of an ABI waiver service recipient's progress and;

(j) Submitting an ABI waiver service recipient's updated plan of care to the department every six (6) months; and

(k) Submitting monthly caseload reports to the department.

(4) A case manager's caseload, including all cases (not just ABI cases), shall not exceed forty (40) individuals.

(5) A case manager shall not be a provider of other direct services.

(6) A case manager provider agency shall supervise a case manager, ensure twenty-four (24) hour availability of necessary ABI waiver services for an ABI waiver service recipient, and ensure that an ABI waiver service recipient's health, welfare, and safety needs are met.

Section 10. Personal Care Services. (1) Personal care services consist of the retraining of an ABI waiver service recipient in the performance of his or her activities of daily living by using repetitive, consistent, and ongoing instruction and guidance.

(2) Activities of daily living included in personal care services are:

(a) Eating, bathing, dressing, personal hygiene;

(b) Meal preparation (excludes meal cost); and

(c) Housekeeping chores such as bed-making, dusting, and vacuuming.

Section 11. Respite Care. Respite care shall be short-term care provided to an ABI waiver service recipient:

(1) Unable to care for himself or herself;

(2) Whose normal care giver is absent or needs relief from providing care; and

(3) In his or her home, residence, setting approved by the provider agency, or a nursing facility.

Section 12. Companion Services. (1) Companion services include:

(a) Nonmedical services, supervision, or socialization;

(b) Assisting with but not performing meal preparation, laundry, or shopping; or

(c) Light housekeeping tasks which are incidental to the care and supervision of an ABI waiver service recipient.

(2) Companion services shall be therapeutic, part of an ABI waiver service recipient's plan of care, and not diversional in nature.

(3) A provider of companion services shall, if necessary, accompany and assist an ABI waiver service recipient while the recipient utilizes assisted transportation services.

Section 13. Structured Day Program Services. (1) A structured day program service provider agency shall be:

(a) Licensed as an adult day health care center in accordance with KOR KAR 20:068;

(b) Licensed as an outpatient rehabilitation facility; or

(c) Enrolled as a Medicaid provider in accordance with KOR KAR 1:672.

(2) A structured day program service provider's staffing ratio shall not exceed five (5) individuals per one (1) staff person.

(3) Structured day program services include:

(a) Social skills training;

(b) Sensory or motor development;

(c) Reduction or elimination of a maladaptive behavior; or

(d) Teaching concepts and skills to promote independence including:

1. Following instructions;

2. Attendance and punctuality;

3. Task completion;

4. Problem-solving;

5. Safety;

6. Appropriate social behavior; or

7. Money management.

(4) Structured day program services shall be provided in a non-residential setting.

(a) A structured day program shall:

1. Be developed in accordance with an ABI waiver service recipient's overall plan of care;

2. Reflect the recommendations of an ABI waiver service recipient's interdisciplinary team;

3. Be appropriate given an ABI waiver service recipient's:

(a) Age, level of cognitive and behavioral function and interest; and

(b) Interest and abilities prior to and since his or her injury;

4. Be coordinated with physical, occupational, speech, or other rehabilitation therapy included in an ABI waiver service recipient's plan of care; and

5. Provide an ABI waiver service recipient with an organized framework within which to function in his or her daily activities.

(b) An ABI waiver service recipient's structured day program shall entail frequent assessments of his or her progress and be appropriately revised as necessary.

Section 14. Supported Employment Services. (1) A supported employment service provider agency shall be:

(a) Licensed as an adult day health care center in accordance
with 902 KAR 20:066; (b) Licensed as an outpatient rehabilitation facility; or (c) Enrolled as a Medicaid provider in accordance with 907 KAR 1:672.

2. Supported employment services shall be provided by an individual meeting the direct service requirements established in Section 5(2) of this administrative regulation or an individual with a bachelor’s or master’s degree in rehabilitation counseling.

3. Supported employment services; (a) Shall be paid employment for an ABI waiver service recipient who is unlikely to obtain employment at or above the federal minimum wage and needs intensive, ongoing support in order to perform in a work setting; (b) May be provided in a variety of settings, but preferably in a work setting in which individuals without disabilities are employed; (c) Shall be necessary in order for an ABI waiver service recipient to sustain paid work, including supervision and training; and (d) Shall be reimbursed if unavailable to an ABI waiver service recipient via a program funded by either the Rehabilitation Act of 1973 or Pt. 94-142. Documentation that a supported employment service is unavailable, via the Rehabilitation Act of 1973 or Pt. 94-142, shall be maintained in an ABI waiver service recipient’s record.

Section 15. Behavior Programming Services. (1) A behavior specialist who provides a behavior programming service shall: (a) Be a licensed psychologist; (b) Be a certified psychologist with autonomous functioning; (c) Be a psychological associate or certified psychologist; (d) Be a psychiatrist; (e) Be a licensed clinical social worker; (f) Be a clinical nurse specialist with a master’s degree in psychiatric nursing or rehabilitation nursing; or (g) Be an advanced registered nurse practitioner (ARNP); and (b)(1) Have at least one (1) year of behavior specialist experience or be

2. Provide documentation of completed coursework regarding learning and behavior principles and techniques.

(2) Behavior programming services focus on decreasing an individual’s maladaptive behaviors which jeopardize his or her ability to function independently within a community.

(3) Behavior programming services may be provided in an individual’s residence or in a community setting as well as in an ABI service provider’s facility.

4. Behavior programming services include: (a) Implementing planned systematic techniques and methods to: 1. Alter or influence a behavior in a desired way; or 2. Increase acceptable behavior and decrease maladaptive behavior; (b) Monitoring an ABI waiver service recipient’s progress; (c) Revising, as necessary, an individual’s behavior programming based on data analysis regarding the frequency, intensity, and duration of the individual’s behaviors as well as based on observations; (d) Ongoing training and supervision of direct service staff and care givers; (e) A functional analysis by a qualified behavioral specialist, which addresses: 1. A target behavior; 2. Frequency, intensity, and severity of a maladaptive behavior; 3. Antecedents and consequences of a maladaptive behavior; 4. Analysis of the possible communicative intent of a maladaptive behavior; 5. Reinforcement history regarding a maladaptive behavior; 6. Environments and social context in which a maladaptive behavior occurs; 7. Hypotheses regarding the motivation, purpose, and factors that maintain a maladaptive behavior; 8. An ABI waiver service recipient’s medical, physical, cognitive, and emotional condition; 9. Knowledge and reaction of significant others involved; 10. Day-to-day changes in personal functioning; 11. A history of unsuccessful approaches to alter a maladaptive behavior; and 12. A justification for altering a target behavior; (f) Developing, in cooperation with an ABI waiver service recipient, implementing, and periodically reassessing a behavioral intervention plan, if necessary, which includes: 1. Identifying behavior that needs to be altered; 2. Establishing a justification for behavioral intervention; 3. Establishing procedures to help the ABI waiver service recipient attain goals while in the community; 4. Identifying past unsuccessful approaches utilized to try to alter the ABI waiver service recipient’s behavior; 5. A justification for altering a target behavior; 6. Identifying methods to be used to alter a target behavior; 7. Identifying the frequency, intensity, or duration of a target behavior; 8. Establishing a positive behavior to replace a maladaptive behavior, as well as establishing specific methods for teaching a positive behavior; 9. Establishing data collection methods used to evaluate a behavior intervention plan’s effectiveness; 10. Evaluating the behavior intervention plan’s effectiveness; 11. Establishing specific reinforcements to be used; 12. Identifying an individual’s right, if applicable, that need to be restricted; 13. Identifying risks of the behavior intervention plan, particularly in comparison to the risks of the maladaptive behavior; 14. Documenting an individual’s, and his or her legal representative’s, informed consent to the behavior intervention plan; 15. If restricted procedures are to be utilized, documenting approval from a behavior intervention committee (BIC) and a human rights committee (HRC) of the behavior intervention plan; 16. A behavior intervention plan shall incorporate the least restrictive, least aversive, and least intrusive procedures, as well as protect the dignity and rights of the individual receiving services.

(6) A behavior intervention plan shall be monitored on an ongoing basis by a behavioral specialist.

Section 16. Counseling Services. (1) A provider of counseling services shall be: (a) A psychiatrist; (b) A licensed psychologist; (c) A certified psychologist with autonomous functioning; (d) A psychological associate or certified psychologist; (e) A licensed social worker; (f) A clinical nurse specialist with a master’s degree in psychiatric nursing; (g) An advanced registered nurse practitioner (ARNP); or (h) A certified alcohol and drug counselor.

(2) Counseling services shall be designed to help an ABI waiver service recipient resolve personal issues or interpersonal problems resulting from his or her acquired brain injury.

(3) If a social service recipient in implementing an ABI waiver service recipient’s plan of care, counseling services may be provided to members of the ABI waiver service recipient’s family.

(4) A group therapy may be a counseling services if included in an ABI waiver service recipient’s plan of care.

(5) Counseling services may be: (a) Include substance abuse counseling; or (b) In a severe case, be provided as an adjunct to behavioral programming.

Section 17. Occupational Therapy, Speech, Hearing, and Language Services. (1) A provider of occupational therapy or speech, hearing, and language services shall: (a) Meet all applicable state licensure and certification requirements; and (b) Be employed by or under contract with a participating ABI provider agency.

(2) Except for services over and above the Medicaid Program, occupational therapy or speech, hearing, and language services shall be provided and covered via the Medicaid Program.

(3) Occupational therapy or speech, hearing, and language services over and above the Medicaid Program shall be covered via the ABI Waiver Program.

Section 18. Specialized Medical Equipment and Supplies. (1) Specialized medical equipment and supplies shall be provided to an
ABI waiver service recipient if:
(a) Prior authorized by the department;
(b) Specified in the ABI waiver service recipient's plan of care; and
(c) Obtained from a Medicaid-certified pharmacy or Medicare- and Medicaid-certified medical equipment supplier; and
(d) They are not covered via the Medicaid durable medical equipment program established in 907 KAR 1:479.
(2) Prior authorization of specialized medical equipment and supplies shall be based on:
(a) Medical necessity in accordance with 907 KAR 3:130; and
(b) The equipment’s and supplies’ necessity in regards to an ABI waiver service recipient's plan of care.
(3) A case manager shall be responsible for:
(a) Requesting prior authorization, using a MAP-95 form, for specialized medical equipment and supplies; and
(b) Arranging for and obtaining specialized medical equipment and supplies.
(4) All specialized medical equipment and supplies shall meet applicable standards of manufacture, design, and installation.
(5) Life support equipment, auxiliary supplies, and related equipment shall not be covered by the ABI Waiver Program.

Section 19. Environmental Modifications. (1) An environmental modification shall be provided in accordance with applicable state and local building codes.
(2) An environmental modification shall be provided to an ABI waiver service recipient if:
(a) Prior authorized by the department;
(b) Specified in the ABI waiver service recipient's plan of care;
(c) Obtained from a qualified contractor; and
(d) Necessary to ensure the ABI waiver service recipient’s health, welfare, and safety.
2. It enables the ABI waiver service recipient to function with greater independence within his or her home and without which he or she would require institutionalization; or
3. It is necessary to accommodate medical equipment and supplies necessary for the ABI waiver service recipient's welfare.
(3) A case manager shall be responsible for:
(a) Requesting prior authorization, using a MAP-95 form, for an environmental modification; and
(b) Arranging for an environmental modification.
(4) Vehicle modifications and electronic monitoring systems shall be excluded from environmental modification coverage in the ABI Waiver Program.

Section 20. Community Residential Services. (1) Community residential services:
(a) Shall focus on retraining an ABI waiver service recipient in the performance of basic care and home management tasks in accordance with the ABI waiver service recipient's plan of care;
(b) Shall be provided in a staffed residence or group home;
(c)1. Shall include supervision and oversight;
2. Shall include supportive services including:
(a) Socialization as a part of an ABI waiver service recipient's plan of care;
(b) Assistance with arranging meetings and appointments; or
(c)1. Providing transportation;
2. Shall include activities of daily living training;
4. Shall include social skills training;
5. Shall include home care tasks training; or
6. Shall include home management tasks training; and
(d) May be provided up to twenty-four (24) hours per day.
(2) An ABI waiver service recipient shall be eligible for community residential services if he or she:
(a) Is not living with a caregiver;
(b) Is living with a caregiver but is exhibiting maladaptive behavior that places himself or herself or the caregiver at significant risk of injury or jeopardy; or
(c) Is exhibiting behavior which may result in legal problems if not ameliorated;
(d) Has a need for a staffed residence;
(e) For a staffed residence, a community residential service staffing ratio shall not exceed three (3) individuals per one (1) staff person.

Section 21. [8] Limits on Coverage. (1) Respite services shall be limited to no more than 168 units in a six (6) month period. An exception to this period shall be granted by the department if the individual's primary caregiver's ability to provide care for the individual is compromised by:
(a) A death in the family;
(b) A serious illness; or
(c) Hospitalization.
(2) An environmental modification shall be limited to being provided to the individual's home.

Section 22. Prior Authorization of [9] Prior Approval for an ABI waiver service. (1) The department shall prior authorize all of an individual's ABI services to ensure that:
(a) Nursing facility level of care criteria and ABI service eligibility requirements are met;
(b) Services are adequately specified in the ABI recipient's plan of care;
(c) Services are medically necessary in accordance with 907 KAR 3:130; and
(d) Properly and timely service is provided.
1. Prepare the ABI recipient for reentry into a community where he or she can function without continued ABI services; and
2. Prevent institutionalization;
(d) Cost of the services shall not reasonably be expected to exceed the cost of the corresponding appropriate level of institutional care; and
(e) Services are adequate to meet the ABI recipient's needs.
(2) Prior authorization procedures include an individual's home situation, caregiver support availability, and type and amount of services requested.
(3) Prior authorization procedures shall be as follows: a. A case management agency shall request and obtain from the department, by telephone, a nursing facility level of care determina-
(b) Upon receiving a written nursing facility level of care determination, a case manager shall submit to the department the following information in order to request a determination indicating an individual's medical eligibility for ABI services:
1. A copy of an ABI Plan of Care Form (MAP-4097);
2. A completed and dated ABI Physician Certification Form (MAP-4098) signed by an individual's attending physician recommending the individual for ABI services; and
3. A Medicaid Certification Form (MAP-350); and
4. The department's nursing facility level of care written determination.
(c) If the department's registered nurse or nurses reviewing an individual's documentation regarding ABI eligibility determine that an individual qualifies for ABI services, the department shall submit that determination to a case manager who shall then submit the following information to the department:
1. A completed ABI Plan of Care Form (MAP-4097);
2. A copy of the department's nursing facility level of care approval;
3. A copy of the department's determination that an individual qualifies for ABI services; and
4. A completed MAP-4099 form signed and dated by the individual's attending physician recommending the ABI Waiver Program;
5. The Kentucky Medicaid Certification Form (MAP-350); and
6. A completed "Acquired Brain Injury Waiver Services Program Applicant/Recipient Memorandum of Understanding" (MAP-4096).
(d) Upon receipt of the documentation listed in paragraph (c) of this subsection, the department shall render a decision regarding the individual's eligibility for ABI services;
(e) If the department's registered nurse or nurses reviewing an individual's documentation regarding ABI eligibility determine that an individual is not likely to qualify for ABI services, the nurse or nurses shall refer the matter to a physician who shall:
1. Be a physical medicine and rehabilitation physician;
2. Be a physician who is qualified by virtue of rehabilitation training and experience;
2. Have two (2) years of full-time experience in managing rehabilitation services in a brain injury program; and
3. Determine whether the individual qualifies for ABI services and notify the department of his or her determination.
(f) In accordance with paragraph (e) of this subsection, upon re-
ceiving a physician’s determination that an individual qualifies for ABI services, the department shall follow the procedures established in paragraph (c) of this subsection; and

(g) Upon receiving a physician’s determination that an individual does not qualify for ABI services, the department shall notify the individual and the case management agency which initiated the request for ABI services.

(4) An individual determined to not qualify for ABI services may appeal the determination in accordance with 907 KAR 1:560 and 907 KAR 1:563.

(5) A modification of an ABI recipient’s plan of care shall be authorized if:

(a) The recipient’s case management agency notifies the department of the modification by submitting:

1. An ABI plan of Care Modification Form (MAP-4098);
2. A Request for Equipment Form (MAP-95), if applicable; and
3. A brief explanation of the need for the modification; and

(b) The department approves the modification. The department shall prior authorize an ABI waiver service for an individual to ensure that:

1. The level-of-care criteria and ABI waiver service eligibility requirements are met in accordance with Section 3 of this administrative regulation;
2. An ABI waiver service being provided is defined in the individual’s approved plan of care;
3. A service shall have direct or remedial benefit to prepare the recipient for re-entry to the community;
4. The ABI waiver services prevent placement of the individual in a nursing facility and prepare him to reside in the community without continued ABI waiver services;
5. Adequate service is available to meet the individual’s care needs; and
6. The services shall not reasonably be expected to exceed the cost of the appropriate level of institutional care.

Section 23. [44] Recipient Choice. An individual eligible to receive acquired brain injury waiver services and his or her legal representative shall be given a choice to:

(1) Receive home- and community-based services or nursing facility services subject to the limitations established in Section 3 of this administrative regulation; and

(2) Select a participating ABI waiver provider from whom he or she wishes to receive a service.

Section 24. [41] Appeals 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.


(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.

ELLEN M. HESSEN, Interim Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: September 27, 2001
FILED WITH LRC: October 5, 2001 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 2001, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2001, 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 Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS AND HEARING STATEMENT
Agency Contact Person: Wanda Fowler or Teresa Goodrich
(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions relating to acquired brain injury (ABI) waiver services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions relating to ABI waiver services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage provisions relating to ABI waiver services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the authorizing statutes by establishing the coverage provisions relating to ABI waiver services.

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

(a) How the amendment will change this existing administrative regulation: The primary amendment to this regulation removes the requirement that a provider agency be licensed in order to provide ABI waiver services, while still requiring the agency to be Medicaid-certified. Certain individual provider types must have licenses, for example a registered nurse, but a provider agency as a whole will no longer be required to have a license. In addition, amendments to this administrative regulation establish provider requirements regarding a crisis prevention and response plan, incident reporting, medication, sanitary conditions, safety, and nutrition.

(b) The necessity of the amendment to this administrative regulation: The primary amendment to this administrative regulation is necessary in order to allow additional competent, certified, needed providers to participate in the ABI Waiver Service Program. Additional amendments to this administrative regulation are necessary to establish provider requirements regarding a crisis prevention and response plan, incident reporting, medication, sanitary conditions, safety, and nutrition.

(c) How the amendment conforms to the content of the authorizing statutes: The primary amendment to this administrative regulation conforms to the content of the authorizing statutes by allowing additional competent, certified, needed providers to participate in the ABI Waiver Service Program. Additional amendments to this administrative regulation conform to the content of the authorizing statutes by establishing provider requirements regarding a crisis prevention and response plan, incident reporting, medication, sanitary conditions, safety, and nutrition.

(d) How the amendment will assist in the effective administration of the statutes: The primary amendment to this administrative regulation will assist in the effective administration of the authorizing statutes by allowing additional competent, certified, needed providers to participate in the ABI Waiver Service Program. Additional amendments to this administrative regulation will assist in the effective administration of the authorizing statutes by establishing provider requirements regarding a crisis prevention and response plan, incident reporting, medication, sanitary conditions, safety, and nutrition.

(3) List the type and number of individuals, businesses, organizations, governmental and state/local agencies affected by this administrative regulation: There are approximately 22 providers and 54 recipients currently participating in the ABI Waiver Service Program; however, the Department for Medicaid Services (DMS) anticipates these num-
bers to increase as a result of the amendment 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. The implementation of the amendment to this administrative regulation will allow more providers to participate in the ABI Waiver Service Program, thus generating more options for current recipients. Potential recipients, particularly those who currently may have difficulty locating providers, will likewise have more opportunities to receive ABI waiver services.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: This administrative regulation requires no implementation cost; however, it has a companion administrative regulation, 907 KAR 3:100, which is projected to increase expenditures by $2.1 million in state fiscal year (SFY) 2002.
   (b) On a continuing basis: This administrative regulation requires no implementation cost. This administrative regulation has a companion administrative regulation, 907 KAR 3:100, but the cost only applies to SFY 2002.

(6) Identify the source of the funding to be used for the implementation and enforcement of this administrative regulation: This administrative regulation requires no implementation or enforcement funding; however, it has a companion administrative regulation for which sources of revenue to be used for implementation and enforcement are federal funds authorized under Title XIX and Title XXI of the Social Security Act and state matching funds of general and agency fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation; however, it has a companion administrative regulation which requires an additional $2.1 million to implement.

(8) 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 fee.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. 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)

921 KAR 3:020. Financial requirements.


NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children shall administer a Food Stamp Program. KRS 194B.050(1) provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth the financial eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Financial Eligibility Requirements. (1) As established in [Pursuant to] federal regulations promulgated by the Food and Nutrition Service, of the United States Department of Agriculture, national uniform standards of financial eligibility for the Food Stamp Program shall be composed of the following criteria:
   (a) Income limitations; and
   (b) Resource limitations.
   (2) Participation in the program shall be limited to a household that is prevented from obtaining a more nutritious diet because of its income.
   (3) The income eligibility standards shall be:
      (a) Derived from the federal income poverty guidelines as defined in [Pursuant to] 42 USC 9902(2) for the forty-eight (48) contiguous states and
      (b) Adjusted annually each October 1, as published in the Federal Register.

Section 2. Countable Income. All nonexcluded income shall be considered in determining eligibility, including the following:
   (1) Wages earned by a household member, including wages received by a striker as defined in [Pursuant to] 921 KAR 3:035, Section 5(9);
   (2) The gross income of a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the cost of doing business;
   (3) Training allowance from vocational and rehabilitative programs recognized by federal, state or local governments, to the extent that they are not reimbursable;
   (4) Payments under 42 USC 4951 et seq. shall be considered earned income unless specifically excluded in Section 3 of this administrative regulation;
   (5) The earned or unearned income of an ineligible household member or nonhousehold member as defined in [Pursuant to] 921 KAR 3:035, Section 5(3) and 4;
   (6) Assistance payments from federal or federally aided public assistance including:
      (a) Supplemental security income;
      (b) Kentucky Transitional Assistance Program;
      (c) General assistance programs; or
      (d) Other assistance programs based on need;
   (7) Kinship care;
   (8) Benefits;
   (9) Retirement, veteran's or disability benefits;
   (10) Worker's or unemployment compensation;
   (11) Strike pay;
   (12) Old-age survivors or Social Security benefits;
   (13) Foster care payments for a child or adult, except as excluded in Section 3(15) of this administrative regulation;
   (14) Gross income derived from rental property:
      (a) Minus the cost of doing business; and
      (b) Shall be considered as earned income if the household member is actively engaged in the management of the property an average of twenty (20) hours or more per week;
   (15) Wages earned by a household member that [which] are garnished or diverted by an employer and paid to a third party for a household expense;
   (16) Support or alimony payments made directly to the household from a nonhousehold member. This shall include any portion of a payment returned to the household by the cabinet;
   (17) A portion of the following, that is not excludable as defined in [Pursuant to] Section 3(6) of this administrative regulation:
      (a) Scholarship;
      (b) Education grant;
      (c) Fellowship;
      (d) Deferred payment education loan; or
      (e) Veterans educational benefit;
   (18) A payment from:
      (a) A government sponsored program;
      (b) A dividend;
      (c) Interest;
      (d) A royalty; and
      (e) Similar direct money payments, from a source, that may [could] be construed as a gain or benefit;
   (19) Money withdrawn or a dividend that is or may [could] be received from a trust fund;
   (20) That amount of monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien as set forth in 921 KAR 3:035, Section 5(11);
   (21) The portion of means tested assistance monies:
      (a) From a:
         1. Federal welfare program;
Section 5 of this administrative regulation;
(e) For payment of mandatory fees relating to the course of study, including the rental or purchase of:
1. Equipment;
2. Material;
3. Books; and
4. Supplies;
(7) A loan, other than an educational loan on which payment is deferred, from a:
(a) Private individual or;
(b) Commercial institution;
(A) Reimbursement for a past or future expense, other than normal living expenses, to the extent they do not:
(a) Exceed actual expenses; and
(b) Represent a gain or benefit to the household;
(9) Money received and used for the care and maintenance of a third-party beneficiary who is not a household member;
(10) The earned income of a child who is:
(a) A member of the household;
(b) An elementary or secondary school student; or
(c) Age seventeen (17) years or younger;
(11) Money received in the form of a nonrecurring lump-sum payment.
(12) The cost of producing self-employment income. If the cost of producing farm self-employment income exceeds the income derived from self-employment farming, the loss shall be offset against any other countable income in the household;
(13) Income specifically excluded by a federal statute from consideration as income for the purpose of determining Food Stamp Program eligibility;
(14) An energy assistance payment or allowance that is made [are made pursuant to:
(a) In accordance with any federal law, except 42 USC 601 et seq., including a utility reimbursement made by:
1. The Department of Housing and Urban Development; and
2. Rural and Economic Community and Development; or
(b) For the purpose of one (1) time payment or allowance made as defined in [pursuant to] a federal or state law for the costs of:
1. Weatherization; or
2. Emergency repair; or
3. Replacement of an:
   a. Unsafe; [or]
   b. Inoperative furnace; or
   c. Other heating or cooling device; [\]
(15) A cash donation based on need received from a nonprofit charitable organization, not to exceed $300 in a federal fiscal year quarter;
(16) A foster care payment for a foster child if the household requests that the child be excluded from the household in determining eligibility;
(17) Up to $12,000 to Alaskans and $20,000 to individuals of Japanese ancestry for payments made by the U.S. to compensate for a hardship experienced during World War II;
(18) Money received under Section 3507 of the Internal Revenue Code (advanced payment of earned income credit);
(19) An Indian per capita payment made as defined in [pursuant to] 25 USC 459, 25 USC 1281 and 25 USC 1401, as distribution from a judgment award and trust fund of $2,000 or less per individual per payment; [\]
(20) An amount of income necessary for the fulfillment of an approved plan for achieving self-support of a household member as defined in [pursuant to] 42 USC 1382a(b)(4)(B)(iv); and
(21) An on-the-job training payment that is received as defined in [pursuant to] 29 USC 1630 through 1635.

Section 4. Income Eligibility Standards. Participation in the Food Stamp Program shall be limited to a household whose income falls at or below the applicable standards as established by the Food and Nutrition Service that [and which] are set forth below:

(1) A household that contains [which contains] a member who is elderly or has a disability as defined in 921 KAR 3:010, Section (8) or (12), shall have his [their] net income compared to 100 percent of the federal income poverty guidelines.
(2) A household in which any member receives or is authorized to
receive cash, in-kind, or other benefits funded under temporary assis-
tance to needy families shall be considered categorically eligible in
accordance with 921 KAR 3:030, Section 6: [(a)]

(a) Be categorically eligible; and
(b) Be required to meet either the eligibility standards for:
   (1) Gross income; or
   (2) Net income.

(3) A household in which all members are recipients of SSI shall
be considered categorically eligible in accordance with 921 KAR
3:030, Section 6:[(b)]

(a) Be categorically eligible; and
(b) Be required to meet the eligibility standards for:
   (1) Gross income; or
   (2) Net income.

(4) Other households shall have their gross income (total income
after excluded income has been disregarded but before any deduc-
tions have been made) compared to 130 percent of the federal income
poverty guidelines and their net income compared to 100 percent of
the federal income poverty guidelines.

Section 5. Income Deductions. The following shall be allowable
income deductions:

(1) A standard deduction per household per month that shall be
periodically adjusted by the Food and Nutrition Service to reflect a
change in the cost of living for a prior period of time as determined by
the Food and Nutrition Service;

(2) Twenty (20) percent of gross earned income that is reported
within ten (10) days of the date that the change of income becomes
known to the household;

(3) A payment:
   (a) For the actual cost for the care of:
      1. A child; or
      2. Other dependent;
   (b) Not to exceed:
      1. $200 per month per dependent child under age two (2); [and]
      2. $175 per month for each other dependent; and
   (c) Necessary for a household member to:
      1. Seek, accept, or continue employment;
      2. Attend training; or
      3. Pursue education preparatory to employment;

(4) The cabinet shall use a homeless standard allowance of a
shelter expense for a household in which all members are homeless
and are not receiving free shelter throughout the calendar month,
unless that household verifies higher expenses; [(c)]

(5) Allowable medical expenses in excess of thirty-five (35) dollars
per month incurred by a household member who meets the definition
of being elderly or having a disability as specified by 921 KAR 3:010,
Section 1(9) and (12):
   (a) Including:
      1. Medical and dental care;
      2. Hospitalization or outpatient treatment and nursing care;
      3. Medication and medical supplies;
      4. Health and hospitalization premiums;
      5. Dentures, a hearing aid, eyeglasses, prosthetics; or [and]
      6. Similar medical expense; and
   (b) Excluding special diet costs;
   (c) Actual child support payment made by a household member
shall be allowed as a deduction if:
      (a) The household member is legally obligated to pay child sup-
port; and
      (b) Verification is provided showing a payment is currently being
made.

Section 6. Monthly Shelter Cost Deduction. (1) The monthly shel-
ter cost deduction shall be that amount in excess of fifty (50) percent
of the household’s income after allowable deductions have been
made.

(2) The shelter deduction shall not exceed the current shelter
maximum, except that a household shall not be subject to the maxi-
mum if a member is:
   (a) Elderly; or
   (b) Disabled.

(3) The excess shelter maximum shall be adjusted periodically by
the Food and Nutrition Service to reflect change in the cost of living.

(4) Allowable monthly shelter expense shall include the following:
   (a) Continuing charge for the shelter occupied by the household
      including:
      1. Rent;
      2. Mortgage;
      3. Payment on mobile home loan;
      4. Condominium and association fees;
      5. Interest on a payment; and
      6. [b) Similar charge leading to ownership of the shelter;
      (b) Property tax;
      (c) State and local assessment;
      (d) Insurance on the structure itself;
      (e) The cost of:
          1. Heating and cooking fuel;
          2. Cooling;
          3. Electricity;
          4. Water and sewage;
          5. Garbage and trash collection fee;
          6. Telephone standard deduction;
    7. A fee charged by a utility provider for the initial installation of the
         utility;
       (f) The shelter cost for the home if:
           1. Temporarily unoccupied by the household because of:
              a. Employment or training away from home;
              b. Illness; or
              c. Abandonment caused by a natural disaster or casualty loss;
       2. The current occupant is not claiming shelter cost for food stamp
purpose; and
       3. The home is not leased or rented during the absence of the
          household;
       (g) A charge for the repair of the home if substantially damaged or
           destroyed by fire, flood, or other natural disaster, except to the ex-
           tent the cost is reimbursed by:
              1. A private or public relief agency;
              2. Insurance; or
              3. A similar source; [s]
   (5) The standard utility allowance shall be used to calculate shel-
ter cost for a household:
   (a) Receiving Low Income Home Energy Assistance Program
       benefits; or
   (b) Incurring cost, separate from its rent or mortgage payment, for:
       1. Heating; or
       2. Cooling (by air conditioning unit only).
   (6) The standard utility allowance shall be adjusted periodically.
   (7) If the household is not entitled to the utility standard or home-
less standard allowance, it shall be given the option of choosing the:
      (a) Actual utility expense; or
      (b) Basic utility allowance, [f-$422a]
      (6) The basic utility allowance shall be:
      (a) Adjusted annually; and
      (b) Allowed as an option to a household billed for:
         1. Electricity (nonheating and noncooling);
         2. Water or sewage;
         3. Garbage or trash; or

Section 7. Resources. (1) Uniform national resource standards of
eligibility shall be utilized.

(2) Eligibility shall be denied or terminated if the total value of a
household’s liquid and nonliquid resources, not exempt under Section
8 of this administrative regulation exceed:
   (a) $3000 for a household with one (1) or more members, when at
least one (1) member is sixty (63) years or older; or
   (b) $2000 for any other household.

(3) A household that is categorically eligible in accordance with
921 KAR 3:030, Section 6 [as specified in Section 4(2) and (3) of this
administrative regulation] shall be considered as having met the food
stamp resource requirement.

(4) A household member who receives benefits from supplemental
security income shall be considered categorically eligible and to have satisfied the Food Stamp Program’s resource limit as specified in
subsection (2) of this section.

(5) In a household in which any member receives cash, in-kind or
other benefits funded under temporary assistance to needy families
shall be considered categorically eligible and to have satisfied the Food Stamp Program's resource limit as specified in subsection (2) of this section.]  

Section 8. Exempt Resources. The following resources shall not be considered in determining eligibility:

(1) The home and surrounding property that is not separated from the home by intervening property owned by others;
(2) Household goods;
(3) Personal effects;
(4) One (1) burial plot per household member;
(5) The cash value of life insurance policies;
(6) A pension fund, except:
   (a) A Keogh plan that does not involve a contractual relationship with an individual who is not a household member; and
   (b) An Individual Retirement Account;
(7) The value of one (1) prepaid burial plan per household member shall be excluded as follows:
   (a) The entire value of a prepaid burial plan shall be excluded if, prior to the date the household member becomes eligible to participate in the Food Stamp Program, the money is not accessible to the household because it is held in an irrevocable irrevocable funeral trust agreement with the funeral home as the agent; or
   (b) The equity value of a prepaid burial plan that is accessible to the household shall be excluded up to an amount of $1,500;
(8) In accordance with P.L. 106-367 a licensed or uninsured vehicle that is excluded pursuant to Section 9 of this administrative regulation;
(9) Property that annually produces income consistent with its fair market value, even if only used on a seasonal basis;
(10) Property that is essential to the employment or self-employment of a household member;
(11) An installment contract for the sale of land or building if the contract or agreement is producing income consistent with its fair market value;
(12) A governmental payment that is designated for the restoration of a home damaged in a disaster, if the household is subject to legal sanction if funds are not used as intended;
(13) A resource, of which the cash value is not accessible to the household;
(14) A resource that [which] has been prorated as income;
(15) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs;
(16) A resource that is excluded for food stamp purpose by express provisions of federal statute;
(17) Up to $12,000 to Aleuts and $20,000 to an individual of Japanese ancestry for payment made by the U.S. to compensate for hardships experienced during World War II;
(18) Incomes that is withheld by the employer to pay a certain expense directly to a third party as a vendor payment to the extent that the remainder of the withheld income is not accessible to the household at the end of the year;
(19) Indian per capita payment made as defined in P.L. 106-367 to 25 USC 459, 25 USC 1261, and 25 USC 1401, as distribution from a judgment award and trust fund, of $2,000 or less per individual per quarter;
(20) A purchase of $2,000 or less that is made solely with an Indian per capita payment after December 31, 1981 but prior to January 12, 1983;
(21) The earned income tax credit income received by a member of the household for a period of twelve (12) months from receipt if the member was participating in the Food Stamp Program;
(22) A resource[except a vehicle] that cannot be sold for a significant amount of funds for the support of the household.

Section 9. Vehicles. (1) The entire value of a licensed vehicle shall be excluded from the resource of a household if it is:
   (a) Used for an income-producing purpose over fifty (50) percent of the-time;
   (b) Annually producing income consistent with its fair market value, even if used only on a seasonal basis;
   (c) Necessary for long distance travel, other than daily commuting, essential to the employment of a:
      1. Household member;
      2. Ineligible alien; or
      3. Disqualified person;
   (d) Used as the household's home;
   (e) Necessary to transport, regardless of the purpose, a:
      1. Household member with a physical disability;
      2. Ineligible alien; or
      3. Disqualified person;
   (f) The sole means to carry:
      1. Fuel for heating the home; or
      2. Water for home use;
   (g) Classified as inessential because it has an equity value of less than one-half (1/2) of the household's resource limit pursuant to Section 7(2) of this administrative regulation;
   (2) The exclusion in subsection (1)(a) through (e) of this section shall be applicable if a vehicle is not in use because of temporary unemployment;
   (3) An exclusion under subsection (1)(c) and (e) of this section shall be:
      (a) Applicable if the resource of the individual is being considered available to the household;
      (b) Limited to one (1) vehicle per physically disabled household member;
   (4) A vehicle shall be considered necessary for the transportation of a household member with a physical disability, regardless of special equipment, if it:
      (a) Meets the specific need of the person with a disability; or
      (b) Makes it possible to transport the disabled person;
   (5) A licensed vehicle not excluded under subsection (1) of this section shall be:
      (a) Individually evaluated for fair market value; and
      (b) Attributed in full toward the household's resource level;
   (6) For that portion of the value exceeding $4,550 and
      (7) Regardless of the amount of an encumbrance on the vehicle;
   (8) A licensed vehicle shall be evaluated for its equity value, unless it is:
      (a) Excluded in subsection (1) of this section;
      (b) The only licensed vehicle for the household, regardless of use;
      (c) Used;
      (d) As transportation for:
         a. Employment;
         b. Training;
         c. Education preparatory to employment; or
         d. Seeking employment in compliance with the Food Stamp Employment and Training Program, pursuant to 921 KAR 3-042; or
      (8) By the following, whose resource is considered available to the household:
         a. Household member;
         b. Ineligible alien; or
         c. Disqualified household member;
   (7) A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during a temporary period of unemployment;
   (8) The following shall be attributed to a household's resource level:
      (a) The equity value of a licensed vehicle not covered by this exclusion; and
      (b) An uninsured vehicle not excluded by Section 8(9) through (14) of this administrative regulation;
      (8) If a licensed vehicle is assigned a fair market value in excess of $4,550 and an equity value, the greater of these two (2) amounts shall be counted as a resource.

Section 10. Transfer of Resources. A household that has transferred a resource knowingly for the purpose of qualifying or attempting to qualify for food stamps shall be disqualified from participation in the program for up to one (1) year from the date of the discovery of the transfer.

Section 11. Failure to Comply with Other Programs. (1) Ex-
cept as provided in subsection (2) of this section, if the benefits of a household are reduced under a federal, state, or local law relating to a means-tested public assistance program for the failure of a member of the household to perform an activity required under the program, for the duration of the reduction, the food stamp allotment of the household shall be reduced by twenty-five (25) percent.

(2) If the benefits of a household are reduced as defined in [pursuant to] a federal, state, or local law relating to a means-tested public assistance program for the failure of a household member to perform a work requirement, the individual shall be subject to the disqualification procedure as defined in [pursuant to] 921 KAR 3:042.

DIETRA PARIS, Commissioner
VIOLA P. MILLER, Secretary
APPROVED BY AGENCY: October 12, 2001
FILED WITH LRC: October 15, 2001 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 2001, at 9 a.m. in the Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2001, of their intent to attend. 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. 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, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7600, (502) 564-9123 (Fax).

REGULATORY IMPACT ANALYSIS
Agency contact person: Shirley Eldridge

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation implements federal changes relating to vehicles as specified in PL 106-397. The administrative regulation will exclude vehicles from the resource requirements of the Food Stamp Program. This revision now permits those ineligible individuals or working households that own vehicles to obtain food stamps. In addition, it permits disregards of condominium and association fees.
(b) The necessity of this administrative regulation: To set forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Program.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms by administering policy as it relates to the Food Stamp Program in compliance with KRS 194.605(1), 205.2005, 7 CFR 271.4, and 273.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently assists in the effective administration of the statutes by developing policies and operating the Food Stamp Program as it relates to the welfare of the citizens of the Commonwealth.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: Same as (1)(a).
(b) The necessity of the amendment to this administrative regulation: To comply with federal mandates relating to the treatment of all vehicles from the Food Stamp Program as a resource. In addition, it permits disregards of condominium and association fees.
(c) How the amendment conforms to the content of the authorizing statutes: Implements the federal requirements pursuant to 7 CFR Part 273 as it relates to the Food Stamp Program.
(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist ineligible individuals and working households that own vehicles to participate in the Food Stamp Program. This amendment will assist individuals who reside in condominiums as their place of residence. In addition, it allows for financial requirement changes of Kentucky's Food Stamp Program to comply with federal requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently ineligible individuals and working households that own vehicles will be affected by this administrative regulation. All applicants or recipients who reside in condominiums as their place of residence will be affected.
(4) Provide an assessment of whether this administrative regulation will be funded: This administrative regulation will be funded by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The impact on the ineligible individuals and working households that own vehicles will be positive. It will assist more citizens of Kentucky in obtaining food stamps who previously may have been denied or disqualified. In addition, the impact on those individuals who reside in condominiums as a place of residence will be positive.
(5) Provide an estimate of how much it will cost to implement this administrative regulation: Food stamps benefits are 100% federally funded.
(a) Initially: No additional funding required.
(b) On a continuing basis: No additional funding required.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of administrative funding has been appropriated in the enacted budget.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funding required.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with the Food Stamp Program.

FAIR SCORING: Is tiering applied? Tiering was not applied since the provisions of the Food Stamp Program are uniform and applied consistently on a statewide basis.

FEDERAL MANDATE ANALYSIS COMPARISON
1. Federal statute or regulation constituting the federal mandate. 7 CFR Part 273 Final Rule that was published November 21, 2000.
2. State compliance standards. None.
3. Minimum or uniform standards contained in the federal mandate. The provisions of the administrative regulation comply with the federal mandate 7 CFR Part 273 Final Rule that was published November 21, 2000.
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 standards, or additional or different responsibilities or requirements. None imposed:

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


RELATES TO: KRS 17.165, 199.894 to 199.898
STATUTORY AUTHORITY: KRS 194.050(1), 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 define terms used for child day care facilities.

(1) "Adequate supervision" means that each qualified child day care staff person shall:
(a) Devote full time and attention appropriate to the developmental stage of each child;
(b) Know each child's [to the children being-supervised-and-be
aware of their whereabouts at all times; and
(c) Be within the range of each child's voice and each child shall
be within the sight of a staff person.
(2) "Cabinet" means the Cabinet for Families and Children or its
designee.
(3) "Caregiver" means each child day care facility staff person and
volunteer who has supervisory authority over children [including vol-
unteers who work in a child day care facility].
(4) "Child day care staff" means each person and volunteer [per-
sons, including volunteers] who works [work] in a child day care fac-
ility.
(5) "Day care" means care of a child in a facility that:
(a) [Which] Regularly provides full or part-time care during the [.] day or night; [;]
(b) Includes developmentally-appropriate practices [play] and
learning activities.
(6) "Director" means an individual;
(a) Who meets the education and training requirements [as] specified in 922 KAR 2:110, Section 3;
(b) [;] and [;] Whose primary full-time job responsibility is [respon-
ibilities are] to ensure compliance with 922 [905] KAR 2:090, 922 KAR
2:110, and 922 KAR 2:120 [and 905 KAR-2:120]; and
(c) Who is responsible for directing the program and [for] managing each [the] staff person who works at the day care facility [specified
in their individual job descriptions].
(7) "Facility" means:
(a) A Type 1 day care facility that is [which is a facility];
1. Not [Other than] a dwelling unit and [which] regularly provides
day care services for [receives] four (4) or more children; or
2. [Including] A dwelling unit and [which] regularly provides day
care services for thirteen (13) or more children; [;]
(b) A Type II child day care facility that [which]:
1. Is a home or dwelling unit that is the full-time residence of the
licensee; and
2. Regularly provides care apart from parents for seven (7), but
not more than twelve (12) children; [;]
(c) The following child day-care settings shall be included:
1. Day-care;
2. Preschool;
3. Nursery;
4. Child care provided by employers for employees;
5. Kindergartens not accredited by the Kentucky Department of
Education pursuant to 704 KAR 5:050;
6. Child care in recreational programs;
7. Montessori;
8. Headstart; and
(a) The following child care settings may [shall] not be included:
1. Summer camps certified by the Cabinet [Kentucky Department]
for Health Services as "youth camps" and providing care for school-
age children;
2. Programs operated under Kentucky Department of Education
preschool administrative regulations;
3. Grades kindergarten through twelve (12) in private schools;
4. Summer programs operated by religious organizations in which
a child attends no longer than two (2) weeks;
5. Child care programs operated by the armed services;
6. Child care provided while parents are on the premises other
than the employment and educational site of parents;
7. Child care provided by educational programs that include
[which includes] parental involvement with the care of the child in-
cluding development of parenting skills;
8. Facilities operated by a religious organization while religious
services are being conducted; [and]
9. Respite care to provide relief for the primary caregiver of a child
for a specific period of time; and [;]10. A facility providing instructional and educational programs that
[for children]:
a. [Which] Is operated for a maximum of [four (4) hours per-day or]
twenty (20) hours per week; and
b. [Which] A child attends for no more than [two (2) hours per-day or]
ten (10) hours per week.
(B) "Human services center or facility" means a facility that pro-
vides full or part-time care to children or adults. This term shall include
the following:
(a) Day care center;
(b) Certified family child care home;
(c) Adult day care center;
(d) Adult day care health facility [facilities];
(e) Family care home;
(f) Group home [homes] for the mentally retarded or develop-
mentally disabled;
(g) Acute care, psychiatric, or comprehensive physical rehabilita-
tion hospital [hospitals];
(h) Intermediate care facility [facilities];
(i) Nursing facility [facilities];
(j) Nursing home [homes];
(k) Personal care home [homes];
l. Skilled nursing facility [facilities];
m. Psychiatric residential treatment facility [facilities];
(n) Child caring facility [facilities];
(o) Child placing agency [agencies];
p. Rural primary-care hospital [hospitals];
(q) Alzheimer nursing home [homes];
r. Youth camp [camps];
s. Boarding home;
(t) Alternate intermediate services for the mentally retarded or
developmentally delayed.
(9) "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 and [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.
(10) ["Infant" means a child under one (1) year of age.
(11) "Licensee" means an individual, partnership, corporation or
other entity authorized to operate a day care center.
(12) "New employees" means an individual who:
(a) Works in a child day care facility; and
(b) Has submitted to each background check required by KRS
17,165 and 199.886(19) and the results of each check have not yet
been received by the facility.
(13) "Nighttime care facility" means a facility that regularly serves
[which serves] children during hours that range from [are received for] regular, full, or part-time care during the night.
(14) "Premises" means the indoor [building] and outdoor [contigu-
eous] property that is licensed for the purpose of operating a [in which]
day care facility [is provided and licensed].
(15) "Qualified substitute" means a person who meets the re-
quirements of a caregiver.
(16) "Regularly" means the provision of child day care services
at a facility for more than ten (10) hours per week.
(17) "Related" means:
(a) The licensee's:
1. Own child;
2. Stepchild;
3. Grandchild;
4. Niece;
5. Nephew; or
(b) A child who is related to the licensee through a current mar-
rriage or court decree [children, grandchildren, nieces, nephews, or
children in legal custody of the operator of the facility.]
(18) "Secretary" means the Secretary for the Cabinet for Families
and Children.
(19) "School-age child" means a child attending kindergarten,
elementary or secondary education.
(20) "School-age child" means a child attending kindergarten,
elementary or secondary education.
(21) "Toddlers" means a child between the age of twelve (12)
months and twenty-four (24) months.
(22) "Twelve (12) clock hours of training" means a Cabinet for
Health Services [Families and Children] approved program,
in compliance with the Guidelines for Obtaining Child Day Care Training
Approval, and herein incorporated by reference, of child development training that is completed by each caregiver, director, and licensee [employees and owners] who directly cares [care] for children as governed by KRS 199.896(2).

(20) [22] "Twelve (12) clock hours of orientation and child development training" means a Cabinet for Health Services [Families and Children] approved program, in compliance with the Guidelines for Obtaining Child Day Care Training Approval, and herein incorporated by reference, that is completed by employees and owners who directly care for children, six (6) hours of which shall be completed within the first three (3) months of employment as governed by KRS 199.896 and the remaining six (6) hours shall be completed within the first year of employment.


(2) This material [incorporated by reference] may be inspected, copied or [copies] obtained, subject to applicable copyright law, at the Cabinet for Families and Children [Building], Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, [Office hours are 8 a.m. to 4:30 p.m.]

DIETRA PARIS, Commissioner
HIREN DESAI, Attorney
VIOLA P. MILLER, Secretary
APPROVED BY AGENCY: September 28, 2001
FILED WITH LRC: September 28, 2001 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 2001, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2001, 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) 564-7500. (502) 564-9126 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Shirley Eldridge, Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes definitions for 922 KAR Chapter 2.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define terms used under 922 KAR Chapter 2.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 199.896(2) by defining terms related to child care services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation complies with the statutory intent of KRS 199.896(2).

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

(a) How the amendment will change this existing administrative regulation: This administrative regulation is being amended to update terms used under 922 KAR Chapter 2.

(b) The necessity of the amendment to this administrative regulation: Amendment of this administrative regulation is necessary to update terms used under 922 KAR Chapter 2.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment complies with KRS 199.896(2).

(d) How the amendment will assist in the effective administration of the statutes: The amendment complies with the statutory intent of KRS 199.896(2).
KENTUCKY BOARD OF INTERPRETERS FOR THE 
DEAF AND HARD OF HEARING 
(New Administrative Regulation)

201 KAR 39:020. Board member expenses.

RELATES TO: KRS 309.302(5), 309.306(3)
STATUTORY AUTHORITY: KRS 309.304(3)
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation authorizes board members to receive reimbursement for actual and necessary expenses when conducting board-related business.

Section 1. The board members shall receive no compensation for their services, but may receive reimbursement for actual expenses and travel expenses to the extent authorized by 200 KAR Chapter 2.

LINDA KOLB BOZEMAN, Interim Chair
APPROVED BY AGENCY: October 15, 2001
FILED WITH LRC: October 15, 2001 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 2001, at 9:00 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by November 15, 2001, five working days 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 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: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3266, 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 establishes the reimbursement of board members.
(b) The necessity of this administrative regulation: To inform the public of the types of expenses that the board members may be reimbursed for.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 309.304(3) authorizes the board to promulgate administrative regulations in accordance with KRS Chapter 13A to effectively carry out and enforce the provisions of KRS 309.300 to 309.319. KRS 309.302(5) sets forth the conditions under which board members may be reimbursed. This administrative regulation in turn ties the reimbursements in with the provisions of 200 KAR Chapter 2.
(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation clearly delineates the types of expenses for which board members may receive reimbursement.
(2) 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 the men and women who are appointed by the Governor to serve as board members on the Kentucky Board of Interpreters for the Deaf and Hard of Hearing.
(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: The implementation of this administrative regulation will provide the board members with the opportunity to be reimbursed for the expenses they incur during the performance of their duties.
(5) Estimate of how much it costs to implement this administrative regulation:
(a) Initially: There are no costs associated with the initial implementation of this administrative regulation.
(b) On a continuing basis: The costs will vary according to whom is appointed to the board. Specifically, the costs will depend upon the amount of travel reimbursement which is requested as well as other actual expenses incurred in the discharge of their duties, such as reimbursement for lodging and meals.
(6) The source of funding for the implementation and enforcement of this administrative regulation: General board funds.
(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.
(8) This administrative regulation does not establish fees.
(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all board members.

KENTUCKY BOARD OF INTERPRETERS FOR THE 
DEAF AND HARD OF HEARING 
(New Administrative Regulation)

201 KAR 39:030. Application; qualifications for licensure; and certification levels.

RELATES TO: KRS 309.304(1), 309.312(1)(b)
STATUTORY AUTHORITY: KRS 309.304(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.304(3) and 309.312(1)(b) require the Kentucky Board of Interpreters for the Deaf and Hard of Hearing to promulgate an administrative regulation establishing the requirements for an applicant for licensure as an interpreter for the deaf and hard of hearing.

Section 1. Application. Each applicant for a license shall submit:
(1) A completed "Application for Licensure" form to the board; and
(2) Pay the application and license fee as set forth in 201 KAR 39.040.

Section 2. Certification Levels. In order to receive a license, an applicant shall submit with an application proof of holding one (1) or more of the following certifications of competence or completion assessments:
(1) Current certification by the Registry of Interpreters for the Deaf in:
(a) Comprehensive Skills Certificate (CSC). Holders of this full certificate have demonstrated the ability to interpret between American Sign Language and Spoken English and to transliterate between spoken English and an English-based sign language. The CSC examination was offered until 1987;
(b) Certificate of Transliteration (CT). Holders of this certificate are recognized as fully certified in transliteration and have demonstrated the ability to transliterate between English-based sign language and spoken English in both sign-to-voice and voice-to-sign. The transliterator's ability to interpret is not considered in this certification;
(c) Certificate of Interpretation (CI). Holders of this certificate are recognized as fully certified in interpretation and have demonstrated the ability to interpret between American Sign Language and spoken English in both sign-to-voice and voice-to-sign. The interpreter's ability to transliterate is not considered in this certification.
(d) Interpreting Certificate/Transliteration Certificate (IC/TC). Holders of this partial certificate demonstrated ability to transliterate between English and a signed code for English and the ability to interpret between American Sign Language and spoken English. The IC/TC is no longer offered;
(e) Reverse Skills Certificate (RSC). Holders of this full certificate demonstrated the ability to interpret between American Sign Language and English-based sign language or transliterate between spoken English and a signed code for English. Holders of this certificate
are deaf or hard-of-hearing and interpretation/translation is rendered in American Sign Language, spoken English, a signed code for English or written English. This certificate is no longer offered;

(i) Certified Deaf Interpreter (CDI). Holders of this certification are interpreters who are deaf or hard-of-hearing and who have demonstrated the ability to interpret, within one (1) year of experience, to work as an interpreter, completion of at least eight (8) hours of training in the RID Code of Ethics, and eight (8) hours of training in general interpretation as it relates to the interpreter who is Deaf or Hard-of-Hearing;

(g) Certified Deaf Interpreter Provisional (CDI-P). Holders of this provisional certificate are interpreters who are deaf or hard-of-hearing and who have demonstrated a minimum of one (1) year's experience working as an interpreter, completion of at least eight (8) hours of training on the RID Code of Ethics, and eight (8) hours of training in general interpretation as it relates to the interpreter who is deaf or hard-of-hearing. Provisional certification is valid until one (1) year after the certified deaf interpreter written and performance test is available nationally. Provisional certificate holders shall take and pass the CDI examination in order to remain certified as a deaf interpreter;

(h) Oral Translating Certificate (OTC). Holders of this generalist certificate have demonstrated the ability to translate a spoken message from a person who hears to a person who is deaf or hard-of-hearing and the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf and hard-of-hearing;

(k) Interpretation Certificate (IC). Holders of this partial certificate demonstrate the ability to interpret between American Sign Language and written English. The IC is no longer offered;

(l) Oral Translating Certificate (OTC). Holders of this partial certificate demonstrated the ability to translate between spoken English and a signed code for English. The TC is no longer offered;

(m) CLIP (Conditional Legal Interpreting Permit). Holders of this conditional permit have completed an RID recognized training program designed for interpreters and translators who work in legal settings. The Certificate of Interpretation (CI) and CT, or CEC is required prior to enrollment in the training program. This permit is valid until one (1) year after the specialist certificate: legal written and performance test is available nationally. CLIP holders must take and pass the new legal certification examination in order to maintain certification in the special area of interpreting in legal settings. Holders of this conditional permit are recommended for a broad range of assignments in the legal setting. The CLIP-R is no longer offered;

(n) MCGC (Master Comprehensive Skills Certificate). The MCGC examination was designed with the intent of testing for a higher standard of performance than the CSC. Holders of this certificate were required to hold the CSC prior to taking this exam. Holders of this certificate are recommended for a broad range of interpreting and transliterating assignments. This certificate is no longer offered;

(o) SCL (Specialist Certificate; Legal). Holders of this specialist certificate have demonstrated specialized knowledge of legal settings and greater familiarity with language used in the legal system. Generalist certification and documented training and experience is required prior to sitting for this exam. Holders of the SCL are recommended for a broad range of assignments in the legal setting. This test is currently available.

(p) Prov. SCL (Provisional Specialist Certificate; Legal). Holders of this provisional certificate hold generalist certification and have completed a minimum of one (1) year of experience working as an interpreter, completion of at least eight (8) hours of training on the RID Code of Ethics, and eight (8) hours of training in general interpretation as it relates to the interpreter who is Deaf or Hard-of-Hearing. This certificate is no longer offered.

(q) SC-PA (Specialist Certificate: Performing Arts). Holders of this certificate were required to hold RID generalist certification (SC) prior to sitting for this examination and have demonstrated specialized knowledge in performing arts interpretation. Holders of this certificate are recommended for a broad range of assignments in the performing arts setting. The SC-PA is no longer offered.

(q) OICC (Oral Interpreting Certificate: Comprehensive). Holders of this generalist certificate demonstrated the ability to transcribe a spoken message from a person who hears to a person who is deaf or hard-of-hearing and the ability to understand and repeat the message and intent of the speech and mouth movements of the person who is deaf or hard-of-hearing. This certificate is no longer offered. Individuals wishing oral certification should take the OTC exam noted above.

(r) OIC-SV (Oral Interpreting Certificate: Speech to Visible). Holders of this partial certificate demonstrated the ability to transcribe a spoken message from a person who hears to a person who is deaf or hard-of-hearing. This individual received scores on the OIC-C examination which prevented the awarding of full OICC certification. The OIC-SV is no longer offered. Individuals wishing oral certification should take the OTC exam noted above.

(s) OIC-VS (Oral Interpreting Certificate: Visible to Spoken). Holders of this partial certificate demonstrated ability to understand the speech and silent mouth movements of a person who is deaf or hard-of-hearing and to repeat the message for a hearing person. This individual received scores on the OIC-C examination which prevented the awarding of full OICC certification. The OIC-VS is no longer offered. Individuals wishing oral certification should take the OTC exam noted above.

(t) Specialist certificates to be made available in the future by RID; or

(2) Current certification by the National Association for the Deaf in:

(a) Level V Masters;

(b) Level IV Advanced;

(c) CUEU Speech - National Training, Evaluation, and Certification Unit;

(d) Other certifications as described in 201 KAR 30:080 or as required by federal law.

Section 3. Incorporation by Reference. (1) "Application for License," 2001 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LINDA KOLB BOZEMAN, Interim Chair
APPROVED BY AGENCY October 15, 2001
FILED WITH LRC: October 15, 2001 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 28, 2001, at 9:00 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 2001, five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by this date, the 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 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: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, 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 establishes the requirements for an applicant for licensure as an interpreter for the deaf and hard of hearing.

(b) The necessity of this administrative regulation: To inform the public of the requirements necessary to use the title licensed interpreter.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 309.304(3) authorizes the board to promulgate administrative regulations in accordance with KRS Chapter 13A to effectively carry out and enforce the provisions of KRS 309.300 to 309.319. KRS 309.304(1) requires the board to evaluate the qualifications of applicants for licensure and KRS 309.312(1)(b) states that the board shall determine the requisite level of certification from a nationally-recognized organization that an applicant must possess. This administrative regulation sets forth those requirements.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation clearly delineates the process for application and the requisite qualifications for licensure, including the approved certification levels.

(2) 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 approximately 300+ men and women who are expected to apply for licensure. In addition, consumers of interpreter services such as deaf and hard of hearing individuals, school systems, courts of law, etc. will be affected.

(4) Assessment of the above groups will be impacted by the implementation of this administrative regulation: Applicants for licensure must meet the standard and certification levels set forth in this administrative regulation. Consumers of interpreter services such as deaf and hard of hearing individuals, school systems, courts of law, etc., will see an improvement in the level of services that they receive. The school systems may need to amend their administrative regulations to conform with the administrative regulations herein.

(5) Estimate of how much it costs to implement this administrative regulation:

(a) Initially: The cost of application for each applicant for licensure is the only cost associated with this administrative regulation. The specific fee is set forth in 201 KAR 39:040.

(b) On a continuing basis: No change in the cost of application is anticipated.

(c) The source of funding for the implementation and enforcement of this administrative regulation: General board funds.

(d) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

(e) This administrative regulation does not establish fees.

(f) TIERING: Is tiering applied? No. This administrative regulation applies equally to all applicants for licensure.

KENTUCKY BOARD OF INTERPRETERS FOR THE DEAF AND HARD OF HEARING
(New Administrative Regulation)

201 KAR 39:040. Fees.

RELATES TO: KRS 309.312(1)(a), (4), 309.314(1), (2), (4), (6)
STATUTORY AUTHORITY: KRS 309.304(3)
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessitated by KRS 309.304(3) and sets forth in detail all fees charged by the board.

Section 1. Application Fee. (1) The application fee for initial licensure shall be fifty (50) dollars.

(2) The application fee for initial temporary license shall be fifty (50) dollars.

(3) Application fees shall not be refundable.

Section 2. Initial Licensure Fee. (1) The initial licensure fee for licensure shall be $100.

(2) The initial licensure fee for a temporary license shall be fifty (50) dollars.

(3) If the initial licensure application is denied the initial licensure fee may be refunded upon written request of the applicant.

Section 3. Renewal and Extension Fees. (1) The annual renewal fee for licensure shall be seventy-five (75) dollars.

(2) The fee to extend a temporary license shall be fifty (50) dollars.

(3) Renewal fees and extension fees shall not be refundable.

Section 4. Late Renewal and Extension Fees. (1) All licenses renewed during the sixty (60) day grace period shall require payment of a late renewal fee of sixty (60) dollars in addition to the current renewal fee set forth in Section 3 of this administrative regulation.

(2) All temporary licenses extended during the sixty (60) day grace period shall pay a late fee of thirty-five (35) dollars in addition to the current extension fee set forth in Section 3 of this administrative regulation.

(3) Late renewal and extension fees shall not be refundable.

Section 5. Reinstatement Fee. (1) The reinstatement fee for a license terminated pursuant to KRS 309.314(3) shall be $250, in addition to the current renewal fees as set forth in Section 3 of this administrative regulation.

(2) The reinstatement fees shall not be refundable.

Section 6. Fee for a Reciprocal License. (1) The fee for a reciprocal license shall be $250.

(2) The reciprocal license fee shall not be refundable.

Section 8. Duplicate License Fee. The fee for a duplicate license shall be ten (10) dollars.

LINDA KOLB BOZEMAN, Interim Chair
APPROVED BY AGENCY: October 15, 2001
FILED WITH LRC: October 15, 2001 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 2001, at 9:00 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 2001, five workdays prior to the hearing of their intent to attend. If no notification 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 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: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3236, FAX (502) 564-4518.

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 in detail all fees to be charged by the board.

(b) The necessity of this administrative regulation: To inform the public of the fees charged by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 309.304(3) authorizes the board to promulgate administrative regulations in accordance with KRS Chapter 13A to effectively carry out and enforce the provisions of KRS 309.300 to 309.319, including promulgation of fee regulations. This administrative regulation sets forth all required fees by the board.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation clearly delineates the amounts of all fees charged by the board. This in turn will reduce the number of inquiries the board receives by placing the public on notice.

(2) 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.
regulation: This administrative regulation will affect approximately 300+ men and women who are expected to apply for licensure as interpreters for the deaf and hard of hearing.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: Applicants for licensure must meet the fees set forth in this administrative regulation to receive and maintain licensure.

(5) Estimate of how much it costs to implement this administrative regulation:
(a) Initially: The cost of application for each applicant for licensure is the only cost associated with this administrative regulation.
(b) On a continuing basis: The costs to applicants for licensure will be the renewal fees associated with maintaining licensure.

(6) The source of funding for the implementation and enforcement of this administrative regulation: General board funds.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

(8) This administrative regulation does establish fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation applies fees differently to applicants for full licensure and to applicants for temporary licensure.

KENTUCKY BOARD OF INTERPRETERS FOR THE DEAF AND HARD OF HEARING (New Administrative Regulation)

201 KAR 39:050. Renewal of licenses and extension of temporary licenses.

RELATES TO: KRS 309.304(6), 309.314(1), (2)

STATUTORY AUTHORITY: KRS 309.304(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 309 provides that the board shall promulgate administrative regulations establishing procedures for annual renewal of the license. This administrative regulation sets forth that process in detail.

Section 1. Renewal of Licenses. Persons licensed as an interpreter shall annually, on or before each July 1, pay to the board a renewal fee as set forth in 201 KAR 39:040 for the renewal of the license and submit the following to the board:
(1) A completed "License Renewal Application" Form;
(2) Proof of current certification of the licensee as set forth in 201 KAR 39:030; and

Section 2. (1) A sixty (60) day grace period shall be allowed beginning each July 1, during which time individuals may renew their licenses upon payment of the late renewal fee as set forth in 201 KAR 39:040 and submission of the documents and information required in Section 1 of this administrative regulation.
(2) Licenses not renewed before August 30 shall terminate based on the failure of the individual to renew in a timely manner.
(3) Upon termination, the licensee is no longer eligible to practice and shall be sent notice of termination and to cease and desist practice, at the last known address available to the board.

Section 3. After the sixty (60) day grace period, but before five (5) years from the date of termination, individuals with a terminated license may have their licenses reinstated upon:
(1) Payment of the late renewal fee plus a reinstatement fee as set forth in 201 KAR 39:040; and
(2) Submission of a completed "License Reinstatement Application" Form to the board.

Section 4. Before issuing any license or renewal, the board shall collect from the person licensed the full amount of all fees due in accordance with 201 KAR 39:040.

Section 5. Extensions of Temporary Licenses. (1) A person holding a temporary license who is a graduate of a baccalaureate inter-
interpreters for the deaf and hard of hearing.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: Applicants for renewal of licensure must meet the requirements set forth in this administrative regulation.

(5) Estimate of how much it costs to implement this administrative regulation:

(a) Initially: The cost of renewal for each licensee is the only cost associated with this administrative regulation.

(b) On a continuing basis: The costs to applicants for renewal will be the renewal fees associated with maintaining licensure.

(6) The source of funding for the implementation and enforcement of this administrative regulation: General board funds.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

(8) This administrative regulation does not establish fees.

(9) TIERING: Is tiering applied? Yes. This administrative regulation applies differently to applicants for renewal who apply in a timely manner versus those who apply during the 60 day grace period.

KENTUCKY BOARD OF INTERPRETERS FOR THE DEAF AND HARD OF HEARING

(New Administrative Regulation)

201 KAR 39:060. Reinstatement of license subject to disciplinary action.

RELATES TO: KRS 309.318

STATUTORY AUTHORITY: KRS 309.304(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.318 authorizes the board to discipline a licensee for violation of the statutes and administrative regulations governing the practice of interpreting. KRS 309.318(5) permits a person whose license has been revoked to apply for reinstatement after five (5) years. This administrative regulation establishes the requirements for reinstatement of a license that has been the subject of disciplinary action by the board.

Section 1. Definition. "A license voluntarily surrendered as if revoked" means the process by which a person who holds a license issued by the board, knowingly and willingly, returns the license to the board, forfeiting all rights and privileges associated with that license, in settlement of a disciplinary action initiated by the board.

Section 2. Reinstatement of a License Revoked by Disciplinary Action of the Board. (1) If a license has been revoked, an individual may apply for reinstatement by:

(a) Submitting a completed "License Reinstatement" Form;

(b) Paying the initial licensure fee as set forth in 201 KAR 39:040; and

(c) Submitting proof of qualification for licensure as set forth in 201 KAR 39:030.

(2) Show evidence of completion of fifteen (15) hours of continuing education for each year since the date of revocation in accordance with the requirements established in 201 KAR 39:090.

(2)(a) The board shall review the reinstatement request and determine whether to reinstate the license.

(b) Based upon the information submitted the board shall determine if reinstatement of the license would be a threat to public safety, health and welfare.

(c) If the board finds that there no longer constitutes a danger to the public, it may reinstate the license.

(d) If the board finds that a danger still exists, or the applicant failed to comply with the requirements of this administrative regulation it may refuse to reinstate the license. The applicant may then request a hearing on the denial.

Section 3. Reinstatement of a License which was Voluntarily Surrendered as if Revoked. (1) If a license has been voluntarily surrendered as if revoked, an individual may apply for reinstatement by:

(a) Submitting a completed "License Reinstatement Application" Form;

(b) Paying the initial licensure fee as established in 201 KAR 39:040;

(c) Paying a reinstatement fee of fifty (50) dollars; and

(d) Notifying the board, in writing, that the requirements of the agreed order have been met or completed. If the board finds that the danger still exists, or the applicant failed to comply with the requirements of this administrative regulation it may refuse to reinstate the license. The applicant may then request a hearing on the denial.

(2) An individual whose license has been voluntarily surrendered as if revoked shall be required to comply with the annual continuing education requirements for the period during which the license was voluntarily surrendered in accordance with the requirements established in 201 KAR 39:090.

Section 4. Incorporation by Reference. (1) "License Reinstatement" Form, 2001, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright, in the office of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 2001, five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by this date, the 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 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 below.

CONTACT PERSON: Anne Bagin, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, 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 in detail the process for reinstatement of licenses which have been the subject of disciplinary action.

(b) The necessity of this administrative regulation: To inform the public of the process required by the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 309.304(3) authorizes the board to promulgate administrative regulations in accordance with KRS Chapter 13A to effectively carry out and enforce the provisions of KRS 309.300 to 309.319, including promulgation of fee regulations. This administrative regulation sets forth the requirements for the reinstatement of licensure by the board.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation clearly delineates the reinstatement process followed by the board. This in turn will reduce the number of inquiries the board receives by placing the public on notice.

(2) 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 only those licensees who are subject to the disciplinary process of the board and having been adjudicated guilty have their licenses revoked.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: Applicants for reinstatement of licensure must meet the requirements set forth in this administrative regulation.

(5) Estimate of how much it costs to implement this administrative regulation:

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VOLUME 28, NUMBER 5 -- NOVEMBER 1, 2001

LINDA KOLB BOZEMAN, Interim Chair
APPROVED BY AGENCY: October 15, 2001
FILED WITH LRC: October 15, 2001 at 10:30 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 2001, at 9:00 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 2001, 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 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: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, 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 establishes the requirements for an applicant for temporary licensure as an interpreter for the deaf and hard of hearing.
(b) The necessity of this administrative regulation: To inform the public of the requirements necessary to obtain temporary licensure as an interpreter.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 309.304(3) authorizes the board to promulgate administrative regulations in accordance with KRS Chapter 13A to effectively carry out and enforce the provisions of KRS 309.300 to 309.319. KRS 306.304(1) requires the board to evaluate the qualifications of applicants for licensure and KRS 309.312(1)(b) states that the board shall determine the requisite level of certification from a nationally recognized organization that an applicant must possess. This administrative regulation sets forth those requirements.
(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation clearly delineates the process for application and the requisite qualifications for temporary licensure, including the approved certification levels.

(2) This is a new administrative regulation.

(3) List the type and number of individual businesses, organizations, or state and local government employees affected by this administrative regulation: This administrative regulation will affect approximately 300+ men and women who are expected to apply for temporary licensure. In addition, consumers of interpreter services such as deaf and hard of hearing individuals, school systems, courts of law, etc. will be affected.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: Applicants for temporary licensure must meet the standard and certification levels set forth in this administrative regulation. Consumers of interpreter services such as deaf and hard of hearing individuals, school systems, courts of law, etc., will see an improvement in the level of services that they receive. The school systems may need to amend their administrative regulations to conform with the administrative regulations herein.

(5) Estimate of how much it costs to implement this administrative regulation:
(a) Initially: The cost of application for each applicant for temporary licensure is the only cost associated with this administrative regulation. The specific fee is set forth in 201 KAR 39:040.

(b) On a continuing basis: No change in the cost of application is anticipated.

(6) The source of funding for the implementation and enforcement of this administrative regulation: General board funds.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

KENTUCKY BOARD OF INTERPRETERS FOR THE DEAF AND HARD OF HEARING
(New Administrative Regulation)

201 KAR 39:070. Application, qualifications, and certification levels for temporary licensure.

RELATES TO: KRS 309.312(1)(b), (3)
STATUTORY AUTHORITY: KRS 309.304(3)
NECESSITY: PUBLIC, AND CONFORMITY: KRS 309.304(3) and 309.312(1)(b) and (3) require the board to promulgate an administrative regulation establishing the requirements for an applicant for temporary licensure as an interpreter for the deaf and hard of hearing.

Section 1. Definition. "Board-approved supervisor" means a licensed interpreter:
(1) In this or another state whose licensure requirements meet or exceed the licensure requirements of this state;
(2) Who holds a certificate from the National Association for the Deaf and Hard of Hearing ("NAD") Level IV or V or the Registry of the Interpreters for the Deaf ("RID") for a minimum of four (4) years prior to serving as a supervisor; and
(3) Has completed sixty (60) hours of continuing education since obtaining the NAD or RID certification.

Section 2. Application for Licensure. Each applicant shall submit:
(1) A completed "Application for Licensure" Form;
(2) The appropriate application and licensure fees as required by 201 KAR 39:040;
(3) A "Plan of Supervision for a Temporary Licensure" from a board-approved supervisor; and
(4) Certification of competence from the National Association for the Deaf in Level III Intermediate;
(5) Persons working in a K-12 educational setting only: proof of successful completion of the Sign Communication Proficiency Interview (SCPI)-Intermediate Plus level or the Educational Interpreter Performance Assessment with a score of 2.75 or above.

Section 3. Supervision Requirements. (1) Each applicant for a temporary license shall be trained and supervised by a board-approved supervisor.
(2) During the period of training and supervision the supervisor shall meet with each licensee on a quarterly basis. One (1) of these meetings shall be on a face-to-face basis with each person being supervised. The remaining meetings may be through the use of video or video teleconferencing.
(3) A supervisor shall contract with no more than twenty (20) temporary licensees during a calendar year.

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Application for Temporary License", 2001; and
(b) "Plan of Supervision for a Temporary Licensee" 2001.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
VOLUME 28, NUMBER 5 – NOVEMBER 1, 2001

(8) This administrative regulation does not establish fees.
(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all applicants for temporary licensure.

KENTUCKY BOARD OF INTERPRETERS FOR THE DEAF AND HARD OF HEARING
(New Administrative Regulation)

201 KAR 39:080. Reciprocity.

RELATES TO: KRS 309.304(1), 309.312(4)
STATUTORY AUTHORITY: KRS 309.304(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.312(4) requires the board to promulgate an administrative regulation governing the granting of a license through reciprocity. This administrative regulation establishes the requirements for licensure by reciprocity.

Section 1. An applicant for licensure by reciprocity shall:
(1) Hold a current, valid license in good standing to practice interpreting which has been granted by at least one (1) state, U.S. Territory, the District of Columbia, or a Canadian province, which maintains an interpreter registration board;
(2) The standards or requirements for having granted that license shall meet or exceed the licensure requirements contained in KRS Chapter 309 and the accompanying administrative regulations;
(3) Not have a record of disciplinary action pending in another state or province; and
(4) Submit the reciprocity fee as set forth in 201 KAR 39:040, Section 7.

LINDA KOLB BOZEMAN, Interim Chair
APPROVED BY AGENCY: October 15, 2001
FILED WITH LRC: October 15, 2001 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 2001, at 9:00 a.m. at the offices of the Board of Education, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify the agency in writing by November 15, 2001, five workdays prior to the hearing of their intent to attend. If no notification 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 regulation.

CONTACT PERSON: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, 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 establishes the standards for reciprocity.
(b) The necessity of this administrative regulation: To inform the public of the manner in which reciprocity may be granted to applicants from other states, districts, or provinces.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 309.304(3) authorizes the board to promulgate administrative regulations in accordance with KRS Chapter 13A to effectively carry out and enforce the provisions of KRS 309.300 to 309.319.
(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation clearly delineates the process for application for reciprocity.
(2) 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 those men and women who are apply for licensure by reciprocity. Presently, it is impossible to guess the number of applicants who may be affected.
(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: Applicants must meet or exceed the requirements set forth for licensure in this Commonwealth. The process of application for licensure by reciprocity is set forth in detail in this administrative regulation.
(5) Estimate of how much it costs to implement this administrative regulation:
(a) Initially: The cost of application for each applicant for licensure is the only cost associated with this administrative regulation. The specific fee is set forth in 201 KAR 39:040.
(b) On a continuing basis: No change in the cost of application is anticipated.
(c) The source of funding for the implementation and enforcement of this administrative regulation: General board funds.
(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.
(8) This administrative regulation does not establish fees.
(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all applicants for licensure by reciprocity.

KENTUCKY BOARD OF INTERPRETERS FOR THE DEAF AND HARD OF HEARING
(New Administrative Regulation)

201 KAR 39:090. Continuing education requirements.

RELATES TO: KRS 309.304(5)
STATUTORY AUTHORITY: KRS 309.314(7)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.314(7) authorizes the board to promulgate an administrative regulation that requires interpreters who apply for renewal to show evidence of completion of continuing education. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definition. One (1) continuing education hour means sixty (60) contact minutes of participating in continuing education experiences.

Section 2. Accumulation of Continuing Education Hours Mandatory; Computation of Accrual. (1) A person who is licensed as an interpreter shall have earned a total of fifteen (15) hours of approved continuing education during the compliance period, prior to renewal of his license for the next licensure period.

(2) A minimum of half of the fifteen (15) hours shall be from any of the following sources, alone or in combination, which have been pre-approved by the board:
(a) Alexander Graham Bell Association of the Deaf;
(b) American Sign Language Teacher Association;
(c) National Association of the Deaf;
(d) National Educational Interpreters Conference;
(e) Registry of Interpreters for the Deaf - Certificate Maintenance Program; or
(f) Registry of Interpreters for the Deaf - Associate Continuing Education Training.

(3) A minimum of fifteen (15) continuing education hours shall be accrued by each licensee during the licensure period for renewal for the following year.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of an interpreter. The hours shall be earned by completing any of the following educational activities:
(1) Programs not requiring board review and approval. An educational program from any of the following providers shall be deemed to be relevant to the practice of interpreting and shall be approved without further review by the board:
(a) A program sponsored or approved by the:  
1. Alexander Graham Bell Association of the Deaf;  
2. American Sign Language Teacher Association;  
3. National Association of the Deaf; or  
4. Registry of Interpreters for the Deaf; or  
(b) An academic course offered by an accredited postsecondary  
institution that is directly related to interpreting. Credit shall only be  
granted for grades of "C" or above.  

(2) Programs requiring board review and approval. A program  
from any of the following sources shall be reviewed and determined if  
the program is relevant and therefore subsequently approved by the  
board:  
(a) Relevant programs, including home study courses and in-  
service training provided by other organizations, educational institu-  
tions, or other service providers approved by the board;  
(b) Relevant programs or academic courses presented by the  
licensee. Presenters of relevant programs or academic courses may  
earn full continuing education credit for each contact hour of instruc-  
tion, not to exceed three (3) hours of continuing education credits.  
Credit shall not be issued for repeated presentation of the same  
course.  

(c) Authoring an article in a relevant, professionally-recognized, or  
juried publication. Credit shall not be granted for an article unless the  
article was published within the one (1) year period immediately  
preceding the renewal date. A licensee shall earn three (3) hours of con-  
tinuing education credit toward the hours required for renewal. No  
more than one (1) publication shall be counted during a renewal peri-  
d. A general education course, elective course, or a course de-  
digned to meet degree requirements offered by an accredited post-  
secondary institution. Academic credit equivalency for continuing educa-  
tion hours shall be based on one (1) credit hour equals one (1)  
continuing education hour. Credit shall only be granted for grades of  
"C" or above.  

Section 4. Procedures for Preapproval of Continuing Education  
Sponsors and Programs. (1) Any entity seeking to obtain approval of a  
continuing education program prior to its offering shall complete and  
submit the Application for Continuing Education Program Approval  
form to the board at least sixty (60) days in advance of the commen-  
tation of the program, stating the following:  
(a) A published course or similar description containing educa-  
tional objectives;  
(b) Names and qualifications of the instructors;  
(c) A copy of the program agenda indicating hours of instruction,  

and lunch breaks;  
(d) Number of continuing education hours offered; and  
(e) Official certificate of completion or college transcript from the  
sponsoring agency or college.  

(2) A continuing education activity shall be qualified for approval if  
the board determines the activity being offered:  
(a) Is an organized program of learning;  
(b) Pertains to subject matters, which integrally relate to the prac-  
tice of interpreting;  
(c) Contributes to the professional competency of the licensee;  
and  
(d) Is conducted by individuals who have educational training or  
experience acceptable to the board.  

(3) A sponsor of continuing education requiring board approval  
shall be responsible for submitting a course offering to the board for  
review and approval before listing or advertising that offering as ap-  
proved by the board.  

Section 5. Responsibilities and Reporting Requirements of Licen-  
sees. A licensee shall be responsible for obtaining the required con-  
tinuing education hours. He shall identify his own continuing education  
needs, take the initiative in seeking continuing education activities to  
mets these needs, and seek ways to integrate new knowledge, skills  
and attitudes. Each person holding a license shall:  
(1) Select approved activities by which to earn continuing educa-  
tion hours;  
(2) Submit to the board when applicable a request for approval for  
continuing education activities not approved by the board as set forth  
in Section 5 of this administrative regulation;  

(3) Maintain records of continuing education hours. Each licensee  
shall maintain all documentation verifying successful completion of  
continuing education hours for a period of two (2) years from the date  
of renewal. During each licensure renewal period, up to fifteen (15)  
percent of all licensees shall be required by the board to furnish  
documentation of the completion of the appropriate number of con-  
tinuing education hours for the current renewal period. Verification of  
continuing education hours shall not be otherwise reported to the  

board;  
(4) Document attendance and participation in a continuing educa-  
tion activity in the form of official documents including transcripts, cer-  
tificates, affidavits signed by instructors, receipts for fees paid to the  
sponsor, or less formal evidence including written summaries of expe-  
rience that are not otherwise normally or officially documented in any  
way. The type of documentation required shall vary depending on the  
specific activity submitted to the board for approval; and  
(5) Fully comply with the provisions of this administrative regula-  
tion. Failure to comply shall constitute violation of KRS 309.318(1)(f)  
and may result in the refusal to renew, suspension, or revocation of  
the licensure.  

Section 6. Procedures for Approval of Continuing Education Pro-  
grams. A course, which has not been preapproved by the board, may  
be used for continuing education if approval is secured from the board  
for the course. In order for the board to adequately review a program,  
the following information shall be submitted:  
(1) A published course or similar description containing educa-  
tional objectives; and  
(2) Names and qualifications of the instructors.  

Section 7. Carry Over of Continuing Education Hours. A licensee  
can carry over continuing education hours earned in excess of those  
required under Section 1 of this administrative regulation for one (1)  
renewal period, after which time they expire. All carry-over hours must  
comply with the requirements of Sections 1 and 2 of this administrative  
regulation.  

Section 8. Board to Approve Continuing Education Hours; Appeal  
when Approval Denied. In the event of a denial, in whole or in part, of  
a request for approval of continuing education hours, the licensee  
shall have the right to request reconsideration by the board of its  
decision. The request shall be in writing, specifically stating the rea-  
sions for reconsideration, and shall be received by the board within  
three (30) days of the board's decision denying approval of continuing  
education hours.  

Section 9. Waiver or Extensions of Continuing Education. All re-  
quests for waiver or extension shall accompany the License Renewal  
Application Form.  
(1) Upon written request, the board shall consider whether to grant  
a waiver of continuing education requirements or an extension of time  
within which to fulfill the requirements, in the following cases:  
(a) Medical disability of the licensee;  
(b) Illness of the licensee or immediate family member;  
(c) Death or serious injury of an immediate family member; or  
(d) For good cause shown.  
(2) A written request for a waiver or extension of time involving  
medical disability or illness shall be:  
(a) Submitted by the person holding a license; and  
(b) Accompanied by a verifying document signed by a licensed  
physician.  
(3) An extension of time within which to fulfill the minimum con-  
tinuing education requirements shall not exceed sixty (60) days, or  
August 30.  
(4) A waiver of the continuing education requirements applies only  
to the current licensure year.  
(a) Subsequent requests for waiver of the continuing education  
requirements must be made at the time of licensure renewal.  
(b) There is no limit to the number of waivers that the board may  
grant, as long as the applicant meets the requirements set forth in  
subsections (1) and (2) of this section.  

Section 10. Continuing Education Requirements for Reinstate-  
ment of License. (1) A person requesting reinstatement of licensure  

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shall submit evidence of completion of fifteen (15) hours of continuing education within the twelve (12) month period immediately preceding the date on which the request for reinstatement is submitted to the board.

(2) If the person seeking reinstatement does not meet the requirements established in subsection (1) of this section, the board may conditionally reinstate licensure, requiring the applicant to obtain fifteen (15) hours of continuing education within six (6) months of the date on which licensure is reinstated.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 1 of this administrative regulation and shall not be used to comply with the requirements of that section.

Section 11. Incorporation by Reference. (1) "Continuing Education Application", 2003 form is incorporated by reference.

(2) This material may be inspected, coped, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LINDA KOLB BOZEMAN, Interim Chair
APPROVED BY AGENCY: October 15, 2001
FILED WITH LRC: October 15, 2001 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 2001, at 9:00 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 2001, five workdays prior to the hearing of their intent to attend. If no notification 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 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: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, 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 establishes the continuing education requirements for all licensees.

(b) The necessity of this administrative regulation: To inform the licensees of the continuing education requirements which must be met to maintain licensure.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 309.304(3) authorizes the board to promulgate administrative regulations in accordance with KRS Chapter 19A to effectively carry out and enforce the provisions of KRS 309.300 to 309.319.

(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation clearly delineates the process for application and approval of the requisite continuing education hours.

(2) 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 approximately 300+ men and women who are expected to apply for licensure.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: Licensees must meet the continuing education requirements set forth in this administrative regulation. The process from application to approval to waiver is set forth in detail in this administrative regulation.

(5) Estimate of how much it costs to implement this administrative regulation:

(a) Initially: The cost of continuing education varies depending upon the class or method chosen.

(b) On a continuing basis: The cost of continuing education varies depending upon the class or method chosen.

(6) The source of funding for the implementation and enforcement of this administrative regulation: General fund.

(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

(8) This administrative regulation does not establish fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all licensees.

KENTUCKY BOARD OF INTERPRETERS FOR THE DEAF AND HARD OF HEARING
(New Administrative Regulation)

201 KAR 39:100. Complaint procedure.

RELATES TO: KRS 303.318
STATUTORY AUTHORITY: KRS 309.304(3), 309.316(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.316 delineates the causes for which disciplinary action may be taken against a licensee. This administrative regulation establishes procedures for filing, evaluation, and disposition of administrative complaints.

Section 1. Definitions. (1) "Case manager" means a member of the board appointed by the chair of the board to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint.

(2) "Chair" means the chair or vice-chair of the board.

(3) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (5) of this section, issued by the board alleging a violation of a specified provision of KRS Chapter 309, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(4) "Complaint" means any written or videotaped allegation of misconduct by a licensed individual that might constitute a violation of KRS Chapter 309, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(5) "Complaint screening committee" means a committee consisting of three (3) persons on the board appointed by the chairman of the board to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint. In addition to board members the executive director of the board or another staff member may be appointed to serve on this committee.

(6) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

(7) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(8) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

Section 2. Receipt of Complaints. (1) A complaint:

(a) May be submitted by an:

1. Individual;

2. Organization; or

3. Entity.

(b) Shall be:

1. In writing or contained on a videotape; and

2. Contain the signature, address, and telephone number of the person submitting the complaint; and

(c) May be filed by the board or board member based upon information in its possession.

(2) A videotaped complaint shall be accompanied by a form pro-
vided by the board.

(3) Upon receipt of the complaint a copy of the complaint shall be sent to the licensee named in the complaint along with a request for the licensee's response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the licensee's response, the case manager or the complaint screening committee shall consider the complaint, the licensee's response, and any other relevant materials available and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:
(a) Dismiss the complaint; and
(b) Notify the complainant and licensee of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall:
(a) Authorize an investigation into the matter; and
(b) Order a report to be made to the case manager or the complaint screening committee at the earliest opportunity.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a written report to the case manager or the complaint screening committee of the facts regarding the complaint. The case manager or the complaint screening committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS Chapter 309 or the administrative regulations promulgated thereunder and if a complaint should be filed.

(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:
(a) Dismiss the complaint; and
(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a violation has occurred but is not serious, the board may issue a written admonishment to the licensee. A copy of the written admonishment shall be placed in the permanent file of the licensee. The licensee shall have the right to file a response in writing to the admonishment within thirty (30) days of its receipt and may have it placed in his permanent file. Alternatively, the licensee may file a request for a hearing with the board within thirty (30) days of the admonishment. Upon receipt of the request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

(4) If the board determines that a complaint warrants the issuance of a formal complaint against the respondent, the board attorney in conjunction with the case manager or the complaint screening committee shall prepare a formal complaint which states clearly the charges or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B.

(5) If the board determines that a person may be in violation of KRS 309.301(1), it shall:
(a) Order the individual to cease and desist from further violations of KRS 309.301(1);
(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 309.301(1) with a request that appropriate action be taken under KRS 309.319; or
(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 309.301(1) pursuant to KRS 309.304(7).
(5) Estimate of how much it costs to implement this administrative regulation:
(a) Initially: There is no initial cost associated with this administrative regulation.
(b) On a continuing basis: The costs will vary depending upon factors such as the necessity of a formal investigation, if the case can be resolved by informal means, or whether it proceeds to a formal hearing pursuant to KRS Chapter 13B.
(6) The source of funding for the implementation and enforcement of this administrative regulation: General board funds.
(7) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.
(8) This administrative regulation does not establish fees.
(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all licensees.

KENTUCKY BOARD OF INTERPRETERS FOR THE DEAF AND HARD OF HEARING
(New Administrative Regulation)


RELATES TO: KRS 309.304(3)
STATUTORY AUTHORITY: KRS 309.318(1)(b)
NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessitated by KRS 309.318(1)(f), which requires the board to adopt and publish a code of ethics.

Section 1. Preamble. The preservation of the highest standards of integrity and ethical principles is vital to the successful discharge of the professional responsibilities of all interpreters for the deaf and hard of hearing. This code of ethics has been promulgated by the Kentucky Board of Interpreters for the Deaf and Hard of Hearing in an effort to stress the fundamental rules considered essential to this basic purpose. Any action that is in violation of this administrative regulation shall be considered unethical. The enumeration of the standards in Section 2 of this administrative regulation is not exhaustive of all standards of professional and ethical conduct expected of a licensee.

Section 2. All licensees shall abide by the following standards of professional and ethical conduct:
(1) Licensees shall keep all assignment-related information strictly confidential. From the moment of accepting the assignment, the interpreter holds a trustworthy relationship with the consumer, in which the interpreter is bound to confidentiality.
(a) All information obtained from the interpreter service shall be considered confidential. This applies whether the interpreter accepts or declines the assignment.
(b) All information about a consumer that is received from other interpreters shall be considered confidential and shall be exchanged in a manner which protects both the consumer and the assignment.
(c) The interpreter shall comply with the requirements of KRS Chapter 620.
(2) Licensees shall faithfully convey the content and spirit of the speaker using language most readily understood by the person(s) whom they serve. Every interpretation shall be faithful to the message of the source text. A faithful interpretation should not be confused with a literal interpretation. The fidelity of an interpretation includes an adaptation to make the form, the tone, and the deeper meaning of the source text felt in the target language and culture.
(3) Licensees shall possess the knowledge and skills to support accurate and appropriate interpretation. Licensees work in a variety of settings and with a wide range of consumers and therefore must be adept at meeting the linguistic needs of consumers, the cultural dynamics of each situation, and the spirit and content of the discourse.
(4) Licensees shall not counsel, advise or interject personal opinions.
(a) Interpreters shall remain neutral, impartial, and objective. Should the interpreter find himself unable to put aside personal biases or reactions which threaten impartiality, the interpreter is under an obligation to examine options and take actions to remedy the situation.
(b) Interpreters shall refrain from altering a message for political, religious, moral, or philosophical reasons, or for any other biased or subjective considerations.
(c) The interpreter shall advise the consumer that he assumes a position of neutrality in the relationship between all parties during an interpreting assignment. He shall not become personally involved in regards to the issues or persons present at the interpreting assignment.
(5) Licensees shall accept assignments using discretion with regard to skill, setting, and the consumers involved.
(a) Interpreters shall recognize the need for a deaf interpreter and advocate their participation as part of the interpreting team. Deaf interpreters may be necessary when working with individuals who use regional sign dialects, nonstandard signs, foreign sign languages, and those with emerging language usage.
(b) Interpreters shall generally refrain from providing services in situations where family members, personal or business associations may affect impartiality. In emergency situations an interpreter may provide services for family members, friends or business associates. In such situations, the interpreter shall guard against allowing his personal involvement to affect his ability to interpret impartially. If the interpreter finds that he can no longer be impartial, he must inform the parties involved and may assist in finding another interpreter.
(6) Prior to accepting an engagement for services licensees shall advise the party responsible for payment of the services to be provided of the amount of compensation to be charged for the services.
(7) Licensees shall not advertise their services in a false, deceptive or misleading manner.
(8) Licensees shall function in a manner appropriate to the situation. Interpreters shall attempt to become familiar with the anticipated discussion topic, type of activity, level of formality, expected behaviors, and possible presentational materials prior to commencement of the assignment.

LINDA KOLB BOZEMAN, Interim Chair
APPROVED BY AGENCY: October 15, 2001
FILED WITH LRC: October 15, 2001 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 2001, at 9:00 a.m. at the offices of the Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 15, 2001, five working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by this date, the 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 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: Nancy Black, Executive Director, Division of Occupations and Professions, 700 Louisville Road, Frankfort, Kentucky 40601, telephone (502) 564-3296, 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 establishes the code of conduct for all licensees.
(b) The necessity of this administrative regulation: To inform the licensees of the expected standards of practice and ethical principles to be followed.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 309.304(3) authorizes the board to promulgate administrative regulations in accordance with KRS Chapter 13A to effectively carry out and enforce the provisions of KRS 309.300 to 309.319. KRS 309.318 requires the board to adopt a code of ethics. This administrative regulation adopts a national code of conduct and incorporates them into the board's laws.
(d) How this administrative regulation will assist in the effective administration of the statutes: This administrative regulation clearly
delineates the standards and professional responsibilities expected of all licensees.

(2) This is a new administrative regulation.

List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect approximately 300+ men and women who are expected to apply for licensure.

(4) Assessment of how the above groups will be impacted by the implementation of this administrative regulation: This regulation informs licensees of the code of conduct which must be followed.

(5) Estimate of how much it costs to implement this administrative regulation:

(a) Initially: There is no initial cost associated with this administrative regulation.

(b) On a continuing basis: There is no on-going cost associated with this administrative regulation.

(b) The source of funding for the implementation and enforcement of this administrative regulation: General board funds.

(6) Assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: The board does not anticipate any increase in fees or funding to implement this administrative regulation.

(8) This administrative regulation does not establish fees.

(9) TIERING: Is tiering applied? No. This administrative regulation applies equally to all licensees.

GOVERNOE'S OFFICE FOR TECHNOLOGY
Commercial Mobile Radio Service Emergency Telecommunications Board of Kentucky
(New Administrative Regulation)

202 KAR 6:070. PSAP Workload Fund disbursement.

RELATES TO: KRS 65.7621 to 65.7643, 9 USC 1 to 16, 47 USC 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(2)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(2)(b) requires the CMRS Board to establish procedures and guidelines for reviewing, evaluating, and approving or disapproving disbursements from the CMRS Fund and requests for disbursements. This administrative regulation establishes the wireless workload fund disbursement process.

Section 1. Initial Revenues Collected by the CMRS Board. (1) Monthly revenues remitted to the CMRS Board prior to July 1, 2001 for distribution per the "wireless workload formula" shall be disbursed in one (1) payment.

(2) PSAPs certified by the CMRS Board on October 1, 2001 shall be eligible to receive a disbursement under this section.

(3) Not later than July 1, 2001, the CMRS Board shall notify PSAPs of this deadline by:

(a) Posting it on the CMRS Board's website; and

(b) Distributing it in writing to:

1. County judge executives of those jurisdictions without a certified PSAP;
2. Mayors of class six (6) cities or above in those jurisdictions without a certified PSAP;
3. Mayors of urban county governments in those jurisdictions without a certified PSAP;
4. The executive director of each area development district; and
5. All currently certified PSAPs.

(4) Each PSAP certified by the board shall receive a disbursement from the workload funds in accordance with KRS 65.7631(2)(a), within 120 days after June 30, 2001.

Section 2. Ongoing Revenues Collected by the CMRS Board. (1) Wireless workload revenues remitted to the CMRS Board during any calendar quarter after June 30, 2001 shall be disbursed in one payment to PSAPs within 120 days of the end of that same calendar quarter.

(2) Each PSAP certified by the end of a calendar quarter shall be eligible for a disbursement of funds received during that same calendar quarter.

Section 3. Determination of the Zip Codes or Portions thereof in a PSAP's Jurisdiction. (1) Not later than June 30, 2001, CMRS Board staff shall submit by certified mail, return receipt requested, to all certified PSAPs and those whose application for certification is currently being processed by the CMRS Board, a list of all zip codes or any portion of a zip code greater than three (3) percent within the PSAP's jurisdiction, as determined by Kentucky's Office for Geographic Information from U.S. Post Office data.

(a) Within forty-five (45) days of receipt of the zip code list from the CMRS Board, each PSAP shall acknowledge, in writing to the CMRS Board, that:

(a) The list of zip codes determined by the CMRS Board to be in the PSAP's jurisdiction is correct and complete; and

(b) Where at least a three (3) percent or larger portion of a zip code is in more than one (1) PSAP's jurisdiction, the percentage of the zip code area allocated by the CMRS Board to this PSAP is equivalent to the percentage of CMRS connections within the zip code.

(2) Within forty-five (45) days of receipt of the zip code list from the CMRS Board, a PSAP may dispute zip code allocations or percentage allocations of zip codes by notifying the board and any PSAP affected by the dispute, in writing, of the problematic zip code.

(a) Within five (5) working days of receipt of such a notice, the CMRS Board shall notify all PSAPs affected by the dispute, by certified mail, return receipt requested. The affected PSAPs shall negotiate a mutually-acceptable resolution to the identified problem and notify the CMRS Board of the result.

(b) If within the following thirty (30) days the CMRS Board is not notified of a mutually-acceptable resolution between the affected PSAPs, regarding the identified problem, the board shall determine the percentage of the identified zip code to be allocated to each PSAP.

(4) A PSAP may request a change to a previously-approved zip code allocation by submitting a written request to CMRS Board and the other affected PSAPs no later than thirty (30) days after the end of any calendar quarter.

(a) Within five (5) working days of receipt of such a request, CMRS Board staff shall notify all affected PSAPs, by certified mail, return receipt requested. The affected PSAPs shall negotiate a mutually-acceptable resolution to the requested change and notify the CMRS Board of the result.

(b) If within the following thirty (30) days the CMRS Board is not notified of a mutually-acceptable resolution between the affected PSAPs, regarding the requested change, the board shall determine the percentage of the zip code to be allocated to each PSAP.

(5) A PSAP may appeal any final allocation of a zip code assignment in accordance with KRS Chapter 139.

The zip codes and percentage allocations of zip codes as determined in this section shall be used to determine the number of CMRS connections for each PSAP as required by Section 4(3) of this administrative regulation.

Section 4. Calculation of Individual PSAP Disbursements Under the PSAP's Wireless Workload Formula. (1) Not more than two (2) calendar months after the end of calendar quarter, CMRS Board shall determine a value per CMRS connection by dividing the total amount of funds remitted to the CMRS Board during the collection period established for this disbursement by the total number of CMRS connections, as submitted in a quarterly report by the CMRS providers.

(2) CMRS Board staff shall then multiply the value per connection by the number of connections in each zip code as reported in the quarterly reports specified in subsection (1) of this section.

(3) For those zip codes which cross PSAP jurisdictional boundaries, the CMRS Board shall divide the disbursement for that zip code according to the percentages established in Section 3 of this administrative regulation.

(4) A PSAP's workload disbursement shall consist of the totalized amounts for all zip codes or percentage of zip codes whose areas are served by a PSAP as determined by subsections (2) and (3) of this section.

(5) Disbursement amounts attributed to zip codes whose allocation of CMRS connections is disputed by a PSAP shall be reserved by the CMRS Board in its normal accounts until a allocation for that zip code is determined.

(a) Disputed funds shall remain in the CMRS fund accounts until
(b) All interest accrued by disputed funds shall be distributed among the normal CMRS accounts in accordance with KRS 65.7627.

(c) Upon resolution of any dispute, the reserved funds shall be disbursed to the PSAPs with the next regular workload fund disbursement. Interest accrued during the period of the dispute shall remain in the CMRS fund use as specified by KRS 65.7627 and 65.7631.

RICHARD GUJTAR, Chairman
APPROVED BY AGENCY: September 27, 2001
FILED WITH LRC: October 5, 2001 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held November 21, 2001, at 1 p.m. in the CMRS Board conference room, 21 Millcreek Park, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2001, five business days prior to hearing, of their intent to attend. If no notification 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. If you do not wish to attend a 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: John J. Patterson, CMRS Administrator, CMRS Board, 21 Millcreek Park, Frankfort, Kentucky 40601, (502) 573-1000, FAX: (502) 573-1711.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John J. Patterson, ENP, CMRS Administrator, 21 Millcreek Park, Frankfort, KY 40601, Phone: (502) 573-1000, FAX: (502) 573-1711, John.patterson@mail.state.ky.us

(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation defines the process by which the amounts disbursed to PSAPs under the workload formula will be determined and the dates by which PSAPs must be certificated to participate in these disbursements.

(b) The necessity of this regulation: The statute KRS 65.7631(2)(b) permits the CMRS Board to determine the basis for these disbursements. KRS 65.7632(3)(c) requires the Board to promulgate regulations for this purpose.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation determines the formulas to be used in the disbursement of the workload portion of the CMRS Fund.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 65.7631(2)(b) states that the CMRS Board must determine the most effective method of measuring the workload of the PSAPs and disburse the funds accordingly. This regulation defines the process to be used for disbursement.

(2) If this an amendment to an existing regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or local governments affected by this administrative regulation: Approximately 80 public safety answering points (PSAPs) operated by local governments and Kentucky State Police.

(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: PSAPs will receive additional revenue in quarterly payments correlated to the amount of work they perform in the management of calls by wireless consumers to 9-1-1. This money is to assist them in covering their costs for additional hardware and software caused by the additional workload imposed by wireless 9-1-1 traffic.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: There is no additional cost in the implementation for this regulation since it only requires some staff time for the CMRS Board to set up the initial formulas and gain agreement from the local PSAPs regarding the percentage allocation where zip codes are split across more than one PSAP's jurisdiction.

(b) On a continuing basis: On comments filed, there is virtually no additional work to maintain this formula for disbursement.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The administrative budget of the CMRS Board will cover all of the costs of implementation and enforcement of this regulation. The CMRS Board receives its budget allocation solely from its statutory allocation of the CMRS surcharges remitted to the CMRS fund.

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

(9) TIERING: Is tiering applied? No. This regulation applies equally to all regulated entities.

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?

2. State what unit, part, or division of local government this administrative regulation will affect: Specify the unit, part, or division. Public safety communications operations which utilize enhanced 9-1-1 facilities to receive calls for emergency services from the public will be affected by this administrative regulation.

3. State the aspect or service of local government to which this administrative regulation relates: This administrative regulation relates to the reception and management of voice and data elements associated with calls to 9-1-1 centers for emergency service from wireless telephone users.

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 statement of the fiscal impact of this regulation. The purpose of this administrative regulation is to stipulate deadlines for eligibility to receive fund distributed by the Commercial Mobile Radio Service Board in accordance with the workload formula specified by KRS 65.7631(2)(b). This administrative regulation also stipulates both when the revenue collected during the start up phase of board operations and the ongoing revenues remitted to the board will be paid to 9-1-1 centers. This administrative regulation will impact city, county, or urban county governments that operate or contract with others to operate enhanced 3-1-1 services. Government revenues will increase via payments from the Commercial Mobile Radio Services Board based on the total number of wireless connections billed within individual government entities. As a gauge of the additional workload imposed on their 9-1-1 centers. Participating government entities, depending on the current utilization of the equipment deployed in a 9-1-1 center, may be required to increase their expenditures to manage the increased workload and increase capacity in telecommunications network facilities in order. It is anticipated that the increase revenues available will exceed any increased costs incurred by an individual local government and some may receive small surpluses above their increased costs. Neither state revenues nor expenditures are increased or decreased by this administrative regulation because the revenue utilized by the board are collected from wireless consumers as a user surcharge. No additional fees are collected by local governments nor are any paid by local governments to the board. Any local government certified by the board as a result of the administrative regulation is entitled to an equal share of 25% of the funds collected by the board and to a stipend for each wireless 911 call received based on a formula in accordance with KRS 65.7631(2) and (9).
GOVERNOR'S OFFICE FOR TECHNOLOGY
Commercial Mobile Radio Service Emergency
Telecommunications Board of Kentucky
(New Administrative Regulation)

202 KAR 6:080. CMRS surcharge remittance and reporting.

RELATES TO: KRS 65.7621 to 65.7643, 9 USC 1 to 16, 47 USC 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7629(3), (5), 65.7639
NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7631(3) requires the CMRS Board to collect surcharges from every CMRS connection in the Commonwealth and to distribute a portion of the revenues deposited into the CMRS fund to PSAs based on their workload in complying with the wireless E911 service requirements established by the FCC order. This administrative regulation establishes the process by which CMRS providers and their resellers will remit those surcharges and report the necessary information to collect the remittances and to calculate the required disbursements.

Section 1. Remittance of CMRS Surcharge. (1) A CMRS provider shall remit to the CMRS Board the CMRS surcharge by the means and in the manner specified by the board on its web page at "http://cmrsboard.state.ky.us".

(2) The board shall not less than ninety (90) calendar days prior to implementation of any change in remittance procedure notify all providers by certified mail, return receipt requested of the method to be employed including copies of any required forms and instructions for use.

(3) The board shall:
   (a) Provide copies of any required forms and instructions for use to all providers upon request by any provider; and
   (b) Maintain a copy of the form in current use with instructions on its web site.

Section 2. Quarterly Report of CMRS Connections in a Zip Code. (1) All CMRS providers, including resellers, shall submit to the CMRS Board a quarterly report of the number of CMRS connections served by them.

(2) Each quarterly report shall list for each zip code served by the provider and located at least partially in Kentucky, the number of CMRS connections billed by them in the months of March, June, September, or December.

(3) The report shall be sorted by zip code and submitted as an Excel spreadsheet.

(4) Resellers of CMRS service shall also include a list of the CMRS providers on whose network they resell service and the number of CMRS connections on each.

(5) The report shall be due at the CMRS Board office no later than sixty (60) days following the end of the reporting month.

Section 3. Required Reports Regarding Resellers of CMRS Service. (1) CMRS providers who contract with resellers of wireless service shall submit to the CMRS Board a quarterly report of all vendors reselling wireless service on the provider's network.

(2) The quarterly report shall:
   (a) Include the reseller's business name, address, contact person, telephone numbers, and email address;
   (b) Be submitted to the board no later than sixty (60) days after the end of a calendar months of March, June, September, and December; and
   (3) Include the number of CMRS connections receiving service on the provider's network and billed by the listed reseller, only if the network provider has a cost recovery plan based on subscribers.

Section 4. Provider Failure to Comply with Reporting and Remittance Requirements. (1) Failure to comply with the requirements of this administrative regulation may constitute cause for the board to suspend cost recovery payments to a provider.

(2) Cost recovery payments may be suspended only if authorized by a majority vote of the CMRS Board.

(3) The CMRS Board may not vote to suspend cost recovery payments to a provider unless the provider has been notified in writing of their failure to comply with the administrative regulations' requirements and allowed sufficient time to respond.

(4) The provider may appeal the board's suspension of cost recovery payments in accordance with KRS Chapter 13B.

RICHARD GUHTAR, Chairman
APPROVED BY AGENCY: September 4, 2001
FILED WITH LRC: October 5, 2001 at 10 a.m.
PUBLIC HEARING: A public hearing on this administrative regulation will be held November 21, 2001, at 1 p.m. in the CMRS Board conference room, 21 Millcreek Park, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 2001, five business days prior to hearing, of their intent to attend. If no notification 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. 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: John J. Patterson, CMRS Administrator, CMRS Board, 21 Millcreek Park, Frankfort, Kentucky 40601, (502) 573-1000, FAX: (502) 573-1711.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT
Contact Person: John J. Patterson, EPN, CMRS Administrator, 21 Millcreek Park, Frankfort, KY 40601, Phone: (502) 573-1000, FAX: (502) 573-1711, John.Patterson@mail.state.ky.us

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation defines the process by which the CMRS surcharge shall be remitted by CMRS providers and the reports required of them.

   (b) The necessity of this regulation: The statute KRS 65.7631(2)(b) permits the CMRS Board to determine the basis for disbursements and KRS 65.7639 permits the board to report. The board has the authority to create the above basis. KRS 65.7629(3) requires the board to collect the CMRS surcharge from all CMRS connections billed in the state.

(2) How this regulation conforms to the content of the authorizing statute: This regulation determines the process by which providers will remit surcharges; and what reports are necessary to be filed by providers to ensure that all providers are remitting funds and providing the data necessary to disburse CMRS funds to local governments.

(3) How this administrative regulation currently assists or will assist in the effective administration of the statute: KRS 65.7631(2)(b) states that the CMRS Board must determine the most effective method of measuring the workload of the PSAs and disburse the funds accordingly. This regulation defines the reports necessary to ensure that the CMRS Board has the data necessary to determine the "workload" of each PSA and that all surcharges are collected process to be used for disbursement. It also defines a uniform process that all providers must use to remit the surcharges.

(2) If this an amendment to an existing regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

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

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

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

(3) List the type and number of individuals, businesses, organizations, or local governments affected by this administrative regulation: Approximately 30 CMRS providers billing wireless consumers in the Commonwealth.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: CMRS providers have been using a paper form for remitting surcharges resulting in numerous efforts to correct errors and misrouted remittances. This method merely changes the remittance method to an electronic form that will ensure that the money is correctly the first time and will be
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intermittently routed to the CMRS accounts. It also requires that CMRS providers keep the board informed of any providers who are buying service wholesale and selling wireless phone service to retail customers. Finally, it simplifies the data that providers submit by substituting a requirement that providers supply the CMRS Board with subscriber-based information instead of the previous requirement for the number of calls forwarded to each PSAP.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: This regulation will save staff time previously spent on tracking down misrouted remittances and correcting inaccurate remittances. It will also minimize the cost of calculating workload payments to PSAPs.
(b) On a continuing basis: Once established, the costs associated with this regulation should decrease, as staff time is no longer expended on setting up these processes.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The administrative budget of the CMRS Board will cover all of the costs of implementation and enforcement of this administrative regulation. The CMRS Board receives its budget allocation solely from its statutory allocation of the CMRS surcharges remitted to the CMRS Fund.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional fees or funding increases will be necessary to implement this regulation.
(8) Explain whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No fees established by this regulation nor are any fees increased in any way.
(9) TIERING: Is tiering applied? No. This regulation applies equally to all regulated entities.

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? No
2. State what unit, part, or division of local government this administrative regulation will affect: Specify the unit, part, or division. No local government is affected.
3. State the aspect or service of local government to which this administrative regulation relates: This administrative regulation does not relate to any aspect or service of local government.
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 this regulation. This regulation will not affect the revenues of local government.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(New Administrative Regulation)

401 KAR 8:022. Sanitary surveys.

RELATES TO: KRS 224.10-100, 224.10-110, 40 CFR 142.10(b)(2), 142.16(b)

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 40 CFR 142.10(b)(2), 42 USC 300f, 305g, 306h, 309

PURPOSE, Necessity, and Conformity: KRS 224.10-100(3) and 224.10-110 authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. This administrative regulation contains the requirements of a systematic program for conducting sanitary surveys by the cabinet and requirements on the public water system subject to a sanitary survey.

Section 1. Applicability. (1)(a) The cabinet shall conduct a sanitary survey of a public water system that uses as its source surface water or groundwater under the direct influence of surface water and pre-
pare a report of the sanitary survey, according to the requirements of this administrative regulation.
(b) The sanitary survey and report of the survey shall be consistent with the guidelines of “Guidance Manual for Conducting Sanitary Surveys of Public Water Systems; Surface Water and Ground Water Under the Direct Influence (GWDI),” incorporated by reference in Section 5 of this administrative regulation.
(c) The priority for conducting the surveys shall be given to public water systems that are not in compliance with 401 KAR Chapter 8 and according to the frequency in Section 3 of this administrative regulation.
(2) A public water system that receives a sanitary survey report prepared by the cabinet shall comply with the requirements of this administrative regulation.

Section 2. Sanitary Survey Contents. (1) The survey shall contain an evaluation of all the adequacy of the system, its sources and operations, and the distribution of safe drinking water. The survey shall include an on-site review of a public water system’s:
(a) Water source, identifying sources of contamination using results of a source water assessment if available;
(b) Facilities;
(c) Equipment;
(d) Operation;
(e) Maintenance; and
(f) Monitoring compliance.
(2) The sanitary survey and the resultant report shall address the following components:
(a) Source;
(b) Treatment;
(c) Distribution system;
(d) Finished water storage;
(e) Pumps, pump facilities, and controls;
(f) Monitoring, reporting, and data verification including a disinfection profile, if the system is required to have a disinfection profile pursuant to 401 KAR 8:160;
(g) System management and operation; and
(h) Operator certification compliance with requirements of 401 KAR 8:030.

Section 3. Frequency. The cabinet shall conduct a sanitary survey and prepare a report on the survey at the following frequencies:
(1) Community water system that uses as its source surface water or groundwater under the direct influence of surface water: no less frequently than every three (3) years.
(2) Noncommunity water system that uses as its source surface water or groundwater under the direct influence of surface water: no less frequently than every five (5) years.

Section 4. System Requirements. (1) If the cabinet identifies a significant deficiency of a public water system in a sanitary survey report, the public water system shall:
(a) Correct or otherwise address the significant deficiency within forty-five (45) days of receiving the report or within a time frame otherwise set by the cabinet; and
(b) Submit to the cabinet within forty-five (45) days of receipt of the report an approvable written plan that describes how and on what schedule the significant deficiency shall be corrected or otherwise addressed. If the cabinet approves the plan, the system shall implement the provisions of the approved plan to the extent it is able to correct the significant deficiency.
(2) If the cabinet identifies a deficiency of a public water system in a sanitary survey report that is not significant, the public water system shall correct or otherwise address the deficiency.
(3) A deficiency shall be a significant deficiency if:
(a) It is part of a recurring pattern of noncompliance with the administrative regulations in 401 KAR Chapter 8;
(b) It poses a potential threat to public health or safety;
(c) The system fails to implement the items identified in a compliance correction program; or
(d) It meets other criteria for significant deficiencies identified by the cabinet.

Section 5. Incorporation by Reference. (1) "Guidance Manual for
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(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:
FILED WITH LRC: October 12, 2001 at 10 a.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation is scheduled for 1:30 p.m. Eastern Time, November 29, 2001, 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 November 20, 2001, 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 this hearing, you may submit written comments on the administrative regulation. Send written notification of your intent to be heard at this 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 accommodating, 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, phone: (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 requires the cabinet to perform a sanitary survey on most public water systems that use as their source surface water or groundwater under the direct influence of surface water (GWUDI) every 3 to 5 years, depending on the system type. The administrative regulation identifies the items that the survey shall address. This administrative regulation also requires the public water system to correct or otherwise address the deficiencies identified in the sanitary survey report. The system shall submit a plan to the cabinet within 45 days of receipt of the report as to how it will address significant deficiencies identified in the report.

(b) The necessity of this administrative regulation: This administrative regulation contains requirements for federal regulations in 40 CFR Part 142 (40 CFR 142.10(b)(2), 142.16(b)). The cabinet must promulgate this administrative regulation in order to receive primary enforcement of the federal regulations for the Interim Enhanced Surface Water Treatment Rule in 40 CFR Part 141.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation will become part of the cabinet’s comprehensive program for the purification of water for public and semipublic use, and is consistent with the federal regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will allow the cabinet to continue to have an approvable 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 regula-

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) I list the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will apply to all community and noncommunity water systems that use as their source surface water or groundwater under the direct influence of surface water. There are about 190 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: Most of the impact of this administrative regulation will be on the cabinet to perform the sanitary surveys, and prepare a report of the sanitary surveys. If the sanitary survey report indicates that a water system will need to correct or otherwise address the deficiency, if the deficiency is a significant deficiency, the system must prepare a report as to how it will correct the significant deficiency. The system must then correct the significant deficiency, if it is within the ability of the system to do so.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: The first year, the cabinet will be required to begin performing sanitary surveys and the resultant reports on about 1/3 of the systems. Existing staff will be used to implement this administrative regulation. The cost on public water system will be dependent upon what deficiencies are identified in the sanitary survey report.

(b) On a continuing basis: The costs would be the same as the first-year costs.

(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 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 grant program is less stringent than the federal program, and the cabinet maintains "primary" 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.

(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. The federal regulation does not allow tiering on to the class of the water system. However, it does not require the cabinet to perform sanitary surveys on specific types of systems at a specified frequency, so a form of tiering is used. Only community water systems that use surface water or groundwater under the direct influence of surface water will have sanitary surveys performed at least every 3 years. Noncommunity water systems that use as their source surface water or groundwater under the direct influence of surface water will have sanitary surveys performed at least every 5 years.

FEDERAL MANDATE ANALYSIS COMPARISON
1. Federal statute or regulation constituting the federal mandate: 40 CFR 142.10(b)(2), 142.16(b).
2. State compliance standards. 401 KAR 8:022.
3. Minimum or uniform standards contained in the federal mandate. The cabinet must perform sanitary surveys on specified public water systems every 3 to 5 years. The public water system must correct or otherwise address significant deficiencies identified in the re-
part of the survey.

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 requires a public water system to correct or otherwise address all deficiencies that are identified in the sanitary survey report. The federal regulation requires that only significant deficiencies be addressed as to how they will be corrected.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Customers of a public water system should be able to receive clean, safe water from their public water system.

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 many community and noncommunity 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 (+/-): The only expenditures that would be imposed on a local government would be if the sanitary survey report identified any significant deficiencies in the water system. However, the system would have to respond within 45 days of how it would address the significant deficiencies. Additional costs may be required for the system to correct the significant deficiency, or correct or otherwise address other deficiencies identified in the report. This administrative regulation further stipulates, however, that the system shall implement the provisions of the approved plan, to the extent that correction of significant deficiencies is within the authority of the water system.

Other Explanation: None

TRANSPORTATION CABINET

Department of Vehicle Regulation
Division of Vehicle Enforcement
(New Administrative Regulation)


RELATES TO: KRS Chapter 18A, 189.227, 281.765
STATUTORY AUTHORITY: KRS Chapter 18A, 189.227, 281.765
NECESSITY, FUNCTION, AND CONFORMITY: Officers of the Transportation Cabinet, Department of Vehicle Regulation, Division of Vehicle Enforcement are commissioned pursuant to KRS 281.765. Weighmasters (inspectors) are employed by the Transportation Cabinet pursuant to KRS 189.227. Dispatchers are employed pursuant to the cabinet's appointing authority as set forth in KRS Chapter 18A. Pursuant to the authority to hire these safety-sensitive personnel and KRS 13A-100, the Transportation Cabinet has authority to determine qualifications of employment, fitness for duty requirements, and disciplinary procedures. This administrative regulation incorporates a drug and alcohol policy for safety-sensitive employees of the Department of Vehicle Regulation.

Section 1. Definitions. (1) "Employee" means a person employed by the Transportation Cabinet in a safety-sensitive position as defined in subsection (2) of this section including, but not limited to, officers commissioned pursuant to KRS 281.765, inspectors employed pursuant to KRS 189.227, and dispatchers employed pursuant to KRS Chapter 18A.

(2) "Safety-sensitive position" means position(s) within the Division of Vehicle Enforcement requiring the performance of duties which could endanger the safety of fellow employees or the general public if prohibited drug or alcohol usage were present.

Section 2. All employees of the Division of Vehicle Enforcement who hold a safety-sensitive position shall be subject to the drug and alcohol policy set forth in the Drug and Alcohol Policy for Safety Sensitive Employees.

Section 3. Any testing requirements resulting from the Drug and Alcohol Policy for Safety Sensitive Employees are separate from and in addition to testing requirements for holders of commercial driver's license pursuant to Transportation Cabinet policy and federal law.

Section 4. Incorporation by Reference. (1) Drug and Alcohol Policy for Safety Sensitive Employees, October 2001 is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to copyright law, at the Division of Vehicle Enforcement, State Office Building, 8th Floor, 501 High Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

DALE SHROUT, Commissioner
JAMES C. CODELL, III, Secretary
APPROVED BY AGENCY: October 9, 2001
FILED WITH LRC: October 11, 2001 at 11 a.m.
PUBLIC HEARINGS: A public hearing on this administrative regulation will be held on November 21, 2001, at 10 a.m., local prevailing time in the Transportation Cabinet, State Office Building, 10th Floor, General Counsel Conference Room, 501 High Street, Frankfort, Kentucky 40622. Persons wishing to attend this meeting must notify this agency in writing by November 14, 2001. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. If this hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirement by November 21, 2001. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit a written comment on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is cancelled, written comments will be accepted until close of business on November 21, 2001. Send written notification of intent to attend public comment hearing or written comments on the administrative regulation to: Hollie B. Spade, Staff Attorney, Transportation Cabinet, Office of General Counsel and Legislative Affairs, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7656, Fax (502) 564-5228.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Hollie Spade

(a) Provide a brief summary of.

(1) This administrative regulation defines safety-sensitive employees and sets forth a procedure for drug and alcohol testing of safety-sensitive employees.

(b) The necessity of this administrative regulation: Because of the potential risk for harm to the public, it is necessary to have controls in place for these particular employees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 13A-100, 189.227 and 287.765 give the cabinet authority to make drug and alcohol testing mandatory for these safety-sensitive employees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: These safety-sensitive employees will be competent to carry out statutory duties effectively without jeopardizing public safety.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: Not applicable.

(a) How the amendment will change this existing administrative
(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 and type the number of individuals, businesses, organization, or state and local governments affected by this administrative regulation: This will affect all safety-sensitive employees of the Division of Vehicle Enforcement, including vehicle enforcement dispatchers, weighmasters (inspectors) and commissioned vehicle enforcement officers.
(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 safety-sensitive employees will be subject to random drug and alcohol testing. They are already subject to pre-employment and reasonable suspicion testing.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None known.
(b) On a continuing basis: $15,000-$20,000 annually.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative expenses are paid with road fund money.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: None
(8) State whether or not this administrative regulation established any fees or directly or indirectly increase any fees: No applicable fees.
(8) TIERING: Is tiering applied? Yes. Tiering is applied since the testing requirements are only applied to those employees in safety-sensitive positions.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education
Department of Education
(Repeal)


RELATES TO: KRS 156.031, 157.420
STATUTORY AUTHORITY: KRS 157.420
NECESSITY, FUNCTION, AND CONFORMITY: This is to repeal administrative regulation 702 KAR 3:010. Guidelines for use of capital outlay funds. This administrative regulation is no longer needed since the mandates set forth in the administrative regulation have either been included in statutes since the passage of the administrative regulation or are deemed no longer necessary.

Section 1. 702 KAR 3:010. Guidelines for use of capital outlay funds, is hereby repealed.

GENE WILHOIT, Commissioner of Education
HELEN MOUNTJOY, Chairperson
APPROVED BY AGENCY: October 8, 2001
FILED WITH LRC: October 8, 2001 at 4 p.m.
PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on November 26, 2001, at 10 a.m. in the State Board Room, 1st Floor, Capitol Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Deputy Commissioner, Operations and Support Services, Department of Education, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-3921.

CABINET FOR WORKFORCE DEVELOPMENT

Department for Adult Education and Literacy
(Repealer)

785 KAR 1:021. Repeal of 785 KAR 1:020.

RELATES TO: KRS 151B.23, 151B.125, 151B.410
STATUTORY AUTHORITY: KRS 151B.023, 151B.410
NECESSITY, FUNCTION, AND CONFORMITY: 785 KAR 1:020 is no longer necessary as the subjects covered by that administrative regulation will be added to an amended administrative regulation.

Section 1. 785 KAR 1:020. High school equivalency diploma, is hereby repealed.

CHERYL D. KING, Commissioner
APPROVED BY AGENCY: October 12, 2001
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 2001, at 10 a.m. at Department for Adult Education and Literacy, 3rd Floor Capital Plaza Tower, Training Room. Individuals interested in attending this hearing shall notify this agency in writing by November 15, 2001, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Anyone 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 the contact person.

CONTACT PERSON: B. J. Helton, Principal Assistant, Department for Adult Education and Literacy, 3rd Floor Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Phone: (502) 564-5114, Fax: (502) 564-5436, e-mail address: brendaj.helton@mail.state.ky.us

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. J. Helton

(1) Provide a brief summary of: (a) What this administrative regulation does: This regulation repeals 785 KAR 1:020.

(b) The necessity of this administrative regulation: This regulation is necessary to repeal a regulation that is no longer needed. The provisions of this regulation will be contained along with other provisions of the GED Testing Program in 785 KAR 1:010.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Department of Adult Education and Literacy has the responsibility for all administrative functions of the state in relation to the management, control, and operation of programs and services in adult education and literacy (KRS 151B.023(4)). The GED is recognized as a high school equivalency diploma by KRS 151B.125(6).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will repeal a regulation that is no longer necessary. The provisions of the existing regulation will be included with all other aspects of the testing program in a related amended regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: (a) How the amendment will change the existing administrative regulation: This regulation does not amend the existing regulation.

(b) The necessity of the amendment to this administrative regulation: This regulation does not amend the existing regulation, but the provisions of the existing regulation will be covered in another amended regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This regulation does not amend the existing regulation.

(d) How the amendment will assist in the effective administration of the statutes: This regulation does not amend the existing regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Aspects of the GED Testing Program that were contained in the existing regulation will be in another amended regulation. Therefore, no individual, business, organization, or organizational entity will 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: No one will be affected by this regulation. Repealing this regulation does not change the testing procedures nor the process by which the GED diploma is issued.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: No new costs will be incurred by this regulation.

(b) On a continuing basis: No new costs will be incurred by this regulation.

(6) What is the source of the funding to be used by the implementation and enforcement of this administrative regulation: No funding is required for implementation and enforcement of 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 will be required to implement the change made by this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly incurs any fees: This regulation does not establish any fees or directly or indirectly increase any fees. The fee for a duplicate transcript set in the existing regulation will be the same as the duplicate transcript fee set in the amended regulation (785 KAR 1:010).

(9) TIERING: Is tiering applied? Since tiering was not applied in the existing regulation, the repeal of the regulation will affect no individual, business, organization or state or local government.

CABINET FOR WORKFORCE DEVELOPMENT
Department for Adult Education and Literacy
(New Administrative Regulation)

785 KAR 1:130. GED eligibility requirements.

RELATES TO: KRS 151B.023, 151B.125
STATUTORY AUTHORITY: KRS 151B.023
NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.023 designates the Department for Adult Education and Literacy to carry out the statewide mission on adult education. The Department has the responsibility for all administrative functions of the state in relation to the management, control, and operation of programs and services in adult education and literacy. KRS 151B.125 recognizes the general educational development (GED) test for high school equivalency purposes in Kentucky. This administrative regulation establishes the eligibility requirements for taking the GED test.

Section 1. Eligibility Requirements. Except as provided in Sections 2 and 3 of this administrative regulation, the GED test shall be administered to an applicant with a Kentucky address who: (1) Has reached his 19th birthday; or (2) Is at least seventeen (17) years of age, and: (a) Has officially withdrawn from public or private school as certified by the local school district; and (b) His last enrolled class has graduated; or (c) He has been out of formal instruction for a period of one (1) year.

Section 2. Exempt Circumstances. An applicant at least sixteen (16) years of age who believes exempt circumstances exist and who does not meet the conditions of Section 1 of this administrative regulation may request an exemption from the local school superintendent or designee in the district where the applicant resides. An exemption granted on the basis of exempt circumstances or a denial shall be in writing. A copy of all exempt circumstance decisions shall be mailed or faxed within five (5) working days to the state GED administrator. Dissatisfaction resulting from a denial by the local school superintendent may be appealed to the Commissioner of the Department for Adult Education and Literacy.

Section 3. Exemptions. An applicant at least sixteen (16) years of age with a Kentucky address is eligible to take the GED test if: (1) Committed or placed in a state correctional facility; (2) Enrolled in the Jobs Corps Program of Instruction; (3) Considered a state agency child, as defined by KRS 158.135(1)(a) and receives approval for the GED test by his interdisciplinary team; (4) Detained in a juvenile detention center or juvenile holding facility; and (a) Has at least one (1) year behind academically from his graduating class; (b) Has a minimum stay in detention of thirty (30) days; and (c) Is approved for the GED test by the local school superintendent.

Section 4. Test Readiness. An applicant shall be certified as test-
ready by a Department for Adult Education and Literacy designated entity.

(1) Before taking the official GED test, an applicant shall:
   (a) Successfully complete the Official GED Practice Test with the same passing scores required for the GED test or present a Kentucky Educational Television GED Connection Verification.

(b) Complete the GED Testing Application Form. This form shall be available from a local adult education provider, local school superintendent or the Department for Adult Education and Literacy.

(2) Military personnel shall:
   (a) Not be required to complete the GED Testing Application Form prior to taking the test; and
   (b) Complete the Military GED Application (Form 300-M) before a high school equivalency diploma shall be issued.

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

(a) "GED Testing Application (DAEL-6)", revised 10/12/01 edition, Cabinet for Workforce Development, Department for Adult Education and Literacy; and

(b) "Application for High School Equivalency Diploma or Certificate (Military GED Application) (Form 300-M)", revised 6/96 edition, GED Testing Service, Washington, D.C.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Adult Education and Literacy, Capital Plaza Tower, Third Floor, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CHERYL D. KING, Commissioner
PROMITTED BY AGENCY: October 12, 2001
FILED WITH LRC: October 15, 2001 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 2001, at 10 a.m. at Department for Adult Education and Literacy, 3rd Floor Capital Plaza Tower, Training Room. Individuals interested in attending this hearing shall notify this agency in writing by November 15, 2001, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the 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 the contact person.

CONTACT PERSON: B. J. Helton, Principal Assistant, Department for Adult Education and Literacy, 3rd Floor Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Phone: (502) 564-5114, Fax: (502) 564-5430, e-mail address: bren- djhelton@mail.state.ky.us.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. J. Helton

(1) Provide a brief summary of:
   (a) What this administrative regulation does: This regulation sets the eligibility requirements for taking the GED test.

   (b) The necessity of this administrative regulation: This regulation is necessary to clearly define who is eligible to take the GED test. The regulation sets the criteria for general eligibility and specifies any exceptions to those criteria. This regulation provides clarity by promulgating separate regulations to cover a broader subject matter, the GED test.

   (c) How this administrative regulation conforms to the content of the authorizing statutes: The Department for Adult Education and Literacy has the responsibility for all administrative functions of the state in relation to the management, control, and operation of programs and services in adult education and literacy (KRS 151B.023(4)). The GED test is one of those services. KRS 151B.125 recognizes the General Educational Development (GED) test for high school equivalency purposes in Kentucky. By specifying eligibility requirements, the regulation enables the Department for Adult Education and Literacy to administer the GED test, one of its programs, and issue GED diplomas.

   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation separates the eligibility requirements for the GED test from the testing program administrative provisions.

   (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 regulation does not amend an existing regulation.

   (b) The necessity of the amendment to this administrative regulation: This regulation does not amend an existing regulation.

   (c) How the amendment conforms to the content of the authorizing statutes: This regulation does not amend an existing regulation.

   (d) How the amendment will assist in the effective administration of the statutes: This regulation does not amend an existing regulation.

   (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: No one will be affected by this new regulation. The eligibility criteria in this new regulation were already contained in an existing 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 one will be affected by this regulation. Although this is a new regulation, the provisions are not new. The eligibility requirements have not changed, but simply have been placed in a separate regulation.

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

   (a) Initially: No new costs will be incurred by this regulation.

   (b) On a continuing basis: No new costs will be incurred by this regulation.

   (6) What is the source of the funding to be used by the implementation and enforcement of this administrative regulation: No funding is required for implementation and enforcement of 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 will be required to implement the change made by this 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 or directly or indirectly increase any fees.

   (9) TIERING: Is tiering applied? Since tiering was not applied in the existing regulation from which the provisions of this new regulation were taken, no individual, business, organization or state or local government will be affected.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(New Administrative Regulation)


RELATES TO: KRS 211.000-211.995, 211.994, 217.801
STATUTORY AUTHORITY: KRS 211.090, 211.160, 211.9061-211.9017
NECESSITY, FUNCTION, AND CONFORMITY: 902 KAR 47:080, 902 KAR 47:090 and 902 KAR 47:100 are no longer required because four (4) new administrative regulations governing the requirements for the training, certification of persons, and standards and procedures for activities related to conducting lead hazard assessment and abatement activities in target housing or child-occupied facilities have been promulgated by the Cabinet for Health Services.

Section 1. The following administrative regulations are hereby repealed:

(1) 902 KAR 47:080, Training and certification requirements for persons who perform lead-hazard detection or lead-hazard abatement;

(2) 902 KAR 47:090, Accreditation of training programs and providers of educational programs for individuals who perform lead-
hazard detection and abatement.

(3) 902 KAR 47:100. Permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement.

NICHOLAS Z. KAFOGLIS, M.D., Chairman
RICE C. LEACH, M.D., Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: September 24, 2001
FILED WITH LRC: September 27, 2001 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held October 22, 2001, at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Interested individuals interested in attending shall notify this agency in writing by October 15, 2001. 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. Send written notice of intent to attend the public hearing or written comments to: Jill Brown, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - S-W-B, Frankfort, Kentucky 40621, (502) 564-7905, fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Terry Wescott
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation repeals 902 KAR 47:090, 902 KAR 47:080, and 902 KAR 47:100, which relate to certification, accreditation, procedures and standards for conducting lead hazard assessment and abatement in target housing and child occupied facilities.
(b) The necessity of this administrative regulation: The Department for Public Health is promulgating this regulation in order to repeal then adopt new updated regulations as required by law in accordance with new federal rules and standards, create administrative methods for assessing fees for noncompliance, and bring the regulation into compliance with KRS Chapter 13A requirements.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Kentucky Lead Hazard Assessment and Abatement Law, KRS 211.9065 and 211.9067 authorizes the Department for Public Health to promulgate administrative regulations relating to the training, certification of persons, and standards and procedures for activities related to conducting lead hazard assessment and abatement activities in target housing or child-occupied facilities.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Repealing outdated regulations and promulgating new administrative regulations will enhance and assist the Environmental Lead Program's efforts in effective administration of the Lead Hazard Assessment and Abatement Law. The Department for Public Health is promulgating this regulation in order to adopt new updated regulations as required by law in accordance with new federal rules and standards, and bring the regulation into compliance with KRS Chapter 13A 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: N/A
(b) The necessity of the amendment to this administrative regulation: This is a repealer regulation.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).
(d) How the amendment will assist in the effective administration of the statutes: Repealing outdated regulations and promulgating new administrative regulations will enhance and assist the Environmental Lead Program's efforts in effective administration of the Lead Hazard Assessment and Abatement Law. The Department for Public Health is promulgating this regulation in order to adopt new updated regulations as required by law in accordance with new federal rules and standards, and bring the regulation into compliance with KRS Chapter 13A requirements.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 600 regulated persons or companies who are projected to be or are presently certified 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, if new, or by the change if it is an amendment: The regulated persons or companies will be impacted by changes in standards, updated standards and protocols, and fee requirements.
(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: None
(b) On a continuing basis: None
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: N/A
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: None
(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because this is a repealer regulation.

CABINET FOR HEALTH SERVICES
Department of Public Health
Division of Public Health Protection and Safety
(New Administrative Regulation)


RELATES TO: KRS 211.900-211.905, 211.994, 217.801
STATUTORY AUTHORITY: KRS 211.090, 211.180, 211.9061-211.9079
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.9065 and 211.9067 authorizes the Department for Public Health to promulgate administrative regulations relating to the training, certification of persons, and standards and procedures for activities related to conducting lead-hazard assessment and abatement activities in target housing or child-occupied facilities. This administrative regulation establishes definitions for wording used in 902 KAR 48:030, 902 KAR 48:030 and 902 KAR 48:040.

Section 1. Definitions. (1) "Abatement permit" means a permit issued by the department to an abatement permit holder plans to conduct lead-hazard abatement in target housing or child-occupied facilities.
(2) "Abatement permit holder" means a person whom:
(a) Is certified by the department to conduct lead abatement activities; and
(b) Has been issued a permit by the department to conduct specific lead abatement activities.
(3) "Abatement plan" means a plan prepared either by a departmental certified supervisor or project designer, that is a detailed, written description of the proposed planned abatement activities relating to the lead-hazard abatement, environmental lead-hazard control, cleanup, and clearance.
(4) "Accredited training program" means that a training provider has been accredited by the department to provide courses for training individuals engaged in lead-hazard detection and abatement activities.
(5) "Adquate quality control" means a plan or design that:
(a) Ensures the authenticity, integrity, and accuracy of samples including:
   1. Dust;
   2. Soil; and
   3. Paint chips; and
(b) Provides for representative sampling.
(6) "Applicable work experience" means experience in a profession related to lead, asbestos, environmental remediation work, building renovation/remodeling, or building construction.
(7) "Approved course" means that:
(a) The training course was approved under the initial accreditation requirement of a training program; and
(b) The training provider followed the departmental training course notification and reporting requirements as identified in 902 KAR
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48:030, Section 13.

(8) "Certificate of accreditation" means the document issued by the department to a training provider certifying that the training provider has been approved by the department to provide training courses for individuals who perform lead-hazard detection and abatement activities.

(9) "Chewable surface" means an interior or exterior painted surface that is accessible to children for mouthing or chewing.

(10) "Child" or "children" means a person or persons six (6) years of age or younger.

(11) "Child-occupied facility" is defined by KRS 211.9061(1).

(12) "Cleanliness" means the level lead permitted in dust on a surface following completion of an abatement or other activity which has or potentially has disturbed a lead paint hazard as identified in 902 KAR 48:040, Section 13.

(13) "Common area" means a portion of a building that is generally accessible to the occupants of multipersonal units.

(14) "Composite dust sample" means dust samples that shall:
- consist of at least two (2) subsamples;
- represent each component that is being tested shall be included in the sampling; and
- not consist of subsamples from more than one (1) type of component.

(15) "Containment" means a process to protect workers and the environment by controlling exposure to lead-contaminated dust and debris created during a lead abatement project or activity.

(16) "Course test blueprint" means written documentation identifying the percentage of course test questions devoted to each major topic in a course curriculum.

(17) "Department" means the Department for Public Health.

(18) "Deteriorated paint" means any interior or exterior paint or other coating that is peeling, chipping, flaking or cracking, or is otherwise damaged or separated from the substrate.

(19) "Discipline" means one (1) of the following types of lead-hazard assessment and abatement activities:
- Lead-hazard inspector;
- Lead-hazard risk assessor;
- Lead-hazard dust sampling technician;
- Lead-hazard abatement worker;
- Lead-hazard abatement supervisor;
- Lead-hazard project designer; or
- Lead-hazard abatement company.

(20) "Distinct painting history" means the application history of paint or other surface coatings to a component or building component, as indicated by:
- its visual appearance;
- or a record of paint application over time.

(21) "Documented methodologies" means methods or protocols used to sample for the presence of lead in paint, dust, and soil, which are:
- established by administrative rule; or
- recognized as indicated in 902 KAR 48:040, Section 1, for acceptable use as indicated in department administrative rules or regulations.

(22) "Drip line" means the area within three (3) feet surrounding the perimeter of a building.

(23) "Dust lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a specific area or mass concentration of lead as identified in 902 KAR 48:040, Section 13.

(24) "Encapsulant" means a liquid-applied coating, or an adhesive-bonded covering material, that forms a barrier between lead-containing paint and the environment.

(25) "Encapsulation" means the application of an encapsulant.

(26) "Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate, in order to act as a barrier between the underlying lead containing paint and the environment.

(27) "Equivalent method" means a method that has been demonstrated by a certified person to the department that the method:
- is equally protective as documented methodologies;
- ensures adequate quality control; and
- protects the environment.

(28) "EPA" means the U.S. Environmental Protection Agency.

(29) "Hands-on skills assessment" means:
- activities that tests the trainees' ability to satisfactorily perform work practice standards and procedures established by 902 KAR 48:40; and
- includes a written evaluation of the trainees' performance of the activities.

(30) "Hazardous levels in paint" or "lead-based paint" means a level of lead in paint or similar coating as identified in 902 KAR 48:040, Section 12.
- equal to or in excess of one (1.0) milligrams per square centimeter; or
- more than five-tenths (0.5) percent by weight.

(31) "Friction surface" means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to certain window and floor and stair surfaces.

(32) "Impact surfaces" means an interior or exterior surface that is subject damage by repeated sudden force such as parts of a doorframe.

(33) "Interior window sill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

(34) "Guest instructor" means a person designated by training manager to provide:
- instructions specific to the lecture;
- hands-on activities; or
- work practice components of a course.

(35) "Interim controls" means a set of measures designed to temporarily reduce human exposure or potential exposure to lead-hazards, including:
- specialized cleaning;
- repairs;
- maintenance;
- painting;
- temporary containment;
- ongoing monitoring of lead-hazards or potential hazards; or
- the establishment and operation of management and resident educational programs.

(36) "Large scale" means an abatement project with ten (10) or more residential dwellings.

(37) "Lead-hazard" or "lead-based paint hazard" means hazardous lead-based paint, dust lead hazards or soil lead hazards.

(38) "Lead-hazard abatement" is defined by KRS 211.9061(4).

(39) "Lead-hazard abatement worker" means a person who is certified by the department to perform physical lead-hazard abatement activities.

(40) "Lead-hazard abatement company" means a firm that is certified by the department to perform lead-hazard abatement activities in target housing and child-occupied facilities.

(41) "Lead-hazard detection" is defined by KRS 211.9061(3).

(42) "Lead-hazard dust sampling technician" means a person who performs clearance evaluation and sampling for nonabatement activities that potentially create lead dust hazards.

(43) "Lead-hazard inspection" means a examination of painted surfaces within the interior or exterior of a residential structure or child-occupied facility to determine if hazardous levels of lead are present.

(44) "Lead-hazard inspector" means a person who is certified by the department to:
- conduct lead-hazard inspections;
- collect samples; and
- conduct lead-hazard dust clearance.

(45) "Lead-hazard project designer" means a person who is certified by the department to prepare the following items for lead-hazard abatement projects in accordance with requirements pursuant to 902 KAR 48:040, Section 7:
- abatement project plans;
- abatement reports; and
- occupant protection plans.

(46) "Lead-hazard risk assessment" means an on-site investigation to determine the existence, nature, severity, location of lead hazards.

(47) "Lead-hazard risk assessor" means a person who is certified by the department to:
- conduct lead-hazard inspections;
- conduct risk assessments;
- conduct lead-hazard screens; and
- collect samples; and
(e) Conduct lead-hazard dust clearance.

(48) "Lead-hazard screen" means a risk-assessment activity that involves reduced paint and dust or other potential lead-hazard sampling.

(49) "Lead-hazard supervisor" means a person who is certified by the department to:

(a) Supervise lead-hazard abatement activities; and
(b) Approve in accordance with requirements pursuant to 902 KAR 48:040, Section 7:

1. Abatement plans;
2. Abatement reports; and
3. Occupant protection plans for small scale lead-hazard abatement projects.

(50) "Lead paint hazard" means:

(a) Any lead-based paint on a friction surface that is subject to abrasion and where the dust levels on the nearest horizontal surface under the friction surface are equal to greater to identified dust lead-hazard levels;
(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface;
(c) Any chewable lead-based painted surface on which there is evidence of teeth marks; or
(d) Any other deteriorated lead-based paint within the interior or exterior of any residential dwelling or child-occupied facility.

(51) "Living area" means an area of a residential dwelling used by one (1) or more occupants.

(52) "Midyard" means an area of a residential yard approximately midway between the drip line of a residential building and the nearest property boundary or between the drip lines of a residential building and another building on the same property.

(53) "Multifamily dwelling" means a structure that contains more than one (1) separate residential dwelling unit, that is used or occupied, or intended to be used or occupied, as the home or residence of one (1) or more persons.

(54) "Permanently covered soil" means:

(a) Soil that has been separated from human contact by the placement of a barrier consisting of solid, impermeable materials, such as pavement or concrete; and
(b) Does not consider as permanent grass, mulch, and other landscaping materials.

(55) "Person" means an individual, corporation, partnership, association, or any other group or organization.

(56) "Play area" means an area of frequent soil contact by children as indicated by the following:

(a) Presence of:
1. Play equipment;
2. Toys; or
3. Other children’s possessions; or
(b) Observations of play patterns;
(c) Information provided by the:
1. Parents;
2. Residents;
3. Care givers; or
4. Property owners.

(57) "Postabatement report" means a report that is prepared at the conclusion of the abatement project after clearance has been achieved, which indicates any changes in the activities that were conducted and other information as indicated in 902 KAR 48:040, Section 15.

(58) "Quality assurance inspection" means an inspection conducted by the department to determine whether the lead abatement activity complies with:

(a) Certification requirements;
(b) Work practices; and
(c) Performance standards.

(59) "Quality control plan" means a written plan prepared by the training program that explains in-house controls to assure that the program meets the requirements as indicated in KAR 48:030, Section 5.

(60) "Recognized laboratory" means an environmental laboratory recognized by EPA accredited pursuant to Section 405(b) of Toxic Substance Control Act, 15 USC 2601, as being capable of performing an analysis for lead compounds in paint, soil, dust and water.

(61) "Reduction" means measures designed to reduce or eliminate human exposure to lead hazards.

(62) "Residential dwelling" means a building containing one (1) or more residential dwellings.

(63) "Room" means a separate part of the inside of building, that is separated from adjoining rooms by build-in walls or archways that extend at least six (6) inches from the intersecting wall.

(64) "Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains lead at or in excess of levels specified in 902 KAR 48:040, Section 14.

(65) "Soil sample" means a sample collected in a representative location using:

(a) ASTM E 1727 "Standards Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectroscopy Techniques";
(b) Documented methodologies; or
(c) Other equivalent methods.

(66) "Small scale" means an abatement project with less than ten residential dwellings.

(67) "Target housing" is defined by KRS 211.996(5).

(68) "Training day" means a period of time which includes eight (8) training hours.

(69) "Training hour" means at least fifty (50) minutes of actual teaching, including:

(a) Time devoted to lecture;
(b) Learning activities;
(c) Small group activities;
(d) Demonstrations;
(e) Evaluations; and
(f) Hands-on experience.

(70) "Third-party examination" means a written test that is approved by and administered by the department or its designated agent.

(71) "Training manager" means the individual responsible for administering a training program and monitoring the performance of principal and guest instructors.

(72) "Visual inspection for clearance testing" means the visual examination of a residential dwelling or a child-occupied facility, following an abatement or other activity that disturbs lead based paint, to inspect for visible residue, dust, and debris.

(73) "Visual inspection for risk assessment" means the visual examination of a residential dwelling or child-occupied facility to determine the existence of deteriorated lead-containing paint or other potential sources of lead hazards.

(74) "Window brough or window well" means:

(a) For a typical double-hung window, the proportion of the exterior window sill between the interior window sill and the frame of the storm window; or
(b) If there is no storm window the area is received both the upper and lower sash when they are both lowered to the lowered point.

(75) "Wipe sample" means a sample collected by wiping a representative surface of a known area as determined by:

(a) ASTM E 1728: Standard practice for field collection of settled dust samples using wipe sampling methods for lead determination by atomic spectrophotograph technique;
(b) Documented methodologies indicated in 902 KAR 48:040, Section 2; or
(c) An equivalent method.

(76) "Wipe sampling materials" means that the material complies within ASTM E 1702 "Standards specifications for wipe sampling material contents in surface dust".

(77) "XRF" means an x-ray fluorescence device that indicates the lead levels of paint on a painted surface.

NICHOLAS Z. KAFOGLIS, M.D., Chairman
RICE C. LEACH, M.D., Commissioner
MARCIA R. MORGAN, Secretary
APPROVED BY AGENCY: September 24, 2001
FILED WITH LRC: September 25, 2001 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held October 22, 2001, at 9 a.m., in the Cabinet for Health Services Audito-rium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by October 15, 2001. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The
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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 Brown, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health and Family Services, 275 East Main Street, C-W-B, Frankfort, Kentucky 40621, (502) 564-7905, fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Contact person: Terry Wescott, 564-4537, ext. 3703

(1) Provide a brief summary of:
(a) What this administrative regulation does: This new administrative regulation establishes definitions and wording used in new proposed administrative regulations for the lead program, as a result there will be no fiscal impact on the department.
(b) The necessity of this administrative regulation: The adoption of this administrative regulation is necessary in order to comply with requirements mandated by the Kentucky Lead Hazard Assessment and Abatement Law KRS 211.9065 and 211.9067.
(c) How this administrative regulation conforms to the content of the enacting statutes: The Kentucky Lead Hazard Assessment and Abatement Law KRS 211.9065 and 211.9067 authorizes the Department for Public Health to promulgate administrative regulations relating to the training, certification of persons, and standards and procedures for activities related to conducting lead-hazard assessment and abatement activities in target housing or child-occupied facilities.
(d) How this administrative regulation currently assists or will assist in the effective administration of the regulations: In order to enhance and assist the environmental lead programs efforts in effective administration of the Lead Hazard Assessment and Abatement Law, the Department for Public Health is promulgating this regulation in order to adopt new updated regulations as required by law in accordance with new federal rules and standards, and bring the regulation into compliance with KRS Chapter 13A requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the enacting statutes: See (1)(c).
(d) How the amendment will assist in the effective administration of the statute: In order to enhance and assist the environmental lead programs efforts in effective administration of the Lead Hazard Assessment and Abatement Law, the Department for Public Health is promulgating this regulation in order to adopt new updated regulations as required by law in accordance with new federal rules and standards, and bring the regulation into compliance with KRS Chapter 13A requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 600 regulated persons or companies who are projected to be or are presently certified or accredited 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, if new, or by the change if it is an amendment: The regulated persons or companies will be impacted by changes in standards, updated standards and protocols, and fee requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional program cost will be incurred as a result of adopting 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: Federal funds and program fees.

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

(7) 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 appropriate in this administrative regulation because the certification, training and apply equally to all persons who conduct lead-hazard assessment, or abatement in target housing or child-occupied facilities within the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 745.
3. Minimum or uniform standards contained in the federal mandate. Yes
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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 whether this administrative regulation will affect the local government or only a part or division of the local government. Part of local government.
3. State the aspect or service of local government to which this administrative regulation relates. When employees of local government conducts assessment and abatement activities in residential structures and child-occupied facilities they must comply with training and certification requirements and must use established standards and procedures.
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. As indicated in the past history of assessment and abatement activities since 1997, that it is anticipated that only a limited number of lead-hazard assessment and abatement activities will be conducted by local government employees.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(New Administrative Regulation)

902 KAR 48:020. Training and certification requirements for persons who perform lead-hazard detection or lead-hazard abatement.

RELATES TO: KRS 211.900-211.905, 211.990, 211.994, 217.001
STATUTORY AUTHORITY: KRS 211.900, 211.180, 211.9051-211.9079
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.9063 authorizes the Department for Public Health to promulgate administrative regulations relating to the training, testing requirements and procedures for certification of persons who perform or offer to perform lead-hazard detection or lead-hazard abatement in target housing or child-occupied facilities.

Section 1. Applicability. This administrative regulation governs the certification of persons engaged in lead-hazard detection and abatement in target housing and child-occupied housing.

Section 2. Application for Certification. (1) Individual certification for the discipline applied for shall be for a period of two (2) years and be based on the date of the completion of the required course(s).
(2) The department shall have ten (10) working days to review and approve or disapprove of the initial certification or recertification.
applications.
4. The person applying for certification shall submit the application fee for the discipline established by Section 9 of this administrative regulation, which is to be:
   (a) Submitted in the form of check or money order; and
   (b) Made payable to the Kentucky State Treasurer.
4. In addition, a person seeking certification by the department shall submit the following information to the department:
   (a) Name;
   (b) Company;
   (c) Address;
   (d) Phone number;
   (e) Discipline for which the applicant is requesting certification;
   (f) Color photograph no smaller than two (2) by two (2) inches;
   (g) A copy of course completion certificate(s) received from a departmental approved course(s); and
   (h) Documentation that indicates that the applicant has met the established requirements for the applicable discipline identified in Section 5 of this administrative regulation.

Section 3. Initial Application Review. (1) When the application is approved for a discipline requiring a third-party examination individual shall do the following:
   (a) Pay the third-party examination fee as identified in Section 9 of this administrative regulation; and
   (b) Schedule a time and date to take the examination with the department.
(2) The applicant shall be:
   (a) Allowed to take the third-party examination up to three (3) times within in twelve (12) month time period; and
   (b) Required to pass after the third time to complete another approved course before reapplying for certification.
(3) When the applicant passes or is not required to take the examination shall pay the appropriate discipline fee as identified in Section 9 of this administrative regulation.
(4) When the applicable discipline fee is received the department will issue a certification certificate and identification card.
(5) When the application is found to be deficient the department shall:
   (a) Provide the applicant with a listing of additional documentation required;
   (b) Indicate the need for additional educational or training; or
   (c) Request other information necessary to determine applicants’ qualifications.
(6) The applicant shall provide the additional information to the department before the applicant is allowed to take the required third-party examination and complete the examination process.
(7) The individual shall have up to twelve (12) months to become certified by the department or start the examination process over as identified in Section 2 of this administrative regulation and pay additional fees as identified.

Section 4. Certification Through Reciprocity. Persons shall be given consideration for certification by the department under equivalent certification agreements established as per KRS 211.9089.
Section 5. Initial Requirements for Each Discipline. (1) Lead-hazard abatement worker shall successfully complete a departmental-approved lead abatement worker course.
(2) Lead-hazard inspector shall:
   (a) Successfully complete an approved training course for inspectors;
   (b) Have a high school diploma or equivalent; or
   (c) Have a least one (1) year's applicable work experience.
(3) Lead-hazard risk assessor discipline shall:
   (a) Successfully complete an approved inspector course prior to the completion of an approved risk assessor course; and
   (b) Have a minimum one (1) of the following qualification requirements:
      1. Certification as an industrial hygienist, professional engineer, registered architect, registered sanitary;
      2. A bachelor's degree, and one (1) year applicable work experience;
      3. An associate degree, and two (2) years applicable work experience; or
   (c) A high school diploma or equivalent, and at least minimum of (3) years applicable work experience.
   (4) Lead-hazard supervisor discipline shall have:
   (a) Successfully completed an accredited training course for supervisors;
   (b) A high school diploma or equivalent; and
   (c) At least two (2) years applicable work experience.
(5) Lead-hazard project designer discipline shall have:
   (a) Successfully completed an approved training course for supervisor prior to taking and completing an approved project designer course; and
   (b) One (1) of the following qualification requirements:
      1. A bachelor's degree in engineering, architecture, or a related profession, and one (1) year applicable work experience; or
      2. Four (4) years applicable work experience.
(6) Lead dust sampling technician shall have:
   (a) Successfully completed an approved training course for a project designer; and
   (b) Successfully completed department proficiency requirements.

Section 6. Certification of Lead-Hazard Company. (1) A company shall be certified by the department prior to conducting lead-hazard assessment and abatement activities and qualify as follows:
(2) The company applying for certification shall:
   (a) Pay applicable application fee as identified in Section 8 of this administrative regulation; and
   (b) Submit the following information:
      1. A list of department certified employees; and
      2. Notarized affidavit stating that the company is knowledgeable of and will follow the work practice standards established by 902 KAR 48:040.

Section 7. Individual Recertification. (1)(a) An application for recertification shall be made at a minimum of thirty (30) days prior to the expiration date indicated on the department issued certificate; and
   (b) An applicant for recertification shall submit:
      1. The fee established by Section 9 of this administrative regulation for the applicable discipline; and
      2. Documentation of successful completion of an approved refresher course, for the appropriate discipline; which was taken within the last twelve (12) months of the certification period.
(2) When an individual applies for recertification after the time specified in paragraph (1) of this section but within six (6) months after the certification has lapsed, he shall be required to:
   (a) Take a department-approved refresher course; and
   (b) Retake and pass the applicable third-party examination under the process identified in Section 2 of this administrative regulation.
(3) When an individual fails to reapply for certification after six (6) months from the date that the certification has lapsed he shall:
   (a) Be required to take an initial course; and
   (b) Reapply through the certification process as identified in Section 2 of this administrative regulation.

Section 8. Company Recertification. A lead-hazard company shall apply for recertification by submitting:
(1) The fee established by Section 9 of this administrative regulation;
(2) A current listing, as of the date of recertification, of certification numbers identifying the employees engaged in lead-hazard activities; and
(3) A notarized affidavit certifying that:
   (a) The company has continued to use the work practice standards established by 902 KAR 48:040; and
   (b) Uses only departmental-certified employees to conduct lead-hazard activities in target housing and child-occupied facilities in the Commonwealth.

Section 9. Fee Schedule. The fee for application for certification and recertification shall be as follows:

<table>
<thead>
<tr>
<th>Type or Discipline</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application</td>
<td>$50</td>
</tr>
<tr>
<td>Third-party exam</td>
<td>$50</td>
</tr>
<tr>
<td>Lead dust sampling technician</td>
<td>$100</td>
</tr>
</tbody>
</table>
Section 10. Suspension, Revocation, Denial and Modification of Certifications. If the department suspends, revokes, denies, or modifies the certification of a person or firm, it shall notify the person or firm in writing of the following:

1. The legal and factual basis for the suspension, revocation, denial, or modification;
2. The commencement date and duration of the suspension, revocation, or modification;
3. Action, if any, which the certified person may take to avoid suspension, revocation, or modification or to receive certification in the future;
4. The opportunity and method for requesting a hearing prior to final department action; and
5. Other information the department deems appropriate.

Section 11. Administrative Hearings. An administrative hearing shall be conducted in accordance with 502 KAR 1:400.

NICHOLAS Z. KAFOGLIS, M.D., Chairman
RICE C. LEACH, M.D., Commissioner
MARcia R. MORGAN, Secretary
APPROVED BY AGENCY: September 24, 2001
FILED WITH LRC: September 25, 2001 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held October 22, 2001, 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 October 15, 2001. 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 Brown, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 275 East Main Street - S-W-B, Frankfort, Kentucky 40621, (502) 564-7905, fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Contact person: Terry Wescott, 564-4537, ext. 3703

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes requirements for the certification of persons engaged in lead-hazard detection and abatement, in target housing and child-occupied housing. In so doing it establishes some new fees to support particular functions within the regulation and raises one other current fee.
(b) The necessity of this administrative regulation: The adoption of this administrative regulation is necessary in order to comply with requirements mandated by the Kentucky Lead Hazard Assessment and Abatement Law, KRS 211.9065 and 211.9067.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Kentucky Lead Hazard Assessment and Abatement Law, KRS 211.9065 and 211.9067 authorizes the Department for Public Health to promulgate administrative regulations relating to the training, certification of persons, and standards and procedures for activities related to conducting lead-hazard assessment and abatement activities in target housing or child-occupied facilities.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: In order to enhance and assist the environmental lead program's efforts in effective administration of the Lead Hazard Assessment and Abatement Law, the Department for Public Health is promulgating this regulation in order to adopt new updated regulations as required by law in accordance with new federal rules and standards, and bring the regulation into compli-ance with KRS Chapter 13A requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: In order to enhance and assist the environmental lead program's efforts in effective administration of the Lead Hazard Assessment and Abatement Law, the Department for Public Health is promulgating this regulation in order to adopt new updated regulations as required by law in accordance with new federal rules and standards, and bring the regulation into compliance with KRS Chapter 13A requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 400 regulated persons or companies who are projected to be or are presently certified or accredited 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, if new, or by the change if it is an amendment: The regulated persons or companies will be impacted by changes in standards, updated standards and protocols, and fee requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional program cost will be incurred as a result of adopting this administrative regulation.
(b) On a continuing basis: None.
(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds and program fees.

(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 fees established by this administrative regulation are based on partial support of the program. Current federal grant money supports most of the program under EPA state authorization. The additional $15,000 of revenue that will be generated will prevent the Department for Public Health from being required to request general funds from the General Assembly in order to continue to operate this program in the Commonwealth.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The existing fee to be increased is for application to be certified as a lead-hazard company. Currently the fee is set at $50 and will be increased to $200. Approximately 20 of these applications are issued annually which would generate an additional $3,000.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the certification and training requirements apply equally to all persons who conduct lead-hazard assessment, or abatement in target housing or child-occupied facilities within the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: 40 CFR Part 745.
2. State compliance standards. 902 KAR 48:020
3. Minimum or uniform standards contained in the federal mandate: Yes.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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 whether this administrative regulation will affect the local government or only a part or division of the local government. Part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. When employees of local government conduct assessment and abatement activities in residential structures and child occupied facilities they must comply with training and certification requirements and must use established standards and procedures.

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. As indicated in the past history of assessment and abatement activities since 1997, it is anticipated that only a limited number of lead-hazard assessment and abatement activities will be conducted by local government employees.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(New Administrative Regulation)

902 KAR 48:030. Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection and abatement.

RELATES TO: KRS 211.900-211.905, 211.990, 211.994, 217.801
STATUTORY AUTHORITY: KRS 211.090, 211.180, 211.9061-211.9079
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.9065 and 211.9067 authorizes the Department for Public Health to promulgate administrative regulations relating to the accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection or lead-hazard abatement activities in target housing or child-occupied facilities. This administrative regulation establishes requirements for accreditation, curriculum content, training experience, competency and proficiency qualifications, and establishes fees for functions performed by the department.

Section 1. Applicability. The provisions of this administrative regulation shall govern the accreditation of all training programs, which provide training for persons who conduct lead-hazard detection and abatement activities in target housing or child-occupied facilities in the Commonwealth of Kentucky under the certification procedures identified in 902 KAR 48:020.

Section 2. Initial Application Requirements for Training Programs. A training provider shall submit the following:

(1) An application review fee of $200 in the form of a check or money order payable to the Kentucky State Treasurer unless exempted by federal or state law or regulation;
(2) Management and administrative information as follows:
(a) Training provider name;
(b) Address; and
(c) Telephone number;
(3) The name of training manager;
(4) A list of training courses proposed for accreditation;
(5) Documentation of the training manager qualifications as identified in Section 6 of this administrative regulation;
(6) Documentation of principal instructor’s qualifications as identified in Section 6 of this administrative regulation;
(7) Copies of student and instructor manuals for each course;
(8) Course outlines;
(9) Copies of course agendas;
(10) The description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course;
(11) Copies of hands-on assessment forms;
(12) Course test blueprints;
(13) Copies of course tests;
(14) A copy of the quality control plan; and
(15) The location and description of the facilities and equipment to be used for providing lecture and hands-on training.

Section 3. Review of Accreditation Documentation. (1) The department shall have thirty (30) calendar days after the receipt of the application to:
(a) Approve or disapprove an application for accreditation; and
(b) Notify an applicant of its action.
(2) During the thirty (33) day period established by subsection (1) of this section, the department may request clarification or additional information from the applicant.
(3) When the department approves an application for a training program, it shall:
(a) Notify the applicant of its approval in writing; and
(b) Indicate the appropriate course fees that are to be paid to the department.
(4) On receipt of the required fee of $200 for each initial and refresher course the department shall issue a certificate of accreditation to the training provider.
(5) When the department denies the approval of a training course it shall:
(a) Notify the applicant of its denial in writing; and
(b) List the necessary additions or corrections to the application.
(6) The training provider shall have six (6) months to:
(a) Make the corrections specified in the notice of denial; and
(b) Reapply for accreditation.
(7) The provider shall be required to pay another application review fee of $200 to the department before the accreditation review process will be undertaken if the training provider does not:
(a) Correct the deficiencies; and
(b) Resubmit the application within the six (6) months of the initial application date.

Section 4. Amending Training Program Accreditation. (1) The accreditation of a training program shall be for two (2) years.
(2) After the training provider has applied for and received program accreditation, the provider may add new course disciplines at any time by:
(a) Amending the original accredited training program application in writing; and
(b) Paying the application and course fee.
(3) Courses added to the training program during this time period shall be included with and applied for under the application for reaccreditation of the training program.

Section 5. Training Provider Facilities and General Course Requirements. (1) A training provider shall provide the following:
(a) Adequate facilities for the delivery of the:
1. Lecture;
2. Course test;
3. Hands-on training;
4. Assessment activities; and
(b) Provide one (1) instructor per ten (10) students when conducting hands-on skills activities and assessments;
(c) Ensure that there is adequate training equipment for the hands-on skills activities that reflects current technologies;
(d) Ensure that there is adequate audiovisual equipment to provide effective instruction and lecture to students; and
(e) Ensure that lighting and space is appropriate for effective student learning.
(2) A training provider shall:
(a) Give a course test at the completion of each course;
(b) Confirm the identity of the student by examining a picture identification; and
(c) If applicable, conduct a hands-on skill assessment.
(3) A training provider shall not grant an individual a course completion certificate unless he has:
(a) Successfully completed the hands-on skills assessment;
(b) Received a score of seventy (70) percentile on the course test; and
(c) Has attended a least ninety (90) percent of each training day for the length of the course.
(4) The training provider may allow the student up to two (2) weeks following the course to:
(a) Retake and pass the course examination; and
(b) Complete the hands-on skills assessment requirements.
(5) When a course completion certificate is issued the certificate
shall include the following information:
(a) The name of the individual;
(b) The name of the course;
(c) The inclusive dates of the training;
(d) The name and address of the training program;
(e) The signature of the principal instructor;
(f) The signature of the training manager;
(g) The language in which the course was taught, if other than
English; and
(h) A unique identification number for each individual.

Section 8. Training Manager and Principle Instructor Qualifications. (1) The training manager shall have at minimum one (1) of the
following:
(a) Two (2) or more years of experience, education, or training in
teaching adults; and
(b) A bachelor or graduate degree in:
1. Building construction technology;
2. Engineering;
3. Industrial hygiene;
4. Safety;
5. Public health;
6. Education;
7. Business administration; or
8. Program management; or
(c) Two (2) or more years experience managing an occupational
health and safety training program specializing in environmental haz-
ards; and
(d) Experience in the construction industry, in one (1) of the fol-
lowing areas:
1. Lead or asbestos abatement;
2. Painting;
3. Carpentry;
4. Renovation;
5. Remodeling;
6. Occupational health and safety; and
7. Industrial hygiene; or
8. A related field.
(2) The principal instructor shall have:
(a) Two (2) years experience in adult education and training;
(b) Completed an EPA-model or department accredited all initial
courses that are taught, except the worker course; and
(c) Experience, education, or training in:  
1. Lead or asbestos abatement;
2. Painting;
3. Carpentry;
4. Renovation;
5. Remodeling;
6. Occupational health and safety; or
7. Industrial hygiene.

Section 7. Training Manager's Duties. The training manager shall:
(1) Designate a qualified principal instructor to:
(a) Organize the course;
(b) Oversee the teaching of course materials;
(2) Designate guest instructors as needed to provide:
(a) Instruction specific to the lecture;
(b) Hands-on activities; and
(c) Work practice components of a course; and
(3) Maintain the validity and integrity of the hands-on skills as-
essment to ensure that the activities:
(a) Accurately evaluate the trainees' performance of the work
practices and procedures associated with the course topics; and
(b) Reflect current technologies, standards and needs of the stu-
dents;
(4) Maintain the validity and integrity of the course test to ensure
that it accurately evaluates the trainees' knowledge and retention of the
course topics;
(5) Insure that the course test was developed in accordance with
the course test blueprint submitted with the training accreditation appli-
cation; and
(6) Develop the quality assurance control plan, that:
(a) Is to be used to maintain and improve the quality of the training
program over time; and
(b) Contains, at least, the procedures for the:
1. Periodic revision of training materials and the course test to re-
fect innovations in the field; and
2. Training managers annual review of principal instructor com-
petency; and
(7) Ensures that the training program complies with the require-
ments of this administrative regulation.

Section 8. Knowledge of Work Practice Standards. (1) The train-
ing provider shall offer courses that teach the work practice standards
developed by:
(a) This administrative regulation for conducting lead-hazard ac-
tivities; and
(b) Other related standards developed by:
1. EPA; and
2. Other federal and state agencies.
(2) Work practice standards shall be taught in the appropriate
courses to provide trainees with knowledge needed to perform safe,
effective lead-hazard assessment or abatement activities in target
housing and child-occupied facilities.

Section 9. Requirements for Initial Courses. (1) The lead-hazard
inspector course shall:
(a) Last a minimum of twenty-four (24) training hours;
(b) Include a minimum of eight (8) hours devoted to hands-on
training activities; and
(c) Include the following minimum curriculum requirements for
inspector course topics:
1. Role and responsibilities of an inspector;
2. Background information on lead and its adverse health effects;
3. Background information on federal, state and local regulations
that pertain to lead hazards and lead-hazard assessment and
abatement activities;
4. Lead-hazard inspection methods, including selection of rooms
and components for sampling or testing, with hands-on activities;
5. Paint, dust, water and soil sampling methodologies, with hands-
on activities;
6. Clearance standards and testing, including random sampling,
with hands-on activities;
7. Preparation of an inspection report, with hands-on activities;
and
8. Recordkeeping.
(2) The lead-hazard risk assessor course shall:
(a) Last a minimum of sixteen (16) training hours;
(b) Include a minimum of four (4) hours devoted to hands-on
training activities; and
(c) Include the following minimum curriculum requirements for the
risk assessor course topics:
1. Role and responsibilities of the risk assessor;
2. Collection of background information to perform a risk assess-
ment;
3. Sources of environmental lead contamination found in paint,
surface dust, soil, water and air, packaging and food;
4. Visual inspection for the purpose of identifying potential
sources of lead hazards that includes hands-on activities;
5. Lead-hazard screening protocol;
6. Sampling for other sources of lead exposure, with hands-on
activities;
7. Interpretation of lead-sampling results, including applicable
federal or state regulations pertaining to lead hazards, with hands-on
activities;
8. Development of hazard control options, the role of interim
controls, and operation and maintenance activities to reduce lead haz-
ards; and
(3) The lead-hazard supervisor course shall:
(a) Last a minimum of thirty-two (32) training hours;
(b) Include a minimum of eight (8) hours devoted to hands-on
activities; and
(c) Include the following minimum curriculum requirements for the
supervisor course topics:
1. Role and responsibilities of a supervisor;
2. Background information on lead and its adverse health effects;  
3. Background information on federal, state, and local regulations 
that pertain to lead hazards and lead-hazard assessment and 
abatement activities;  
4. Liability and insurance issues relating to lead-hazard abate-
ment;  
5. Risk assessment and inspection report interpretation, with 
hand-on activities;  
6. Development and implementation of an abatement and occu-
pan protection plan;  
7. Lead-hazard recognition and control, with hands-on activities;  
8. Lead-hazard abatement and lead-hazard reduction methods, 
including restricted practices, with hands-on activities;  
9. Interior dust abatement, cleanup, or lead-hazard control and 
reduction methods, with hands-on activities;  
10. Soil and exterior lead dust abatement or lead-hazard control 
and reduction methods, with hands-on activities;  
11. Clearance standards and testing;  
12. Cleanup and waste disposal; and  
13. Recordkeeping.  

(a) The lead-hazard project designer course shall:  
(b) Include the following minimum requirements for the project 
designer course:  
(1) Role and responsibilities of a project designer;  
(2) Development and implementation of an occupant protection 
plan for large-scale abatement projects;  
3. Lead-hazard abatement and lead-hazard reduction methods, 
including restricted practices for large-scale abatement projects;  
4. Interior dust abatement, cleanup, or lead-hazard control and 
reduction methods for abatement projects;  
5. Clearance standards and testing for large-scale abatement 
projects; and  
6. Integration of lead-hazard abatement methods with moderniza-
tion and rehabilitation projects for large-scale abatement projects.  

(b) The lead-hazard abatement worker course shall:  
(c) Include the following minimum requirements for the worker 
course:  
(1) Role and responsibilities of an abatement worker;  
(2) Background information on lead and its adverse health effects;  
3. Background information on federal, state, and local regulations 
and guidance to lead-hazard abatement;  
4. Lead-hazard recognition and control, with hands-on activities;  
5. Lead-hazard abatement and lead-hazard reduction methods, 
including restricted practices, with hands-on activities;  
6. Interior dust abatement methods, cleanup, or lead-hazard re-
duction, with hands-on activities; and  
7. Soil and exterior dust abatement methods of lead-hazard re-
duction, with hands-on activities.  

(b) The lead-hazard dust clearance technician course shall:  
(c) Include the following minimum curriculum for lead technician 
courses:  
(1) Role and responsibilities of a lead technician;  
(2) Background information on lead and it adverse health effects;  
3. Background information on federal, state and local regulation 
that pertains to the lead hazards and lead-hazards technician activi-
ties;  
4. Lead-hazard dust sampling methodologies, with hands-on ac-
activities;  
5. Lead-hazards clearance techniques;  
6. Preparation of a clearance report with hand-on activities; and  
7. Recordkeeping.  

Section 10. Requirements for Refresher Courses. (1) To obtain 
accreditation to offer refresher-training courses, the provider shall 
meet the following minimum requirements:  
(a) The training provider shall have been accredited by the de-
partment to teach the related initial course; and  
(b) The refresher course shall teach the same curricula topics of 
the initial course and shall include:  
1. An overview of current safety practices relating to lead-hazard 
activities in general, including specific information pertaining to the 
appropriate discipline;  
2. Current laws and regulations relating to lead-hazard abate-
ment, inspection, assessment activities in general, including specific in-
formation pertaining to the applicable discipline; and  
3. Current technologies relating to lead-hazard activities in gen-
eral, including specific information pertaining to the applicable disci-
pline.  

(2) The training hour requirements for a refresher course shall be:  
(a) Eight (8) hours if the initial course was more than eight (8) 
hours; or  
(b) Four (4) hours if the initial course was eight (8) hours or less.  
(3) For each training course offered, the training provider shall:  
(a) Provide applicable hands-on skills assessments; and  
(b) Give a test at the completion of the course.  

Section 11. Renewal of Accreditation of Training Program. (1) 
Accreditation for a training program shall be for a two (2) year period 
following issuance.  

(2) At a minimum of thirty (30) days prior to the expiration date of 
accreditation a training provider shall:  
(a) Apply for renewal of accreditation; and  
(b) Submit the following fees:  
1. Reapplication review fee of $100; and  
2. Course fee of $150 per course.  
(3) A training provider shall also submit the following information:  
(a) The training provider’s name, address, and telephone number;  
(b) A list of courses for which the training provider is applying for 
renewal of accreditation; and  
(c) Updated materials and other information identified in Section 2 
of the administrative regulation.  

(4) The application shall be reviewed and approved or denied 
pursuant to provisions identified in Section 3 of this administrative 
regulation.  

Section 12. Recordkeeping Requirements. (1) An accredited 
training provider shall maintain, update, and make available to the 
department upon request the following records:  
(a) Current curriculum, course materials, and documents reflecting 
changes made to these materials; and  
(b) Information regarding how the hands-on assessment is con-
ducted, including:  
1. Who conducts the assessment;  
2. How the skills are graded;  
3. What facilities are used; and  
4. The pass or fail rate; and  
(c) The quality control plan; and  
(d) Results of:  
1. The student’s hands-on skills assessments and course tests; and  
2. A copy of each student’s course completion certificate.  

(2) The training provider shall retain the documentation for a 
minimum of three (3) years and six (6) months.  

Section 13. Notification Requirements. (1) The training provider 
shall notify the department in writing within fourteen (14) calendar 
days of the following changes:  
(a) Management;  
(b) Organizational;  
(c) Address; and  
(d) The transfer of records to the new training provider’s address.  
(2) The training provider shall provide written notification to the 
department at a minimum of fourteen (14) calendar days prior to the 
course start date indicating the following information:  
(a) Training provider name;  
(b) Telephone number;  
(c) Course name; and  
(d) Course location;
REGULATORY IMPACT ANALYSIS

Contact person: Terry Wescott, 564-4537, ext. 3703

(1) Provide a brief summary of:
(a) What this administrative regulation does: This new administrative regulation establishes requirements relating to the accreditation of training programs and the providers of educational programs for individuals who perform lead-hazard detection or lead-hazard abatement activities in target housing or child-occupied facilities. As a result it will establish some new fees and reduce a current fee.
(b) The necessity of this administrative regulation: The adoption of this administrative regulation is necessary in order to comply with requirements mandated by the Kentucky Lead Hazard Assessment and Abatement Law, KRS 211.9065 and 211.9067.
(c) How this administrative regulation conforms to the content of the authorizing statutes: The Kentucky Lead Hazard Assessment and Abatement Law, KRS 211.9065 and 211.9067 authorizes the Department for Public Health to promulgate administrative regulations relating to the training, certification of persons, and standards and procedures for activities related to conducting lead-hazard assessment and abatement activities in target housing or child-occupied facilities.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: In order to enhance and assist the environmental lead program’s efforts in effective administration of the Lead Hazard Assessment and Abatement Law, the Department for Public Health is promulgating this regulation in order to adopt new updated regulations as required by law in accordance with new federal rules and standards, and bring the regulation into compliance with KRS Chapter 13A requirements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).
(d) How the amendment will assist in the effective administration of the statutes: In order to enhance and assist the environmental lead program’s efforts in effective administration of the Lead Hazard Assessment and Abatement Law, the Department for Public Health is promulgating this regulation in order to adopt new updated regulations as required by law in accordance with new federal rules and standards, and bring the regulation into compliance with KRS Chapter 13A requirements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 20 regulated companies and 100 principle instructors who are projected to be or are presently accredited 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, if new, or by the change if it is an amendment: The regulated persons or companies will be impacted by changes in standards, updated standards and protocols, and fee requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: No additional program cost will be incurred as a result of adopting this administrative regulation.
(b) On a continuing basis: None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds and program fees.

(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 fees established by this administrative regulation are based on partial support of the program. Current federal grant money supports most of the program under EPA state authorization. The additional $700 of revenue that will be generated will help prevent the Department for Public Health from being required to request general funds from the General Assembly in order to continue to operate the program in the Commonwealth.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The existing fee to
be decreased is the renewal course fee. Currently the fee is set at $200 and will be decreased to $150. Approximately 8 of these fees are assessed annually, which would reduce revenues by approximately $400.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the certification and training requirements apply equally to all persons who conduct lead-hazard assessment, or abatement in target housing or child occupied facilities within the Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
   40 CFR Part 745.
3. Minimum or uniform standards contained in the federal mandate. Yes
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

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 whether this administrative regulation will affect the local government or only a part or division of the local government. Part of local government
3. State the aspect or service of local government to which this administrative regulation relates. When employees of local government conduct assessment and abatement activities in residential structures and child occupied facilities they must comply with training and certification requirements and must use established standards and procedures.
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. As indicated in the past history of assessment and abatement activities since 1997, it is anticipated that only a limited number of lead-hazard assessment and abatement activities will be conducted by local government employees.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(New Administrative Regulation)

902 KAR 48:040. Permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement.

RELATES TO: KRS 211.190, 211.900-211.905, 211.994, 217.001
STATUTORY AUTHORITY: KRS 211.090, 211.180, 211.9081-211.9079
NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.9076
and 211.9075 authorizes the Department for Public Health to promulgate administrative regulations relating to the establishment of permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement activities in target housing or child-occupied facilities.

Section 1. Work Practice Requirements and Methodologies. Lead-hazard detection and abatement activities shall comply with:
(1) The work practice standards and procedures established by the provisions of this administrative regulation;
(2) Documented methodologies recognized in federal EPA rules identified in 40 CFR Part 745.227, "Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities"; or
(3) Equivalent methodologies.

Section 2. Lead-hazard Inspections. A lead-hazard inspection shall comply with the following work practice standards and procedures:
(1) An inspection shall be conducted by a certified lead-hazard inspector or lead-hazard risk assessor;
(2) The sites and components specified in subsection (3) of this section shall be:
   (a) Selected as provided by the technical methodologies indicated in Section 1 of this administrative regulation; and
   (b) Tested for the presence of lead in paint;
   (c) Unless the inspector or risk assessor determines that the components had:
      1. Been replaced after '1978; or
      2. Not been coated with lead-containing paint or similar coatings.
   (3)(a) In a single residential dwelling or child-occupied facility, interior and exterior components with a distinct painting history shall be tested for lead levels; and
   (b) In a multifamily dwelling or child-occupied facility additional components with a distinct painting history in common areas shall be tested for lead levels.
(4) Paint shall:
   (a) Be sampled under the technical methodologies specified in Section 1 of this administrative regulation; and
   (b) Tested in the following manner:
      1. The analysis of paint to determine the presence of lead shall be conducted using documented methodologies that incorporate quality control procedures; and
      2. Paint chip samples that have been collected shall be analyzed by an EPA-recognized laboratory to determine if they contain hazardous levels of lead.
(5) A certified lead-hazard inspector or risk assessor shall prepare an inspection report that shall include the following:
   (a) Date of each inspection;
   (b) Address of building;
   (c) Date of construction;
   (d) Apartment numbers, if applicable;
   (e) Name, address, and telephone number of the owner of each residential dwelling or child-occupied facility;
   (f) Name, signature, and certification number of the certified inspector or risk assessor who conducted the inspection;
   (g) Name, address, and telephone number of the firm or individual employing each inspector or risk assessor, if applicable;
   (h) Name, address, and telephone number of the laboratory that conducted an analysis of collected samples, if applicable;
   (i) The testing method, testing device, or sampling procedure employed for paint analysis, including:
      1. Quality control data; and
      2. If used, the serial number and radioactive materials license number of the XRF device;
   (j) Specific locations of each painted component tested for the presence of lead in paint; and
   (k) The results of the inspection expressed in terms appropriate to the sampling method used.
(6) A copy of the lead-hazard inspection report shall be submitted to the department within thirty (30) days after the completion of the inspection.

Section 3. Lead-hazard Screens. (1) Work practice standards and procedures for lead-hazard screening shall comply with the provisions of this section.
(2) A lead-hazard screen shall be conducted by a certified lead-hazard risk assessor.
(3) In a residential dwelling or child-occupied facility, the lead-hazard risk assessor shall:
   (a) Collect background information regarding the physical characteristics and occupant use patterns of the residential dwelling or child-occupied facility that may cause lead exposure to a child;
   (b) Conduct a visual inspection to determine if deteriorated paint is present;
   (c) Test for the presence of lead on each surface with deteriorated paint, that has determined to have a distinct painting history;
   (d) Use the technical methodologies indicated in Section 1 of this
administrative regulation when collecting paint chip and dust samples;
(e) Collect a minimum of two (2) composite dust samples, from
rooms where children are most likely to come in contact with dust:
1. One (1) from the floors; and
2. One (1) from the window troughs or sills;
(f) Collect in a multifamily dwelling, one (1) additional sample from
the common areas, where young children are most likely to come in
contact with lead dust.
(g) Submit paint chip or dust samples to an EPA-approved labo-
rary for analysis.
(h) Prepare a lead-hazard screening report that shall include:
1. The applicable component information required for a complete
lead-hazard risk assessment identified in Section 4(d) of this adminis-
trative regulation; and
2. If warranted, recommendations for a follow-up risk assessment
and other appropriate actions.
(4) A copy of a lead-hazard screening report shall be submitted to
the department within thirty (30) days after the completion of the lead-
hazard screening assessment.

Section 4. Lead-hazard Risk Assessments. (1) Risk assessment
work practice standards and procedures shall comply with the provi-
sions of this section.
(2) A risk assessment shall be conducted by a certified risk assess-
sor.
(3) A risk assessor shall:
(a) Use the methodologies identified in Section 1 of this adminis-
trative regulation to conduct samples;
(b) Conduct a visual inspection of a residential dwelling or child-
occupied facility to:
1. Locate deteriorated paint;
2. Assess the extent and causes of the deterioration of paint; and
3. Inspect for other potential sources of lead hazard;
(c) Collect information regarding the physical characteristics and
occupant use patterns of the residential dwelling or child-occupied
facility that may cause lead exposure to children;
(d) Test the following surfaces for the presence of lead by using
technical methodologies identified in Section 1 of this administrative
regulation:
1. Each friction or impact surface with visibly-deteriorated paint;
and
2. All other surfaces with visibly-deteriorated paint;
(e) Collect dust samples in residential dwellings (either composite or
single surface samples) from the interior window sill(s) and floor,
where children are most likely to come into contact with dust;
(f) Collect additional dust samples in the following locations in
multifamily dwellings:
1. Common areas that are adjacent to the residential dwelling or
child-occupied facility from which samples have been taken; and
2. Other common areas in the building;
(g) Collect dust samples in the following locations in child-
occupied facilities that are utilized by children:
1. Each room, hallway or stairwell; and
2. Other common areas;
(h) Collected soil samples shall be collected at the following loca-
tions:
1. Exterior play areas where bare soil is present;
2. Dripline or foundation areas where bare soil is present; and
3. The rest of the yard where bare soil is present;
(i) Submit collected paint chip, dust, or soil samples to an EPA-
recognized laboratory; and
(l) Prepare a lead-hazard risk assessment report.
(4) The information provided in a report shall include:
(a) Date of assessment;
(b) Address of each building;
(c) Date of construction of buildings;
(d) Apartment numbers (when applicable);
(e) Name, address, and telephone number for each owner of each
building;
(f) Name, signature, and certification number of the certified risk
assessor conducting the assessment;
(g) Name, address, and telephone number of the firm or individual
employing each certified risk assessor, when applicable;
(h) Name, address, and telephone number of each recognized
laboratory conducting an analysis of collected samples;
(i) Results of the visual inspection;
(j) Testing method and sampling procedure for paint analysis
employed;
(k) Specific locations of each painted component tested for the
presence of lead;
(l) Diagram or floor plan showing testing locations;
(m) Data collected from on-site testing, including:
1. Quality control data; and
2. If used, the serial number of the XRF device;
(n) Results of laboratory analysis:
1. Collected paint;
2. Soil; and
3. Dust samples;
(o) Other sampling results;
(p) Background information collected pursuant to subsection (3)(o)
of this section;
(q) The history of any previous inspection or analysis for the pres-
ence of lead, lead assessments, or other lead hazards found in the
residence, that have been given consideration, as a part of the present
hazard determination;
(r) A description of:
1. The location, type, and severity of identified lead hazards asso-
ciated with paint; and
2. Other potential lead hazards;
(s) A description of interim controls or abatement for each identi-
fi ed lead hazard, including:
1. Description of interim controls or abatement options; and
2. Recommendations for addressing the lead hazard; and
(t) If the use of an enclosure or enclosure is recommended, a
suggested maintenance and monitoring schedule is required.
(5) A copy of the lead-hazard risk assessment report shall be
submitted to the department within thirty (30) days after the completion
of the assessment.

Section 5. Abatement Permit Application. (1) The following items
shall be submitted to the department by the certified individual who
has prepared the abatement plan:
(a) An abatement plan with components as identified in Section
7(b) of this administrative regulation;
(b) An occupant protection plan with components identified in
Section (c) of this administrative regulation; and
(c) The fee established by Section 6 of this administrative regu-
lation.
(2) As per KRS 211.9063(6), the department shall have seven (7)
calendar days to consider and render a decision in response to the
application.
(3)(a) When an application is not approved, the applicant shall be
notified in writing of the deficiencies;
(b) The applicant shall correct the deficiencies indicated in the
department's notice of disapproval; and
(c) The corrected application shall be resubmitted to the depart-
ment for reconsideration and an additional application review fee.
(4) An abatement permit shall be valid for the dates of issuance,
unless extended by the department for the following conditions:
(a) Written request ever: (7) days prior to expiration date by the
permit holder; and
(b) Provision of the following information:
1. Amended dates of abatement; and
2. An amended abatement plan, if applicable; and
3. An amended occupant protection plan, if applicable.
(5) When the lead-hazard abatement activity has not been com-
pleted within the dates of issuance or permit dates extended, the per-
mit holder shall:
(a) Be required to apply for an amended permit; and
(b) Pay the required amended permit fee as indicated in Section 6
of this administrative regulation.

Section 6. Application and Permit Fee Schedule. (1) The fee for a
lead-hazard abatement permit shall be:
(a) For each single family or child-occupied: $225; or
(b) In a multifamily dwelling: $100 per residence;
(c) Exterior abatement: $125 per building; and
(d) Soil abatement: fifty (50) dollars per project.
Section 7. Lead-hazard Abatement and Occupant Protection Plans. (1) Standards and requirements for abatement and occupant protection plans are as follows:

(a) Abatement and occupant protection plans shall be prepared by:
   1. A certified project designer when:
      a. The project is a large-scale project; and
      b. The planned abatement activities create more than low lead waste materials as defined in administrative regulation 902 KAR 48:010; or
   2. Either a certified project designer or a certified supervisor on all other projects.

(b) An abatement plan shall be a detailed, written description of the abatement, and include the:
   1. Name and certification number of the individual who prepared the plan;
   2. Name and certification numbers of all individuals working at the site;
   3. Anticipated start and finish dates;
   4. Daily work hours at the project;
   5. Copy of job specifications relating to the project;
   6. Location of the site;
   7. Type of structure;
   8. Sequence of work activity;
   9. Abatement methods to be used;
   10. Diagram, floor plan showing abatement locations;
   11. Enclosure and containment methods and locations;
   12. Locations of rooms and components where abatement will occur;
   13. Reason for the selection of particular abatement methods for each component;
   14. If encapsulants are to be used, product usage information;
   15. Cleanup measures; and
   16. Name and address of individual conducting clearance testing;

(c) An occupant protection plan shall:
   1. Be unique to the residential dwelling or child-occupied facility;
   2. Developed prior to the abatement; and
   3. A detailed, written description of the measures and management procedures that will be taken during the abatement to protect the occupants of the building from exposure to lead hazards.

Section 8. Lead-hazard Abatement On-site Project Requirements. (1) An abatement permit must be issued by the department before any lead-hazard abatement activity is conducted.

(2) The abatement permit shall be kept at the abatement site until:
   (a) Project is complete;
   (b) Clearance is achieved; and
   (c) The department has conducted the response activities as identified in KRS 211.9063(6).

(3) Only certified individuals shall be allowed on the abatement site during the time that abatement activities are being conducted.

(4) Certified individuals shall have on their possession departmental-issued identification cards.

(5) The certified supervisor or certified project designer who prepared the abatement plan shall be:
   (a) Available, within two (2) hour distance, to the lead-abatement workers while lead-abatement activities are conducted; and
   (b) On site during:
      1. Work site preparation;
      2. The post-lead-abatement cleanup of work areas; and
      3. At the time of the departmental quality assurance inspection.

(6) The lead-abatement permit holder shall ensure that a lead abatement and postlead-abatement activity comply with the provisions of:
   (a) This administrative regulation; and
   (b) Applicable federal, state, and local requirements.

Section 9. Specific Lead-Hazard Abatement Practices. (1) Soil abatement shall be conducted as follows:

(a) If soil containing a hazardous level of lead is removed, the permit holder will provide analytical information to the department that the replacement soil does not contain amounts over the established soil lead-hazard levels; or

(b) If soil containing a hazardous lead level is not removed, the lead hazard in the soil shall be considered as abated when permanently covered by methods identified in technical methodologies in Section 1 of this administrative regulation.

(2) The following work practices used for paint removal shall be prohibited:

(a) Open-flame burning or torching; or
(b) Machine sanding or grinding, or abrasive blasting unless conducted using a high efficiency particulate air exhaust control that removes particles of three-tenths (0.3) microns or larger from the air at 99.97 percent or greater efficiency;

(c) Dry scraping unless:
   1. In conjunction with heat guns; or
   2. Around electrical outlets; or
   3. In the treatment of defective paint spots that total no more than:
      a. Two (2) square feet; on all surfaces within a room; or
      b. Twenty (20) square feet; on all the exterior surfaces;

(d) Use of a heat gun at temperatures that exceed 1,100 degrees Fahrenheit.

Section 10. Postabatement Clearance Procedures. (1) Postabatement clearance procedures shall be performed according to documented methodologies identified in Section 1 of this administrative regulation.

(2) Postlead-hazard abatement clearance shall be performed by a certified inspector or certified risk assessor.

(3) Postlead-hazard clearance after nonabatement activities such as renovation and remodeling activities shall be performed by a certified inspector, risk assessor, or sampling technician.

(4) A visual shall be conducted before sampling to examine for deteriorated paint, dust or debris.

(5) Clearance sampling shall not take place if deteriorated painted surfaces or visible amounts of dust or debris are found during the visual.

(6) Sampling shall be conducted either using single or composite dust sampling using the documented methodologies identified in Section 1 of this administrative regulation.

(7)(a) The certified individual who conducted the clearance shall compare the residual lead levels as determined by the laboratory analysis of each dust sample, with applicable clearance levels for lead in dust established by Section 13 of this administrative regulation; and

(b) If the residual lead levels in a dust sample exceed the specified clearance levels, all the components represented by the failed sample shall be recleaned and retested until clearance levels have been met.

(8)(a) In a multifamily dwelling with similarly-constructed and maintained residential units:
   (a) Random sampling for clearance will be conducted in accordance with documented methodologies; and
   (b) The person who conducted the lead-hazard abatement and postabatement cleanup in the residential dwelling(s) shall not be provided knowledge of the dwellings units selected for the random sample.

Section 11. Clearance Report. (1) When clearance is conducted, the certified individual shall prepare a report containing the following information:

(a) Name of the individual conducting the clearance;
(b) Departmental certification number;
(c) Address of the property;
(d) Specified units and areas affected; (e) Dates of clearance examination;
(f) Results of visual assessment;
(g) Results of dust sample analysis;
(h) Name and address of laboratory used;
(i) Project activity information; and
(j) Lead-hazard reduction or abatement methods used.
(2) A copy of the lead-hazard clearance report shall be submitted to the department within thirty (30) days after the completion of the clearance.

Section 12. Lead in Paint Levels. The following lead levels shall be used to determine if paint or similar coatings are considered as lead-based paint:
1. Equal to or in excess of one (1.0) milligrams per square centimeter; or
2. More than five-tenths (0.5) percent by weight.

Section 13. Dust Lead Hazards. The levels used for clearance or other evaluation after the disturbance of lead paint, or for determination of potential lead dust hazards in a residential structure of child-occupied facility are as follows:

<table>
<thead>
<tr>
<th>Floors</th>
<th>40</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interior Window Sills</td>
<td>250</td>
</tr>
<tr>
<td>Window Troughs</td>
<td>400</td>
</tr>
<tr>
<td>Exterior Components</td>
<td>800</td>
</tr>
</tbody>
</table>

Section 14. Soil Lead Hazards. Soil is considered to be a lead hazard on residential property or at a child-occupied facility when the lead level is:
1. Exceeds 400 parts per million in a play area; or
2. Exceeds 1,200 parts per million of bare soil in the rest of the yard.

Section 15. Quality Assurance Inspection. (1) A permit holder shall notify the department of the completion of the abatement services and clearance testing.
(2) The department shall conduct activities pursuant to KRS 211.0063(6).
(3) An abatement permit holder shall provide the department with access to the project unit to conduct a quality assurance inspection.
(4) When, during the inspection, the department discovers:
   a. Vicarious work practices and standards; or
   b. Visual dust or paint chips the department representative shall:
      1. Not conduct sampling; and
      2. Notify the permit holder that another inspection will be conducted when:
         a. Cleanup has been completed; and
         b. Another clearance is conducted.
(5) When collected dust samples exceed clearance levels, the components making up the failed sample shall be:
   a. Recleaned; or
   b. Otherwise lead-hazard abated; and
   c. Another clearance is conducted.
(6) For each failed inspection a permit holder shall pay a reinspection fee as established by Section 6 of this administrative regulation.

Section 16. Postabatement Report. (1)(a) A postabatement report shall be prepared by either the certified lead-hazard supervisor or lead-hazard project designer who prepared the abatement plan.
   (b) The postabatement report shall include the:
       1. Start and completion dates of abatement;
       2. Name and addresses of the certified individual preparing the report;
       3. Changes made to the occupant protection plan and the abatement plan;
       4. Name, address, and signature of each certified lead inspector conducting clearance sampling and the date of clearance testing;
       5. The name of each recognized laboratory that conducted the analysis;
       6. Results of:
          a. Sampling testing;
          b. Soil analysis, when applicable; and
       7. Suggested monitoring of encapsulation or enclosure plan as per methodologies identified in Section 1 of this administrative regulation.
   (2) The postabatement report required by this section of this administrative regulation shall be submitted to the department within thirty (30) days after the completion of the abatement project.

Section 17. Recordkeeping. All reports required by the provisions of this administrative regulation shall be retained by the permit holder or other certified individual who prepared the report for three (3) years.

NICHOLAS Z. KAFOLGIS, M.D., Chairman
RICE C. LEACH, M.D., Commissioner
MARIA R. MORGAN, Secretary
APPROVED BY AGENCY: September 24, 2001
FILED WITH LRC: September 25, 2001 at 10 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held October 22, 2001, 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 October 15, 2001. 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 Brown, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Health Services, 725 East Main Street - S-W-B, Frankfort, Kentucky 40621, (502) 564-7905, fax: (502) 564-7873
REGULATORY IMPACT ANALYSIS

Contact person: Terry Wescott, 564-4537, ext. 3703

(1) Provide a brief summary of:
   a. What this administrative regulation does: This new administrative regulation establishes permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement activities in targeted housing or child-occupied facilities. As a result it will establish some new fees and reduce a current fee.
   b. The necessity of this administrative regulation: The adoption of this administrative regulation is necessary in order to comply with requirements mandated by the Kentucky Lead Hazard Assessment and Abatement Law, KRS 211.0065 and 211.0067.
   c. How this administrative regulation conforms to the content of the authorizing statutes: The Kentucky Lead Hazard Assessment and Abatement Law, KRS 211.0065 and 211.0067 authorizes the Department for Public Health to promulgate administrative regulations relating to the training, certification of persons, and standards and procedures for activities related to conducting lead-hazard assessment and abatement activities in targeted housing or child-occupied facilities.
   d. How this administrative regulation currently assists or will assist in the effective administration of the statutes: In order to enhance and assist the Environmental Lead Program's efforts in effective administration of the Lead Hazard Assessment and Abatement Law, the Department for Public Health is promulgating this regulation in order to adopt new updated regulations as required by law in accordance with new federal rules and standards, and bring the regulation into compliance with KRS Chapter 13A requirements.
   e. If this is an amendment to an existing administrative regulation, provide a brief summary of:
      a. How the amendment will change this existing administrative regulation: This is a new administrative regulation.
      b. The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
      c. How the amendment conforms to the content of the authorizing statutes: See (1)(c)
      d. How the amendment will assist in the effective administration of the statutes: In order to enhance and assist the Environmental Lead Program's efforts in effective administration of the Lead Hazard Assessment and Abatement Law, the Department for Public Health is promulgating this regulation in order to adopt new updated regulations as required by law in accordance with new federal rules and standards, and bring the regulation into compliance with KRS Chapter 13A requirements.
   f. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 400 regulated persons who are projected to
be or are presently certified by the department.

(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: The regulated
persons or companies will be impacted by changes in standards, up-
dated standards and protocols, and fee requirements.

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

(a) Initially: No additional program cost will be incurred as a result
of adopting this administrative regulation.

(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: Federal
funds and program fees.

(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 fees established by
this administrative regulation are based on partial support of the pro-
gram. Current federal grant money supports most of the program
under EPA state authorization. The additional $1,875 of revenue that
will be generated will help prevent the Department for Public Health
from being required to request general funds from the General As-
sembly in order to continue to operate this program in the Common-
wealth.

(8) State whether or not this administrative regulation establishes
any fees or directly or indirectly increases any fees: The existing fee
to be decreased is the multifamily dwelling fee. Currently the fee is set
at $225 and will be decreased to $100. Approximately 10 of these fees
are assessed annually, which would reduce revenues by approxi-
mately $1,250.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this
administrative regulation because the certification, training and apply
equally to all persons who conduct lead-hazard assessment, or
abatement in target housing or child-occupied facilities within the
Commonwealth.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
40 CFR Part 745
2. State compliance standards. 902 KAR 47:100
3. Minimum or uniform standards contained in the federal man-
date.
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 addi-
tional or different responsibilities or requirements. N/A

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 whether this administrative regulation will affect the local
government or only a part or division of the local government. Part of
local government
3. State the aspect or service of local government to which this
administrative regulation relates. When employees of local govern-
ment conducts assessment and abatement activities in residential
structures and child-occupied facilities they must comply with training
and certification requirements and must use established standards and
procedures.
4. Estimate the effect of this administrative regulation on the ex-
penditures 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. As indicated in the past history of assess-
ment and abatement activities since 1997, it is anticipated that only a
limited number of lead-hazard assessment and abatement activities
will be conducted by local government employees.

CABINET FOR FAMILIES AND CHILDREN
Department for Community Based Services
Division of Policy Development
(New Administrative Regulation)

922 KAR 1:450. Tuition waiver for foster and adopted chil-
dren.

RELATES TO: KRS Chapter 138, 164.001, 164.2847, 164.7877,
164.7879, 164.7881, 199.570, 620.020(5), 620.050, 45 CFR 1355.20
STATUTORY AUTHORITY: KRS 164.2847, 194B.050(1)
NECESSITY, FUNCTION, AND CONFORMITY: Upon the re-
quest of a public postsecondary education institution, the Cabinet for
Families and Children shall verify the status of the student seeking to
participate in the tuition waiver program for foster children and for
adopted children who were in the custody of the Cabinet for Families
and Children or the Justice Cabinet prior to adoption. This administra-
tive regulation sets forth the provisions for the release of this infor-
mation.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Fami-
lies and Children or its designee.
(2) "Central office staff" means Division of Protection and Perma-
nency personnel within the central office of the cabinet located in
Frankfort.
(3) "Foster care" is defined at KRS 620.020(5) and 45 CFR
1355.20(a).
(4) "Institution" means a Kentucky public postsecondary institu-
tion as defined in KRS 164.001(10).
(5) "Student" means an individual who:
(a) Was adopted from the Kentucky foster care system;
(b) Is in foster care with the cabinet or Department of Juvenile
Justice;
(c) Is in an independent living program provided by or contracted
through the cabinet or Department of Juvenile Justice; or
(d) Is an individual who is in the permanent control of the cabinet
or the Department of Juvenile Justice through a court order, until the
individual:
1. Attains the age of eighteen (18); or
2. Terminates the voluntary extended commitment by:
   a. Reaching the age of twenty-one (21); or
   b. Requests release from voluntary extended commitment.
(6) "Tuition waiver" means a student exemption or a release from
tuition and mandatory student fees assessed by a Kentucky insti-
tution in accordance with KRS 166.2847(4)(b).

Section 2. Confirmation of Student Status. (1) A student shall
request a tuition waiver by:
(a) Completing the form "Tuition Waiver for Foster And Adopted
   Children"; and
(b) Presenting the form to a postsecondary institution after having
   complied with KRS 164.2847(3).
(2) A procedure for verifying student eligibility regarding a child in
the custody of the Justice Cabinet shall be established between the
institutions and the Department for Juvenile Justice within the Justice
Cabinet.
(3) Upon request of confirmation from an institution, the design-
ated central office staff within the cabinet shall:
(a) Determine the eligibility of a student as set forth in KRS
164.2847; and
(b) Respond to a student's completed form "Tuition Waiver for
   Foster and Adopted Children" within thirty (30) working days of receipt
and return the form to an institution.
(4) The confidentiality of information shall be maintained in accord-
dance with KRS 199.570 and 620.050 in the release of information.
(5) The central office staff shall maintain an active file of a stu-
dent's completed form "Tuition Waiver for Foster and Adopted Chil-
dren" for five (5) years from the student's initial request.
(6) A student is not required to resubmit the form "Tuition Waiver
for Foster and Adopted Children" provided that student has been con-
tinuously enrolled at the same institution.
(7) When a student transfers to another institution, a new form
shall be completed.
Section 3. Service Appeal. An applicant who is determined ineligible for a tuition waiver by the cabinet shall have access to a hearing in accordance with 922 KAR 1:320.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Families and Children, Division of Policy Development, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DIETRA PARIS, Commissioner
HIRED DESAI, Attorney
VIOLA P. MILLER, Secretary
APPROVED BY AGENCY: October 15, 2001
FILED WITH LRC: October 15, 2001 at noon
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on, November 21, 2001 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 2001, 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: Kentucky Office of Behavioral Health, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-9126 (Fax) 922 KAR 1:450.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Shirley Eldridge, Coordinator
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation implements KRS 164.2847(2) (HB 62 of the 2001 Session) which provides for a waiver of tuition and mandatory student fees at any public postsecondary institution for a student who meets the criteria of the legislation.
(b) The necessity of this administrative regulation: To implement KRS 164.2847(2).
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 164.2847 by providing a process for the Cabinet for Families and Children and the Department of Juvenile Justice to confirm the status of a student seeking to participate in the waiver of tuition and mandatory fees for any public postsecondary institution.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a process for confirmation of status for a student who is eligible to receive a waiver from tuition and mandatory fees for any public postsecondary institution.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new administrative regulation.
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state postsecondary educational institutions will be affected by this regulation. This waiver is available to a Kentucky student who is a:
(a) Kentucky public adopted child;
(b) Cabinet for Families and Children or Department of Juvenile Justice foster care child;
(c) Cabinet for Families and Children or Department of Juvenile Justice foster care child or Kentucky public foster child who is in an independent living program provided by or contracted through the cabinet or Department of Juvenile Justice;
(d) Child who is in permanent control of the cabinet or the Department of Juvenile Justice through a court order, until a child:
1. Attains the age of 18; or
2. Completes an independent living program provided by or contracted through the cabinet or Department of Juvenile Justice.
(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: With the Cabinet for Families and Children or Justice Cabinet status confirmation, any student who is eligible will receive a waiver from tuition and mandatory fees for any public postsecondary institution.
(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: Minimal cost to implement will be absorbed in the existing budget.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation does not affect funding.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increases any fees.
(9) TIERING: Is tiering applied? Tiering was not applied since policy is applied in a like manner to all eligible students to receive a waiver from tuition and mandatory fees for any public post-secondary institution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 1355.20(a).
2. State compliance standards. KRS 164.2847
3. Minimum or uniform standards contained in the federal mandate. The federal mandate provides a definition of foster care and in no other way affects this regulation.
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 standards, or additional or different responsibilities or requirements. None
The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 9, 2001 at 10:00 a.m. in Room 149 of the Capitol Annex. Representative John Arnold, Chairman, called the meeting to order, and the roll call was taken. The minutes of the September 11, 2001 meeting were approved.

Present were:

- Members: Representative John Arnold, Chairman; Senators Richard "Dick" Roeding, Joey Pendleton, and Marshall Long; Representatives Woody Allen, Jimmie Lee, and James Bruce.
- LRC Staff: Dave Nicholas, Karen Smith, Susan Wunderlich, Donna Kemper, Edna Lowery, and Ellen Steinberg.
- Guests: Karen Doyle, Kim Townley, Early Childhood Development Authority; Stephanie Brammer-Barnes, Cabinet for Families and Children; Diana Barber, Denise Reid, Linda Renschers, Richard Casey, Kentucky Higher Education Assistance Authority; Nancy L. Black, Division of Licensing and Occupations; James J. Grawe, Board for Specialists in Hearing Instruments; Gary Munsch, Board of Dentistry; George Purvis, Board of Speech Language Pathology and Audiology; B.R. Salyer, Board of Professional Engineers and Land Surveyors; Nathan Goldman, Sharon Weisenbeck, Bernadette Sutherland, Board of Nursing; Jack Darrow, Brian Logan, Brenda Priestley, Department of Corrections; Steve Lynn, Pat Carter, Betty Godsey, Department of Criminal Justice Training; Hollie Spade, Transportation Cabinet; Kevin Noland, Kentucky Board of Education; Rowena Holloway, Virginia L. Moore, Kentucky Commission on Deaf and Hard of Hearing; Sherry R. Deatrick, Reece Sourgland, B.J. Helton, Cabinet for Workforce Development, Kembra Taylor, Chuck Strifling, Tim Chancellor, Labor Cabinet; Vicky Horn, Sharon Clark, Department of Insurance; James Carroll; Ken Reese; Pamela J. Murphy, Cabinet for Health Services; Lisa Hinkle, Andrea R. Gabbott, Stephanie Fitchmaster, Nurses Registry, Inc.; Darlene Goodrich, KIDS NOW.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, compiled with statutory requirements:

**Governor's Office: Early Childhood Development Authority**


In response to questions by Senator Roeding, Ms. Townley stated that the Authority had already funded 15 community early childhood councils and was currently in the process of funding 60 more councils. The council may be within an individual county or group of counties. The Authority requires the councils to establish measurable specific outcomes for accountability. If a council fails to accomplish its outcomes, the Authority may discontinue its funding. The funding for each council is determined by the population of the county or group of counties.

This administrative regulation was amended as follows: (1) the RELATION TO ALLOW was amended to add a statutory citation; and (2) the administrative regulation was amended throughout to comply with the drafting and format requirements of KRS Chapter 13A.

**Kentucky Higher Education Assistance Authority: Work-Study Program**

11 KAR 6:010. KHEAA Work-Study Program. Linda Renschers, Student Aid Branch Manager, Diana Barber, Assistant General Counsel, and Richard Casey, General Counsel, represented the Program.

This administrative regulation was amended as follows: (1) Section 8(2) was amended to correct an internal cross-reference; and (2) Section 10 was amended to comply with the drafting requirements of KRS 13A.225.1.

**Osteopathic Medicine Scholarship Program**

11 KAR 14:010. Osteopathic Medicine Scholarship Program application process. This administrative regulation was amended as follows: Sections 2(2) and 3(2)(b) were amended to comply with the drafting requirements of KRS 13A.222(4)(a).

11 KAR 14:060. Osteopathic Medicine Scholarship Program application of payments. This administrative regulation was amended as follows: Sections 1 and 2 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

11 KAR 14:070. Osteopathic Medicine Scholarship Program notifications. This administrative regulation was amended as follows: Sections 1 and 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

11 KAR 14:080. Deferment of Osteopathic Medicine Scholarship Program repayment. This administrative regulation was amended as follows: Sections 1 and 4 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

**Early Childhood Development Scholarship Program**

11 KAR 16:001. Definitions for 11 KAR Chapter 16. This administrative regulation was amended as follows: Section 1 was amended to comply with the drafting and format requirements of KRS Chapter 13A.

11 KAR 16:060. Early Childhood Development Scholarship Program system of monetary incentives. This administrative regulation was amended as follows: Section 3(3)(a) was amended to comply with the drafting and format requirements of KRS Chapter 13A.

**Kentucky Licensing Board for Specialists in Hearing Instruments**

201 KAR 7:015. Fees. James J. Grawe, Assistant Attorney General, and Nancy Black represented the Board.

In response to questions by Senator Roeding, Ms. Black stated that the licensure renewal fee established by this administrative regulation for hearing instrument specialists would raise $13,000 annually. This administrative regulation was amended as follows: Section 4 was amended to comply with the drafting requirements of KRS Chapter 13A.

201 KAR 7:040. Examinations. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 5 were amended to comply with the drafting and formatting requirements of KRS Chapter 13A.

**Kentucky Board of Dentistry**

201 KAR 8:140. Continuing education compliance. Gary Munsch, Director, represented the Board.

This administrative regulation was amended as follows: Sections 2 through 4 were amended to comply with the drafting and formatting requirements of KRS Chapter 13A.

**Board of Speech-Language Pathology and Audiology**

201 KAR 17:030. License fees and requirements for inactive specialists. Nancy Black, George Purvis, Chairman, and Richard Carroll, Assistant Attorney General, represented the Board.

In response to questions by Senator Roeding, Ms. Black stated that this administrative regulation increased the licensure fees for speech-language pathologists, speech-language pathologist assistants, and audiologists to compensate the Board for rising legal fees and administrative costs. The Board had notified its licensees regarding the fee increases.

In response to questions by Representative Allen, Ms. Black stated that the license fees were less than those charged in surrounding states.

In response to questions by Representative Lee, Ms. Black stated that the Board had not received any objections to the fee increases by the licensees.

This administrative regulation, as amended, was approved on a roll call vote, with Senator Pendleton, Representative Bruce, Representative Lee, and Chairman Arnold voting in support of this administrative regulation, and with Senator Roeding and Representative Allen voting in opposition to this administrative regulation.

This administrative regulation was amended as follows: superfluous language was removed from Section 4(3) pursuant to KRS 13A.222(4)(a).

**Kentucky State Board of Licensure for Professional Engineers and Land Surveyors**

201 KAR 18:010. Classes of applicants. Bud Salyer, General Counsel, 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; and (2) the STATUTORY AUTHORITY paragraph and Section 1 were amended to correct statutory citations.

201 KAR 18:030. In-training certificates. 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; (2) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; and (3) Section 3 was amended to comply with the drafting requirements of KRS Chapter 13A.

201 KAR 18:040. Fees. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 were amended to comply with the drafting requirements of KRS Chapter 13A.

201 KAR 18:050. Branches of professional engineering for testing. This administrative regulation was amended as follows: (1) the Title was amended to accurately reflect the content of the administrative regulation; (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; and (4) Section 1 was amended to change "Branches" to "Disciplines."

Board of Nursing

201 KAR 20:070 & E. Licensure by examination. Sharon Weisenbeck, Executive Director, Bernadette Sutherland, Nursing Practice Consultant, and Nathan Goldman, General Counsel, represented the Board.

In response to a question by Senator Roeding, Mr. Goldman stated that the Administrative Office of the Courts charged the applicants for the court records search required by this administrative regulation.

This administrative regulation was amended as follows: Section 2 was amended to clearly establish the review process for applicants.

201 KAR 20:225. Reinstatement of license. In response to questions by Chairman Arnold, Ms. Weisenbeck stated that the Board could order that a nurse's license be probated, suspended, or revoked for drug use by the nurse. To reinstate a revoked licensee, the applicant must retake the nursing examination unless the applicant qualified for the pre-1987 exemption.

This administrative regulation was amended as follows: Section 3 was amended to comply with the drafting requirements of KRS Chapter 13A.

201 KAR 20:470 & E. Dialysis technician credentialing requirements and training program standards. In response to questions by Senator Roeding, Mr. Goldman stated that this administrative regulation established a continued approval fee for dialysis technician training programs. The fee funds the biennial credentialing process performed by the Board for the programs.

This administrative regulation was amended as follows: Section 7 was amended to include standards for completion of the training program.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:110. Roederer Correctional Complex. Jack Darroon, Counsel, represented the Department.

This administrative regulation was amended as follows: (1) RCC 13-19-01 was amended to include a statutory reference; (2) RCC 14-03-01 was amended to delete the requirement that persons solemnizing marriages within the prison provide a copy of their development to the Chaplain, to conform with KRS Chapter 402; and (3) RCC 18-03-01 was amended to delete the requirement that caseworker requests be filed in a U.S. mail box.

Department of Criminal Justice Training: General Training Provision

503 KAR 3:070. Telecommunications academy (non-CJIS). Steve Lynn, Assistant General Counsel, Pat Carter, Telecommunications Section Supervisor, and Betty Godsey, Telecommunications training instructor, represented the Department.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) Section 1 was amended to include a definition of "KLEC;" and (3) the Statutory Authority paragraph and Sections 1, 3, 4, 5, 6, 7, 8, and 9 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Carriers

601 KAR 1:019. Special overweight or overdimensional permits. Hollie Spade, Office of General Counsel, Rick Taylor, Director, and Denise King, Assistant 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; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2 and 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Education, Arts, And Humanities Cabinet: Kentucky Board of Education: Department of Education: Office of District Support Services: School Administration and Finance

702 KAR 3:246. School council allocation formula: KETS District Administrative System Chart of Accounts. Kevin Noland, General Counsel, represented the Board.

In response to questions by Senator Roeding, Mr. Noland stated that the school boards allocate the funding for student staff positions. The amendments clarify that school district administrators are required to follow the school boards' allocation policies.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 4, 5, 6, 7, and 13 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Office of Learning Programs Development: Office of Instruction

704 KAR 3:500 & E. Professional Development Leadership and Mentor Fund. In response to questions by Senator Roeding, Mr. Noland stated that the Professional Development Leadership and Mentor Fund received funding of $500,000 for this year. Each qualifying teacher is eligible for a $10,000 supplement from the fund.

This administrative regulation was amended as follows: Section 3 was amended to comply with the drafting and format requirements of KRS Chapter 13A.

Commission on the Deaf and Hard of Hearing: Telecommunication Devices for the Deaf

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive specialized telecommunications equipment for the deaf, hard of hearing and speech impaired. Rowena Holloway, Program Coordinator, and Virginia Moore, State Interpreter Administrator, represented the Commission.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to add statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 7 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (3) Section 10 was created to incorporate by reference a necessary form.

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to add statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 5 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Workforce Development Cabinet: Department for Adult Education and Literacy: Adult Education and Literacy

798 KAR 1:031. Repeal of 798 KAR 1:032. B.J. Helton, Principal Assistant, and Sherry Deadrick, General Counsel, represented the Department.

This administrative regulation was amended as follows: (1) the
RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to more clearly state the necessity for this repealer.

Labor Cabinet: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Occupational Safety and Health
803 KAR 2:320 & E. Air contaminants. Kembra Taylor, General Counsel, and Tim Chancellor, Health Standards Specialist, represented the Cabinet.

In response to a question by Representative Bruce, Mr. Chancellor stated that this administrative regulation regulated 300 different chemicals that are classified as air contaminants.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph and Sections 2 and 3 were amended to correct statutory citations and internal references; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 2, 3, 5, and 6 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Department of Insurance: Trade Practices and Frauds
806 KAR 12:095. Unfair claims settlement practices for property and casualty insurance. Sharon Clark, Director, and Vicki Horn, Counsel, represented the Department.

In response to a question by Senator Roeding, Ms. Clark stated that this administrative regulation assisted consumers who have been involved in an automobile accident and who disagree with the insurance company's loss valuation.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 9 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

Cabinet For Health Services: Department for Public Health: Health Services and Facilities
902 KAR 20:145. Operations and services; rural health clinics. Pamela Murphy, Inspector General, and Alex Reese, Administrative Regulations Coordinator, represented the Department.

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; and (2) Sections 1 through 3 were amended to comply with the drafting and format requirements of KRS Chapter 13A.

902 KAR 20:370 (& E). Operations and services; private duty nursing agencies. Marie Cull, Counsel, Kentucky Home Health Association, and Lisa Hinkle, Nurses Registry, appeared in support of this administrative regulation.

In response to questions by Representative Bruce, Ms. Murphy stated that the Department was legally required to regulate private duty nursing agencies because a certificate of need was issued for that level of health care.

In response to questions by Senator Roeding, Mr. Reese stated that this administrative regulation and its $104 licensure fee only applied to private duty nursing agencies and did not apply to independent practitioners. The presence of supervision over the nurses determined whether a private duty nursing enterprise qualified as a regulated agency.

In response to a question by Senator Roeding, Mr. Reese stated that all Kentucky health facility licensure fees, including the private duty nursing agency fee, were lower in comparison to those of surrounding states.

In response to questions by Representative Allen, Mr. Reese stated that the agencies were responsible for paying the annual licensure fee and not the individual nurses. Each agency paid a single $134 fee, regardless of the number of nurses it employed.

In response to questions by Representative Lee, Ms. Cull stated that because private duty nursing services had been licensed and regulated as a mobile health service prior to the issuance of the certificate of need, this administrative regulation did not impose a new licensure fee. Instead, it merely continued the prior fee.

In response to a question by Senator Roeding, Ms. Murphy stated that the agencies and not the individual nurses were responsible for creating the required nursing protocols and establishing the required written plans coordinating a patient’s care.

This administrative regulation was amended as follows: (1) the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Section 1(6) was amended to clearly establish that a nursing agency supervises only the nursing services provided by its personnel; (3) Section 2(3)(a) was amended to add Medical Director to the necessary personnel; (4) Section 2(3)(d) was amended to: (a) add “infection control” to the employee health program; (b) delete the requirement for pre-employment and periodic health examinations; and (c) to clarify that required health tests are to be based on the service to be performed; (5) Section 2(3)(g) was amended to delete vague language regarding job orientation; (6) Section 2(4)(c) 2. was amended to (b) delete the option of releasing a medical record in the form of an abstract; and (b) clarify that the releasing party is the patient or the patient’s agent; (7) Sections 1 to 4 were amended to comply with the drafting and format requirements of KRS Chapter 13A; and (8) the Summary of Material Incorporated by Reference was amended to delete a provision for annual fee increases.

The Subcommittee determined that the following administrative regulations complied with statutory authority:

Kentucky Higher Education Assistance Authority: KHEAA Grant Program
11 KAR 5:160. Disbursement procedures. Linda Renschler, Student Aid Branch Manager, Diana Barber, Assistant General Counsel, and Richard Casey, General Counsel, represented the Program.

Kentucky State Board of Licensure for Professional Engineers and Land Surveyors
201 KAR 18:20. Reissuance of license. Bud Salyer, General Counsel, represented the Board.

1. 201 KAR 18:190. Business entity registration.

Board of Nursing
201 KAR 20:110 & E. Licensure by endorsement. Sharon Weisenbeck, Executive Director, Bernadette Sutherland, Nursing Practice Consultant, and Nathan Goldman, General Counsel, represented the Board.

201 KAR 20:162. Procedures for disciplinary hearings pursuant to KRS 314.091.

201 KAR 20:240. Fees for applications and for services.

201 KAR 20:370. Applications for licensure and registration.

Transportation Cabinet: Department of Vehicle Regulation: Motorcycle and Bicycle Safety
801 KAR 14:010. Headgear and eye-protective devices. Hollie Spade, Office of General Counsel, represented the Cabinet.

In response to questions by Chairman Arnold, Ms. Spade stated that, by statute, only motorcycle operators who are under age 18, who have instructional permits, or who have had an operator’s license for less than a year have to wear helmets. This administrative regulation no longer requires the operators who are required to wear a helmet to affix a decal to the helmet verifying the operator’s health insurance.

Education, Arts, and Humanities Cabinet: Kentucky Board of Education: Department of Education: Office of Learning Programs Development: Office of Instruction
704 KAR 3:490. Teachers’ Professional Growth Fund. Kevin Noland, General Counsel, represented the Board.

Workforce Development Cabinet: Department for Adult Education and Literacy: Adult Education and Literacy
785 KAR 1:041. Repeal of 785 KAR 1:040, 785 KAR 1:050, 785 KAR 1:060, 785 KAR 1:070, 785 KAR 1:080, and 785 KAR 1:090. B.J. Helton, Principal Assistant and Sherry Deatrick, General Counsel, represented the Department.
The Subcommittee and the promulgating administrative agencies agreed to defer consideration of the following administrative regulations to the next meeting of the Subcommittee:

**Secretary Of State: Implementation of Revised Article 9**
- 30 KAR 5:010E. Definitions for 30 KAR Chapter 5.
- 30 KAR 5:020E. General provisions.
- 30 KAR 5:030E. Acceptance and refusal of records.
- 30 KAR 5:040E. UCC Information Management System.
- 30 KAR 5:050E. Filing and data entry procedures.
- 30 KAR 5:060E. Search requests and reports.

**Department Of Law: Office of the Attorney General: Racial Profiling**
- 40 KAR 7:010. Procedures for reporting allegations of racial profiling.

**Kentucky Employees’ Retirement System: General Rules**
- 105 KAR 1:310E. Duty-related death and disability.

**Kentucky Board of Dentistry**
- 201 KAR 8:440. Biennial fee schedule and registration. Gary Munsie, Director, represented the Board.

In response to questions by Representative Arnold, Mr. Munsie stated that this administrative regulation increased the license renewal fees for dentists and dental hygienists. The Board proposed the fee increase to compensate for the rising operating, legal, and personnel expenses that the Board has incurred in regulating those professions.

In response to questions by Representative Lee, Mr. Munsie stated that the Board notified its licensees of the fee increases by contacting their state professional associations. The Board had not published the proposed fee increases in its biannual newsletter because the newsletter had already been mailed prior to the Board’s decision to raise the fees.

In response to questions by Representative Allen, Mr. Munsie stated that the administrative regulation increased the dental licensure renewal fee by $25 and the hygienist licensure renewal fee by $5.

Representative Lee made a motion to defer consideration of this administrative regulation. Without objection, and with the agreement of the agency, this administrative regulation was deferred.

**Board of Medical Licensure**

**Board of Licensure and Certification for Dietitians and Nutritionists**
- 201 KAR 33:015. Application; approved programs.
- 201 KAR 33:050. Complaint procedure.
- 201 KAR 33:060. Supervision requirements.

**Commercial Mobile Radio Service Emergency Telecommunications Board**

**Department Of Agriculture: Livestock Sanitation**

**Agricultural Pest Control**
- 302 KAR 27:060. Fine schedule for violation of KRS 217B.120.

**Ornamental Turf Lawn and Interior Plantscape Pest Control**

**Structural Pest Control**
- 302 KAR 29:030. Hearings to determine suspension, modification or revocation of license.

**Pesticides**

**Justice Cabinet: Department of Criminal Justice Training: Kentucky Law Enforcement Council**
- 503 KAR 1:150E. Department of Criminal Justice Training - Kentucky Police Corps basic training; graduation requirements; records.

**General Training Provision**
- 503 KAR 3:060E. Department of Criminal Justice Training - Kentucky Police Corps basic training course cadet conduct requirements; procedures and penalties.

**Education, Arts, And Humanities Cabinet: Department of Libraries and Archives: Libraries**
- 725 KAR 2:015 & E. Services and facilities for public libraries.

**Department of Insurance: Authorization of Insurers and General Requirements**
- 805 KAR 3:210E. Privacy of consumer financial information.

**Health Insurance Contracts**
- 805 KAR 17:180E. Standard health benefit plan and comparison format.

**Public Service Commission: Utilities**
- 807 KAR 5:080. Procedural and filing requirements and safeguards concerning nonregulated activities of utilities or utility affiliates.

**Cabinet For Health Services: Department for Public Health: State Health Plan**
- 802 KAR 17:041E. State health plan for facilities and services.

**Department for Medicaid Services: Services**
- 907 KAR 1:013E. Payments for hospital inpatient services.
- 907 KAR 1:015E. Payments for hospital outpatient services.
- 907 KAR 1:025E. Payment for services provided by an intermediate care facility for the mentally retarded and developmentally disabled, a dually-licensed pediatric facility, an institution for mental diseases, a nursing facility with an all-inclusive rate unit.
- 907 KAR 1:031E. Payments for home health services.
- 907 KAR 1:038E. Hearing and Vision Program services.
- 907 KAR 1:065E. Payments for price-based nursing facility services.
- 907 KAR 1:072E. Payments for homecare waiver services.
- 907 KAR 1:092E. Payments for personal care assistance waiver services.
- 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. Payments for home and community based waiver services.
- 907 KAR 1:320E. Kentucky Patient Access and Care System (KoPAC).
- 907 KAR 1:350E. Preventive and remedial public health services provided through interagency agreement.
- 907 KAR 1:626E. Reimbursement of dental services.

**Payment and Services**
- 907 KAR 3:010E. Reimbursement for physicians’ services.
- 907 KAR 3:090E. Acquired brain injury services.
- 907 KAR 3:100E. Payments for acquired brain injury services.
- 907 KAR 3:170E. Telehealth services and reimbursement.

**Cabinet For Families And Children: Department of Community Based Services: Family Support: Food Stamp Program**
- 921 KAR 3:020E. Financial requirements.
- 921 KAR 3:025E. Technical requirements.

**Protection and Permanency: Child Welfare**
- 922 KAR 1:450E. Tuition waiver for foster and adopted children.
OTHER BUSINESS

Representative Lee made a motion for the Subcommittee to review 902 KAR 20:016 at its November meeting so the Subcommittee could review the provision that requires a physician to sign off on a verbal order within 72 hours. Because the Cabinet for Health Services is currently considering addressing this issue by amending the administrative regulation or by promulgating an emergency regulation, Representative Lee withdrew his motion.

The Subcommittee adjourned at 12:10 p.m. until November 13, 2001, at 10 a.m. in Room 149 of the Capitol Annex.
COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON BANKING AND INSURANCE
Meeting of September 25, 2001

The following administrative regulations were available for consideration by the Interim Joint Committee on Banking and Insurance during its meeting of September 25, 2001, having been referred to the Committee on September 11, 2001, pursuant to KRS 13A.290(6):

806 KAR 17:310

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 25, 2001, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE
Meeting of September 25, 2001

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of September 25, 2001, having been referred to the Committee on September 14, 2001, pursuant to KRS 13A.290(6):

202 KAR 7:580 & E
921 KAR 1:380
921 KAR 2:006
922 KAR 1:400
922 KAR 2:160
922 KAR 2:180

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 25, 2001, meeting, which are hereby incorporated by reference.

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of October 2, 2001

The following administrative regulations were available for consideration by the Interim Joint Committee on Transportation during its meeting of October 2, 2001, having been referred to the Committee on September 10, 2001, pursuant to KRS 13A.290(6):

601 KAR 1:030
603 KAR 7:090

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 2, 2001, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT
Meeting of September 26, 2001

The following administrative regulations were available for consideration by the Interim Joint Committee on Local Government during its meeting of September 26, 2001, having been referred to the Committee on September 14, 2001, pursuant to KRS 13A.290(6):

815 KAR 4:010

The administrative regulation was found to be in compliance with the requirements of KRS Chapter 13A and was approved as submitted by a unanimous vote of the Interim committee.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the September 26, 2001, meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION
Meeting of October 1, 2001

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of October 1, 2001, having been referred to the Committee on September 14, 2001, pursuant to KRS 13A.290(6):

704 KAR 20:120
704 KAR 20:165

- 1299 -
The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None.

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None.

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 1, 2001 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON
AGRICULTURE AND NATURAL RESOURCES
Meeting of October 10, 2001

Administrative regulations were available for consideration by the Interim Joint Committee on Agriculture and Natural Resources during its meeting on October 10, 2001.

The following administrative regulations were found to comply with KRS Chapter 13A:

Kentucky Aquaculture Productions System Grant Program
200 KAR 35:020
10 KAR 4:020E

The following administrative regulation was found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None.

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None.

The following administrative regulation was reviewed but no action was taken:
Natural Resources and Environmental Protection Cabinet
401 KAR 5:074. Permit conditions for beef, dairy, poultry, and swine Concentrated animal feeding operations.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 10, 2001 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.
CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates .................................................................................................................. E - 2

The Locator Index lists all administrative regulations published in VOLUME 26 of the Administrative Register from July, 2001 through June, 2002. 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 27 are those administrative regulations that were originally published in Volume 27 (last year’s) issues of the Administrative Register but had not yet gone into effect when the 2001 bound Volumes were published.

KRS Index .................................................................................................................................................. E - 11

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 26 of the Administrative Register.

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The Subject Index is a general index of administrative regulations published in VOLUME 26 of the Administrative Register, and is mainly broken down by agency.
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(Note: Emergency regulations expire 170 days from publication; or 170 days from publication plus number of days of requested extension; or upon replacement or repeal, whichever occurs first)

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