Administrative Register of Kentucky

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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TUESDAY, NOVEMBER 1, 1988

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UNLESS WRITTEN NOTIFICATION OF INTENT TO ATTEND A PUBLIC HEARING IS RECEIVED BY THE PROMULGATING AGENCY AT LEAST FIVE (5) DAYS BEFORE THE HEARING DATE, THE HEARING MAY BE CANCELLED.

MEETING NOTICE: The next meeting of the Administrative Regulation Review Subcommittee is **tentatively** scheduled on November 1, 1988. See **tentative** agenda on pages 1205-1206 of this Administrative Register.

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

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

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - November 1, 1988
(Rm. 107, Capitol Annex @ 10 a.m.)

AGRICULTURAL EXPERIMENT STATION

Milk and Cream
12 KAR 5:010. Licenses.
12 KAR 5:020. Testing.
12 KAR 5:030. Test samples.
12 KAR 5:040. Sampling and weighing.
12 KAR 5:050. Inspections.
12 KAR 5:060. Purchases from farm bulk tanks.
12 KAR 5:070. Uniform standards for payment.

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National Guard
106 KAR 1:060 & E. Rescue squad regulations.

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Office of Management Services

State Owned Buildings and Grounds
200 KAR 3:045. Monthly meal charges at mansions.

GENERAL GOVERNMENT CABINET

Board of Physical Therapy
201 KAR 22:040. Procedure for renewing licenses.
201 KAR 22:110. Renewal of assistant's certification.

TOURISM CABINET
Department for Fish and Wildlife Resources

Fish
301 KAR 1:085. Mussel shell harvesting.
301 KAR 1:146. Commercial fishing gear. (Repeals 301 KAR 1:145)
301 KAR 1:150. Waters open to commercial fishing.
301 KAR 1:200. Seasons and limits for angling.

Game
301 KAR 2:140. Seasons for wild turkey.
301 KAR 2:220 and E. Hunting seasons for migratory birds.

Hunting and Fishing
301 KAR 3:021. Hunting and fishing license fees.

Wildlife
301 KAR 4:070. Scientific, educational and commercial nuisance wildlife control collecting permits. (Amended After Hearing)

CORRECTIONS CABINET

Kentucky Parole Board
501 KAR 1:030 & E. Determining parole eligibility. (Repeals 501 KAR 1:011)
501 KAR 1:040 & E. Conducting parole revocation hearings. (Repeals 501 KAR 1:020)
501 KAR 1:050 & E. Granting final discharge from parole. (Repeals 501 KAR 1:015)

Office of the Secretary
501 KAR 6:020. Corrections policies and procedures.
501 KAR 6:030 & E. Kentucky State Reformatory.
501 KAR 6:060. Northpoint Training Center.
501 KAR 6:130. Western Kentucky Farm Center.

TRANSPORTATION CABINET

Property Acquisition and Uniform Relocation
600 KAR 3:010. Relocation assistance payments of the Transportation Cabinet.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services

School Terms, Attendance and Operation
702 KAR 7:065 and E. Designation of agent to manage high school interscholastic athletics.

Office of Instruction

Kindergartens and Nursery Schools
704 KAR 5:060 and E. Entrance of five year olds into kindergarten for compulsory attendance purposes.

Office of Vocational Rehabilitation

Administration
706 KAR 1:050. Office of vocational rehabilitation appeals procedures.

LABOR CABINET
Department of Workers' Claims

Workers' Compensation Board
803 KAR 25:025 & E. Joint self-insurers. (Amended After Hearing)

PUBLIC PROTECTION AND REGULATION CABINET
State Racing Commission

Thoroughbred Racing Rules
810 KAR 1:012. Horses.

CABINET FOR HUMAN RESOURCES
Department for Health Services

Maternal and Child Health
902 KAR 4:050 & E. Kentucky Family Planning Program.
Hospitalization of Mentally Ill and Mentally Retarded
902 KAR 12:020. Patient's rights. (Amended After Hearing)
Certificate of Need and Licensure
902 KAR 20:016 & E. Hospital operation and services.

Department for Social Insurance

Food Stamp Program
904 KAR 3:060 & E. Administrative disqualification hearings and penalties.

Department for Medicaid Services

Medicaid Services
907 KAR 1:013 & E. Payments for hospital inpatient services.
907 KAR 1:036 & E. Amounts payable for skilled nursing and intermediate care facility services.

REGULATION REVIEW PROCEDURE

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 regulations received by the deadline required in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing

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

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five (5) days before the scheduled hearing. If no written notice is received at least five (5) 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 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 following publication shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the 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.

EMERGENCY REGULATIONS NOW IN EFFECT

(NOTE: Emergency regulations expire 90 days from publication or upon replacement or repeal.)

STATEMENT OF EMERGENCY
301 KAR 2:220E

Migratory bird hunting season frameworks are established annually by the U.S. Fish and Wildlife Service. Under federal law, states that wish to establish migratory bird hunting seasons must do so within the federal frameworks. Development of the federal regulations involves consideration of harvest and population status data, coordination with state wildlife agencies, and public involvement. Consequently, federal migratory bird hunting regulations are promulgated less than six weeks before the opening dates of the hunting season in Kentucky. An ordinary administrative regulation will not suffice because insufficient time precludes timely effectiveness of the administrative regulation. This emergency regulation will be replaced by an ordinary administrative regulation.

WALLACE G. WILKINSON, Governor
DON R. McCORMICK, Commissioner

TOURISM CABINET
Department for Fish & Wildlife Resources

301 KAR 2:220E. Hunting seasons for migratory birds.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.175, 150.235, 150.240, 150.305, 150.330, 150.340, 150.360, 150.600, 150.603, 150.630, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

EFFECTIVE: September 23, 1988

NECESSITY AND FUNCTION: This regulation pertains to the seasons and limits for the taking of specified migratory birds, to the associated permitting and harvest reporting requirements, and to restrictions in the use of blinds and pits. It is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource [for the purpose of furnishing sport and recreation for present and future residents of the state]. The framework of this regulation falls within the seasons and bag limits prescribed by the U.S. Fish and Wildlife Service. The function of this regulation is to provide for the prudent taking of migratory birds within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates and hunting rules.

Section 1. Definitions. (1) "Blind" means any form of concealing enclosure, including a pit, from which one may shoot game or observe wildlife including an anchored, stationary, or drifting boat from which waterfowl are hunted.

(2) "Permanent blind" means any blind which is in place more than twenty-four (24) hours.

(3) "Commercial waterfowl hunting area" means any area of land or water used in whole or in part for the taking of migratory waterfowl where a monetary charge is made for hunting.

(4) "Noncommercial waterfowl hunting area" means any area used in whole or in part for the taking of migratory waterfowl where no monetary charge is made.

(5) "Waterfowl" means all species of ducks, coots, mergansers and geese.

Section 2. [1.] Seasons for Gun and Archery. (1) Sora rails, Virginia rails, common moorhens, and purple gallinules: November 24 [16] through January 20 [16].

(2) Ducks, coots and mergansers: November 24 [26] through November 27 [29] and December 10 [12] through January 4 [16].

(3) Geese.

(a) Eastern Zone: November 24 [8] through January 31 [16], east of a boundary beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending north along the Purchase Parkway to I-24, East on I-24 to U.S. 641, north on U.S. 641 to U.S. 60, northeast on U.S. 60 to U.S. 41 and then north on U.S. 41 to the Kentucky-Indiana border.

(b) Western Zone. This zone consists of the area to the west of the boundary described in paragraph (a) of this subsection. For the purpose of controlling the goose harvest, the Western Zone is subdivided into the Ballard Reporting Area and associated counties and the Henderson-Union Reporting Area and associated counties. Seasons within the Western Zone are specified as follows:

1. Canada Goose Season: December 10 [12] through January 28 [30], unless harvest quotas are met as described below.

a. Ballard Reporting Area. This reporting area lies within the following boundary: starting at the northwest city limits of Wickliffe in Ballard County to the middle of the Mississippi River, and thence north along the Mississippi to the low water mark of the Ohio River along the Illinois shore to the Ballard-McCracken County line; thence along the county line south to state road 358; thence south along state road 358 to its junction with U.S. Highway 60 at LaCenter; thence following U.S. 60 southwest to the northeast city limits of Wickliffe. Should it be determined that the quota of 14,200 [10,400] Canada geese will be filled prior to January 28 [30], the goose hunting season shall [will] close in the Ballard Reporting Area. Notice shall [will] be given a minimum of twenty-four (24) hours in advance of the time and date of closing.

b. Counties associated with the Ballard Reporting Area. The counties associated with the Ballard Reporting Area, those portions of Ballard (excluding Ballard Reporting Area), McCracken, Graves, Carlisle, Hickman, Fulton and Marshall counties in the Western Zone, shall [will] remain open for seven (7) days after the closure of the Ballard Reporting Area or until January 28 [30], whichever occurs first.

c. Henderson-Union Reporting Area. This reporting area includes those portions of Henderson and Union Counties within the Western Zone. Should it be determined that the quota of 4,500 [3,300] Canada geese will be filled prior to January 28 [30], the goose hunting season shall [will] close in the Henderson-Union Reporting Area. Notice shall [will] be given a minimum of twenty-four (24) hours in advance of

the time and date of closing.

d. Counties associated with the Henderson-Union Reporting Area. The counties associated with the Henderson-Union Reporting Area, those portions of Lyon, Crittenden and Livingston counties in the Western Zone shall [will] remain open for seven (7) days after the closure of the Henderson-Union Reporting Area or until January 28 [30], whichever occurs first.

2. Season for goose species other than Canada geese (snow and blue geese, white-fronted geese, and brant): November 24 [26] through January 28 [17], or whenever the Canada goose season closes, whichever occurs first.

Section 3. [2.] Limits for Gun and Archery. (1) Ducks [and Mergansers]. The daily bag limit is three (3) and shall include no more than two (2) mallards (no more than (1) of which shall be a female), and one (1) black duck, two (2) wood ducks, one (1) redhead, and one (1) pi tail of either sex. Pintail may be taken only during the first four (4) day segment of the season. No canvasbacks shall be taken. [Point system bag and possession limits will be in effect. Point values for species and sexes are as follows:

100 points: mallard hen and black duck.

70 points: redhead, wood duck, and hooded merganser.

35 points: mallard drake, pintail and all species of ducks not listed in other categories.

20 points: all teal species, wigeon, gadwall, shoveler, scaup, and mergansers (except hooded merganser).

The season on canvasbacks is closed.

The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in two (2) days.]

(2) Coots. [Coots have a point value of zero, but] The daily bag limit is fifteen (15) and the possession limit is thirty (30).

(3) Mergansers. The daily bag limit is five (5) of which no more than one (1) shall be a hooded merganser. Possession limit is double the daily bag limit.

(4) [(3)] Geese.

(a) The bag limit is five (5) with no more than two (2) Canada and two (2) white-fronted geese.

(b) The possession limit is ten (10), not to include more than four (4) Canada and four (4) white-fronted geese.

(5) [(4)] Sora and Virginia Rails. The bag and possession limits are twenty-five (25) singly or in the aggregate.

(6) [(5)] Common Moorhens and Purple Gallinules. The bag and possession limits are fifteen (15) and thirty (30), respectively, singly or in the aggregate of the two (2) species.

Section 4. [3.] Shooting Hours. [One-half (1/2) hour before] Sunrise to sunset for all species listed in this regulation except as specified in Section 8 [7] of this regulation, and from [one-half (1/2) hour before] sunrise to 3 [2] p.m. for waterfowl [(defined as ducks, geese, and mergansers) and coots] during the Canada goose season in the Ballard Reporting Area.

Section 5. [4.] Shot Size Restrictions. No lead shot larger than BB or steel shot larger than F shall [may] be in possession while hunting the species listed in this regulation.

Section 6. [5.] Falconry Season. November 1 through January 20 [16]. All legal species listed in this regulation may be taken by falconry.

(1) Falconry limits. The bag and possession limits are three (3) and six (6), respectively, of any legal species listed in this regulation, singly or in the aggregate.

(2) Hunting hours for falconry. The hunting hours shall [will] conform with the shooting hours stated in Sections 4 [3] and 8 [7] of this regulation.

Section 7. [6.] Wildlife Management Area Blind [and Pit] Regulations. The following restrictions apply to all wildlife management areas except those excluded in Section 8 [7] of this regulation.

(1) Permanent blinds [or pits] are not permitted. Decoys and temporary blinds shall [must] be removed at the end of each hunting day.

(2) No blind shall [may] be established less than 200 yards from any other blind or waterfowl refuge areas. [For the purposes of this section, an anchored, stationary, or drifting boat from which waterfowl or coots are hunted is considered a blind.]

(3) No more than four (4) persons shall occupy a single blind [or pit] at any one time.

(4) Designated recreation areas and access points are closed to hunting of all species listed in this regulation.

Section 8. [7.] Exceptions for Specified Wildlife Management Areas and Counties. Other sections or regulations apply unless specified below.

(1) Ballard Wildlife Management Area, except the Miller Tract, located in Ballard County.

(a) Species and seasons.

1. Geese: December 12 through January 28.

2. [1. The season for] Ducks, coots and mergansers: [is] December 12 through January 4 [16].

3. [2.] No hunting is permitted on Sundays.

4. [3.] No more than three (3) persons shall occupy a single blind [or pit] at the same time.

(b) General rules. Waterfowl hunters shall have no more than ten (10) shells in their possession. [There will be a ten (10) shell limit per hunter when hunting geese.] Any hunter under the age of eighteen (18) years shall [must] be accompanied by an adult. Any person whose transportation to and from blinds [and pits] is furnished by the department shall [must] have his gun encased. Hunting shall be by advanced application or as otherwise authorized.

(c) Shooting hours: [one-half (1/2) hour before] sunrise to 12 noon.

(2) Swan Lake Wildlife Management Area located in Ballard County. The Upper Blenderman Tract, located to the north of Holloway Landing Road and marked by signs, is open to hunting of all legal species listed in this regulation.

(3) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.

(a) Closed areas. Smith Bay, Energy Lake, and Long Creek Pond as indicated by signs are closed to hunting. The eastern two-thirds (2/3) of Duncan Bay on Kentucky Lake is closed to all

activity November 1 through March 15, as indicated by signs and buoys. The Environmental Education Center is closed to hunting of all species listed in this regulation.

(b) LBL permit. An annual LBL hunting permit is required for hunting of all legal species listed in this regulation on all shoreline [and inland areas. Shoreline areas are defined as all LBL] areas along Kentucky and Barkley Lakes from the water's edge to twenty-five (25) yards above elevation 359' and inland areas. Waterfowl and coot hunting from shoreline areas along Lake Barkley is allowed according to subsection (4) of this section [Lake Barkley Wildlife Management Area regulations. Inland areas are defined as all areas above shoreline areas]. No hunting of any species listed in this regulation is permitted on inland areas during quota gun deer hunt days as listed in 301 KAR 2:111. Permanent blinds [and pits] are not permitted on inland areas nor along the Kentucky Lake shoreline area. Decoys and temporary blinds shall [must] be removed at the end of each hunting day.

(4) Lake Barkley Wildlife Management Area located in Trigg, Lyon, and Livingston Counties.

(a) Closed areas. Refuge areas shall [will] be closed to all hunting, fishing, boating and molesting of all species listed in this regulation during the dates designated in this subsection and on signs posted along the boundaries. Refuges and closing dates are as follows: November 1 through February 15 within an area including a row of islands on the west side of the main channel as marked by buoys and signs between river mile 51 (Hayes Landing Light) and river mile 57.3 (Crooked Creek Light), excluding Taylor and Jake Fork Bays as marked by buoys and signs. Within the refuge area, that area west of a line from the north point of the mouth of Fulton Bay to the south point of the mouth of Honker Bay will remain closed until March 15 as marked by buoys and signs. Boating is allowed but hunting is prohibited within 200 yards of the area surrounded by a levee and located between river mile 68.4 and river mile 70.4 during the period October 15 through March 15.

(b) Blinds [and pits]. Permanent blinds shall [or pits, defined as those which are in place more than twenty-four (24) hours, may be used but must] remain within ten (10) yards of the assigned numbered blind marker within the area described as follows: beginning at the mouth of Donaldson Creek and proceeding south along the east side of the old Cumberland River channel as marked by buoys, to a point due west of the boat ramp at Linton, then east to the Linton boat ramp, then north along the east shore of Barkley Lake to the mouth of Donaldson Creek. All other blinds within this described area shall [must] be temporary.

(5) Sloughs Wildlife Management Area located in Henderson and Union Counties.

(a) Grassy Pond-Powell's Lake Unit. [Waterfowl and coot] Hunting is permitted only from permanent blinds constructed [or pits registered] by the department. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

(b) Jenny Hole-Highland Creek Unit. [Waterfowl and coot] Hunting shall [will] be allowed from permanent blinds constructed [or pit sites registered] by the department and at any other above ground site provided there is a minimum of 200 yards between hunters or hunting parties. Hunters shall remove all personal property from blinds or the vicinity of blinds daily.

(c) Shooting hours: [One-half (1/2) hour before] sunrise to 2 p.m.

(d) When the Ohio River reaches a level that requires boat access to the units, hunting shall [will] be allowed from boats spaced 200 yards apart, without regard to the department [registered] blinds [or pits].

(e) Sauerheber Unit. On [except] the Crenshaw and old Duncan Tracts - waterfowl hunting shall be allowed only from permanent blinds constructed by the department. Use of the constructed blinds shall be by drawing unless the person(s) drawn do not occupy the blind by the opening of legal shooting hours. The remainder of the Sauerheber Unit, including [will be closed to all hunting, fishing, boating and trespassing during the period indicated on posted signs. The privately owned in-holding totaling 468 acres and known as] the Wood Tract, located between mile marker 4 and 6 on state road 268 and bounded by the Ohio River on the north and Tram Road on the east [and the Sauerheber Unit of the Sloughs WMA,] is closed to all hunting, fishing, boating and trespassing between October 15 and March 15.

(6) Ohio River Waterfowl Refuge located in Livingston County shall [will] be closed to all hunting and molesting of all species listed in this regulation from October 15 through March 15. This area includes the Kentucky portion of the Ohio River from Smithland Lock and Dam upstream to a power line crossing the river at approximately river mile 911.5 and including Stewart Island.

(7) Hunting of all species listed in this regulation is not permitted on the following areas:

(a) Ohio River in the vicinity of the Ballard Wildlife Management Area located in Ballard County, from a point fifty (50) yards upstream from Dam 53, downstream to a point fifty (50) yards below the downstream boundary of the Ballard Wildlife Management Area.

(b) That portion of the Grayson Lake Wildlife Management Area located in Carter and Elliott Counties, which lies east of the Little Sandy River and on Bruin Creek portions of Grayson Lake.

(c) Beaver Creek Wildlife Management Area located in Pulaski and McCreary Counties.

(d) Cane Creek Wildlife Management Area located in Laurel County.

(e) Robinson Forest Wildlife Management Area located in Breathitt, Perry and Knott Counties.

(f) Redbird Wildlife Management Area located in Leslie and Clay Counties.

(g) Mill Creek Wildlife Management Area located in Jackson County.

(8) Bath, Rowan, Menifee and Morgan Counties, including Cave Run Lake, are closed to goose hunting. Breech and muzzle-loading shotguns may be used for duck hunting along the shore line portion of Cave Run Lake bordering the Pioneer Weapons Wildlife Management Area.

(9) Ohio County south of Rough River, Muhlenberg County east of state route 181, [and] Butler County west of state route 79, Pulaski and McCreary Counties east of U.S. Highway 27 and Laurel, Whitley, Perry, Knott and Breathitt Counties are closed to goose hunting.

(10) Yellowbank Wildlife Management Area in Breckinridge County. A twenty-five (25) acre

wetland designated by signs and painted boundary markers is closed to the public from October 15 through March 15.

(11) Blind [and pit] restrictions for Barkley Lake, Barren Lake, Green River Lake, Nolin River Lake, Rough River Lake, Buckhorn Lake and Taylorsville Lake Wildlife Management Areas[, and the Grassy Pond-Powell's Lake and Jenny Hole-Highland Creek units of the Sloughs Wildlife management Area].

(a) Permanent blinds shall [or pits, defined as those which are in place more than twenty-four (24) hours, may be used but must] be registered on a permit issued by the U.S. Army Corps of Engineers [or the Department of Fish and Wildlife Resources]. Applicants may designate one (1) other person as a partner for registration. No more than two (2) nontransferable permits shall [may] be issued for each permanent blind [or pit]. Only one (1) permit shall [will] be issued per hunter per area. Permittees who have not constructed a [pit or] blind at the designated location by November 20 shall [will] forfeit their permit.

(b) Blinds [or pits] not occupied by permittees by the opening of shooting hours of any day shall be [are] available for use by other hunters on a first come-first served basis for the remainder of that day.

(c) Permittees shall not lock blinds [or pits] so as to prevent use by other hunters in the absence of the permittee.

(d) Permanent [pits or] blinds shall [must] be removed within thirty (30) days of the close of waterfowl season unless extension of that period is approved.

(e) Permittees shall [will] be selected by drawing at Barkley Lake, Barren Lake, Green River Lake, and Taylorsville Lake Wildlife Management Areas[, and the Grassy Pond-Powell's Lake and Jenny Hole-Highland Creek units of the Sloughs Wildlife Management Area]. Applicants for blind [or pit] permits shall [must] present a current Kentucky hunting license to the registration clerk at the time of the drawing. Sites which become available by forfeiture shall [may] be assigned to another applicant according to the following procedure: five (5) additional names shall [will] be drawn at each area (or the number of remaining names if less than five (5) are present) and any forfeited blinds shall [will] be assigned to those people in the order they were drawn.

(12) White City Wildlife Management Area located in Hopkins County. Waterfowl [and coot] shooting hours are from [one-half (1/2) hour before] sunrise to 2 p.m.

(13) Taylorsville Lake Wildlife Management Area, located in Anderson and Spencer Counties. That portion [of] east of Van Buren Boat Ramp as marked by buoys and signs is closed to all hunting, fishing, boating, and trespassing during the period from November 24 through March 1.

Section 9. [8.] Ballard and Henderson-Union Reporting Area Waterfowl Hunting Permit Requirements. It is unlawful for any person to hunt waterfowl within the Ballard or Henderson-Union Reporting Areas without first obtaining the appropriate waterfowl hunting permit or waterfowl harvest register forms as specified in subsections (1), (2) and (3) of this section.

(1) Commercial waterfowl hunting areas.

[(a) A commercial waterfowl hunting area is any area of land or water, used in whole or in part for the taking of migratory waterfowl, where a monetary charge is made.]

(a) [(b)] A commercial waterfowl hunting area permit issued by the department shall [must] be obtained by any person operating a commercial waterfowl hunting area. An annual fee shall [will] be charged for each commercial waterfowl hunting area permit. These permits shall [will] expire at the end of waterfowl hunting season [as stated on the permit].

(b) [(c)] Persons operating more than one (1) commercial waterfowl hunting area shall [must] obtain a permit for each individual area. A land holding divided by a public road may be operated as a commercial waterfowl hunting area under one (1) permit. Whenever a farm unit is divided by land owned by others, a separate permit shall be [is] required for each tract of land operated as a commercial waterfowl hunting area.

(2) Noncommercial waterfowl hunting areas.

[(a) A noncommercial waterfowl hunting area is any area used in whole or in part for the taking of migratory waterfowl where no monetary charge is made.]

(a) [(b)] Any person controlling the waterfowl hunting rights and privileges on a noncommercial waterfowl hunting area shall [must] obtain a free migratory goose hunting area permit which shall [will] expire at the end of waterfowl hunting season [as stated on the permit].

(b) [(c)] The holder of a free migratory goose hunting area permit may be the landowner, his tenant or any person to whom these individuals have assigned exclusive control of goose hunting rights or privileges, in writing, on forms provided by the department.

(c) [(d)] The permittee shall display the permit openly on the property for which it was issued and provide the permit for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Ohio and Mississippi River waterfowl hunters. Persons hunting geese on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall [must] carry on their person a waterfowl harvest register form provided by the department. When hunting in a party, [it is permissible that only] one (1) hunter of the party may possess the goose harvest reporting form provided the names of all members of the party are written on the form.

(4) Obtaining permits and harvest reporting forms.

(a) Persons desiring commercial waterfowl hunting area permits, migratory goose hunting area permits, or a season supply of waterfowl harvest register forms for the Ballard Reporting Area may apply by writing to the Ballard County Wildlife Management Area, Route 1, LaCenter, Kentucky 42056, and for the Henderson-Union Reporting Area may apply by writing to the Sloughs Wildlife Management Area, RR 2, Box 183A, Corydon, Kentucky 42406.

(b) Waterfowl harvest register forms for either reporting area are [will] also [be] available from conservation officers in each area and from the Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, No. 1 Game Farm Road, Frankfort, Kentucky 40601.

Section 10. [9.] Ballard and Henderson-Union Reporting Area Recordkeeping and Reporting

Requirements. (1) Commercial waterfowl hunting area permit holders.

(a) The permittee shall maintain and keep an accurate and complete daily hunter register and waterfowl harvest record in duplicate on the hunting area on forms provided by the department.

(b) The permittee shall, during the waterfowl season, close the register at the end of shooting hours each Sunday and Wednesday and mail or take the original of the completed daily register and waterfowl harvest record form each subsequent Monday and Thursday to the address indicated on the form. The permittee shall [must] hold duplicate copies of these completed forms at the place of registration and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(c) A permittee is responsible for any violation of permit requirements or violations of other regulations committed on the premises under permit unless he immediately reports such violations to a conservation officer.

(2) Migratory goose hunting area permit holders.

(a) At all times during the waterfowl season, the permittee shall make available on the premises under permit the daily hunter registration forms as provided by the department.

(b) The permittee shall require all waterfowl hunters to enter their names and the date on the register and report form prior to each time they hunt on any permit area and to record, prior to leaving the permitted premises, the numbers and kinds of geese taken.

(c) The permittee shall, during the waterfowl season, close the register at the end of shooting hours each Sunday and Wednesday and mail or take the original of the completed daily register and waterfowl harvest record form each subsequent Monday and Thursday to the address indicated on the form. The permittee shall [must] hold duplicate copies of the forms for a period of two (2) months after the end of the waterfowl season and make these and current register and harvest records available for inspection by agents of the department and the U.S. Fish and Wildlife Service.

(3) Hunter requirements.

(a) Persons hunting waterfowl on commercial or noncommercial waterfowl hunting areas in the Ballard or Henderson-Union Reporting Areas shall [must]:

1. Prior to hunting, enter their name, address, and the date of the hunt on the daily register form made available by the waterfowl hunting area operator.

2. Before leaving the premises, enter on the waterfowl harvest register form the numbers and kinds of geese taken.

(b) Persons hunting geese on the Ohio or Mississippi Rivers or their overflow areas within the Ballard and Henderson-Union Reporting Areas shall [must]:

1. Prior to hunting, enter on the waterfowl harvest register form their name and address, or the names and addresses of all hunting party members if only one (1) hunter is carrying the form for the party, and the date.

2. At the end of each day's hunting, enter on the waterfowl harvest register form the number and kinds of geese taken.

3. No later than Monday and Thursday of each week, mail or take the completed original of the waterfowl harvest register to the address indicated on the form.

Section 11. [10.] General Rules Concerning Waterfowl Hunting in the Ballard Reporting Area. (1) It is unlawful to hunt waterfowl [or coots] except from a blind [or a pit], unless waterfowl [or coot] hunting is conducted in flooded, standing timber. [For the purposes of this section, a blind or pit is defined as any form of concealing enclosure from which one may shoot game or observe wildlife including an anchored, stationary, or drifting boat from which waterfowl or coots are hunted.]

(2) It is unlawful to establish or use any blind [or pit] for the hunting of waterfowl [or coots] within 100 yards of any other blind [or pit].

(3) It is unlawful to establish or locate any blind [or pit] within fifty (50) yards of any property line.

(4) No more than five (5) persons may occupy a single blind [or pit] at the same time.

(5) A hunter may possess only one (1) shotgun while occupying a blind [or pit].

Section 12. [11.] Waterfowl Stamp Requirements. Individuals hunting waterfowl shall [must] possess appropriate state and federal waterfowl stamps as stipulated in KRS 150.330 and 150.603.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman
APPROVED BY AGENCY: September 15, 1988
FILED WITH LRC: September 23, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
401 KAR 63:045E

KRS 224.550 authorizes the Department for Environmental Protection, Division for Air Quality to establish a comprehensive statewide asbestos contractor accreditation program which provides in part for accreditation of asbestos inspectors, management planners, abatement project designers, abatement contractors, supervisors, and abatement workers, and for the assessment of fees to recover costs of the program. The United States Environmental Protection Agency promulgated 40 CFR 763, Subpart E, which in part requires all local education agencies to inspect for the presence of asbestos in schools, assess the condition of the asbestos, and submit to the states' designees management plans which provide for the removal or maintenance of asbestos in schools. It also requires that all inspections and management plan development and implementation be performed by accredited individuals.

The Commonwealth has determined that it will exercise the discretionary authority conferred by the legislature to implement a program to protect human health and the environment from hazards posed by asbestos in schools, and, as a result, the Kentucky Division for Air Quality, hereinafter named "the Division," is now this state's designee. An emergency exists because these plans, which must be developed and performed by accredited individuals, are now required to be submitted to the Division by October 12, 1988, and the Division needs to have the immediate authority to accredit individuals

to perform the work required by 40 CFR 763, Subpart E, and House Bill 631. An ordinary administrative regulation will not suffice since an ordinary administrative regulation would not be promulgated in sufficient time to accredit individuals so that the required work can be performed.

It is the intent of the Natural Resources and Environmental Protection Cabinet that this emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A. The ordinary administrative regulation will be filed with the Regulations Compiler on the same date this emergency regulation is filed.

WALLACE G. WILKINSON, Governor
WILLIAM F. KNAPP, JR., Acting Commissioner
CARL H. BRADLEY, Secretary

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

401 KAR 63:045E. School asbestos abatement accreditations.

RELATES TO: KRS 224.320, 224.330, 224.340, 224.550, 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, 763.99, Appendices A, B, and D (October 30, 1987), Toxic Substances Control Act II (15 USC 2601 and the related sections which follow, as in effect on July 18, 1988)

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.550, 224.560, 224.994

EFFECTIVE: October 5, 1988

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. KRS 224.550 allows the cabinet to develop, adopt, and maintain a comprehensive statewide asbestos contractor accreditation program relating to asbestos in schools. This regulation provides for the accreditation of individuals who inspect for asbestos in schools, prepare plans addressing potential and actual asbestos hazards in schools, and design, supervise, or perform response actions in schools.

Section 1. Definitions. As used in this regulation, the following terms shall have the following meanings. If not defined in this section, a term shall have the meaning given it by commonly accepted usage.

(1) "Abatement project designer" means an individual who determines how asbestos abatement work should be conducted and who prepares for purposes of an abatement response action, plans, designs, procedures, workscope, or other substantive direction or criteria.

(2) "Act" means the Toxic Substances Control Act (TSCA), 15 USC 2601 and the related sections which follow, as in effect on July 18, 1988.

(3) "Accredited" means when referring to an individual that the individual is accredited in accordance with section 206 of Title II of the Act.

(4) "Accreditation certificate" means a certificate issued by the cabinet attesting to the training qualifications of an individual to perform specified asbestos abatement projects.

(5) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, and actinolite.

(6) "Asbestos abatement contractor" means the individual responsible for the on-site supervision of the removal, encapsulation, or enclosure of friable ACM in a school.

(7) "Asbestos abatement project" means any project intended to identify, assess, plan for, or respond to an asbestos hazard in a school building.

(8) "Asbestos abatement supervisor" means the individual responsible for the on-site supervision of the removal, encapsulation, or enclosure of friable ACM in a school.

(9) "Asbestos abatement worker" means an individual who cleans, removes, encapsulates, encloses, hauls, or disposes of friable asbestos material or who performs any response action required to be performed by an accredited individual.

(10) "Asbestos-containing material" or "ACM" means, when referring to school buildings, any material or product which contains more than one (1) percent asbestos.

(11) "Asbestos-containing building material" or "ACBM" means surfacing ACM, thermal system insulation ACM, or miscellaneous ACM that is found in or on interior structural members or other parts of a school building.

(12) "Cabinet" has the meaning given it in KRS 224.005.

(13) "Day" means calendar day.

(14) "Discipline" means any of the following: an inspector, management planner, abatement project designer, asbestos abatement contractor, asbestos abatement supervisor, and asbestos abatement worker.

(15) "Encapsulation" means the treatment of ACBM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

(16) "Enclosure" means an airtight, impermeable, permanent barrier around ACBM to prevent the release of asbestos fibers into the air.

(17) "EPA" or "U.S. EPA" means the United States Environmental Protection Agency.

(18) "EPA-approved training course" means a training or refresher course for the discipline for which accreditation is requested which is approved by the U.S. EPA, at the time the course is taken, for the purpose of complying with the requirements of section 206 of the Act.

(19) "Friable" means that the material, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after the previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

(20) "Functional space" means a room, group of rooms, or homogeneous area (including crawl spaces or the space between a dropped ceiling and the floor or roof deck above), such as classrooms, a cafeteria, gymnasium, hallways, designated by an individual accredited to prepare management plans, or design or conduct response actions.

(21) "Homogeneous area" means an area of surfacing material, thermal system insulation material, or miscellaneous material that is uniform in color and texture.

(22) "Inspector" means an individual who identifies, assesses the condition of, or collects preabatement air samples or bulk samples of ACM.

(23) "Inspection" means an identification of the status of asbestos in schools, including identification of, assessment of the conditions of, or collection of preabatement air samples or bulk samples of, ACM. This term also includes reinspections, after the initial inspection has been performed.

(24) "Local education agency" or "LEA" means:

(a) Any local education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 3381), which means, a public board of education or other public authority legally constituted for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision, or any combination of school districts or counties recognized as an administrative agency for its public elementary or secondary schools. This term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(b) The owner of any nonpublic, nonprofit elementary or secondary school building.

(c) The governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 USC 921, and the following related sections).

(25) "Management plan" means a plan submitted by an LEA and which is not disapproved, and which contains the items required in 40 CFR 763.93.

(26) "Management planner" means an individual who uses data gathered by inspectors to assess asbestos hazards, and by doing so determines appropriate response actions and develops management plans.

(27) "Miscellaneous ACM" means miscellaneous material that is ACM in a school building.

(28) "Miscellaneous material" means interior building material on structural components, structural members, or fixtures, such as floor and ceiling tiles, and does not include surfacing material or thermal system insulation.

(29) "Nonfriable" means material in a school building which when dry may not be crumbled, pulverized, or reduced to powder by hand pressure.

(30) "Operations and maintenance program" or "O&M program" means a program of work practices to maintain friable ACBM in good condition, ensure cleanup of asbestos fibers previously released, and prevent further release by minimizing and controlling friable ACBM disturbance or damage.

(31) "Person" has the meaning given it in KRS 224.005.

(32) "Removal" means the taking out or the stripping of substantially all ACBM from a damaged area, a functional space, or a homogeneous area in a school building.

(33) "Repair" means returning damaged ACBM to an undamaged condition or to an intact state so as to prevent fiber release.

(34) "Response action" means a method, including but not limited to removal, encapsulation, enclosure, repair, operations and maintenance, that protects human health and the environment from friable ACBM.

(35) "School" means any elementary or secondary school as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 2854).

(36) "School building" means:

(a) Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food;

(b) Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

(c) Any other facility used for the instruction or housing of students or for the administration of education or research programs;

(d) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in paragraphs (a) to (c) of this subsection;

(e) Any portico or covered exterior hallway or walkway; or

(f) Any exterior portion of a mechanical system used to condition interior space.

(37) "Surfacing ACM" means surfacing material that is ACM.

(38) "Surfacing material" means material in a school building that is sprayed on, troweled on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, or other purposes.

(39) "Thermal system insulation" means material in a school building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss or gain, or water condensation, or for other purposes.

(40) "Thermal system insulation ACM" means thermal system insulation that is ACM.

Section 2. Applicability. The provisions of this regulation shall apply to all individuals required to be accredited by 401 KAR 63:050.

Section 3. Prohibition. No individual may engage in, nor any person cause or allow any individual to engage in, any asbestos abatement project at a school on or after October 12, 1988, unless an accreditation certificate to so engage in these projects has been issued to that individual by the cabinet, is currently in effect, and is maintained on the person of that individual at all times.

Section 4. Applications. (1) No individual shall be considered for accreditation unless the training requirements of Section 9 of this regulation have been completed prior to application.

(2) Applications for accreditation shall be made on forms prepared by the cabinet for this purpose and shall contain the information that the cabinet deems is necessary to determine whether the accreditation should be issued.

(3) Applications for accreditation shall be signed by the individual requesting accreditation. The signature shall be made under oath and shall constitute personal affirmation

that the statements made in the application are true and complete.

(4) Applications shall contain the accreditation fee as indicated in Section 7 of this regulation.

Section 5. Consideration of Applications. (1) Within fifteen (15) days after receipt of an application for accreditation, the cabinet shall advise the applicant as to whether or not the application is complete, and if not complete, what additional information is necessary in order to evaluate the application.

(2) Within fifteen (15) days after the application for accreditation is deemed complete, the cabinet shall make its determination concerning the application unless the cabinet determines that an additional period of time is necessary.

(3) If the application is approved, the cabinet shall issue to the applicant the accreditation certificate to engage in asbestos abatement projects at schools, according to the provisions of the regulation.

(4) The cabinet may deny an application for accreditation if the cabinet determines that the applicant has violated any provision of this regulation, 401 KAR 57:011, 401 KAR 63:042, or 401 KAR 63:050, if the applicant willfully made any misstatements in the application, or if the applicant cannot reasonably be expected to conduct himself in a manner that is consistent with the acceptance of responsibility for asbestos abatement projects at schools. The cabinet shall make determinations regarding issuance or denial of the accreditation based upon the applicant's actions during any prior term of accreditation, the information contained in the application, and any other pertinent information that is available to the cabinet.

(5) Accreditations issued according to this regulation shall be subject to the terms and conditions set forth and embodied in the accreditation certificate as the cabinet deems necessary to ensure compliance with the requirements of this regulation, 401 KAR 57:011, 401 KAR 63:042, and 401 KAR 63:050.

Section 6. Duration and Renewal of Accreditation Certificates. (1) Unless the cabinet revokes an accreditation certificate, both initial and renewed accreditation certificates, shall remain in effect for one (1) year after the date of issuance.

(2) No individual shall be considered for renewal of accreditation unless the training requirements of Section 9 of this regulation have been completed prior to application.

(3) Applications for renewal of accreditation shall be made on forms prepared by the cabinet for this purpose and shall contain the information that the cabinet deems is necessary to determine whether the accreditation should be issued.

(4) Applications for accreditation shall be signed by the individual requesting accreditation. The signatures shall be made under oath and shall constitute personal affirmation that the statements made in the application are true and complete.

(5) Failure to supply information required or deemed necessary by the cabinet to enable it to act upon the renewal application shall result in denial of that renewal.

(6) Any individual who submits an application for renewal of accreditation shall include with the application an accreditation fee, as specified in Section 7 of this regulation.

(7) The cabinet shall make its determination to approve or deny the renewal within fifteen (15) days of receipt of a complete renewal application. The cabinet shall notify the applicant, in writing, of its determination and shall set forth its reasons for any denial.

(8) If the renewal is approved, the cabinet shall issue to the applicant the renewed certificate to engage in asbestos abatement projects in schools, according to the provisions of this regulation and 401 KAR 63:050.

(9) The cabinet may deny an application for renewal of accreditation if the cabinet determines that the applicant has violated any provision of this regulation, 401 KAR 57:011, 401 KAR 63:042, or 401 KAR 63:050, if the applicant willfully made any misstatements in the application, or if the applicant cannot reasonably be expected to conduct himself in a manner that is consistent with the acceptance of responsibility for asbestos abatement projects at schools. The cabinet shall make determinations regarding issuance or denial of the renewed accreditation based upon the applicant's actions during any prior term of accreditation, the information contained in the application, and any other pertinent information that is available to the cabinet.

(10) Renewed accreditations issued according to this regulation shall be subject to the terms and conditions set forth and embodied in the accreditation certificate as the cabinet deems necessary to ensure compliance with the requirements of this regulation, 401 KAR 57:011, 401 KAR 63:042, and 401 KAR 63:050.

Section 7. Fees. All fees shall be submitted to the cabinet by check or money order, payable to the Kentucky State Treasurer. Fees for more than one (1) discipline shall be obtained by summing the fees for the requested accreditations. The fee for accreditation as an inspector, management planner, abatement project designer, asbestos abatement contractor, asbestos abatement supervisor, or asbestos abatement worker shall be twenty (20) dollars. The fee for renewal of accreditation for each of those disciplines shall be ten (10) dollars.

Section 8. Accreditation Revocation. The cabinet may revoke any accreditation issued under this regulation if the accredited individual:

(1) Willfully makes any misstatement or knowingly omits information in the certification application, renewal application, or any amendments to an application;

(2) Fails to comply with the terms or conditions of the accreditation;

(3) Fails to comply with 401 KAR 57:011, 401 KAR 63:042, or 401 KAR 63:050;

(4) Fails to perform a response action in a manner which will protect human health and the environment;

(5) Performs a response action required to be performed by an accredited individual which is disapproved by the cabinet or not contained in an applicable management plan; or

(6) Alters any accreditation certificate.

Section 9. Training Requirements. (1) Initial accreditation. Every individual requesting

accreditation shall attend and successfully complete an EPA-approved training course for the appropriate discipline for which accreditation is requested within one (1) year prior to applying for accreditation. Training successfully completed at an EPA-approved training course for the requested discipline since January 1, 1985, shall satisfy the requirement of this subsection for one (1) year from the effective date of this regulation.

(2) Renewal of accreditation.

(a) If an individual successfully completes an EPA-approved refresher course for the discipline for which accreditation is requested prior to the expiration of his certificate and if the individual requests that his accreditation certificate be renewed prior to expiration, then the cabinet may extend the accreditation certificate for one (1) year. The cabinet will issue a renewal certificate for each approved extension.

(b) If an individual fails to successfully complete an EPA-approved refresher course for the discipline for which accreditation is requested within one (1) year of being certified, his accreditation certificate shall expire; however, an expired certificate may be renewed if the applicant successfully completes an EPA-approved refresher course within one (1) year of expiration, and completes all other requirements for renewal of certifications.

(c) If an individual fails to successfully complete an EPA-approved refresher course for the discipline for which accreditation is requested within one (1) year of expiration of his accreditation certificate, the individual shall complete all requirements for initial accreditation in order to receive accreditation.

Section 10. Penalties. Any individual or other person who violates any provision of this regulation shall be subject to the appropriate enforcement action as provided under KRS 224.994.

CARL H. BRADLEY, Secretary
WILLIAM F. KNAPP, JR., Acting Commissioner
APPROVED BY AGENCY: September 30, 1988
FILED BY LRC: October 5, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
401 KAR 63:050E

KRS 224.550 authorizes the Department for Environmental Protection, Division for Air Quality to establish a comprehensive statewide asbestos contractor accreditation program which provides in part for accommodating inspection of schools for asbestos hazards, developing and reviewing schools' asbestos management plans, and assessing fees to recover costs of the program. The United States Environmental Protection Agency promulgated 40 CFR 763, Subpart E, which requires all local education agencies to inspect for the presence of asbestos in schools, assess the condition of the asbestos, and submit to the states' designees management plans which provide for the removal or maintenance of asbestos in schools.

The Commonwealth has determined that it will exercise the discretionary authority conferred by the legislature to implement a program to protect human health and the environment from hazards posed by asbestos in schools, and, as a result, the Kentucky Division for Air Quality, hereinafter named "the Division," is now this state's designee. An emergency exists because these plans are now required to be submitted to the Division by October 12, 1988, and the Division needs to have the immediate authority to oversee the requirements of 40 CFR 763, Subpart E, and House Bill 631, and to notify the local education agencies of their legal responsibilities, fees associated with the review of the management plans, and penalties for not complying. This emergency regulation gives the Division the ability to notify the local education agencies of the criteria which will be used to review management plans and to give the local education agencies proper guidance in submitting their management plans. In the absence of a proper review, schools may implement plans that do not adequately protect the environment and the health of students and school personnel. Implementation of this emergency regulation would allow the Commonwealth to be granted a waiver from federal enforcement, thus preventing local education agencies from being subject to federal penalties for not submitting plans by October 12, 1988. An ordinary administrative regulation will not suffice since an ordinary administrative regulation would not be promulgated in sufficient time to notify the local education agencies and begin timely implementation of mandated programs.

It is the intent of the Natural Resources and Environmental Protection Cabinet that this emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A. The ordinary administrative regulation will be filed with the Regulations Compiler on the same date this emergency regulation is filed.

WALLACE G. WILKINSON, Governor
WILLIAM F. KNAPP, JR., Acting Commissioner
CARL H. BRADLEY, Secretary

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

401 KAR 63:050E. Local education agencies.

RELATES TO: KRS 224.033(10), 224.320, 224.330, 224.340, 224.550, 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, 763.99, Appendices A, B, and D (October 30, 1987), Toxic Substances Control Act II (15 USC 2601 and the related sections which follow, as in effect on July 18, 1988)

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.550, 224.560, 224.994

EFFECTIVE: October 5, 1988

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. KRS 224.550 authorizes the cabinet to develop, adopt, and maintain a comprehensive statewide asbestos contractor accreditation program relating to asbestos in schools. This regulation provides for the control of asbestos emissions in schools by requiring local education agencies to submit management plans to provide for the adequate identification and assessment of asbestos in schools and the

removal of friable asbestos-containing materials.

Section 1. Definitions. As used in this regulation and applicable portions of 40 CFR Part 763, the following terms shall have the following meanings. If not defined in this section, a term shall have the meaning given it by commonly accepted usage.

(1) "Act" means the Toxic Substances Control Act (TSCA), 15 USC 2601 and the related sections which follow, as in effect on July 18, 1988.

(2) "Accessible" means, when referring to ACM, that the material is subject to disturbance by school building occupants or custodial or maintenance personnel in the course of their normal activities.

(3) "Accredited" means when referring to an individual or a laboratory that the individual or laboratory is accredited in accordance with section 206 of Title II of the Act.

(4) "Accreditation certificate" means a certificate issued by the cabinet attesting to the qualifications of an individual to perform specified asbestos abatement projects.

(5) "Air erosion" means the passage of air over friable ACBM which may result in the release of asbestos fibers.

(6) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, and actinolite.

(7) "Asbestos abatement project" means any project intended to identify, assess, plan for, or respond to an asbestos hazard in a school building.

(8) "Asbestos-containing material" or "ACM" means, when referring to school buildings, any material or product which contains more than one (1) percent asbestos.

(9) "Asbestos-containing building material" or "ACBM" means surfacing ACM, thermal system insulation ACM, or miscellaneous ACM that is found in or on interior structural members or other parts of a school building.

(10) "Asbestos debris" means:

(a) Pieces of ACBM that can be identified by color, texture, or composition; or

(b) Dust, if the dust is determined by an accredited inspector to be ACM.

(11) "Cabinet" has the meaning given it in KRS 224.005.

(12) "Damaged friable miscellaneous ACM" means friable miscellaneous ACM which has deteriorated or sustained physical injury so that the internal structure (cohesion) of the material is inadequate or, if applicable, which has delaminated so that its bond to the substrate (adhesion) is inadequate, or which for any other reason lacks fiber cohesion or adhesion qualities. Damage or deterioration may be illustrated by the separation of ACM into layers; separation of ACM from the substrate; flaking, blistering, or crumbling of the ACM surface; water damage; significant or repeated water stains, scrapes, gouges, mars, or other signs of physical injury on the ACM. Asbestos debris originating from the ACBM in question may also indicate damage.

(13) "Damage friable surfacing ACM" means friable surfacing ACM which has deteriorated or sustained physical injury so that the internal structure (cohesion) of the material is inadequate, or which has delaminated so that its bond to the substrate (adhesion) is inadequate, or which for any other reason lacks fiber cohesion or adhesion qualities. Damage or deterioration may be illustrated by the separation of ACM into layers; separation of ACM from the substrate; flaking, blistering, or crumbling of the ACM surface; water damage; significant or repeated water stains, scrapes, gouges, mars, or other signs of physical injury on the ACM. Asbestos debris originating from the ACBM in question may also indicate damage.

(14) "Damaged or significantly damaged thermal system insulation ACM" means thermal system insulation ACM on pipes, boilers, tanks, ducts, and other thermal system insulation equipment where the insulation has lost its structural integrity, or its covering, in whole or in part, is crushed, water-stained, gouged, punctured, missing, or not intact so that it is not able to contain fibers. Damage may be further illustrated by occasional punctures, gouges, or other signs of physical injury to ACM; occasional water damage on the protective coverings or jackets; or exposed ACM ends or joints. Asbestos debris originating from the ACBM in question may also indicate damage.

(15) "Day" means calendar day.

(16) "Emergency response action" means a response action that was not planned but results from a sudden, unexpected event. This term includes operations necessitated by nonroutine failure of equipment.

(17) "Encapsulation" means the treatment of ACBM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

(18) "Enclosure" means an airtight, impermeable, permanent barrier around ACBM to prevent the release of asbestos fibers into the air.

(19) "EPA" or "U.S. EPA" means the United States Environmental Protection Agency.

(20) "EPA-approved training course" means a training or refresher course that is approved by the U.S. EPA, at the time the course is taken as meeting the requirements of section 206 of the Act.

(21) "Fiber release episode" means any uncontrolled or unintentional disturbance of ACBM resulting in visible emission.

(22) "Friable" means that the material, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after the previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

(23) "Functional space" means a room, group of rooms, or homogeneous area (including crawl spaces or the space between a dropped ceiling and the floor or roof deck above), such as classrooms, a cafeteria, gymnasium, hallways, designated by an individual accredited to prepare management plans, or design or conduct response actions.

(24) "High-efficiency particulate air" or "HEPA" means a filtering system capable of trapping and retaining at least 99.97 percent of all monodispersed particles three/tenths (0.3) um in diameter or larger.

(25) "Homogeneous area" means an area of surfacing material, thermal system insulation

material, or miscellaneous material that is uniform in color and texture.

(26) "Inspector" means an individual who identifies, assesses the condition of, or collects preabatement air samples or bulk samples of ACM.

(27) Inspection" means an identification of the status of asbestos in schools, including identification of, assessment of the conditions of, or collection of preabatement air samples or bulk samples of, ACM. This term also includes reinspections, after the initial inspection has been performed.

(28) "Local education agency" or "LEA" means:

(a) Any local education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 3381), which means, a public board of education or other public authority legally constituted for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision, or any combination of school districts or counties recognized as an administrative agency for its public elementary or secondary schools. This term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(b) The owner of any nonpublic, nonprofit elementary or secondary school building.

(c) The governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 USC 921, and the related sections which follow).

(29) "Management plan" means a plan submitted by an LEA and which is not disapproved, which contains the items required in 40 CFR 763.93.

(30) "Management planner" means an individual who uses data gathered by inspectors to assess asbestos hazards, and by doing so determines appropriate response actions and develops management plans.

(31) "Miscellaneous ACM" means miscellaneous material that is ACM in a school building.

(32) "Miscellaneous material" means interior building material on structural components, structural members, or fixtures, such as floor and ceiling tiles, and does not include surfacing material or thermal system insulation.

(33) "Nonfriable" means material in a school building which when dry may not be crumbled, pulverized, or reduced to powder by hand pressure.

(34) "Operations and maintenance program" or "O&M program" means a program of work practices to maintain friable ACBM in good condition, ensure cleanup of asbestos fibers previously released, and prevent further release by minimizing and controlling friable ACBM disturbance or damage.

(35) "Person" has the meaning given it in KRS 224.005.

(36) "Potential damage" means circumstances in which:

(a) Friable ACBM is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities; or

(b) There are indications that there is a reasonable likelihood that the material or its covering will become damaged, deteriorated, or delaminated due to factors such as changes in building use, changes in operations and maintenance practices, changes in occupancy, or recurrent damage.

(37) "Potential significant damage" means circumstances in which:

(a) Friable ACBM is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities;

(b) There are indications that there is a reasonable likelihood that the material or its covering will become significantly damaged, deteriorated, or delaminated due to factors such as changes in building use, changes in operations and maintenance practices, changes in occupancy, or recurrent damage; or

(c) The material is subject to major or continuing disturbance, due to factors including, but not limited to, accessibility or, under certain circumstances, vibration or air erosion.

(38) "Preventive measures" means actions taken to reduce disturbance of ACBM or otherwise eliminate the reasonable likelihood of the material's becoming damaged or significantly damaged.

(39) "Removal" means the taking out or the stripping of substantially all ACBM from a damaged area, a functional space, or a homogeneous area in a school building.

(40) "Repair" means returning damaged ACBM to an undamaged condition or to an intact state so as to prevent fiber release.

(41) "Response action" means a method, including but not limited to removal, encapsulation, enclosure, repair, operations and maintenance, that protects human health and the environment from friable ACBM.

(42) "Routine maintenance area" means an area, such as a boiler room or mechanical room, that is not normally frequented by students and in which maintenance employees or contract workers regularly conduct maintenance activities.

(43) "School" means any elementary or secondary school as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 2854).

(44) "School building" means:

(a) Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food;

(b) Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

(c) Any other facility used for the instruction or housing of students or for the administration of education or research programs;

(d) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in paragraphs (a) to (c) of this subsection;

(e) Any portico or covered exterior hallway or walkway; or

(f) Any exterior portion of a mechanical system used to condition interior space.

(45) "Significantly damaged friable miscellaneous ACM" means damaged friable miscellaneous ACM where the damage is extensive and severe.

(46) "Significantly damaged friable surfacing ACM" means damaged friable surfacing ACM in a functional space where the damage is extensive and severe.

(47) "State" means a state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(48) "Surfacing ACM" means surfacing material that is ACM.

(49) "Surfacing material" means material in a school building that is sprayed on, troweled on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, or other purposes.

(50) "Thermal system insulation" means material in a school building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss or gain, or water condensation, or for other purposes.

(51) "Thermal system insulation ACM" means thermal system insulation that is ACM.

(52) "Timely manner" means that the LEA has fulfilled or is fulfilling its responsibilities in a manner that is as expeditious as possible, taking into account circumstances which are unique to the LEA. The determination of timeliness shall be made by the cabinet.

(53) "um" means micrometer.

(54) "Vibration" means the periodic motion of friable ACBM which may result in the release of asbestos fibers.

Section 2. Applicability. The provisions of this regulation shall apply to all LEAs.

Section 3. Responsibilities of LEAs. (1) The subject matter of this regulation is governed by 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, and 763.99, and Appendices A, B, and D, as promulgated by the U.S. EPA on October 30, 1987 (52 FR 41846). All LEAs shall comply with the provisions of the federal regulations listed in this subsection.

(2) No LEA may permit, allow, or require any individual or other person to perform any asbestos abatement project after October 12, 1988, unless the individual has been issued by the cabinet an accreditation certificate to so engage in these projects in accordance with the provisions of 401 KAR 63:045, which is currently in effect, and which is maintained on his person.

(3) LEAs shall revise their management plans when changes in the schools, school buildings, status of the ACM, or response actions occur. The LEA may submit only the revised portion of the plan. If the entire plan is resubmitted then the revised portions shall be clearly indicated. These revisions shall comply with the applicable provisions of 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, and 763.99, and Appendices A, B, and D. LEAs shall submit the revisions according to the provisions of Section 5 of this regulation.

Section 4. Deferrals. If a LEA is unable to submit to the cabinet its management plan required in 40 CFR 763.93 by October 12, 1988, it may request a deferral to May 9, 1989, for the submission of the plan for one (1) or more schools under its jurisdiction. Deferral requests shall be submitted to the cabinet by the original due date of October 12, 1988, shall be notarized, and shall contain all of the requirements of subsections (1) to (5) of this section. Deferral requests may be submitted using forms prepared by the cabinet for that purpose.

(1) A listing of all schools covered by the request.

(2) A statement and brief explanation as to why the LEA, despite good faith efforts, will not be able to meet the original October 12, 1988, deadline for submittal of its management plan.

(3) A statement that the LEA has made at least one (1) of the following documents available for inspection at each school for which a deferral is sought:

(a) A solicitation by the LEA to contract with an accredited inspector or accredited management planner for inspection or management plan development, respectively;

(b) A letter certifying that school district personnel are enrolled in an EPA-approved training course for inspection and management plan development;

(c) Documentation showing that suspected ACM from the school is being analyzed at an accredited laboratory; or

(d) Documentation showing that an inspection or management plan has been completed in at least one (1) other school under the LEA's authority.

(4) A statement giving assurance that the LEA has carried out notification of affected groups and, for public schools, a public meeting. Before filing a deferral request, a LEA shall notify affected parent, teacher, and employee organizations of its intent to file its request. For public schools, the LEA shall discuss the request at a public meeting of the school board, and affected organizations shall be notified in advance of the time and place of the meeting.

(5) A proposed schedule outlining all significant activities leading up to submission of a management plan by May 9, 1989, including the inspection of the school. This schedule shall contain a deadline of no later than December 22, 1988, for entering into a contract with an accredited inspector, unless inspections are to be performed by accredited school personnel. Laboratory analysis and management plan development shall also be included in the activity schedule.

(6) The cabinet shall respond to the LEA in writing within thirty (30) days of receipt of the request to acknowledge whether the deferral request is complete or incomplete. If incomplete, the cabinet shall identify in the response the items which are missing from the request. The LEA may correct and refile its request with the cabinet no later than fifteen (15) days after it has received a response from the cabinet.

(7) The deferral request shall be considered to be granted only when the cabinet has responded in writing that the deferral request is accepted as complete.

(8) An LEA whose deferral request has been approved shall submit to the cabinet a management plan no later than May 9, 1989. The plan shall include a copy of the deferral request and the appropriate assurances of subsections (1) to (5) of this section which accompanied the original request. The cabinet shall review the deferred management plan in accordance with the procedures in Section 6 of

this regulation, except the LEA shall submit a revised deferred plan within thirty (30) days of disapproval. The cabinet may extend the thirty (30) day period by not more than thirty (30) days.

(9) Deferral or acceptance of the deferred management plan shall not exempt the LEA from its responsibility to begin implementation of the deferred management plan by July 9, 1989.

Section 5. Submittal of Plans. (1) Management plans required in 40 CFR 763.93, deferred management plans, and revisions to management plans shall be submitted using forms approved by the cabinet for that purpose and shall contain all the information that the cabinet deems is necessary to determine if the plan should be approved, including all information required in 40 CFR 763.93.

(2) Management plans, deferred management plans, and revisions to management plans submitted after October 12, 1988, shall include the fee specified in Section 8 of this regulation. LEAs which submitted plans on or before October 12, 1988, shall submit to the cabinet the fee specified in Section 8 of this regulation by December 12, 1988.

Section 6. Consideration of Management Plans. (1) At any time, the cabinet shall disapprove the management plan, deferred management plan, or revised management plan if the plan:

(a) Does not conform with the requirements of this regulation, 401 KAR 57:011, or 401 KAR 63:042;

(b) Does not assure that any action or service required to be performed by accredited individuals in any of the regulations contained in 40 CFR 763, Subpart E will be performed by accredited individuals, and does not assure that the provisions of Section 3(2) of this regulation will be met;

(c) Does not contain a response action schedule which is reasonable and timely as determined by the cabinet, taking into account circumstances relevant to the speed at which the friable ACM in the school buildings under the LEAs authority should be responded to, including human exposure to the asbestos while the friable ACM remains in the school building, and the ability of the LEA to continue to provide educational services to the community; or

(d) Does not provide response actions which adequately protect human health or the environment from friable ACBM.

(2) The cabinet shall deny a management plan if the cabinet determines that the LEA willfully made any misstatements in the plan, or the LEA cannot reasonably be expected to fulfill the obligations of the plan.

(3) If the cabinet disapproves a plan, the cabinet shall explain in writing to the LEA the reasons why the plan was disapproved and the changes that shall be made in the plan. Within thirty (30) days after the date on which notice of the plan's disapproval is received, the LEA shall revise the plan to conform with the suggested changes. The cabinet may extend the thirty (30) day period for not more than ninety (90) days.

Section 7. Notification. As required in 40 CFR 763.93 the management plan shall contain the dates when each response action will begin and end. If the schedule is amended, the LEA shall notify the cabinet of any response action which will occur and which must be performed by an accredited individual, at least ten (10) days prior to commencement, unless the response action is an emergency response action that must be performed by an accredited individual. The LEA shall notify the cabinet of these emergency response actions as soon as possible, as determined by the cabinet, prior to commencing the emergency response action. If the notification is not in writing, then written confirmation of the response action shall also be provided as soon as possible, as determined by the cabinet.

Section 8. Fees. Fees required in this section shall be submitted to the cabinet by check or money order, payable to the Kentucky State Treasurer.

(1) The fee for review of each management plan or deferred management plan shall be sixty (60) dollars for each school building that is identified in the plan as containing ACM and thirty (30) dollars for each school building that is identified in the plan as not containing ACM.

(2) The fee for review of a revision to the management plan shall be thirty (30) dollars for each building contained in the revision and in the original management plan, for which a new response action is proposed. For each new building contained in the revision, the fee shall be sixty (60) dollars if the building contains ACM, and thirty (30) dollars if it does not contain ACM.

Section 9. Penalties. Any LEA which violates any provision of this regulation shall be subject to the appropriate enforcement action as provided under KRS 224.994.

CARL H. BRADLEY, Secretary
WILLIAM F. KNAPP, JR., Acting Commissioner
APPROVED BY AGENCY: September 30, 1988
FILED BY LRC: October 5, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
702 KAR 7:065E

KRS 156.070 requires that the rules and bylaws of the Kentucky High School Athletic Association (KHSAA) be approved by the State Board for Elementary and Secondary Education. KHSAA's Delegate Assembly meets late each July to consider and adopt rules changes for the coming school year. This emergency regulation is necessary in order to get KHSAA's rules and bylaws appropriately updated for the 1988-89 school year. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September 15, 1988.

WALLACE G. WILKINSON, Governor
HENRY E. POGUE IV, Chairman

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Administration and Finance

702 KAR 7:065E. Designation of agent to manage high school interscholastic athletics.

RELATES TO: KRS 156.070
STATUTORY AUTHORITY: KRS 156.070
EFFECTIVE: September 23, 1988
NECESSITY AND FUNCTION: KRS 156.070 gives the State Board for Elementary and Secondary [of] Education the management and control of the common schools, including interscholastic athletics therein, and allows the state board to designate an agency to manage athletics pursuant to rules approved by the state board. This regulation designates such an agent for high school athletics and adopts the constitution, bylaws, procedures and rules of that [said] agent.

Section 1. The Kentucky High School Athletic Association (KHSAA) is hereby designated as the State Board for Elementary and Secondary [of] Education's agent to manage interscholastic athletics at the high school level in the common schools, including any private schools desiring to associate [there]with KHSAA and to compete with the [said] common schools.

Section 2. The constitution, bylaws, [and] tournament rules, due process procedures, and officials' rules of the KHSAA Handbook, 1988-89, [1987-88] are hereby approved, adopted, and incorporated herein by reference. This material may be inspected and copied at the Office of Instruction, Department of Education, 17th Floor, Capital Plaza Tower, Frankfort, 8 a.m. - 4:30 p.m., Monday - Friday. [A copy of said rules may be obtained from the Office of Local Services, Department of Education, Frankfort, Kentucky 40601.]

HENRY POGUE IV, Chairman
APPROVED BY AGENCY: September 14, 1988
FILED WITH LRC: September 23, 1988 at 2 p.m.

STATEMENT OF CONSIDERATION
704 KAR 5:060E

KRS 159.010 and 159.020 now subject any five-year-old who has "entered" kindergarten to compulsory attendance laws, but several local school districts and the Kentucky Department of Education's Unit for Gifted and Kindergarten Education have expressed a real need to withdraw five-year-old kindergarten children who, in the first two months of school, demonstrate immaturity or a lack of readiness for the kindergarten program. An emergency amendment to 704 KAR 5:060(4) is necessary to provide clear and immediate direction to local school boards and the Unit for Kindergarten Education, with respect to five-year-olds who initially enroll in kindergarten this school year and who are determined to be best served by official entrance into kindergarten next year. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on September 15, 1988.

WALLACE G. WILKINSON, Governor
HENRY E. POGUE IV, Chairman

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction

704 KAR 5:060E. Entrance of five-year olds into kindergarten for compulsory attendance purposes.

RELATES TO: KRS 159.010, 159.020
STATUTORY AUTHORITY: KRS 156.070, 159.130
EFFECTIVE: September 23, 1988
NECESSITY AND FUNCTION: KRS 159.010 and 159.020 require any five (5) year old child who has voluntarily "entered" kindergarten to thereafter be subject to compulsory attendance laws. This regulation is necessary to interpret official and final entry into kindergarten for such children to occur only after the first two (2) months of school to allow for withdrawal of five (5) year olds demonstrating a lack of maturity or readiness for the kindergarten program.

Section 1. Any five (5) year old child not otherwise subject to compulsory attendance laws, but who voluntarily enrolls in kindergarten at the beginning of the school year, may be withdrawn from the program at any time within the first two (2) school calendar months, at the end of such trial period of time such a child shall be considered irrevocably entered into kindergarten for purposes of KRS 159.010 and 159.020.

HENRY POGUE IV, Chairman
APPROVED BY AGENCY: September 14, 1988
FILED WITH LRC: September 23, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
902 KAR 17:010E

Under KRS Chapter 13A the administrative body is required to implement this regulation or not have the authority to operate. Therefore, in order to continue to operate the Cabinet for Human Resources in accordance with KRS Chapter 194, the Cabinet for Human Resources needs to implement this emergency regulation. An ordinary administrative regulation cannot suffice because agency policy will not be accurately reflected in a timely manner. This emergency regulation will be replaced by an ordinary administrative regulation.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 17:010E. State health plan.

RELATES TO: KRS 216B.040(2)(a)
STATUTORY AUTHORITY: KRS 194.050, 1986 Acts Chapter 474
EFFECTIVE: September 21, 1988
NECESSITY AND FUNCTION: Pursuant to 1986 Acts Chapter 474 the Statewide Health Coordinating Council is created to prepare and review, as necessary, a state health plan which establishes a health planning policy for the Commonwealth

and describes the health services needed to provide for the well being of persons residing in the state. The Cabinet for Human Resources prepares a Preliminary State Health Plan for the Statewide Health Coordinating Council in preparing the state health plan. The plan becomes final upon approval of the governor. [The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The cabinet and the Statewide Health Coordinating Council are responsible for development of the state health plan.] The Commission for Health Economics Control in Kentucky utilizes the state health plan in review of applications for certificates of need to establish and modify health services and health facilities in the Commonwealth. The function of this regulation is to assist in the inventory of existing health resources and to set planning goals and guidelines.

Section 1. The Kentucky State Health Plan 1988-1990 [1986-1988], was adopted by the Statewide Health Coordinating Council on June 7, 1988, amended after a public hearing on August 3, 1988 [November 8, 1985, amended on January 22, 1986, January 9, 1987, and December 2, 1987,] and approved by Governor Wallace G. Wilkinson on September 15, 1988 as the document that sets out planning policies and guidelines for use by the Commission for Health Economics Control in Kentucky. A copy of the Kentucky State Health Plan 1988-1990 [1986-1988 as amended on January 22, 1986, January 9, 1987, and December 2, 1987] is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621 and is open and available for public inspection during normal business hours.

Section 2. The Review Criteria and Standards Section, pages 175 through 199 [198], of the Kentucky State Health Plan 1988-1990 [1986-1988] is hereby adopted by reference as regulations of the Cabinet for Human Resources as if fully set out herein.

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 9, 1988
FILED WITH LRC: September 21, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
904 KAR 2:110E

This emergency administrative regulation is due to federal requirements effective October 1, 1988 which include Amerasian immigrants as a group eligible for refugee assistance and to reduce the program's period of eligibility from eighteen (18) to twelve (12) months from the date the refugee enters the United States. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance

904 KAR 2:110E. Refugee assistance.

RELATES TO: KRS 194.050, P.L. 96-212
STATUTORY AUTHORITY: KRS 194.050, P.L. 96-212
EFFECTIVE: October 6, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized by KRS 194.050 to administer programs to qualify for the receipt of federal funds providing cash and medical assistance to eligible Kentucky residents. This regulation establishes [sets forth the] eligibility criteria and types and amounts of assistance for refugees residing in Kentucky.

Section 1. Definitions. [Terms used in this regulation are defined as follows:]
(1) "Refugee" is [defined as] any person of any nationality who:
(a) Because of persecution or fear of persecution due to [on account of] race, religion, nationality, membership in a particular social group, or political opinion fled from their country or the country where the [such] person habitually resided and cannot return there because of fear of persecution due to [on account of] race, religion, nationality, membership in particular social group, or political opinion; and
(b) Has been granted status by the United States Department for Immigration and Naturalization Service (INS) as refugee, asylee, parolee, voluntary departure, permanent resident alien, conditional entrant, Amerasian immigrant or Cuban Haitian entrant.
[(2) "Cuban Haitian Entrant Program (CHEP)" is the program for Cuban or Haitian persons who meet the status, documentation, and period of eligibility criteria as set forth in 45 CFR Parts 401.2 and 401.12(c).]
(2) [(3)] "Refugee Resettlement Program (RRP)" is the [that] program for refugees [persons] who meet the following criteria[, excluding those persons who qualify for the Cuban Haitian Entrant Program]:
(a) Have been United States residents for not more than twelve (12) [eighteen (18)] months beginning with the month a refugee entered the United States; and
(b) Meet one (1) of the following status criteria of [as determined by] the Immigration and Naturalization Service (INS):
1. A person from any country who has parolee status as a refugee or asylee under Section 212(d)(5) of the Immigration and Nationality Act (INA).
2. A person admitted from any country with a conditional entrant status under Section 203(a)(7) of the INA.
3. A person from any country admitted as a refugee under Section 207 of the INA (as added by the Refugee Act of 1980).
4. A person from any country who has been granted asylum status under Section 208 of the INA (as added by the Refugee Act of 1980).
5. A person admitted as an Amerasian immigrant under Public Law 100-202.
6. [5.] A person from any country who previously held one (1) of the above statuses [identified above] whose status has [subsequently] been adjusted to [that of] permanent resident alien.

Section 2. Application. Each refugee household requesting assistance shall [be required to] complete an application and provide [such] information [as may be deemed] necessary to determine eligibility in accordance with the procedural requirements of [prescribed by] the cabinet.

Section 3. Eligibility Criteria. The applicant shall meet the following conditions of eligibility for receipt of cash and[/or] medical assistance under the Refugee Resettlement Program [or Cuban Haitian Entrant Program]:

(1) The applicant shall be [meet the definition of] a refugee [as contained in Section 1 of this regulation], however, a child[(ren)] of a recipient of refugee assistance who is a United States Citizen by [virtue of] birth within the United States is eligible while [under this regulation for as long as] the eligible refugee parent remains eligible for refugee assistance; and

(2) The applicant shall be ineligible for Aid to Families with Dependent Children (AFDC) and Medical Assistance Programs; and

(3) The applicant shall be a Kentucky resident as specified in 904 KAR 2:006, [AFDC] Technical requirements; AFDC; and

(4) The applicant shall meet the financial need and resource limitations criteria of Aid to Families with Dependent Children [as set forth] in 904 KAR 2:016, Standards for need and amount; AFDC, or if the application is for medical assistance only, the applicant shall meet the AFDC-related Medical Assistance Program financial eligibility standard[, as set forth] in 904 KAR 1:004, Resource and income standard of medically needy; and

(5) For receipt of cash assistance the applicant shall participate in any available and appropriate social service program providing job or language training in the area in which the refugee resides. In addition, the applicant shall register for employment with the state employment office, unless exempt under one (1) of the following criteria:

(a) A child under age sixteen (16);

(b) A child age sixteen (16) through seventeen (17), if enrolled as a full-time student at the high school level or the equivalent level of vocational or technical school;

(c) An individual who has a medically determined temporary illness or injury with recovery anticipated within ninety (90) days;

(d) An individual who has a medically determined physical or mental incapacity which is expected to exist longer than ninety (90) days;

(e) An individual age sixty-five (65) or over;

(f) An individual whose presence is required in the home to care for another member of the household who has been medically determined unable to care for himself [to be precluded from self-care] and for whom alternate care arrangements are not feasible;

(g) A mother or other caretaker relative of a child under age six (6);

(h) A mother, if the father is required to register; and

(i) A woman who is medically verified to be in the third trimester of pregnancy.

(6) For receipt of cash assistance, the refugee shall [must] not refuse an appropriate offer of employment, terminate employment or refuse to participate in an available and appropriate social service program [as referenced in subsection (5) of this section]. Any refugee not meeting this requirement shall be ineligible for a period of three (3) [payment] months for the first [such] occurrence and for a period of six (6) [payment] months for [the second and] subsequent occurrence.

(7) For receipt of cash assistance, the refugee shall [must] not be a full-time student [(defined as a student who is] carrying a full time workload that is equal to or greater than those specified at 34 CFR 690.2(1)-(6)[)] in an institution of higher education (defined by 34 CFR 668.2(a)(4), 668.3(a)(5), and 668.4(a)(4)) other than a correspondence school.

(8) The applicant shall meet the period of eligibility and status criteria of [contained in the definition of the Cuban Haitian Entrant Program or] the Refugee Resettlement Program [in Section 1 of this regulation].

(9) A child[(ren)] born to a woman [eligible for and] receiving medical assistance under the Refugee Assistance Program is eligible for medical assistance if [so long as] the child[(ren)] has not reached his[/her] first birthday, resides in the household of the woman, and the woman remains eligible for medical [such] assistance. In this situation, an application is deemed to have been made and the child found eligible for medical assistance [MA] as of the date of birth.

Section 4. Benefit Levels. (1) Cash assistance shall be the same as for AFDC [as set forth] in 904 KAR 2:016, standards for need and amount; AFDC, except that the thirty (30) dollars plus one-third (1/3) disregard of earned income does not apply.

(2) Medical assistance benefits shall include all benefits available to [all other] Medicaid recipients. In addition, children eligible for medical assistance under the refugee assistance program are [deemed] eligible for coverage of hepatitis B immune globulin (HBIG) and hepatitis B virus (HBV) vaccine inoculations. Costs incurred for these inoculations will be covered by the Refugee Assistance Program.

(3) Payment of benefits depends upon [is subject to] the availability of federal funds. [, i.e.,] Payments may be reduced, suspended or terminated if federal funds are insufficient or are not provided to the state in a timely manner.

Section 5. Recoupment. Action shall be taken to recoup cash assistance overpayments in accordance with [the manner set forth in] 904 KAR 2:016, Section 10, Recoupment.

Section 6. Time and Manner of Payment. Time and manner of payment shall be in accordance with [the standards for AFDC as shown in] 904 KAR 2:050, Time and manner of payments.

Section 7. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055, Hearings and appeals.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1988
FILED WITH LRC: October 6, 1988 at 9 a.m.

STATEMENT OF EMERGENCY
904 KAR 2:116E

This emergency administrative regulation is necessary for the timely implementation and administration of the Low Income Home Energy Assistance Program in accordance with the federal fiscal year 1989 Low Income Home Energy Assistance Block Grant Application and Plan Narrative. In order to implement the program on October 17, 1988 as specified in the Plan Narrative, it is necessary to promulgate this emergency administrative regulation.

This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on July 13, 1988 as follows:

(a) All clauses pertaining to the emergency summer aid component are deleted as this component is not included in the FFY 1989 State Plan;

(b) As required by federal law the income eligibility scales are raised to 110 percent of poverty;

(c) The effective dates are amended to reflect implementation, termination and other dates as specified in the FFY 1989 State Plan;

(d) The amount of funds allocated to the various components are revised based upon federal and state appropriations and in accordance with the FFY 1989 State Plan; and

(e) Contingency funds reserved to assure the availability of crisis assistance for households without heat through March 15, 1989 is reduced to $300,000 in accordance with the State Plan.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development

904 KAR 2:116E. Low income home energy assistance program.

RELATES TO: KRS 194.050
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: October 10, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by Public Law 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981 as amended) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation states the eligibility and benefits criteria for each of <u>two (2)</u> [three (3)] components of energy assistance, subsidy <u>and</u> crisis [and emergency summer aid], under the Home Energy Assistance Program (HEAP).

Section 1. Definitions. Terms used in HEAP are defined as follows:

(1) "Principal residence" is the place where a person is living voluntarily and not on a temporary basis; the place he considers home; the place to which, when absent, he intends to return; and the place is identifiable from other residences, commercial establishments, or institutions.

(2) "Energy" means electricity, gas, and any other fuel that is used to sustain reasonable living conditions.

(3) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.

(4) "Economic unit" is one (1) or more persons sharing common living arrangements.

(5) "Subsidy component" is the portion of benefits reserved as energy assistance for heating.

(6) "Crisis component" is the component administered by local organizations under contract with the cabinet to provide heating crisis assistance.

(7) "Life threatening situation" under the crisis component means without heat or will be without heat within forty-eight (48) hours and temperatures at a dangerous level for household members. [Under the emergency summer aid program it means the life of a household member is threatened due to a medical condition and that loss of life may be prevented by receipt of assistance under this component.]

[(8) "Emergency summer aid program" is the component administered by local organizations under contract with the cabinet to provide cooling assistance to medically needy households.]

<u>(8)</u> [(9)] An "authorized representative" is the person applying on behalf of a household who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

Section 2. Application. Each household or authorized representative of the household requesting assistance shall complete an application and provide information necessary to determine eligibility and benefit amount. An application shall not be considered completed until all information needed to determine eligibility and benefit amount is received.

Section 3. Eligibility Criteria. (1) A household shall meet the following conditions of eligibility for receipt of a HEAP payment under the subsidy and crisis components:

(a) The amount of continuing and noncontinuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application shall be considered. Income received on an irregular basis shall be prorated.

(b) Gross income for the calendar month preceding the month of application shall be at or below the applicable amount shown on the income scale for the appropriate size household. Excluded from income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant shall spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (WIN and JTPA) normally disregarded in AFDC, federal payments or benefits which shall be excluded according to federal law, and Supplemental Medical Insurance premiums.

Income Scale

Family Size	Monthly	Yearly
1	$ 529	$ 6,347
	[504]	[6,050]
2	709	8,503
	[678]	[8,140]
3	888	10,659
	[852]	[10,230]
4	1,068	12,815
	[1,027]	[12,320]
5	1,248	14,971
	[1,201]	[14,410]
6	1,427	17,127
	[1,375]	[16,500]

(c) For each household member more than six (6), the above income eligibility limitation for six (6) shall be increased by $180 [174] monthly or $2,156 [2,090] yearly.

(d) The household shall have total liquid assets at the time of application of not more than $5,000. Excluded assets are cars, household or personal belongings, principal residence, cash surrender value of insurance policies, prepaid burial policies, real property, and cash on hand or in a bank account if the cash is income considered under paragraph (a) of this subsection.

(e) Applicants for the crisis component shall be without heat, be without fuel within five (5) days, have received a notice of disconnection of service, or require a heat system repair to obtain adequate heat.

(2) Households are eligible to receive benefits under the subsidy component once and [,] under the crisis component not to exceed the maximum amount of benefits [and under the emergency summer aid program not to exceed the benefit maximums].

[(3) Applicants for the emergency summer aid program shall meet the income and resource criteria under subsection (1)(a) through (d) of this section and have a written statement from a physician or registered nurse that a household member is medically in need of assistance under this component. For life threatening situations, a written statement from a physician attesting to a life threatening situation is required.]

Section 4. Benefit Levels. Payment amounts for the subsidy and crisis components are set at a level to serve a maximum number of households while providing a reasonably adequate benefit relative to energy costs. In the subsidy component, the highest level of assistance shall be provided to households with lowest incomes and highest energy costs in relation to income, taking into account family size.

(1) Payments to eligible households under the subsidy component shall be made for the full benefit amount based on type of energy for heating, monthly household income, and household size as follows:

Benefit Scales
Subsidy Component

Scale A.
Energy Sources: Electricity

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$123	$135
$401 - $800	$105	$117
Over $800	---	$101

Scale B.
Energy Sources: LP Gas (Propane), Fuel Oil, Kerosene, Natural Gas

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$113	$125
$401 - $800	$ 95	$107
Over $800	---	$ 88

Scale C.
Energy Sources: Coal, Wood

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$100	$112
$401 - $800	$ 82	$ 94
Over $800	---	$ 75

(2) If the cabinet receives a percentage of the federal funds authorized by Congress, benefits to eligible households under the subsidy component may be reduced proportionately.

(3) Benefits to eligible households under the crisis component shall be in the form of fuel or other energy for heating, heaters, blankets, sleeping bags, vouchers to purchase these item, or repair to a heating system to obtain adequate heat. The contracting agency shall determine the type and value of assistance necessary to alleviate the crisis, not to exceed a maximum of $300 total benefit value for each eligible household.

[(4) Benefits under the emergency summer aid program shall be the minimum type and amount needed to alleviate the crisis as follows:]

[(a) A maximum of two (2) fans per household may be provided not to exceed a total of eight (80) dollars.]

[(b) An additional payment of up to $100 for energy for cooling may be made if the eligible household is without energy for cooling or has received a disconnection of service notice for their cooling energy.]

[(c) For households with members in a life threatening situation, up to $350 for each household may be provided in the form of fans, air conditioners, repairs of cooling systems, or energy payments (when without or threatened to be without energy for cooling). If a local administering agency has donated materials for cooling, the delivery and installation of these donated materials may be provided.]

Section 5. Benefit Delivery Methods. Benefits shall be provided to eligible households as follows:

(1) When feasible, payment under the subsidy component is authorized by a two (2) party check made payable to the recipient and the provider or landlord if the heating is included as an undesignated portion of rent.

(2) When a two (2) party check is not issued under the subsidy component, the recipient shall sign a statement on the application prior to receipt of funds affirming that benefits received under HEAP shall be used solely for home energy.

(3) Under the subsidy component, at the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider (for example, when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments shall not exceed the maximum for the primary source of energy for heating. The household may decide how to divide payment if more than one (1) provider is used.

(4) For the crisis component, no direct cash payments shall be made to the recipient. Benefits shall be provided to eligible households by the contracting agency in the amount and value determined by the contracting agency necessary to alleviate the crisis, not to exceed the maximum allowable payment. Payments under the crisis component shall be authorized to the energy provider by one (1) party checks upon delivery of fuel, heaters, blankets, sleeping bags, restoration or continuation of service, or upon repair of the heating system.

[(5) For the emergency summer aid program, no direct cash payments shall be made to the recipient. Benefits shall be provided to eligible households by the contracting agency in the type and amount determined by the contracting agency to be the minimum amount needed.]

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055, Hearings and appeals.

Section 7. Time Standards. Under the subsidy component, the cabinet shall make an eligibility determination promptly after receipt of a completed and signed application but not to exceed thirty (30) days. Under the crisis component [and the emergency summer aid program], completed applications shall be processed so that the crisis is resolved within forty-eight (48) hours and in life threatening situations within eighteen (18) hours. Applicants under the crisis component shall have ten (10) working days from the date of application to provide information necessary to complete the application. [Applicants under the emergency summer aid program shall have five (5) working days from the date of application to provide information needed to complete the application.]

Section 8. Effective Dates. The following shall be the implementation and termination dates for HEAP depending upon the availability of funds:

(1) Applications for the subsidy component shall be accepted from households containing at least one (1) member who is elderly (age sixty (60) or older) or receiving benefits due to 100 percent disability beginning October 17, 1988 [19, 1987] and ending by October 28, 1988 [30, 1987].

(2) Applications for the crisis component shall be accepted beginning January 9, 1989 [11, 1988] and ending by April 28, 1989 [29, 1988].

(3) Applications shall be processed in the order taken until funds are expended. HEAP subsidy component shall be terminated [by the secretary] when actual and projected component expenditures have resulted in utilization of available funds or October 28 [December 30], 1988.

(4) HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation if additional federal funds are made available.

[(5) Applications for the emergency summer aid program shall be accepted beginning July 11, 1988 and ending by September 15, 1988.]

Section 9. Allocation of Funds. (1) Up to fifteen (15) percent of the total HEAP allocation shall be reserved for weatherization assistance.

(2) Up to $9,677,341 [10,512,922] of benefit funds shall be reserved for the crisis component. Eighty-five (85) percent of the funds reserved for the crisis component shall be allocated, by local administering agency, based upon the 1980 Census poverty levels of the counties served by the local administering agency. Fifteen (15) percent of the funds plus any additional funds made available from the subsidy component or from the Energy Assistance Trust Fund shall be held by the contracting agency as a contingency fund to be allocated to any local administering agency of the state chosen at the discretion of the contracting agency to provide low income home energy assistance in accordance with its contract. On February 6, 1989 [8, 1988], all unobligated allocations may be reallocated by the contracting agency with the concurrence of the Department for Social Insurance.

(3) Up to $5,900,000 [5,000,000] of benefit funds shall be reserved for the subsidy component. Any funds remaining unobligated from the subsidy component may be made available under the crisis component.

(4) Up to $300,000 [400,000] of the contingency fund under subsection (2) of this section shall be reserved to assure component availability until March 15, 1989 [1988] for emergency crisis assistance for households who are without heat.

(5) Up to $25,000 shall be reserved for the Preventive Assistance Program administered by the Department for Social Services to assist families with an energy payment not to exceed $300 for each family if the payment shall prevent the removal of a child from a family or if it shall assist in reuniting a child with the family.

[(6) Up to $450,000 shall be reserved as benefits under the emergency summer aid program. Seventy (70) percent of these funds shall be allocated to the local administering agencies based upon the 1980 Census poverty levels of the counties served by the local administering agencies. Thirty (30) percent shall be reserved as a contingency fund by the contracting agency and provided as needed to local administering agencies to assist households in a life threatening situation after the local agency allocation is obligated.]

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy or services provided to eligible recipients shall comply with the following:

(1) Reconnection of utilities and delivery of fuel shall be accomplished upon certification for payment;

(2) The household shall be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. For balances remaining after acceptance of the HEAP payment, the customer shall be offered the opportunity for a deferred payment arrangement or a level payment plan;

(3) HEAP recipients shall not be treated worse than households not receiving benefits;

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided; and

(5) A landlord shall not increase the rent of recipient households due to receipt of this payment.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 5, 1988
FILED WITH LRC: October 10, 1988 at 3 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:004E

This emergency administrative regulation shows coverage of pregnant women and children under age one (1) with income not in excess of 125 percent of the federal poverty guidelines; and provides for use of the transfer of assets policy mandated by the Medicare Catastrophic Coverage Act of 1988; and specifies that children in psychiatric facilities will be considered to be living with their parents unless the length of stay equals or exceeds (or is projected to equal or exceed, based upon a physician's assessment) thirty (30) days. This change is necessary to permit state residents to immediately qualify for coverage under the expanded coverage and to implement the other program changes in a timely manner.

This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on July 1, 1988 as follows: the previous emergency regulation did not provide for the expanded coverage of pregnant women and children under age one (1) or include the transfer of assets policy, or provide for the policy revision relating to children living with their parents.

This emergency regulation shall be replaced by an ordinary regulation to be filed with the Regulations Compiler on or about October 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:004E. Resource and income standard of medically needy.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050

EFFECTIVE: October 7, 1988

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with requirements of Title XIX of the Social Security Act. KRS 205.520(3) empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Resource Limitations and Exclusions of the Medically Needy. The following provisions are applicable with regard to computation of allowable resources:

(1) The upper limit for resources for family size of one (1) and for family size of two (2) is set at $1,700 and $3,400 respectively, effective January 1, 1986; at $1,800 and $3,600 respectively, effective January 1, 1987; at $1,900 and $3,800 respectively, effective January 1, 1988; and at $2,000 and $4,000 respectively, effective January 1, 1989, with fifty (50) dollars for each additional member.

(2) A homestead, occupied or abandoned, household equipment, and farm equipment without limitation on value are excluded from consideration.

(3) Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, is excluded from consideration. In addition, for AFDC related MA only cases the value of otherwise countable real property (whether income producing or nonincome producing) may be excluded from consideration for six (6) months if a good faith effort is being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

(4) Equity of $4,500 in automobiles is excluded from consideration; however, if an automobile is used for employment, to obtain medical treatment of a specific or regulation medical problem, of if specially equipped (e.g., as for use by the handicapped) the total value of such automobile is excluded.

(5) Burial reserves of up to $1,500 per individual, which may be in the form of burial agreement(s) (prepaid burials or similar arrangements), trust fund(s), life insurance policies, or other identifiable funds are excluded from consideration. The cash surrender value of life insurance is considered when determining the total value of burial reserves. When burial funds are commingled with other funds, the applicant has up to thirty (30) days to separately identify the burial reserve amount. Interest or other appreciation of value of an excluded burial reserve is excluded so long as such amount is left to accumulate as a part of the burial reserve.

(6) Burial spaces, plots, vaults, crypts, mausoleums, urns, caskets, and other repositories which are customarily and traditionally used for the remains of deceased persons are excluded from consideration as a countable resource without regard to value.

(7) Resources determined in accordance with subsections (3), (4), and (5) of this section to

be in excess of excluded amounts must be considered countable resources when determining whether the individual or family group exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or family group is ineligible.

(8) The following exclusions are also applicable as stated:

(a) Proceeds from the sale of a home are excluded from consideration for three (3) months from date of receipt if used to purchase another home.

(b) Resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support are excluded from consideration.

(c) Payments or benefits from federal statutes, other than Title XVI (Supplemental Security Income), are excluded from consideration (as either a resource or income) if precluded from consideration in Title XVI determinations of eligibility by the specific terms of the statute.

(d) Disaster relief assistance is excluded from consideration.

(e) Cash or in-kind replacement for repair or replacement of an excluded resource is excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(f) Effective with regard to determinations of eligibility made on or after April 16, 1988, and applicable with regard to the usual three (3) month period for retroactive eligibility, the life interest that Medicaid applicants or recipients may have in real estate or other property shall be excluded from consideration as an available resource.

(g) Effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988 real property is excluded from consideration for adult medical assistance and state supplementation recipients if:

1. Such property is jointly owned and its sale would cause undue hardship due to loss of housing for the other owner or owners; or

2. Its sale is barred by a legal impediment; or

3. The owner's reasonable efforts to sell have been unsuccessful.

Section 2. Income and Resource Exemptions. Income and resources which are exempted from consideration for purposes of computing eligibility for the comparable money payment program (Aid to Families With Dependent Children and Supplemental Security Income) shall be exempted from consideration by the cabinet, except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) may not be allowed in determining eligibility for medical assistance only.

Section 3. Income Limitations of the Medically Needy. Eligibility from the standpoint of income is determined by comparing adjusted income as defined in Section 4 of this regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	$2,500	$208
2	3,000	250
3	3,500	292
4	4,400	367
5	5,100	425
6	5,800	483

For each additional member, $600 annually or fifty (50) dollars monthly is added to the scale. The change shown in this section of the regulation shall be effective with regard to determinations of eligibility made on or after July 1, 1988.

Section 4. Additional Income Considerations. (1) In comparing income with the scale as contained in Section 3 of this regulation, gross income is adjusted as follows in all cases with exceptions as contained in Section 5 of this regulation:

(a) In cases of adults and children, the standard work related expenses of adult members and out-of-school youth are deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction is seventy-five (75) dollars per month. All earnings of an in-school child are disregarded. Full-time and part-time employment, and school attendance, shall be as defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(b) In cases of adults and children, dependent care as a work expense is allowed not to exceed $160 per child or incapacitated adult per month for full-time employment (as defined in subsection (1) of this section) or $110 per child or incapacitated adult per month for part-time employment (as defined in subsection (1) of this section). A dependent care work expense deduction is allowed only when the dependent is included in the assistance unit.

(2) The following special factors are applicable for pregnant women, infants and children eligible pursuant to Section 9401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA 86):

(a) Such pregnant women and children may have family income up to, but not to exceed, 100 percent of the [nonfarm income] official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of July 1 of the particular state fiscal year;

(b) Pregnant women, infants and children who would be eligible under the provisions of OBRA 86 except for income in excess of the allowable standard may not become eligible by spending down to the official poverty guidelines;

(c) Available liquid assets for the family may not exceed the usual upper limits specified for the medically needy, and all other resources shall be disregarded;

(d) The Aid to Families with Dependent Children (AFDC) budgeting methodology (except for application of the AFDC earned income disregard of the first thirty (30) dollars and one-third (1/3) of the remainder) shall be used; and

(e) Changes of income and, effective for determinations of eligibility made on or after August 1, 1988, changes of resources that occur after the determination of eligibility of a

pregnant woman shall not affect such pregnant woman's eligibility through the remainder of the pregnancy including the usual post partum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

(3) Effective with regard to determinations of eligibility for Medical Assistance furnished on or after October 1, 1988, pregnant women and children eligible pursuant to Section 4101 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) shall be subject to the same special factors applicable to pregnant women, infants, and children as specified in Section 4(2)(b), (c), (d) and (e) of this regulation, and this additional special factor: such pregnant women and children under age one (1) may have family income up to, but not to exceed, 125 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of July 1 of the particular state fiscal year.

Section 5. Individuals in Chronic Care Institutions. For aged, blind or disabled individuals in chronic care facilities, the following requirements with respect to income limitations and treatment of income shall be applicable.

(1) In determining eligibility, the appropriate medically needy standard is used as are appropriate disregards and exclusions from income. In determining patient liability for the cost of institutional care, gross income is used as shown in subsections (2) and (3) of this section.

(2) Income protected for basic maintenance, effective July 1, 1986, is forty (40) dollars monthly in lieu of the figure shown in Section 3 of this regulation. All income in excess of forty (40) dollars is applied to the cost of care except as follows:

(a) Available income in excess of forty (40) dollars is first conserved as needed to provide for needs of the spouse and minor children up to the appropriate family size amount from the scale as shown in Section 3 of this regulation.

(b) Remaining available income is then applied to the incurred costs of medical and remedial care that are not subject to payment by a third party (except that, effective for determinations of eligibility for periods beginning on or after December 1, 1988, the incurred costs may be reimbursed under another public program of the state or political subdivision of the state), including Medicare and health insurance premiums and medical care recognized under state law but not covered under the state's Medicaid plan.

(3) The basic maintenance standard allowed the individual during the month of entrance into or exit from the long term care facility shall reasonably take into account home maintenance costs.

(4) When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the Medical Assistance Program) if actually available for payment to the provider.

Section 6. Spend-down Provisions. No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 3 of this regulation may qualify for any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

Section 7. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment.

Section 8. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medical Assistance Program. Examples of such special services or items include television and telephone service, private room [and/]or bath, private duty nursing services, etc.

Section 9. Pass-through Cases. Increases in social security payments due to cost of living increases but for which the individual would be eligible for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements. Beginning on November 1, 1986, the additional amount specified in Section 12202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) shall be disregarded, i.e., that amount of social security benefits to which certain widows or widowers were entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) such individuals would be eligible for federal supplemental security income benefits; eligibility as a result of such disregard shall not exist prior to July 1, 1986. To be eligible, applicants must apply [within fifteen (15) months of the date of the Act, i.e.,] by July 1, 1988 [1987].

Section 10. Relative Responsibility. For purposes of the Medical Assistance Program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. Effective for determinations of eligibility made on or after December 1, 1987, children under age twenty-one (21) living with parents (but not including children age eighteen (18) and above who are blind or disabled) are considered dependent minor children for purposes of deeming of income and resources under the Medicaid Program even if such children are emancipated under state law. Stepparents are responsible for their stepchildren as shown in this section and Section 11 of this regulation. This

responsibility, with regard to income and resources, is determined as follows:

(1) "Living with" is defined as sharing a common living arrangement or household, but not including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness. Effective July 1, 1987, a husband and wife sharing a room or comparable accommodation in a long term care facility may be considered to be "living with" each other after they have continuously shared such a room or accommodation for six (6) months, if treating such husband and wife as living apart would prevent either of them from receiving medical assistance.

(2) In cases of aged, blind, or disabled applicants or recipients living with their eligible spouse, total resources and adjusted income of the couple is considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(3) In cases of aged, blind or disabled applicants or recipients living with an ineligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined below.

(a) Determine the potential spend-down amount of the eligible individual by comparing the countable income to the Medically Needy Income Level (MNIL) for one (1) as shown in Section 3 of this regulation.

(b) Allocate to other dependents in the household from the ineligible spouse income in an amount equal to one-half (1/2) of the MNIL for a family size of one (1) for each dependent.

(c) If the ineligible spouse's income is more than one-half (1/2) of the MNIL for a family size of one (1), combine the income of the ineligible spouse with that of the eligible individual and compare that figure with the MNIL for a couple to determine the spend-down amount.

(d) Compare the amount resulting from paragraph (a) of this subsection with the result of paragraph (c) of this subsection and determine eligibility using the spend-down amount, if any, which is greater.

(e) Resources shall be considered in the same manner as for an eligible spouse.

(4) In cases of aged, blind, or disabled couples, living apart for any reason other than institutionalization, both of whom are concurrently applying for or receiving MA only, income and resources are considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart; however, if mutual consideration of income and resources causes the individuals to lose eligibility as a couple, eligibility for the individuals is determined in accordance with subsection (4) of this section. If the separation is due to the institutionalization of a spouse, mutual consideration of income ceases in the month after the month of separation but resources are considered mutually available to each other the month of separation, and for the six (6) months following that month unless such would act to preclude eligibility of the individual in long-term care.

(5) In cases of an aged, blind, or disabled individual living apart from a spouse (for a reason other than institutionalization) who is not a recipient of MA only, eligibility is determined on a couple basis for the month of separation and as a single individual after the month of separation.

(6) For an individual whose case is being worked as if he[/she] were a single individual due to living apart from his[/her] spouse, as shown in Section 10(3) and (4) of this regulation, who has jointly held resources with his[/her] spouse, one-half (1/2) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

(7) Total resources and adjusted income of parent(s) and children for whom application is made is considered in relation to limitations for family size. Excluded, however, is the income and[/or] resources of an SSI parent and the SSI essential person spouse whose medical assistance eligibility is based on inclusion in the SSI case. Resources and income of an SSI essential person, spouse or nonspouse, whose medical assistance eligibility is not based on inclusion in the SSI case must be considered.

(8) In cases of a blind or disabled child under eighteen (18) living with his[/her] parent(s) (including stepparent, if applicable), total resources and adjusted income of the parent(s) is related to limitations for family size, including the applicant or recipient child and other dependent children of parent using the adult scale. The income and resources of the parent(s) shall also be considered available to such child who is aged eighteen (18) through twenty-one (21), if in school, when to do so will work to the child's benefit and the individual was aged eighteen (18) through twenty-one (21) in September, 1980, and was MA eligible at that time.

(9) Income and resources of parent(s) are not considered available to a child living apart from the parent(s), but any continuing contribution actually made is considered as income. Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home. For comparison with the resource and income limitations, the child's individual resources and[/or] income are considered in relation to family size of one (1). Effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988, the following criteria should be used to determine whether a child institutionalized in a psychiatric facility is living with his parents: a child is to be considered as living with his parents unless he has been in the facility for thirty (30) or more days or a physician specifies that it is anticipated he will remain in the facility for thirty (30) or more days (regardless of whether the child actually does so).

(10) When a recipient (but not including a child) in a family case has income and resources considered in relation to family size and enters a long term care facility, his[/her] income and resources are considered in the same manner as previously for up to one (1) year with, effective with regard to determinations of

eligibility made on or after February 1, 1988, the individual allowed forty (40) dollars as his[/her] basic maintenance standard. When a child in a family case is in the long term care facility, eligibility of the child is determined in the same manner for up to a year but his[/her] liability for the cost of care is determined by allowing to the child from his[/her] own income forty (40) dollars and considering the remainder available for the cost of care. (Note: in this situation any welfare payment made to the child is disregarded when determining liability for cost of care.) The eligibility of the individual, with regard to income and resources, shall [must] be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

Section 11. Treatment of Income of the Stepparent or Parent/Legal Guardian of a Minor Parent/Legal Guardian ([hereinafter] referred to as a "Grandparent") and Effect on Eligibility of the Assistance Group. An incapacitated (as determined by the department) stepparent's income, or a grandparent's income, is considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. When the stepparent or grandparent living in the home is not being included in the family case the stepparent's or grandparent's gross income is considered available to the spouse or minor parent in accordance with the policies set forth in this section.

(1) Disregards/exclusions from income. The following disregards/exclusions from income shall be applied:

(a) The first seventy-five (75) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time (with full-time and part-time employment as defined in Section 4(1) of this regulation).

(b) An amount equal to the medically needy income limitations scale as shown in Section 3 of this regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals living in the home but whose needs are not taken into consideration in the medical assistance eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining his[/her] federal personal income tax liability.

(c) Any amount actually paid by the stepparent or grandparent to individuals not living in the home who are claimed by him[/her] as dependents for purposes of determining his[/her] personal income tax liability.

(d) Payments by the stepparent or grandparent for alimony or child support with respect to individuals not living in the household.

(e) Income of a stepparent or grandparent receiving supplemental security income.

(f) Verified medical expenses for the stepparent or grandparent and his[/her] dependents in the home.

(2) Determining eligibility of the children. When a stepparent or grandparent has available income remaining after disregards/exclusions are applied, the [such] income may be deemed to the spouse (of the stepparent) or minor parent (child of the grandparent) but not to the stepchild(ren) or grandchild(ren). Eligibility of the stepchild(ren) or grandchild(ren) is determined in the following manner in order to take this requirement into consideration.

(a) The available income deemed to the spouse or minor parent shall be the lesser of the amount available or the medically needy income level for one (1), as shown in Section 3 of this regulation.

(b) The income of the spouse or minor parent (including the amount deemed) shall be combined with that of the child(ren) and the total compared against the medically needy income level for the appropriate family size. If there is no excess income, the child is eligible. If there is an excess, the excess amount may be spent down in the usual manner.

(3) Determining eligibility of the spouse or minor parent. Available income of the stepparent or grandparent remaining after exclusions/disregards are applied shall [must] be considered fully available to the spouse or minor parent. The eligibility of the spouse or minor parent is therefore determined in the same manner as shown in subsection (2) of this section, except that the full amount available (including that portion of the available income, if any, which is in excess of the medically needy income level for one (1)) is deemed to the spouse or minor parent.

(4) When the spouse or minor parent, or both the spouse or minor parent and child(ren) has a spend-down case(s), uncovered incurred medical expenses of all members of the budget unit may be used to meet the spend-down amount(s).

Section 12. Companion Cases. When spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility must be taken into consideration.

(1) In the case of an application for assistance for a dependent child(ren), the income, resources and needs of the parent(s) must be included in the determination of need of the child(ren) even when the parent(s) applies for assistance for himself[/herself] on the basis of age, blindness, or disability (except as shown in subsection (3) of this section).

(2) In the case of a spouse, income and resources of both spouses are combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility shall [must] be made for each individual.

(3) In the case of families with children with a parent eligible for supplemental security income (SSI), neither the income, resources, nor needs of the SSI eligible individual are to be included in the determination of eligibility of the children.

Section 13. Treatment of Lump-sum Income. The following policy is effective January 1, 1986: for adult related cases, lump-sum income is prorated over the three (3) month period following the agency's notice of receipt by the client, with any amount spent by the client prior to notification of the agency deducted from the total considered available; any portion of the income remaining available after the three (3) month period is considered in relation to resource limitations; for AFDC related cases, lump sum income is divided by the medically needy income level and prorated over the resultant number of months.

Section 14. Transferred Resources. The policy relating to transferred resources shown in this section is effective for determinations of eligibility for periods of time beginning on or after July 1, 1988 and transfers of property occurring on or after that date. [When an applicant or recipient transfers a nonexcluded resource(s) for the purpose of becoming eligible for medical assistance, the value of the transferred resource(s) will be considered a resource to the extent provided for by this section. The provisions of this section are applicable to both family related cases and medical assistance only cases based on age, blindness, or disability.]

(1) When an institutionalized individual (defined as an individual in a skilled nursing facility, general intermediate care facility, psychiatric facility, mental hospital, or a participant in a hospice program who is in a skilled nursing or intermediate care facility, or a participant in the home and community based services waiver program or the alternate intermediate services program for the mentally retarded so long as eligibility is being determined using the special income level) applies for medical assistance a period of ineligibility must be computed if at any time during the thirty (30) month period immediately preceding the application the individual disposed of property for less than fair market value. The period of ineligibility (beginning with the month in which the resources were transferred) shall be equal to the lesser of thirty (30) months or the number of months derived by dividing the total uncompensated value of the resources so transferred by the average cost, to a private patient at the time of the application, of nursing facility services in the state (either intermediate care or skilled nursing care as appropriate for the level of care).

(2) An individual shall not be ineligible for medical assistance by virtue of subsection (1) of this section to the extent that the conditions specified in Section 1917(c)(2)(B), (C) and (D) of the Social Security Act are met, nor shall an individual be ineligible for medical assistance due to transfer of resources for less than fair market value except in accordance with this section. Transfers of resources for less than fair market value occurring prior to July 1, 1988 shall not be considered in determinations of eligibility for periods beginning on or after July 1, 1988.

(3) [(1)] The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual shows the transfer was in accordance with Section 1917(c)(2)(B) or (C)(i) of the Social Security Act or presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is in accordance with Section 1917(c)(2)(B) or (C)(i) or is for some [other] reason other than to qualify for medical assistance or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value. Notwithstanding the preceding, if the assessed agricultural value is used for tax purposes the transfer is required to [must] be for an amount equal to the fair market value.

(4) [(2)] After determining that the purpose of the transfer was to become or remain eligible, the cabinet shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if nonhomestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for nonhomestead property. If retention of the resource would not have resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

(5) [(3)] If retention would result in ineligibility, the cabinet will compute a period of ineligibility as provided for in subsection (1) of this section. [consider the excess transferred resource available for up to twenty-four (24) months, subject to the following conditions:]

[(a) The value of the total excess resources considered available (including the uncompensated equity value of the transferred resource) shall be reduced by $500 for each month that has elapsed since the transfer, beginning with the month of transfer; except]

[(b) The reduction provided for in paragraph (a) shall not be applicable with regard to any month in which the individual received medical assistance but was actually ineligible due to the provisions of this section.]

[(4) For those recipients who were receiving assistance on February 28, 1981, this section is applicable only with respect to resources transferred subsequent to that date.]

(6) [(5)] The uncompensated value may be excluded from consideration when good cause exists. A waiver of consideration of the uncompensated amount will be granted subject to the following criteria:

(a) "Good cause" means that an expense (or loss) was incurred by the individual or family group due to a natural disaster, fire, flood, storm or earthquake; or illness resulting from accident or disease; or hospitalization or death a member of the immediate family; or civil disorder or other disruption resulting in vandalism, home explosions, or theft of essential household items.

(b) The exclusion may not exceed the amount of the incurred expense or loss; the amount of the uncompensated value to be excluded cannot include any amount which is payable by Medicaid, Medicare, or other insurance.

[(6) If the individual is in a long term care facility, the actual cost of long term care (rather than the $500) may be deducted from the uncompensated value excess on a monthly basis.]

Section 15. Special Provisions for AIS/MR Recipients. Medical assistance eligibility for participants in the program of alternative intermediate services for the mentally retarded (AIS/MR) shall be determined taking into consideration the special provisions contained in this section.

(1) Usual institutional deeming rules shall be applicable with regard to the categorically

needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

(2) AIS/MR services program participants who participate in the AIS/MR program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard). Income protected for basic maintenance of the AIS/MR participant in the posteligibility determination of patient liability for individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income program in addition to the SSI general exclusion.

(3) When eligibility is determined using community deeming rules, the attributed cost of care against which monthly available income of the AIS/MR participant shall be applied shall be the projected annual average cost of care for all participants divided by twelve (12) and rounded to the nearest dollar. The amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion.

(4) Eligibility shall continue on the same basis as for an institutionalized individual when the cost of care is greater than the recipient's adjusted monthly income or the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

Section 16. Special Provisions for Hospice Recipients. Medical assistance eligibility for participants under the Medicaid hospice benefit shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of the hospice participant in the posteligibility determination of patient liability for noninstitutionalized individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income (SSI) program in addition to the SSI general exclusion. For the noninstitutionalized medically needy participants (all of whom must spend-down on a quarterly basis), the amount protected for basic maintenance is the usual medically needy standard as shown in Section 3 of this regulation plus the SSI general exclusion. For the institutionalized medically needy the amount protected for basic maintenance in the eligibility determination is the medically needy standard for the appropriate family size plus the SSI general exclusion. If a hospice participant is institutionalized in a long-term care facility, the basic maintenance amount is forty (40) dollars per month.

(2) When eligibility is determined for an institutionalized monthly spend-down case, the attributed cost of care against which monthly available income of the hospice participant shall be applied shall be the hospice routine home care per diem (for the hospice providing care) as established by the Medicare program plus the room and board rate for the appropriate level of care (i.e., skilled nursing or intermediate care).

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual when the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

(4) A hospice participant may be eligible for benefits based on this section only if he[/she] has elected coverage under the Medicaid hospice benefit rather than the regular Medicaid program.

(5) Usual institutional deeming rules shall be applicable with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

Section 17. Special Provisions for Recipients Participating in the Home and Community Based Services Waiver Program. Medical assistance eligibility for participants under the home and community based (HCB) services waiver program shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of HCB services program participants who are eligible under the special income level shown in this section shall be the standard used for an individual in the federal supplemental security income (SSI) program in addition to the SSI general exclusion.

(2) HCB services program participants who participate in the HCB program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard).

(3) If an HCB services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of HCB services projected if eligibility is determined on a monthly basis, except that the amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion.

(4) Usual institutional deeming rules shall be applicable with regard to all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

Section 18. Treatment of Potential Payments from Medicaid Qualifying Trusts. When an individual (or his[/her] spouse for the

individual's benefit) creates (other than by will) a trust (or similar legal device) with amounts payable to the same individual, such trust shall be considered a "Medicaid qualifying trust" if the trustee(s) of the trust are permitted to exercise discretion as to the amount of the payments from the trust to be paid to the individual. In this circumstance the amount considered available to the trust beneficiary shall be the maximum amount the trustee(s) may (using the trustee's discretion) pay in accordance with the terms of the trust, regardless of the amount actually paid. The cabinet may, however, consider as available only that amount actually paid if to do otherwise would create an undue hardship upon the individual; the criteria for determining "undue hardship" shall be established by the cabinet.

[Section 19. Implementation. The amendments to this regulation will be effective with regard to determinations of eligibility made on or after July 1, 1988 except as otherwise specified herein.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 7, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:009E

This emergency administrative regulation identifies the specified immunization drugs which will be furnished by the Department for Health Services free of charge to physicians for services provided on or after October 1, 1988 to Medicaid recipients. The Department for Medicaid Services will reimburse the Department for Health Services upon receipt of notice from the physician that the drugs were used to provide immunizations to Medicaid recipients. Physicians can purchase the drugs from the open market and the Department for Medicaid Services will reimburse the physician in accordance with 907 KAR 1:010. This change is being made so that Medicaid recipients may receive necessary immunizations from their provider of choice at a reasonable cost to the Medicaid Program. This emergency administrative regulation shall be replaced by an ordinary regulation to be filed on or about October 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:009E. Physicians' services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: October 7, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the provisions relating to physicians' services for which payment shall be made by the Medical Assistance Program in behalf of both the categorically needy and the medically needy.

Section 1. Physicians' Services. Covered services shall include those furnished by physicians through direct physician-patient contact in the office, the patient's home, a hospital, a skilled nursing or intermediate care facility or elsewhere. For purposes of the Medical Assistance Program, oral surgeons shall be treated in the same manner as physicians with regard to coverage for services within their scope of licensed practice, and the term "physician" shall be construed to include oral surgeons unless the context in which it is used is to the contrary.

Section 2. Limitations. (1) Coverage for initial and extensive visits shall be limited to one (1) visit per patient per physician per twelve (12) month period.

(2) Payment for outpatient psychiatric services rendered by other than board-eligible and board-certified psychiatrists shall be limited to four (4) such services per patient per physician per twelve (12) month period.

(3) A patient placed in "lock-in" status due to overutilization is to receive services only from his[/her] lock-in provider except in the case of emergency or referral.

(4) Coverage for laboratory procedures performed in the physician's office shall be limited to those procedures listed on the agency's physician laboratory benefit schedule. Physician laboratory procedures are limited to those specified as payable, except that the professional component of laboratory procedures performed by board certified pathologists in a hospital setting or an outpatient surgical clinic are covered so long as the physician has an agreement with the hospital or outpatient surgical clinic for the provision of laboratory procedures.

(5) The cost of preparations used in injections shall not be considered a covered benefit, except for specified immunizations identified in Section 3 of this regulation.

(6) Physicians will be allowed to secure drugs for specified immunizations identified in Section 3 of this regulation free from the Department for Health Services or to purchase drugs from the same specified immunizations from the open market to provide immunizations for Medicaid recipients. Reimbursement for the cost of these drugs will be in accordance with 907 KAR 1:010.

(7) [(6)] Telephone contacts with patients shall not be considered a covered benefit.

Section 3. Specified Immunizations for Medicaid are:

(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine, live (MMR);

(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and

(4) Hemophilus B conjugate vaccine (HBCV).

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 7, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:010E

This emergency administrative regulation specifies that with regard to services provided on or after October 1, 1988, physicians will be allowed to secure drugs for specified immunizations, identified in 907 KAR 1:009, free from the Department for Health Services, with reimbursement for the cost of the drugs made from the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the physician that the drugs were used to provide immunizations to medicaid recipients; as an alternative method, physicians will be allowed to purchase the drugs from the open market and the Department for Medicaid Services will reimburse the physician the same amounts that would have been paid to the Department for Health Services. This change is being made so that Medicaid recipients may receive necessary immunizations from their provider of choice at a reasonable cost to the Medicaid program. This emergency administrative regulation shall be replaced by an ordinary regulation to be filed on or about October 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:010E. Payment for physicians' services.

RELATES TO: KRS 205.550, 205.560
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: October 7, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a program of Medical Assistance under Title XIX of the Social Security Act. KRS 205.550 and 205.560 require that the secretary prescribe the methods for determining costs for vendor payments for medical care services. This regulation sets forth the method for establishing payment for physician services.

[Section 1. Amount of Payment. Payment for covered services rendered to eligible medical assistance recipients is based on the physicians' usual, customary, reasonable and prevailing charges.]

Section 1. [2.] Definitions. For purposes of determination of payment:
(1) Usual and customary charge refers to the uniform amount the individual physician charges in the majority of cases for a specific medical procedure or service.
(2) Prevailing charge refers to those charges which fall within the range of charges as computed by the use of a predetermined and established statistical percentile. Prevailing charges for each medical procedure are derived from the overall pattern existing within the state.

Section 2. Amount of Payment. Payment for covered services rendered to eligible medical assistance recipients is based on the physicians' usual, customary, reasonable and prevailing charges.

Section 3. Method and Source of Information on Charges. (1) Effective October 1, 1981, the individual fee profiles for participating physicians were generated from historical data accumulated from charges submitted and processed by the medical assistance program during all of calendar year 1980.
(2) Effective October 1, 1981, the Title XIX prevailing fee maximums were generated from the same historical data as referenced in subsection (1) of this section.
(3) Effective October 1, 1981, the Title XVIII, Part B, current reasonable charge profiles were utilized by the medical assistance program.
(4) Effective October 1, 1981, the Title XVIII, Part B, current prevailing charge data was utilized by the medical assistance program.
(5) Percentile.
(a) The Title XIX prevailing charges were established by utilizing the statistical computation of the 75th percentile.
(b) The Title XVIII, Part B, prevailing charges were established by utilizing the statistical computation of the 75th percentile.

Section 4. Maximum Reimbursement for Covered Procedures. (1) Reimbursement for covered procedures is limited to the lowest of the following:
(a) Actual charge for service rendered as submitted on billing statement;
(b) The physician's median charge for a given service derived from claims processed or from claims for services rendered during all of the calendar year preceding the start of the fiscal year in which the determination is made.
(2) In no case may payment exceed the prevailing charge established under Part B, Title XVIII for similar service on a statewide basis.
(3) In instances where a prevailing charge has not been established for a specific medical procedure by Part B, Title XVIII, the prevailing charge established under Title XIX is utilized as the maximum allowable fee.
(4) The upper limit for new physicians shall not exceed the 50th percentile.
(5) The amount otherwise payable for outpatient services, as determined in accordance with Sections 1 through 3 of this regulation and subsections (1) through (4) of this section, shall be reduced by five (5) percent to arrive at the final payment amount.
(6) Effective with regard to services provided on or after October 1, 1988, physicians will be allowed to secure drugs for specified immunizations identified in 907 KAR 1:009 free from the Department for Health Services to provide immunizations for Medicaid recipients, with reimbursement for the cost of the drugs made from the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the physicians that the drugs were used to provide immunizations to Medicaid recipients.
(7) Effective with regard to services provided on or after October 1, 1988, physicians will be allowed to purchase drugs for specified immunizations identified in 907 KAR 1:009 in the open market to provide immunizations for Medicaid recipients and the Department for Medicaid Services will reimburse the physician the same amounts that would have been paid to the Department for Health Services if the drugs

had been obtained through that agency upon receipt of appropriate notice that the drugs were used to provide immunizations to Medicaid recipients.

Section 5. Exceptions. Exceptions to reimbursement as outlined in other [foregoing] sections are as follows:

(1) Reimbursement for physician's services provided to inpatients of hospitals is made on the basis of 100 percent reimbursement per procedure for the first twenty (20) dollars of allowable reimbursement and on the basis of a percentage of the physician's usual, customary and reasonable charge in excess of twenty (20) dollars per procedure, after the appropriate prevailing fee screens are applied. The percentage rate applied to otherwise allowable reimbursement in excess of twenty (20) dollars per procedure is established at thirty-five (35) percent. The percentage rate will be reviewed periodically and adjusted according to the availability of funds.

(2) Payments for specified obstetrical services provided on or after November 1, 1987, shall be at the lower of the actual billed charge or the following flat rates: for board certified obstetricians, normal delivery and cesarean section, $650; for all other physicians, normal delivery, and cesarean section, $550.

(3) Payment for individuals eligible for coverage under Title XVIII, Part B, Supplementary Medical Insurance, is made in accordance with Sections 1 through 4 of this regulation and subsections (1) and (2) of this section within the individual's deductible and coinsurance liability.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 7, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:011E

This emergency administrative regulation provides for coverage of pregnant women and children up to age one (1) with the income not in excess of 125 percent of the federal poverty level; and in addition provides that individuals who are residents of emergency shelters may be there for up to six (6) months in any nine (9) month period (rather than three (3) months in any twelve (12) month period) and still be eligible for Medical Assistance if other eligibility conditions are met. These changes must be implemented on an emergency basis so affected individuals may qualify for benefits immediately.

This emergency administrative regulation differs from the emergency administrative regulation filed on April 7, 1988 since that change provided for a clarification relating to eligibility in institutions for mental diseases.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be filed with the Regulations Compiler on or about October 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:011E. Technical eligibility requirements.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: October 7, 1988

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet by regulation to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medical Assistance, [hereinafter] referred to as MA, to Kentucky's indigent citizenry. This regulation sets forth the technical eligibility requirements of the MA Program.

Section 1. The Categorically Needy. All individuals receiving Aid to Families with Dependent Children, Title IV-E benefits, Supplemental Security Income or Optional or Mandatory State Supplementation are eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons are included in the program as categorically needy and thus eligible for MA participation.

(1) Children in foster family care or private nonprofit child caring institutions dependent in whole or in part on a governmental or private agency;

(2) Children in psychiatric hospitals or medical institutions for the mentally retarded;

(3) Pregnant women;

(4) Children of unemployed parents;

(5) Children in subsidized adoptions dependent in whole or in part on a governmental agency;

(6) Families terminated from the Aid to Families with Dependent Children (AFDC) program because of increased earnings or hours of employment;

(7) Children (but not their parents) who meet the income and resource requirements of the Aid to Families with Dependent Children program, who were born after September 30, 1983 and who are under the age of five (5); and effective July 1, 1987, children (but not their parents) who meet the income and resource requirements of the Aid to Families with Dependent Children Program, who are under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(8) A child(ren) born to a woman eligible for and receiving medical assistance, so long as the child(ren) has not reached his[/her] first birthday, resides in the household of the woman, and the woman remains eligible for such assistance. In this situation, an application is deemed to have been made and the child found eligible for MA as of the date of birth;

(9) Effective June 1, 1987, individuals in institutions meeting appropriate patient status criteria who (if not institutionalized) would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income, may be eligible under a special income level which is set at 300 percent of the

SSI benefit amount payable for an individual with no income. Eligibility for similar hospice participants and similar participants in the waiver projects of home and community based services for the mentally retarded and the aged, blind or disabled may also be determined under this provision. Eligibility of an individual whose gross income exceeds 300 percent of the previously specified SSI benefit amount may not be determined in accordance with this provision;

(10) Effective July 1, 1987, qualified severely impaired individuals as specified in Section 9404 of P.L. 99-509 and Sections 2, 3 and 4 of P.L. 99-643 (to the extent such coverage is mandatory in this state);

(11) Effective July 1, 1987, individuals who lose SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in child's insurance benefits based on disability as specified in Section 6 of P.L. 99-643; and

(12) Effective October 1, 1987, women during pregnancy (and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy), and infants and children under two (2) years of age, as permitted by Section 9401 of the Omnibus Budget Reconciliation Act of 1986, and effective with regard to determinations of eligibility made for periods beginning on or after October 1, 1988, pregnant women and children under the age of one (1) as permitted by Section 4101 of the Omnibus Budget Reconciliation Act of 1987, subject to the following:

(a) [Such] Pregnant women, infants and children are required to meet the income and resource requirements for these [this] eligibility groups as specified in 907 KAR 1:004, Resource and income standard of medically needy; and

(b) When an infant or child eligible under this provision is receiving covered inpatient services on a birthday which will make him[/her] ineligible due to age, the infant or child will remain eligible until the end of the stay for which the covered inpatient services are furnished so long as the infant or child remains otherwise eligible except for age.

Section 2. The Medically Needy. Other individuals (including children as shown in Section 1(7) of this regulation), and pregnant women meeting income and resource standards of the medically needy program), meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for MA with need determined in accordance with income and resource standards prescribed by regulation of the Cabinet for Human Resources. Included within the medically needy eligible groups are pregnant women during the course of their pregnancy; a woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated). For individuals covered on January 1, 1985 pursuant to this section, the usual three (3) month rule on retroactivity (as shown in Section 3(15)) will apply.

Section 3. Technical Eligibility Requirements. Technical eligibility factors of families and individuals included as categorically needy under Section 1(1) through (6) of this regulation, or as medically needy under Section 2 of this regulation are:

(1) Children in foster care, private institutions, psychiatric hospitals or mental retardation institutions must be under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(2) Pregnant women are eligible only upon medical proof of pregnancy, except as otherwise specified in Section 2 of this regulation;

(3) Unemployment relating to eligibility of both parents and children is defined as:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at least fifty (50) dollars during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent must not have refused suitable employment without good cause as determined in accordance with 45 CFR Section 233.100(a)(3)(ii);

(f) The unemployed parent must meet the requirements for independent employment search as specified herein. That is:

1. The unemployed parent must make not less than twenty-four (24) contacts with prospective employers in each three (3) month period following an approval, reinvestigation or reapproval.

2. The unemployed parent may not contact the same prospective employer more than once in each calendar month.

3. If the unemployed parent does not meet the requirement for the minimum number of employment contacts during the three (3) month period, the parent may, prior to or upon receipt of the advance notice of proposed discontinuance, meet the requirement for the number of contacts for the prior three (3) month period. These contacts shall not offset the requirement for employer contacts during the three (3) month period following the next approval, reinvestigation or reapproval.

(4) Under the definition contained in subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work when it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute when such involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual must be at least sixty-five (65) years of age.

(6) A blind individual must meet the definition of blindness as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(7) A disabled individual must meet the definition of permanent and total disability as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(8) For families losing AFDC eligibility solely because of increased earnings or hours of employment, medical assistance shall continue for four (4) months to all such family members as were included in the family grant (and children born during the four (4) month period) if the family was eligible for and received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC. The four (4) month period begins on the date AFDC is terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated.

(9) Families losing AFDC eligibility solely due to loss of the thirty (30) dollars disregard or the one-third (1/3) disregard from earnings shall be deemed AFDC eligible for nine (9) months after the termination of the disregard, and shall as a result be eligible for continued medical assistance for the nine (9) month period. The nine (9) month period begins on the date the AFDC should have been terminated. Coverage for medical assistance is extended to all family members who were included in the grant (and children born during the nine (9) month period).

(10) Families losing AFDC eligibility as a result (wholly or partly) of the collection or increased collection of child or spousal support, and who were eligible for and received AFDC in at least three (3) of the six (6) months immediately preceding the month in which such ineligibility begins, shall be deemed AFDC eligible for Title XIX purposes for four (4) months beginning with the month in which ineligibility begins. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated. Coverage for medical assistance is extended to all family members losing eligibility as a result of the receipt of the child or spousal support. The extended eligibility provision contained herein is applicable only with respect to families discontinued on or after July 18, 1984 and before October 1, 1988.

(11) Parents may be included for assistance in the cases of families with children including natural and adoptive parents. Other relatives who may be included in the case (one (1) only) are caretaker relatives to the same extent they may be eligible in the Aid to Families with Dependent Children Program.

(12) An applicant who is deceased may have eligibility determined in the same manner as if he was alive, in order to pay medical bills during the terminal illness.

(13) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. Effective April 1, 1986, for new approvals and at time of reinvestigation for other cases, the family unit must be determined in the same manner as is required for AFDC cases, except that if a family member(s) is pregnant the unborn child(ren) will be considered as a family member(s) for budgeting purposes.

(14) The following citizenship and[/or] residency requirements will be applicable:

(a) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law (except as specified in paragraph (b) of this subsection). An alien must have been admitted for permanent residence except as shown in paragraphs (b), (c) and (d) of this subsection. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to recipients of a state supplementary payment and institutionalized individuals. The conditions for determining state residency are specified in federal regulations at 42 CFR 435.403[, which are hereby incorporated by reference].

(b) Effective January 1, 1987, an alien not legally admitted to this country or residing in this country under color of law may be eligible for medical assistance under the following circumstances and conditions:

1. The alien must meet all other requirements for receipt of medical assistance, however, an alien qualifying as a categorically needy recipient need not actually receive an AFDC or federal supplemental security income (SSI) cash payment so long as the alien meets the income resource and categorical requirements of the applicable cash assistance program;

2. The alien must have (or have had within the usual period for retroactive eligibility) an emergency medical condition, defined as a medical condition (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

3. Approval of eligibility shall be for a time limited period, with such period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period may be extended for an appropriate period of time upon presentation to the cabinet of acceptable documentation that the medical emergency will

exist for a more extended period of time than is allowed for in the time limited eligibility period; and

4. The medical assistance to which the alien shall be entitled is limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien.

(c) Effective May 5, 1987, select groups of aliens who are illegally residing in this country may qualify for legalization of residence status under Section 201 of P.L. 99-603. Such aliens are prohibited from Medicaid eligibility for a period of five (5) years (beginning on the date temporary resident status is granted) except as follows:

1. The aged, blind or disabled may be eligible;

2. Children under age eighteen (18) may be eligible;

3. Pregnant women may be eligible for pregnancy related services only; and

4. All such aliens may qualify for emergency services to the extent specified in paragraph (b) of this subsection and with the limitations shown [therein].

(d) Effective June 1, 1987, aliens qualifying for legalization of status as seasonal agricultural workers under Section 302 of P.L. 99-603 are subject to the same coverage limitations as shown in paragraph (c) of this subsection.

(15) An individual may be determined eligible for medical assistance for up to three (3) months prior to the month of application if all conditions of eligibility are met. The effective date of medical assistance is generally the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility may not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met. For individuals eligible on the basis of desertion, a period of desertion must have existed for thirty (30) days, and the effective date of eligibility may not precede the first day of the month in which the thirty (30) day period ends. For individuals eligible on the basis of utilizing their excess income for incurred medical expenses, the effective date of eligibility is the day the spend-down liability is met.

(16) "Child" means a needy dependent child under the age of eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before the age nineteen (19)), who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, and who is a recipient of or applicant for public assistance. Included within this definition is an individual(s) meeting the age requirement specified above, previously emancipated, who has returned to the home of his parents, or to the home of another relative, so long as such individual is not thereby residing with his spouse.

(17) Benefits shall be denied to any family for any month in which any legally liable caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and no individual's needs shall be considered in determining eligibility for medical assistance for the family if, on the last day of the month, such individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(18) Effective May 1, 1987, an individual sanctioned (removed) from an AFDC case due to failure to meet an AFDC technical eligibility requirement may not be eligible for medical assistance as a medically needy individual unless such individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which such individual has been sanctioned.

Section 4. Institutional Status. No individual shall be eligible for MA if a resident or inmate of a nonmedical public institution. No individual shall be eligible for MA while a patient in a state tuberculosis hospital unless he has reached age sixty-five (65). No individual shall be eligible for MA while a patient in a mental hospital or psychiatric facility unless he is under age twenty-one (21) or age twenty-two (22) if receiving such inpatient services on his[/her] 21st birthday or is sixty-five (65) years of age or over. No individual shall be eligible for MA while a patient in a skilled nursing facility or intermediate care facility classified by the Medicaid program as an institution for mental diseases unless such individual has reached age sixty-five (65).

Section 5. Emergency Shelters. Effective July 1, 1985, an individual (or family group) who is in an emergency shelter for a temporary period of time may be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions are as follows:

(1) The individual (or family group) must be a resident of an emergency shelter no more than six (6) [three (3)] months in any nine (9) [twelve (12)] month period, effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988.

(2) The individual (or family group) must not be in the facility serving a sentence imposed by the court, or awaiting trial.

(3) The individual (or family group) must be otherwise eligible when outside the emergency shelter; that is, eligibility must have existed immediately prior to admittance to the shelter, or it must exist immediately after leaving the shelter.

Section 6. Application for other Benefits. As a condition of eligibility for medical assistance, applicants and recipients must apply for all annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Good cause is considered to exist when such benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans'

compensations and pensions, retirement and survivors disability insurance benefits, railroad retirement benefits, and unemployment compensation. Notwithstanding the preceding, no applicant or recipient shall be required to apply for federal benefits when the federal law providing for such benefits shows the benefit to be optional and that the potential applicant or recipient for such benefit need not apply for such benefit when to do so would, in his opinion, act to his disadvantage.

Section 7. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section 8. Third Party Liability as a Condition of Eligibility. Any individual applying for or receiving medical assistance shall be required as a condition of eligibility to cooperate with the Cabinet for Human Resources in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless such individual has good cause for refusing to cooperate as determined by the cabinet taking into consideration the best interests of the individuals involved. A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

Section 9. Provision of Social Security Numbers. Beginning May 1, 1985, each applicant for or recipient of medical assistance shall be required to provide a social security number as a condition of eligibility. However, no one shall be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration when appropriate application for such number has been made. For recipients, the requirement shall be effective with the first full reinvestigation occurring on or after May 1, 1985.

[Section 10. Effective Date. The amendment to this regulation will be effective with regard to determinations of eligibility made on or after May 1, 1988.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 7, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:020E

This emergency administrative regulation is being amended to reflect the changes being made to 907 KAR 1:009 and 907 KAR 1:010 in relation to reimbursements to physicians for drugs for specified immunizations which will be available from the Department for Health Services free of charge for services provided on or after October 1, 1988 to Medicaid recipients. This change is being made so that Medicaid recipients may receive necessary immunizations from their provider of choice at a reasonable cost to the Medicaid Program.

This emergency administrative regulation differs from the emergency administrative regulation filed on July 1, 1988 as that change related to a federally required change in maximum allowable cost limits and this change relates to a program improvement.

This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be filed on or about October 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, MD, Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:020E. Payment for drugs.

RELATES TO: KRS 205.550, 205.560
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: October 7, 1988
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a program of Medical Assistance under Title XIX of the Social Security Act. KRS 205.550 and 205.560 require that the secretary prescribe the methods for determining costs for vendor payments for medical services. This regulation sets forth the method for determining amounts payable by the department for drugs.

Section 1. Maximum Allowable Cost Reimbursement Limits. (1) Reimbursement to pharmacists participating in the Medical Assistance Program for those drugs contained on the Kentucky Medical Assistance Program Outpatient Drug List and provided to eligible recipients is limited to the lowest of:

(a) The maximum allowable cost (MAC) of the drug, if any, whether federal or state or both, plus a dispensing fee; or

(b) The estimated acquisition cost (EAC) of the drug plus a dispensing fee; or

(c) The provider's usual and customary charge to the public for a like product and service.

(2) Reimbursement to skilled nursing and intermediate care facilities for drugs provided to eligible recipients is allowable in accordance with the following:

(a) The Kentucky Medical Assistance Program Outpatient Drug List (with additions and deletions thereto) shall be provided by the program to each participating facility, and for the drugs contained therein, the limits specified in subsection (1) of this section are applicable;

(b) For drugs not on the drug list, the maximum reimbursement shall be the same as set forth in subsection (1)(a) through (c) of this section. EAC's shall be determined in the same manner as for drugs included on the outpatient drug list. SNF/ICF facilities shall not impose an additional charge on medicaid eligible recipients for drugs because of the limitations set forth in Section 1(2) of this regulation;

(c) A packaging cost allowance of not more than six (6) cents per dose may be added to the drug cost (if not already included) for unit dose packaged drugs. The packaging cost (up to six (6) cents, plus the drug cost is added to the dispensing fee to determine the total

reimbursement amount for a unit dose packaged prescription;

(d) There shall be no more than two (2) dispensing fees allowed per drug within a thirty (30) day period, except for Schedules II, III, and IV controlled substances and for nonsolid dosage forms, including topical medication preparations, for which no more than four (4) dispensing fees per drug will be paid within a thirty (30) day period. Though dispensing fees are limited, this shall not be construed as placing a limit on the quantity of reimbursable drugs for which the program will pay for any patient, since the reasonable cost of the drug (as defined herein) is reimbursable as a covered service in whatever quantity is considered medically necessary for the patient. Nonsolid dosage forms include all covered drug items other than oral tablets or capsule forms. Drug items or other related supplies purchased for routine use and which may be purchased without a prescription, including food supplements, are not reimbursable in SNFs or ICFs under the drug program, though the cost of such drug, supply item or food supplement, is an allowable cost for the facility with the cost computed in accordance with the state regulation covering medicaid reimbursement for the facility;

(e) Whenever possible, unused drugs paid for by the department shall be returned to the pharmacy with the credit for the cost of the drug and the unit dose packaging cost (if applicable) accruing to the department as an offset against allowable ancillary cost; and

(f) Interim payments made to participating facilities for allowable drug costs shall be settled at actual allowable costs computed in accordance with the upper limits shown herein at the end of the facilities' fiscal year.

(3) Reimbursement to hospitals for drugs provided to eligible recipients is on the basis of reasonable cost pursuant to 907 KAR 1:013.

Section 2. Physician Maximum Allowable Cost (MAC) Override. The MAC price limitation in Section 1 of this regulation shall not apply in any case where a physician certifies in his own handwriting that in his medical judgment, a specific covered brand is medically necessary for a particular patient. In such instances, reimbursement shall be based on the lower of the EAC plus a professional dispensing fee or the provider's usual and customary charge to the public for the drug.

Section 3. Dispensing Fees. Effective July 1, 1984, the dispensing fee shall be no more than three (3) dollars and twenty-five (25) cents per prescription for drugs reimbursed through the outpatient drug program, as shown in Section 1(1) of this regulation, where the covered drugs are limited to those contained on the Kentucky Medical Assistance Program Outpatient Drug List. The allowable dispensing fee shall be no more than three (3) dollars and twenty-five (25) cents (except for the additional amount for unit dose packaging as shown in Section 1(2)(c) of this regulation) for drugs reimbursed as part of the covered services of skilled nursing and intermediate care facilities, as shown in Section 1(2) of this regulation.

Section 4. Reimbursement to Dispensing Physicians. Participating dispensing physicians who practice in counties where no pharmacies are located are reimbursed for the cost of the drug only, with the cost computed as the maximum allowable cost or estimated acquisition cost as shown in Section 1(1) of this regulation, or the physician's usual and customary charge to the general public for the drug if less, or in accordance with 907 KAR 1:010 for drugs purchased on the open mrket for specified immunizations shown in 907 KAR 1:009.

Section 5. Implementation. The provisions of this regulation as amended shall be effective with regard to services provided on or after October [July] 1, 1988.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 7, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:054E

This emergency administrative regulation identifies the drugs for specified immunizations which will be furnished by the Department for Health Services free of charge to primary care centers for services provided on or after October 1, 1988 to Medicaid recipients. This change is being made so that Medicaid recipients may receive necessary immunizations from their provider of choice at a reasonable cost to the Medicaid program. This emergency administrative regulation shall be replaced by an ordinary regulation to be filed on or about October 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:054E. Primary care center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: October 7, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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. Primary care centers, as defined by the Health Certificate of Need and Licensure Board, represent an opportunity for the provision of comprehensive medical services to the indigent citizenry of Kentucky. This regulation, therefore, sets forth the provisions relating to primary care center services for which payment shall be made by the Medical Assistance Program in behalf of both the categorically needy and medically needy.

[Section 1. Requirement for Participation. Each primary care center shall be required to meet the standards set for certification by the Health Certificate of Need and Licensure Board, and shall not receive reimbursement for services as a primary care center provider until the cabinet determines that such standards are met

and that the provider complies with all requirements for program participation.]

Section 1. [2.] Definitions. As used in this regulation, the following definitions apply:

(1) Basic services. Those services which must be provided by the facility for it to be considered a primary care center by the cabinet;

(2) Supplemental services. Those specified services which are in addition to the basic or required range of services, and for which the cabinet will make payment when appropriately provided by the primary care center;

(3) Element. A specific subprogram within the Medical Assistance Program; for example, primary Care Center Services is a subprogram or element of the Medical Assistance Program;

(4) Requirements for program participation. Those requirements of law or regulation generally applicable throughout the Medical Assistance Program and with which all medical services providers must comply in order to participate and receive reimbursement as a provider of services to eligible medical assistance recipients.

Section 2. Requirement for Participation. Each primary care center shall be required to meet the standards set for certification by the Commission on Health Economics Control in Kentucky, and shall not receive reimbursement for services as a primary care center provider until the cabinet determines that such standards are met and that the provider complies with all requirements for program participation.

Section 3. Covered Services. Each primary care center shall provide directly to eligible program recipients on a regular, full-time basis the basic services, and may provide one or more of the supplemental services.

(1) Basic services.

(a) Medical diagnostic and treatment services for all age groups, as provided by a physician(s), nurse practitioner(s), or physician assistant(s) if licensed under state authority.

(b) Treatment of injuries and minor trauma;

(c) Prenatal and postnatal care;

(d) A program of preventive health services which must include well-baby care, well-child care, and immunization, and which may include other types of preventive care;

(e) Referral services designed to ensure the referral to and acceptance by an appropriate medical resource when services necessary to the health of the patient are not provided directly by the center;

(f) Health education services. These services must provide as a minimum appropriate personnel to present, on request, information on general health care to local school systems, civic organizations and other concerned local groups. Services are to include distribution of written material on pertinent health subjects.

(g) The services provided by the following professional practitioners must be provided directly:

1. Dentist;

2. Clinical pharmacist. A clinical pharmacist is a licensed pharmacist whose services include taking medication histories, monitoring drug use, contributing to drug therapy, drug selection, patient counseling, administering drug programs and surveillance for adverse reactions and drug interactions;

3. Optometrist.

(h) Any of the following services may substitute on a one for one basis for the services shown in paragraph (g) of this subsection, when provided directly by the center in the context of an identifiable program by appropriately trained personnel:

1. Family planning services. These services must be provided as a package which must include those services required under the family planning element of the Medical Assistance Program.

2. Home health services. These services must include the same services as provided under the home health element of the Medical Assistance Program.

3. Social services counseling. This must include, as a minimum, information and referral services. Intensive counseling is to be limited to crisis situations and health related problems. Individuals with other identified counseling needs are to be referred to appropriate social service agencies. These services must be performed by a licensed, graduate, or certified social worker.

4. Pharmacy services. These services must meet the standards of the pharmacy component of the Medical Assistance Program. Where clinical pharmacist is selected as a basic service in paragraph (g) of this subsection, pharmacy services may not be used as a substitute for one of the two (2) remaining required services in paragraph (g) of this subsection.

5. Nutritional services. These services must include as a minimum individual counseling relating to nutritional problems or nutritional education. Group nutritional services may also be provided. These services must be performed by a professional nutritionist.

6. Nurse midwifery services. These services must be provided as a program which is to include prenatal services to expectant mothers, as well as delivery and postnatal services. These services must be performed by a certified nurse midwife.

(2) Supplemental services.

(a) Other services (excluding institutional care) within the scope of the Medical Assistance Program;

(b) Holding/observation accommodations;

(c) Any of the types of service in subsection (1)(h) of this section, which are not provided as basic services;

(d) Outreach services. These services must be provided as a package structured to identify health care needs in the service area.

Section 4. Drugs for Specified Immunizations. Effective with regard to services provided on or after October 1, 1988, primary care centers will be allowed to secure drugs for specified immunizations from the Department for Health Services free to provide immunizations for Medicaid recipients. The specified immunizations are:

(1) Diptheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine, live (MMR);

(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and

(4) Hemophilus B conjugate vaccine (HBCV).

Section 5. [4.] Limitations on Services. The

following limitations are applicable to specified services:

(1) Pharmacy services are limited to those drugs covered through the pharmacy services element of the Medical Assistance Program;

(2) Other drugs and biologicals not covered under pharmacy services are limited to those necessary for the treatment of emergency cases;

(3) Laboratory services are limited to those procedures provided directly by the center, or if purchased, these services are limited to those covered under the independent laboratory element of the Medical Assistance Program;

(4) Dental services are limited to those procedures covered through the dental services element of the Medical Assistance Program;

(5) Vision care services are limited to those services covered through the vision care services element of the Medical Assistance Program;

(6) Audiology services are limited to those services covered through the hearing services element of the Medical Assistance Program;

(7) Abortion and/or sterilization services must be performed in accordance with guidelines specified by the cabinet;

(8) Durable medical goods and prosthetics are limited to those covered under the home health element of the Medical Assistance Program;

(9) Mental health services are limited to emergency services and appropriate referral;

(10) Holding/observation accommodations are covered for not more than twenty-four (24) hours when provided in accordance with the following:

(a) The patient's record shall document the appropriateness of such utilization;

(b) The physician shall make the decision that such utilization is necessary;

(c) A licensed nurse shall be on duty at the center during the time a patient is held in center accommodations beyond regular scheduled hours;

(d) A licensed physician shall be on call at all times when a patient is held beyond the regular scheduled hours of the center;

(e) A statement of conditions observed and treatment rendered during such holding time must be entered in the patient's medical record;

(11) Radiology procedures must be performed by either a licensed practitioner of the healing arts or an individual holding a valid certificate to operate sources of radiation.

Section 6. [5.] Noncovered Services. The following services are specifically excluded from coverage as primary care center services:

(1) All institutional services;

(2) Housekeeping, babysitting, and other homemaker services of like nature;

(3) Services which are not provided in accordance with restrictions imposed by law or regulation.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 7, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:055E

This emergency administrative regulation specifies that with regard to services provided on or after October 1, 1988, primary care centers will be allowed to secure drugs for specified immunizations, which are identified in 907 KAR 1:054, free of charge from the Department for Health Services. The Department for Medicaid Services will reimburse the Department for Health Services upon notice from the primary care centers that the drugs were used to provide immunizations to Medicaid recipients. On or after January 1, 1989, the cost of drugs for these specified immunizations will no longer be an allowable part of the primary care centers' reimbursement system as long as they are available free of charge from the Department for Health Services. These changes are being made so that Medicaid recipients may receive necessary immunizations from their provider of choice at a reasonable cost to the Medicaid program. This emergency administrative regulation shall be replaced by an ordinary regulation to be filed on or about October 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:055E. Payments for primary care center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: October 7, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the method for determining amounts payable by the cabinet for primary care center services.

Section 1. Primary Care Centers. In accordance with 42 CFR 447.325, the cabinet shall make payment to providers who are appropriately licensed and have met the conditions for participation set by the cabinet, on the following basis:

(1) Payment shall be made on the basis of reasonable allowable cost.

(2) Payment amounts shall be determined by application of the "Primary Care Center General Policies and Guidelines and Principles of Reimbursement" (revised July 1, 1986, and hereby incorporated by reference) developed and issued by the cabinet, supplemented by the use of title XVIII-A reimbursement principles.

(3) Allowable costs shall not exceed customary charges which are reasonable.

(4) For services provided prior to July 1, 1985, reimbursement for medical and nursing cost center costs shall be subject to adjustment for a growth allowance. The growth allowance shall be computed for the year beginning each July, and shall be based on a projection of the change in the medical component of the Consumer Price Index over the previous year as applied to the median service cost of medical and nursing services, on a per visit basis, for all participating providers. Increases in medical and nursing center costs in excess of the growth

allowance shall be disallowed. For those facilities with medical and nursing cost increases which are less than the growth allowance, the difference between the two (2) shall be reimbursable as a cost containment incentive payment at the time of the usual cost settlement.

(5) For services provided on or after July 1, 1985, the average allowable cost per visit for the medical and nursing services cost center shall not exceed the lesser of actual allowable costs, or charges, or the actual allowable average cost per visit for medical and nursing center services for the facility fiscal year ending prior to July 1, 1985 (not adjusted to the lower of cost or charges) plus an additional growth allowance of twenty (20) cents per visit per month (if such cost is incurred) for each month after the facility's fiscal year end but prior to July 1985. Primary care centers beginning participation on or after July 1, 1985, or which have less than two (2) full years of program participation on that date, shall be reimbursed on the basis of the lower of reasonable allowable costs or charges (as shown in subsections (1) through (3) of this section) for the first two (2) years of participation in the program. For the third and subsequent years, the average allowable cost per visit may not exceed the lower of the facility's actual allowable costs, or charges, or the facility's actual allowable costs (not adjusted to the lower of cost or charges) for the second year of participation.

(6) During the first six (6) months after the implementation of the policy contained in subsection (4) of this section, centers with fiscal year endings occurring in the six (6) month period shall not have medical and nursing center costs disallowed as a result of imposition of the growth allowance upper limit, but shall be entitled to receive any applicable incentive payment.

(7) The amount of any allowable incentive payment determined pursuant to the policy specified in subsection (4) of this section may not exceed the growth allowance, and must be added to allowable costs for application of the lower of costs or charges principle.

(8) Effective with regard to services provided on or after October 1, 1988, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 which are provided free from the Department for Health Services to primary care centers shall be paid by the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the primary care centers that the drugs were used to provide immunizations to Medicaid recipients.

(9) Effective with regard to services provided on or after January 1, 1989, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 shall not be considered an allowable cost even though the drugs are purchased on the open market so long as the drugs could have been obtained free from the Department for Health Services.

Section 2. Implementation of the Payment System. (1) The reimbursement system developed by the cabinet for primary care centers is supported by the Title XVIII-A reimbursement principles which will serve as guidelines for determining reasonable allowable cost in areas not addressed specifically by the cabinet.

(2) The system shall utilize a method whereby primary care providers are paid an interim rate based on a reasonable estimation of current year costs followed by a year end adjustment to actual reasonable allowable costs. When the need can be demonstrated, adjustment to an interim rate will be made.

(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each primary care center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.

(5) Interim payments due the primary care center shall be made at reasonable intervals but not less often than monthly.

Section 3. Prohibition against Joint Participation. Dual or joint participation in the medical assistance program by a primary care center is not permitted. When a primary care center elects to participate as such in the medical assistance program it may not participate concurrently under other regular ongoing elements of the medical assistance program, including the rural health clinic services element. In addition, when a center elects to participate as such in the medical assistance program, it is considered to elect participation for all eligible service elements, components, or subunits of the center.

Section 4. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 907 KAR 1:054, primary care center services, nor for that portion of a primary care center's costs found unreasonable or nonallowable in accordance with the cabinet's "Primary Care Center General Policies and Guidelines and Principles of Reimbursement." In addition, when the utilization review processes of the cabinet find that costs have been incurred through provision of unnecessary medical treatment services, such costs shall be disallowed.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 7, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:080E

This emergency administrative regulation is amended to show that with regard to services provided on or after October 1, 1988, the cost of drugs for specified immunizations, as shown in 907 KAR 1:082 which are provided free of charge from the Department for Health Services to rural health clinics, shall be paid to the Department for Health Services upon receipt of notice from the rural health clinics that the drugs were used to provide immunizations to

Medicaid recipients. This change is being made so that Medicaid recipients may receive necessary immunizations from their provider of choice at a reasonable cost to the Medicaid Program. This emergency administrative regulation shall be replaced by an ordinary regulation to be filed on or about October 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:080E. Payments for rural health clinic services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: October 7, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the method for determining amounts payable by the cabinet for rural health clinic services.

Section 1. Definitions. (1) A "provider based rural health clinic" is one which is an integral part of a hospital, skilled nursing facility, or home health agency that is participating in Medicare and is licensed, governed, and supervised with other cabinets of the facility.
(2) A "freestanding rural health clinic" is one which is participating in Medicare and which is not provider based.
(3) "Visit" means a face-to-face encounter between a clinic patient and any clinic health professional whose services are reimbursed under the rural health clinic payment method. Encounters with more than one (1) health professional, and multiple encounters with the same health professional, that take place on the same day and at a single location constitute a single visit, except when the patient, after the first encounter, suffers illness or injury requiring additional diagnosis or treatment.

Section 2. Method of Reimbursement. (1) The cabinet shall reimburse licensed participating provider based rural health clinics on the following basis:
(a) The cabinet shall pay the reasonable cost for provider based rural health clinic services and other ambulatory services provided to eligible medical assistance recipients on the basis of Medicare methodology.
(b) Payments shall be made at interim rates which approximate costs on a per visit basis. For Medicare covered services, which are also covered by Medicaid, the interim rate shall be the rate set by the Medicare intermediary. For Medicaid only services, the interim rate shall be set by the cabinet taking into account prior year data when possible. For new facilities, the cabinet shall set the interim rate using a methodology which is expected to approximate costs and review the interim rate approximately six (6) months after the [such] rate has been set to ensure the reasonableness of the rate.
(2) The cabinet shall reimburse licensed participating freestanding rural health clinics at a single rate per visit that is based on the cost of all services furnished by the clinic. The rate shall be determined by the Medicare carrier under the provisions shown in federal regulations at 42 CFR 405.2426 through 405.2429.
(3) Interim payments made to either provider based or freestanding facilities shall be settled back to reasonable costs at the end of the facilities' fiscal year, applying the lesser of cost or usual and customary charges principle, on the basis of the Medicare methodology.

Section 3. Effective with regard to services provided on or after October 1, 1988, the cost of drugs for specified immunizations as shown in 907 KAR 1:082 which are drugs provided free from the Department for Health Services to rural health clinics shall be paid to the Department for Health Services upon receipt of notice from the rural health clinics that the drugs were used to provide immunizations to Medicaid recipients. [The provisions of Section 1 and 2 of this regulation shall be effective May 1, 1982.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 7, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:082E

This emergency administrative regulation identifies the drugs for specified immunizations which will be furnished by the Department for Health Services free of charge to rural health clinics for services provided on or after October 1, 1988 to Medicaid recipients. This change is being made so that Medicaid recipients may receive necessary immunizations from their provider of choice at a reasonable cost to the Medicaid Program. This emergency administrative regulation shall be replaced by an ordinary regulation to be filed on or about October 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:082E. Rural health clinic services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: October 7, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the provisions relating to coverage of rural health clinic services for which payment shall be made by the Medical Assistance Program on

behalf of both categorically needy and medically needy.

Section 1. Conditions of Participation. Each rural health clinic wishing to participate as a rural health clinic in the Medical Assistance Program must be certified as a rural health clinic provider pursuant to Title XVIII of the Social Security Act in accordance with conditions set forth at 42 CFR Part 481.

Section 2. Conditions of Coverage. Each participating rural health clinic may provide for eligible medical assistance recipients the same services it may provide to Medicare recipients, i.e., physicians' services, nurse practitioners' services, and, where permitted under state law, physicians' assistants' services. In addition, rural health clinics may provide any other ambulatory service covered under the Medical Assistance Program so long as the rural health clinic meets the conditions for participation for that service element and provides the services in accordance with the applicable state regulation covering that service; except, however, the rural health clinic need not be certified or licensed as the other type of provider (except to the extent provided for and/or required by law), nor have a separate participation agreement with the Medical Assistance Program for the provision of that type of service.

Section 3. Immunizations. Effective with regard to services provided on or after October 1, 1988, rural health clinics will be allowed to secure drugs for specified immunizations from the Department for Health Services free to provide immunizations for Medicaid recipients. The specified immunizations are:

(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine, live (MMR);

(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and

(4) Hemophilus B conjugate vaccine (HBCV).

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 7, 1988 at 2 p.m.

STATEMENT OF EMERGENCY
907 KAR 1:440E

This emergency administrative regulation shows coverage of case management services and the payment methodology for case management services. In order to immediately permit eligible Medicaid recipients to receive necessary case management services, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be filed with the Regulations Compiler on or about October 1, 1988.

WALLACE G. WILKINSON, Governor
HARRY J. COWHERD, M.D., Secretary

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:440E. Case management services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
EFFECTIVE: October 7, 1988
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the scope of services for case management and the method for determining amounts payable by the cabinet for case management services.

Section 1. Definition of Services. Case management is a service instrument by which service agencies assist an individual in accessing needed medical, social, educational, and other support services. Case management providers are required to monitor to assure that recipients of case management services receive the services for which they are referred. Case management activities include:

(1) Assessment of client's medical, social, and functional status, and identification of client service needs;

(2) Arranging for service delivery from the client's chosen provider to insure access to required services;

(3) Insure access to needed services by explaining the need and importance of services in relation to the client's condition;

(4) Insure access, quality and delivery of necessary services; and

(5) Preparation and maintenance of case record documentation to include service plans, forms, reports, and narratives, as appropriate.

Section 2. Target Group. The case managment services are limited, as provided for in the Social Security Act at Section 1915(g)(1), to the following targeted groups of Medicaid eligible individuals, with the further provision that these individuals cannot be receiving case management services under a Medicaid waiver program:

(1) Individuals under age twenty-one (21) who meet the medical eligibility criteria of the Commission for Handicapped Children; and

(2) Individuals of all ages who meet the medical eligibility criteria of the Commission for Handicapped Children and who have a diagnosis of hemophilia.

Section 3. Qualification of Providers. Providers are required to be certified as a Medicaid provider meeting the following criteria:

(1) Demonstrated capacity to provide all core elements of case management including the following:

(a) Assessment;
(b) Care/services plan development;
(c) Linking/coordination of services; and
(d) Reassessment/follow-up;

(2) Demonstrated case management experience in coordinating and linking community resources as required by the target population;

(3) Demonstrated experience with the target

population;
(4) An administrative capacity to insure quality of services in accordance with state and federal requirements;
(5) A financial management system that provides documentation of services and costs;
(6) Capacity to document and maintain individual case records in accordance with state and federal requirements;
(7) Demonstrated ability to assure a referral process consistent with section 1902(a)(23), freedom of choice of provider;
(8) Demonstrated capacity to meet the case management service needs of the target population on a statewide basis.

Section 4. Qualification of Case Managers. Case managers shall meet the following criteria:
(1) Be licensed as a registered nurse or possess a valid work permit as a registered nurse issued by the Kentucky Board of Nursing; or
(2) Have a master's degree in social work supplemented by one (1) year of professional social work experience; or
(3) Have a bachelor's degree as a graduate of a college or university supplemented by two (2) years of professional social work experience.

Section 5. Other Limitations. The following limitations on service coverage and payments are applicable:
(1) Recipients shall be allowed to have free choice of case management services; and
(2) Recipients shall be allowed to have free choice of the providers of other Medicaid services; and
(3) Payment will not be made for case management services to the extent that payments have been made by the Medicaid program as a part of other program elements for the same purposes. The purpose of this provision is to assure that there is nonduplication of program payments.

Section 6. Payments. Case management providers will be paid at an interim rate, approximating actual cost, which will be settled back to cost at the end of the state's fiscal year. Providers shall be required to provide acceptable documentation of costs.

Secion 7. Implementation. The provisions of this regulation shall be effective with regard to services provided on or after October 1, 1988.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 7, 1988 at 2 p.m.

AS AMENDED BY ADMINISTRATIVE BODY AND REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following regulation was amended by the promulgating agency and the Administrative Regulation Review Subcommittee on October 3, 1988 and became effective on October 12, 1988.

DEPARTMENT OF PERSONNEL
(As Amended)

101 KAR 2:030. Compensation plan.

RELATES TO: KRS 18A.030, 18A.110, 18A.165
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.110
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapter 18A, which govern the pay plan for all employees in the classified service. This regulation is to assure uniformity and equity in administration of the pay plan in accordance with statutory requirements.

Section 1. Preparation, Approval, and Maintenance of the Plan. (1) After consultation with appointing authorities and the Secretary of the Finance and Administration Cabinet, and after conducting wage and salary surveys of relevant labor markets, the commissioner shall prepare a compensation plan for all classes of positions based on the concepts of internal job equity and external market competitiveness. The plan shall provide pay grades or specific salary rates as appropriate for the various job classifications. Each job classification shall be assigned an appropriate pay grade or rate with consideration given to internal job evaluation data and external market conditions. All rates of pay for job classifications shall be consistent with the functions outlined in the classification plan. Amendments to the pay plan shall be made in the same manner.
(2) The plan shall take into account such factors as:
(a) The relative levels of duties and responsibilities of various job classifications;
(b) Rates paid for comparable positions elsewhere taking into consideration the effect of seniority on such rates; and
(c) The state's financial resources.
(3) Each employee shall be paid in accordance with the pay grade or salary rate set forth in the pay plan for the job classification in which he is employed.
(4) The plan shall be reviewed annually.

Section 2. Appointments. Initial appointments shall be made at the minimum rate of the pay grade established for the job classification unless the commissioner authorizes appointment of a highly qualified applicant at a rate above the minimum, not to exceed the midpoint of the pay grade. Such exceptions shall be based on the outstanding and unusual nature of the applicant's education and/or experience over and above the minimum requirements set for the job classification. Such additional qualifications must be in the same or related area of the job duties of the position to which the appointment is to be made. Employees possessing qualifications similar to the applicant being appointed that are employed in the same job classification, by the same agency, in the same county shall have their salaries adjusted by the appointing authority to the same rate granted in the in-range appointment if that rate is higher than their current salaries.

Section 3. Reentrance to State Service. (1) Appointing authorities, with the approval of the commissioner, may place reemployed, reinstated, and former employee probationarily appointed at a salary:
(a) Which is the same as that paid at the time of separation from state service if such salary is within the current pay grade;
(b) Higher than that paid at the time of separation from state service due to salary schedule or pay grade adjustments;
(c) In accordance with the standards used for making new appointments; or
(d) Lower than that paid at the time of separation from the classified service if such salary is within the current pay grade.
(2) Former employees who were separated from state service by layoff and who are reinstated or reemployed in the same or a 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 such salary is above the maximum of the pay grade.
(3) Former employees reemployed, reinstated or probationally appointed to a salary:
(a) Below the midpoint of the pay grade shall be considered for a probationary increment at the time of completion of the probationary period;
(b) Which equals or exceeds the midpoint of the pay grade may be considered for a probationary increment at the time of completion of the probationary period. If such employee is not considered for an increment upon completion of the probationary period, he shall be considered for an increment at the beginning of the month following completion of twelve (12) months service from the date of reemployment, reinstatement or appointment.

Section 4. Salary Adjustments. (1) Promotion. An employee who is promoted shall receive a salary increase of five (5) percent upon promotion. In no case shall the employee's salary be below the minimum of the higher grade following promotion. Employees completing a promotional probationary period may receive a five (5) percent promotional increase at the beginning of the month following completion of the probationary period. If the promotion is to a position which constitutes an unusual increase in the level of responsibility, the appointing authority, with the prior written approval of the commissioner, may grant upon promotion a ten (10) percent or fifteen (15) percent salary increase over the employee's previous salary. A promotional increase shall not change the employee's regular increment date.
(2) Demotion. An employee who is demoted may have his salary changed to a rate which is in the pay grade for the new class; this rate shall not exceed the rate which the employee was receiving prior to the demotion.
(3) Reclassification. An employee who is advanced to a higher pay grade through reclassification shall receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase

be below the minimum of the new pay grade. An employee who is placed in a lower pay grade through reclassification shall receive the same salary he was receiving prior to reclassification.

(4) Reallocation. An employee who is advanced to a higher pay grade through a reallocation of his position may receive a salary increase of five (5) percent except, that in no case shall the employee's salary after such increase be below the minimum of the higher pay grade. An employee who is placed in a lower pay grade through reallocation shall receive the same salary he was receiving prior to reallocation.

(5) Detail to special duty. An employee who is approved for detail to special duty as provided by 101 KAR 2:070, Section 9, may receive a five (5) percent increase upon detail to a higher job classification, except that in no case shall the employee's salary after such increase be below minimum of the higher pay grade.

(6) Reversion.

(a) An employee who is reverted while serving a promotional probationary period following promotion, or following detail to special duty to a higher job classification, shall have his salary changed to the rate received prior to such promotion or detail to special duty and is entitled to all salary advancements and adjustments he would have received had he not left the job classification.

(b) An employee who is reverted to a position in the classified service from a position in the unclassified service shall have his salary changed to the rate received at the time he left the classified service and is entitled to all salary advancements and adjustments he would have received had he not left the classified service.

(7) Pay grade changes. An employee who is advanced to a higher pay grade through a class reevaluation and grade adjustment under Section 9 of this regulation may receive a salary increase of five (5) percent or ten (10) percent except that in no case shall the employee's salary after such increase be below the minimum of the new pay grade.

(8) Other salary adjustments.

(a) An employee who was eligible for but did not receive a five (5) percent salary advancement as the result of any of the following actions: promotional increase, reallocation, or class grade changes, effective on or after January 3, 1986, may have his salary adjusted upon request by the appointing authority and approval by the commissioner. In no case may the salary adjustment be made retroactive to the original effective date but shall be granted on the first of the month following approval of the increase.

(b) Subject to approval by the commissioner, an appointing authority may request a salary adjustment not to exceed ten (10) percent when standards of internal equity justify such an adjustment.

(c) Subject to approval by the commissioner, an appointing authority may request a five (5) percent salary adjustment when a special entrance rate is established under Section 9(3) of this regulation.

Section 5. Salary Advancements. (1) Probationary increments. Full-time and part-time employees who complete an initial probationary period with satisfactory performance shall be granted a probationary increment at the beginning of the month following completion of the probationary period, except as specified under Section 3(3) of this regulation. The service may be provisional or probationary.

(2) Annual increment dates will be established:

(a) Following completion of an initial probationary period, with satisfactory performance, or following completion of twelve (12) months service from the date of appointment, reinstatement, or reemployment, pursuant to Section 3(3) of this regulation.

(b) When an employee returns from leave without pay pursuant to Section 5(5) of this regulation.

(3) Annual increment dates will not change when an employee:

(a) Is in a position which is assigned a new or different salary grade;

(b) Receives a salary adjustment as a result of his position being reallocated;

(c) Is transferred;

(d) Receives a demotion;

(e) Is approved for detail to special duty;

(f) Receives an educational achievement award;

(g) Returns from military leave;

(h) Is reclassified; or

(i) Is promoted or receives a promotional increase after completion of a promotional probationary period.

(4) Annual increment. All employees shall receive statutory annual increments on the employee's regularly scheduled increment date. An employee whose annual increment places his salary above the maximum of the pay grade shall have his annual increment added to his base salary or wages. For purposes of calculating the statutory annual increment: Educational achievement awards, employee suggestion systems awards and overtime and/or compensatory leave payments and performance based payments shall not be added to base salary or wages.

(5) Return from leave without pay. Employees returning to duty from leave without pay shall receive an annual increment when they have completed twelve (12) months of service since the date they last received an annual increment.

(6) Return from military leave. An employee returning to duty from military leave without pay, or from military service in accordance with KRS 61.373, shall receive the same or similar pay (same salary plus grade changes) and all other increases he would have received.

(7) Service computation. In computing service for the purpose of determining annual increment eligibility, in those cases where an employee is changed from part time to full time, part-time service shall be counted in determining increment eligibility for a full-time employee; in those cases where an employee is changed from full time to part time, full-time service shall be counted in determining increment eligibility for a part-time employee.

Section 6. Educational Achievement Award. The participation of an appointing authority in the program for educational achievement awards is contingent upon adequate funding, to be determined by the appointing authority through the budgetary process, for all eligibles within the agency. Upon request of the appointing authority and subject to the approval of the commissioner, a permanent, full-time employee [with status] may receive one (1) [a] lump sum educational achievement award per fiscal year

[for either]:

(1) For satisfactorily completing outside of work hours 260 classroom hours (or the equivalent as determined by the commissioner) of job related instruction in approved courses. Approved courses must have been completed after a merit employee initially gained permanent full-time status in state government [or after a full-time nonmerit employee initially served six (6) months in the unclassified service]. Employees shall not receive credit for courses taken while on educational leave or for courses which previously counted toward an educational achievement award. The lump sum educational achievement award [in this instance] shall be ten (10) percent of the employee's annual base salary. The lump sum payment shall be granted only if the 260 classroom hours (or equivalent) have been completed within the past five (5) years prior to the effective date of the increase; or

(2) For receiving outside of work hours an approved diploma, high school equivalency certificate, or a passing score on the G.E.D. test. The approved diploma, certificate, or passing score must have been obtained on or after January 1, 1984. Employees receiving an approved high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary. A high school level educational achievement award shall not be granted to employees who present new credentials but have previously:

(a) Received a high school diploma, high school equivalency certificate, or a passing score on the G.E.D. test; or

(b) Completed college course work on the undergraduate or graduate level. [For receiving a high school diploma or GED Employees receiving either a high school diploma or GED shall receive a lump sum educational achievement award of ten (10) percent of their annual base salary.]

(3) To apply for an educational achievement award an employee shall submit the educational achievement request form DPT-10 and supporting documentation to the appointing authority or his designee. In compliance with the standards set forth in Section 6 of this regulation, the appointing authority may recommend the application for approval and may forward the documentation to the Commissioner of the Department of Personnel for final approval. A [The] lump sum educational achievement award [payment] shall not be added to the employee's base salary or wages.

Section 7. Employee Suggestion Award. An employee may receive a lump sum payment employee suggestion award in accordance with 101 KAR 2:120. Such lump sum payment shall not be added to the employee's base salary or wages.

Section 8. Salary Schedule Adjustment. When the commissioner authorizes an adjustment of all grades in the pay schedule, employees who are below the new minimum rates shall have their salaries adjusted at least to the minimum rates of their grades. The commissioner may authorize a salary increase for those employees who are at or above the minimum rate based upon the availability of funds. The percentage of such increase shall be determined by the commissioner and shall be uniform for all eligible employees.

Section 9. Class Reevaluation and Grade Adjustment. (1) Class reevaluation is the assignment of a different pay grade to a class based upon a change in relation to other classes or to labor market conditions.

(2) Change in pay grade. Whenever it becomes necessary to assign a class a different pay grade due to changes defined in Section 9(1) of this regulation, the commissioner may make a new or different pay grade applicable to a class of positions. Persons currently employed in positions of that class at the effective date of the change in pay grade shall have their salary placed at least at the minimum salary of the higher grade, and may be eligible for a salary adjustment under Section 4(7) of this regulation. In no event shall an employee's salary be placed at a rate less than he received prior to the change in the pay grade. Employees in a class assigned to a lower pay grade through class reevaluation shall retain their current salary.

(3) Recruitment difficulties. Whenever the commissioner determines that it is not possible to recruit qualified employees at the established entrance salary in a specific area or for a specific class, he may, at the request of the appointing authority, authorize the recruitment for a class of position at a higher rate in the pay grade, provided that all other employees in the same class of position in the same agency in the same county are adjusted in salary to the same rate.

Section 10. Paid Overtime. Overtime for which pay is authorized shall be in accordance with 101 KAR 2:100, Section 4, and 101 KAR 3:010, Section 4, and have the approval of the Commissioner of Personnel and the Secretary of the Finance and Administration Cabinet. Overtime payments shall not be added to base salary or wages.

Section 11. Maintenance and Maintenance Allowance. In each case where an employee or the employee and his family are provided with full or part maintenance, consisting of one (1) or more meals per day, lodging or living quarters, and domestic or other personal services, such maintenance shall be treated as part payment. The value of these services shall be deducted from the appropriate salary rate in accordance with a maintenance schedule developed by the commissioner after consultation with the appointing authority and the Secretary of the Finance and Administration Cabinet.

Section 12. Supplemental Shift Premium. Upon request of the appointing authority, the commissioner may authorize the payment of a supplemental shift premium for those job classifications in which employees are directed to work an evening or night shift. Once authorized, this premium shall apply to those employees directed to work an evening or night shift in a job classification for which the shift premium was approved. However, no employee shall receive a supplemental shift premium subsequent to a transfer to a position that is ineligible for a shift differential premium payment.

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: August 15, 1988
FILED WITH LRC: August 15, 1988 at 11 a.m.

COMPILER'S NOTE: The following regulation was amended by the promulgating agency and the Interim Joint Committee on State Government and became effective on October 12, 1988.

DEPARTMENT OF PERSONNEL
(As Amended)

101 KAR 2:090. Service regulations.

RELATES TO: KRS 18A.030, 18A.110
STATUTORY AUTHORITY: KRS Chapter 13A, 18A.030, 18A.110
EFFECTIVE: October 12, 1988
NECESSITY AND FUNCTION: KRS 18A.110 requires the Commissioner of Personnel to promulgate comprehensive administrative regulations consistent with KRS Chapter 18A, which govern for the maintenance of employee records, the maintenance of other records and reports in the department, and for other conditions of employment. This regulation is necessary to comply with these statutory requirements.

Section 1. General Provisions. Except as otherwise provided in these regulations, the tenure of an employee with status shall be during good behavior and the satisfactory performance of his duties.

Section 2. Attendance; Hours of Work. (1) The number of hours full-time employees in state offices in Frankfort are required to work shall be uniform for all positions unless specified otherwise by the appointing authority or the statutes.
(2) The normal work day shall be from 8 a.m. to 4:30 p.m., local time, Monday through Friday.
(3) An appointing authority may require and decide employees to work hours and work days other than normal including inclement weather schedules if it is in the best interest of the agency.
(4) Employees who work for agencies which require more than one (1) shift or seven (7) days a week operation may be assigned/reassigned from one shift to another and from one post to another or alternate days off by the agency to meet staffing requirements and/or to maintain security or provide essential services of the agency. The employee is required to give reasonable notice in advance of absence from a work station.

Section 3. Work Station. Each employee shall be assigned a work station by the appointing authority. A work station may be changed to better meet the needs of the agency. An employee may be temporarily assigned to a different work station in a different county for a period of up to sixty (60) calendar days, provided that such employee is reimbursed for his travel expenses in accordance with regulatory provisions and the appointing authority notifies the employee in writing prior to the effective date of the action.

Section 4. Dual Employment. No employee holding a full-time position with the Commonwealth may hold another state position except upon recommendation of the appointing authority and the written approval of the commissioner. A copy of such written approval and a statement of the reasons therefor shall be transmitted to the Governor and the Director of the Legislative Research Commission. A complete list of all employees holding more than one (1) state position shall be furnished to the Legislative Research Commission quarterly by the commissioner.

Section 5. Minimum Hiring Age. The minimum age for hiring of state employees shall conform to federal and state labor laws, and administrative regulations.

[Section 6. Maximum Hiring Age. (1) The maximum hiring age for permanent employment subject to these regulations is seventy (70).]
[(2) The appointing authority may request that individuals over seventy (70) be tested and/or employed. The request must be justified in writing by the appointing authority, stating the reasons why it serves the public interest, and must have the prior approval of the commissioner. Applicants so approved shall be certified only to those agencies requesting such waivers.]

[Section 7. Retirement. (1) The normal retirement age for employees subject to these regulations shall be seventy (70).]
[(2) Employees over seventy (70) may be allowed to continue employment from year to year with prior approval of the commissioner when it serves the public interest. Such requests must be justified in writing by the appointing authority.]
[(3) If an employee with status is retired, he is considered as separated without prejudice.]

Section 6. [8.] Resignations. An employee who desires to terminate his service with the state shall submit a written resignation to the appointing authority. Resignations shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be attached to the advice effecting the separation and be filed in the employee's service record in the department. Failure of an employee to give fourteen (14) calendar days notice with his resignation may result in forfeiture of accrued annual leave.

Section 7. [9.] Records and Reports. (1) The commissioner shall prescribe personnel action forms which appointing authorities shall use to report such personnel actions and status changes as he may require. The commissioner shall inform the appointing authorities which personnel actions and status changes must be reported to him. The appointing authority shall provide a copy of a personnel action form to the employee affected by such action.
(2) The commissioner shall maintain a leave record showing for each employee:
(a) Annual leave earned, used and unused;
(b) Sick leave earned, used and unused;
(c) Compensatory leave earned, used and unused; and
(d) Special leave or any other leave with or without pay. Such record shall be documentary evidence to support and justify authorized leave of absence with pay.
(3) The commissioner shall prepare and maintain a record of all employees showing for

each employee his name, address, title of position, salary rate, changes in status, transfer, sick leave, annual leave and compensatory leave.

Section 8. [10.] Department Records. [(1)] All records of the department shall be public records and open to public inspection as provided in KRS 61.870 to 64.884.

[(2) A personnel file shall be maintained by the department and the appointing authority for each employee. The file maintained by the department shall be the official personnel file for the employee. Upon transfer, the personnel file maintained by the appointing authority from which the employee transfers shall be forwarded to the new appointing authority.]

[(3) Each file shall include, but not be limited to, for each employee, his name, address, title of positions held, classification, rates of compensation, all changes in status including evaluations, promotions, demotions, layoffs, transfers, disciplinary actions, commendations, awards, and preliminary and other supporting documentation for each action. Each file shall contain the complete record and supporting documentation for each personnel action.]

[(4) Upon written request, on forms prescribed by the commissioner, an employee shall have the right to examine his personnel file. An employee may comment in writing on any item in his file. Such comments shall be made a part of his file and shall be attached to the specific record or document to which they pertain.]

[(5) Upon written request, on forms prescribed by the commissioner, a state employee, an applicant for employment, and an eligible on a register shall have the right to inspect and to copy any record and preliminary documentation and other supporting documentation that relates to him except that an applicant, an eligible or a state employee shall not have the right to inspect or to copy any examination materials.]

[(6) No public agency, as defined by KRS 61.870, and no officer or employee shall deny, abridge or impede the exercise of the rights under this section.]

[(7) Applicants or employees shall be notified in writing within three (3) working days after receipt of a request for inspection of any reason the records requested are not available for inspection.]

[(8) A fee of ten (10) cents a page for copying or a charge equal to the actual cost of producing copies of records will be assessed in accordance with the regulatory provisions promulgated by the Finance and Administration Cabinet.]

[(9) Records may be inspected from 8 a.m. to 4:30 p.m., Monday through Friday each week except holidays.]

THOMAS C. GREENWELL, Commissioner
APPROVED BY AGENCY: August 15, 1988
FILED WITH LRC: August 15, 1988 at 11 a.m.

COMPILER'S NOTE: The following regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee and, as of October 15, 1988, had not yet gone into effect.

TOURISM CABINET
Department of Fish & Wildlife Resources
(As Amended)

301 KAR 2:044. Taking of migratory wildlife.

RELATES TO: KRS 150.010, 150.015, 150.025, 150.170, 150.300, 150.305, 150.320, 150.330, 150.340, 150.360, 150.603

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: In accordance with KRS 150.015, this regulation is necessary for the continued protection and conservation of the migratory birds listed herein, and to insure a permanent and continued supply of the wildlife resource for the purpose of furnishing sport and recreation for present and future residents of the state. The function of this regulation is to provide for the prudent taking of migratory wildlife within reasonable limits based upon an adequate supply. This amendment is necessary to change season dates where appropriate.

Section 1. Seasons. (1) Doves: September 1 through September 30 [October 31]; October 8 [November 28] through October 31; December 1 through December 6.

(2) Woodcock: October 1 through December 4.

(3) Common snipe: October 1 through December 4.

(4) Experimental September duck: September 7 [9] through September 11 [13].

Section 2. Limits.

Species	Bag Limits	Possession Limits
Doves	15 [12]	30 [24]
Woodcock	5	10
Common snipe	8	16
Experimental September wood duck, wood duck[, teal and other ducks]	*2 [4]	*4 [8]

*Daily bag limit shall be two (2) wood [is four (4)] ducks[, no more than two (2) of which may be wood ducks, and no more than one (1) of which may be a species other than teal or wood duck]. The possession limit is double the daily bag limit.

Section 3. Bag and Possession Limits. (1) After two (2) or more days of shooting, possession limits apply to transporting, but do not permit a double bag limit in the field.

(2) The above species (except doves) dressed in the field, or being prepared for transportation, shall [must] have one (1) fully feathered wing or head attached to the bird for identification purposes.

Section 4. Shooting Hours. (1) Doves: from 11 a.m. until sunset during the period September 1 through September 30; and October 8 through October 31; from sunrise to sunset during the period December 1 [November 28] through December 6.

(2) Common snipe and woodcock: from one-half (1/2) hour before sunrise to sunset.

(3) Experimental September duck: from one-half (1/2) hour before sunrise to sunset.

Section 5. Falconry Hunting. The wildlife species listed in this regulation may be pursued and taken by a licensed falconer with any legal hunting raptor during the regular hunting dates

listed for each species. All bag and possession limits apply to falconry hunting.

Section 6. Exceptions to Statewide Migratory Bird Seasons on Specified Wildlife Management Areas. Unless excepted below, all sections of this regulation apply to the following areas:

(1) Ballard Wildlife Management Area, located in Ballard County.

(a) Doves: September 1 through September 30; and October 8 through October 14 only. Areas so designated by signs are closed. No firearms permitted on this area except during shooting hours.

(b) Woodcock and snipe: seasons closed.

(2) West Kentucky Wildlife Management Area, located in McCracken County.

(a) Doves: September 1 through September 30; and October 8 through October 14 [16] only.

(b) Woodcock and snipe: hunting permitted on tracts 2, 3, 6, and 7 only.

(c) All tracts designated by numbers followed by the letter "A" are closed to hunting.

(3) Central Kentucky Wildlife Management Area, located in Madison County.

(a) Doves: September 1 through September 30; and October 8 through October 14 [16] only.

(b) Woodcock and snipe: seasons closed.

(4) Land Between the Lakes Wildlife Management Area, located in Lyon and Trigg Counties.

(a) Doves: September 1 through September 30 and December 1 through December 6 only.

(b) Woodcock and snipe: December 1 through December 4 only.

(5) Fort Campbell Wildlife Management Area, located in Christian and Trigg Counties.

(a) Doves: September 1 through September 16, September 17 through October 12 on designated areas only. November 24 through December 9; December 10 through December 11 on designated areas only as announced by Fort Campbell Hunting and Fishing Unit.

[(a) Doves: September 1 [3] through October 12 [September 25], September 26 through October 12 [31] as announced by Fort Campbell Hunting and Fishing Unit, and November 24 [28] through December 11 [6] only. Hunting permitted during these periods in designated areas only.]

(b) Woodcock and snipe: November 24 [26] through December 4.

(c) September wood duck: September 7 through 11 only. Hunting permitted during these permits in designated areas only.

(6) Closed Areas. The hunting of doves, woodcock, common snipe, and ducks is prohibited on the following wildlife management areas: that portion of Grayson Lake Wildlife Management Area east of the Little Sandy River and on Bruin Creek portions of Grayson Lake; Beaver Creek Wildlife Management Area, including all private in-holdings, located in Pulaski and McCreary Counties; Robinson Forest Wildlife Management Area, located in Breathitt, Perry, and Knott Counties; Redbird Wildlife Management Area, including all private in-holdings, located in Leslie and Clay Counties; Cane Creek Wildlife Management Area, including all private in-holdings, located in Laurel County; and Mill Creek Wildlife Management Area, located in Jackson County.

Section 7. Waterfowl Stamp Requirements. Those hunting ducks during the experimental September duck season shall [must] possess appropriate state and federal waterfowl stamps as stipulated in KRS 150.330 and 150.603.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
CHARLES E. PALMER, JR., Chairman
APPROVED BY AGENCY: June 13, 1988
FILED WITH LRC: August 15, 1988 at 10 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(As Amended)

401 KAR 4:120. Wild rivers administration and management.

RELATES TO: KRS 146.220, 146.270, 146.290, 146.310, 146.350, 224.045, 224.281, 224.083, 224.085

STATUTORY AUTHORITY: KRS 146.270, 224.033, 224.045[, 224.081, 224.083, 224.085]

NECESSITY AND FUNCTION: KRS 146.270 authorizes the secretary to adopt rules and regulations necessary for the preservation and enhancement of wild rivers as set forth in KRS 146.250, and for control of recreational, educational, scientific and other uses of these areas in a manner that shall not impair them. Emphasis shall be given to protecting aesthetic, scenic, historical, archaeological, ecological and scientific features of the area. This regulation sets forth guidelines for the administration and management of the wild river corridors and for the use of these areas by the public, and criteria for delineating existing, conforming, new and prohibited land uses.

Section 1. Applicability. This administrative regulation shall apply to all lands and waters under state jurisdiction which are located within designated wild river boundaries as set forth in 401 KAR 4:100. Nothing herein shall be construed as superseding any requirements of other cabinet programs or of other state or federal agencies.

Section 2. General Policy. (1) The wild rivers shall be managed to preserve their free-flowing condition and to protect the outstanding and unique aesthetic, scenic, recreational, fish and wildlife, botanical, historical, archaeological and other scientific and cultural features which qualified the streams for designation as wild rivers.

(2) Additional management objectives shall be to afford an opportunity to enjoy natural streams[; to attract visitors] and to preserve for future generations the beauty of certain areas untrammeled by man. The cabinet will not make efforts to attract visitors to areas where it has been determined that the carrying capacity for one (1) or more uses has been reached or exceeded.

Section 3. Management Plans. (1) The management of a given wild river corridor shall be according to a management plan developed by the cabinet.

(2) The cabinet shall consult with landowners in the affected wild river corridor, citizen groups, industries and appropriate local, state and federal agencies in the preparation of each

management plan.

(3) Public participation in the development of a management plan shall be provisioned by at least one (1) public hearing on the draft management plan followed by a thirty (30) day comment period prior to finalizing the plan.

(4)(a) The hearing, or hearings, shall be conducted in one (1) of the counties through which the designated portion of the river flows.

(b) Notice of hearing shall be given in accordance with the provisions of KRS Chapter 424. The notice shall:

1. State the time, place and purpose of the hearing;

2. State the name and address of the person from whom a copy of the proposed management plan may be attained;

3. Be published not less than seven (7) nor more than twenty-one (21) days prior to the hearing;

4. Be published in the county, or counties, through which the designated portion of the river flows, and in at least one (1) major newspaper; and

5. Set forth the address to which written comments on the draft management plan may be submitted, and the date by which those written comments shall be submitted.

(c) The hearing shall be conducted by a designated representative of the division who shall control the order of presentation.

(d) Any interested person may appear at the hearing and make an oral or written presentation concerning the draft management plan. All oral presentations shall be recorded.

(e) All written and oral comments shall be considered in the development of the management plan.

(5) Responsibility for the administration and management of a wild river shall be clearly delineated in the management plan for that river, and any management agreements between the cabinet and local, state or federal agencies having overlapping jurisdiction over lands or waters within the wild river corridor shall be incorporated into the plan.

Section 4. Existing or Conforming Land Uses. (1) Under the provisions of KRS 146.290, land uses which are lawfully existing at the time the boundaries of a wild river are designated may continue in the same manner and location even though the use does not conform to the purpose and intent of the Kentucky Wild Rivers Act or the management plan for a given wild river.

(2) Other than existing uses, land uses within wild river corridors shall conform to the purposes and intent of the Kentucky Wild Rivers Act and the duly adopted management plan for each wild river.

(3) Conforming uses shall include wilderness type recreation such as nonmotorized boating, hiking, hunting, fishing, camping, sightseeing and horseback riding, as well as scientific research, environmental education and related activities which will preserve the primitive character and natural and cultural resources of the area.

(4) Other land uses shall qualify as conforming uses if they satisfy one of the following conditions:

(a) The routine maintenance, repair, renovation or replacement of existing roads, buildings or other structures or improvements to an existing use provided that such improvements do not extend or enlarge the confines of the existing use, involve damage to or removal of natural vegetation, soil or other natural features from an area one-half (1/2) acre or more, nor impose a visual intrusion on the river or other designated public use areas.

(b) The selective cutting of firewood or individual trees by a landowner provided that the cut impacts less than one-half (1/2) acre and does not impose a visual intrusion from the river or other designated public use areas.

(c) Landscaping to prevent erosion or other damage to property or to screen by natural means such as trees or shrubs an existing land use from the river, provided that such landscaping uses native vegetation wherever conditions permit and is compatible with the maintenance of scenic vistas from the river and other designated public use areas.

(d) Fencing that does not require damage to or removal of trees for installation, that blends in with the surrounding landscape[, and is set back a minimum of fifty (50) feet from the nearer bank of the wild river].

(e) The removal of noxious weeds from an area using manual or mechanical methods, including direct application but not aerial spraying, of herbicides that are short-term, nontoxic to fish and wildlife and will not leach into surface waters or groundwater.

(f) The removal of diseased or insect-infested trees from an area greater than one-half (1/2) acre in size upon written authorization from the cabinet based on the recommendation of a professional forester.

Section 5. Permitted Land Uses. (1) Except for land uses prohibited under Section 6 of this regulation or delineated in Section 4 of this regulation, land use changes require that the landowner obtain a change of use permit from the cabinet prior to commencing the new use.

(2) Land use changes authorized by the cabinet through a change of use permit shall comply with all applicable standards set forth in 401 KAR 4:140.

(3) Land use changes which require a change of use permit shall include, but not be limited to:

(a) A resource removal, by methods other than surface mining.

(b) The selective cutting of timber as defined in 401 KAR 4:110.

(c) A new agricultural use that would put new acreage into production, put existing pasture or range into cultivation, require clearing of timber, or construction of roads, buildings or other structures.

(d) Any construction activity involving new or existing roads, buildings or other structures that is not exempted in Section 4 of this regulation.

Section 6. Prohibited Land Uses. Pursuant to the provisions of KRS 146.290, surface mining, timber harvest by methods other than selective cutting and in-stream disturbances are prohibited within a wild river corridor. In-stream disturbances shall include, but not be limited to, dam construction, dredging, spoil or fill deposition, channel diversion, channelization and mining of streambed materials. Also prohibited is the construction of roads, buildings or other structures to effect any use other than an existing or permitted land use as set forth in Section 4 or

5 of this regulation.

Section 7. Public Use. (1) Public use of wild river corridors shall be limited to the public waters and public lands or interests in lands acquired through lease, easement or other agreement entered into by the landowner. Public use of private property shall require permission from the landowner. Trespassing is subject to penalty as set forth in KRS 146.990. This section applies to the public use of [public waters and] state-owned lands within wild river corridors [by the public].

(2) The cabinet will make every effort to inform the public that the wild river designation does not authorize public use of privately-owned lands, and will prepare maps delineating the boundaries of public lands within wild river corridors to reduce unintentional trespassing [will be prepared by the cabinet for public use].

(3) In accordance with KRS 146.290, transportation shall be by foot, canoe, kayak, horseback or other nonmotorized means except on existing public roads, as required for administrative and resource protection purposes, or as necessary to effect an existing or permitted land use.

(4) The cabinet [management agency] may condition or deny public access to [use of] a wild river if such use is causing substantial adverse impact on the scenic, aesthetic, natural, cultural, scientific or recreational resources; if private property is being damaged; or, if user safety is being jeopardized. [Such conditions may include temporary closure of public access points or trails.]

(5) Cultural artifacts, relics, fossils and souvenirs shall not be removed from their site of discovery in a wild river corridor. Deliberate damage to plants, animals, artifacts or other special features is prohibited. A written request shall be submitted to and approved by the division prior to the collection of any natural or cultural materials.

(6) Burying, dumping or depositing litter, soil, garbage, waste, scrap or other unsightly or offensive materials other than in receptacles provided for this purpose is prohibited.

(7) Horseback riding shall be allowed only on trails specifically designated for this use.

(8) [Except where specifically authorized or designated by the management agency,] Overnight camping and campfires shall be prohibited within fifty (50) feet of a wild river. No open fire shall be left unattended, and all fires shall be completely extinguished after use. Live vegetation shall not be cut for firewood.

(9) Camping within a state park shall be in accordance with 304 KAR 1:040.

(10) Hunting, fishing and trapping shall be [allowed only on public lands or lands in which the state has acquired an interest, or on private land with the landowner's written permission,] subject to state and federal fish and wildlife laws and regulations, and shall comply with [under] the following conditions:

(a) The construction of permanent shelters, lean-tos or other buildings is prohibited. Temporary blinds, stands or other structures shall be erected in a manner that will prevent injury to trees.

(b) Trapping is prohibited within fifty (50) feet of designated boat access sites, boat portage trails and other designated public hiking trails, picnic areas and campgrounds.

(11) Carrying or discharging a firearm, bow and arrow or explosive substances shall be prohibited for any purpose other than hunting in accordance with state wildlife laws and the other provisions of this regulation.

(12) Swimming and [, bathing or] other in-stream recreational uses of a wild river shall be in accordance with Division of Water Patrol safety standards (401 KAR 4:130 and 4:080). Entering a wild river from the shores of a state park for swimming, bathing or other in-stream recreational use shall be allowed only in areas designated as swimming areas by the Department of Parks.

(13) Conduct which disturbs the peace or causes property damage [to private property] within a corridor is prohibited.

(14) Public users of wild rivers are encouraged to leave in passing no mark upon the land that might diminish its value to another, and to make every effort to protect and enhance the unspoiled beauty of these areas as components of Kentucky's unique heritage.

Section 8. Enhancement of Recreational Opportunities. (1) The development of public access to a wild river will be compatible with the purposes and intent of KRS 146.200 to 146.360 and the duly adopted management plan for a given river, and shall conform to the natural character of the area.

(2) Development of public access may be used to enhance dispersed, nonmechanized recreational opportunities and provide information on safety, orientation, rules and regulations and interpretation of special features in the area.

(3) Trails constructed within a wild river corridor [developed by the management agency] will be designed and maintained to provide for nonmotorized recreational uses and to prevent soil erosion and compaction, trampling of vegetation, and other damage to the natural beauty and resources of the area.

(4) [Other than the permitted select cutting of trees or the removal of trees that obstruct river navigation or otherwise constitute a health or safety hazard,] There shall be no cutting or removal of natural vegetation, living or dead, to create scenic vistas, except as expressly provided by law.

Section 9. Commercial Uses. (1) The operator of a new commercial service within a wild river corridor shall submit written notification to the cabinet not less than thirty (30) days prior to commencing such use.

(2) The construction of access roads, ramps, wharves or boat docks, buildings or other facilities required to effect a commercial use shall be located outside of a wild river corridor unless authorized by a change of use permit.

(3) The operator of a commercial service on a wild river shall comply with all applicable provisions of this regulation, and shall be responsible for ensuring that the commercial use does not impair or contribute to an adverse impact on the aesthetic, scenic, ecological, scientific, recreational or other significant features in the corridor as identified in the management plan or by the cabinet [management agency], or cause substantial damage to soils, vegetation, fish and wildlife or water quality.

(4) The cabinet [management agency] may

condition or deny commercial use of a wild river, as provided in Section 7(4) [(5)] of this regulation.

(5) In accordance with 304 KAR 1:030, operation of a commercial activity within a state park requires prior written consent from the Department of Parks.

(6) Commercial harvest of mussels by any method is prohibited in areas where mussel species considered endangered or threatened by the Kentucky Academy of Science are known to occur.

Section 10. Scientific Study. (1) A research plan shall be submitted to the cabinet for approval prior to the commencement of any scientific study that may affect [within] a wild river corridor.

(2) A research plan submitted to the cabinet on a form supplied by the cabinet shall contain the following information:

(a) The name, address, telephone number, professional affiliations and qualifications of the principal investigator.

(b) A U.S. Geological Survey 7.5 minute topographic map delineating the location and extent of the study area.

(c) The estimated dates of initiation and completion of the study.

(d) The objectives, methods and significance of the study and a statement as to the necessity or advantages of conducting the study within the wild river corridor.

(e) Plant or animal species or any special features which may be affected by the study, and the type and extent of any such effects.

(f) A list of any plants, animals or other resources or materials to be collected, the estimated quantity to be collected, and the permit numbers of collection permits obtained from state and federal agencies.

Section 11. Utility Right-of-way Construction. (1) As set forth in KRS 146.290, the construction of a transmission line or pipeline right-of-way within any portion of a wild river corridor shall require written approval from the secretary prior to the initiation of any construction activities within the wild river boundaries.

(2) Authorization to construct a right-of-way shall require application by the owner of the utility or pipeline company or their engineering representatives, on an application form supplied by the cabinet. The application shall include a land use plan containing the following information:

(a) A U.S. Geologic Survey topographic map to scale not greater than one (1) inch equal to 500 feet, showing the precise route and dimensions of the right-of-way.

(b) The estimated dates for initiation and completion of construction and the name, address and telephone number of the person or persons in charge of the construction.

(c) A detailed description of the methods of construction and specifications, including profile sheets bearing the seal and signature of a registered professional engineer.

(d) A statement of possible alternate routes for the right-of-way and why the proposed route was selected.

(e) A detailed reclamation plan designed to return the disturbed area as nearly as possible to its former appearance and condition, including the use of native species to revegetate disturbed areas.

(f) A detailed description of proposed methods for maintaining the right-of-way, including the brand names and methods of application of any herbicides to be used.

(3) Upon receipt of an application, an inspection of the proposed construction site will be made by cabinet personnel with the property owner and applicant or their representatives, and personnel from appropriate state and federal agencies.

(4) The secretary shall notify the applicant as to whether the application is approved or denied within sixty (60) days following receipt of the application, and will state the reasons for the decision.

(5) If an application is denied, the applicant may submit a revised application to adequately address the reasons for denial stated in the secretary's written decision.

(6) An application will be approved only if there is no possible alternative route for the right-of-way that would bypass or cause less impact to the wild river corridor, and the applicant agrees to restore all disturbed area within the wild river corridor as nearly as possible to its former appearance and condition, as required under KRS 146.290.

(7) Authorization to construct a right-of-way shall contain, but not be limited to, the following conditions:

(a) Wherever feasible, the right-of-way shall be routed to avoid steep slopes, erodible soils, surface waters and areas with high water tables, public recreation areas, and other significant natural and cultural areas identified by the cabinet, and shall be the minimum width necessary for construction and maintenance.

(b) Adequate measures shall be taken to control sediment and any hazardous substances, and to minimize the visual impact of the right-of-way when viewed from the wild river or other designated public use areas.

(c) Any timber cutting required shall be according to the provisions of 401 KAR 4:140, Sections 4 through 7, Sections 9 through 14, and Section 17(10) through (21).

(d) Every effort shall be made to minimize disturbance to the streambed, stream banks and fish and wildlife habitat during construction activities, and to keep timber slash and other debris out of surface waters and the immediate floodplain.

(e) Stream crossings by equipment or vehicles in a wild river corridor shall require the use of a temporary bridge or other methods approved by the cabinet and be designed so as not to impede stream flow. Construction across surface waters shall occur when local fish and wildlife are not spawning or nesting.

(f) Vehicles and equipment shall be stored outside of the wild river corridor when not in use.

(g) Aerial spraying of herbicides shall not be permitted within the boundaries of a wild river. Direct application of herbicides at ground level shall be limited to brands that are nontoxic to fish and wildlife.

(h) Pipeline relief valves shall be located outside of the wild river corridors.

(i) Primary consideration shall be given to underground placement of transmission lines and pipelines. Overhead transmission lines and towers shall be in accordance with environmental

guidelines required by the Rural Electrification Authority, and shall be designed so as to prevent electrocution or other injury to wildlife.

(j) Reclamation shall consist of establishing a permanent vegetative cover on all disturbed surfaces, planting native trees or shrubs where necessary to establish a buffer zone along the banks of the wild river, implementing measures to prevent access by off-road vehicles, and removing all evidence of construction activities.

(k) A performance bond, in an amount to be determined by the cabinet, shall be required for reclamation if the cabinet determines that the proposed construction may potentially damage, degrade or otherwise have an adverse impact on any significant feature known to occur within the wild river corridor.

(l) The applicant shall provide written notice to the cabinet upon completion of reclamation, and cabinet personnel will inspect the construction site to verify compliance with all permit conditions before the bond is released.

Section 12. Road Construction. (1) In accordance with KRS 146.290, new permanent roads shall not be constructed within a wild river corridor except as authorized by the secretary to enhance recreational opportunities or to protect soil, water or other natural resources.

(2) Temporary roads shall be constructed within a wild river corridor only as necessary to effect a use authorized by a change of use permit, and shall be closed and reclaimed immediately after the permitted land use is concluded.

(3) Any construction required to improve, repair or replace existing state or county-maintained roads or bridges shall require full environmental review by the division and other appropriate state natural resources agencies prior to any construction activity.

(4) During authorized construction activities, no heavy equipment shall be driven through or into a wild river, and every feasible precaution shall be taken by the operator to prevent damage to streambank vegetation, protect fish and wildlife habitat, control soil erosion and prevent stream sedimentation.

(5) When recommended by the secretary, design plans for improving or replacing a bridge across a wild river shall consider provisions for enhancing public access to the river for recreational uses consistent with the provisions of KRS 146.200 to 146.360.

Section 13. Agency Notification. (1) State or local government agencies which engage in or regulate any activity within the watershed of a wild river shall notify the cabinet prior to the initiation of any activity which may adversely affect the river, and shall provide the cabinet an opportunity to review proposals and plans for the new activity.

(2) A change of land use on state-owned lands within a wild river corridor that does not conform with the purpose and intent of KRS 146.200 to 146.360 shall require that the state agency that owns the affected land obtain a change of use permit from the cabinet. [The secretary shall determine if a change of use permit is required.]

Section 14. Fire Control. (1) State fire control provisions of KRS Chapter 149, and any which may be established by cooperative agreement, shall be strictly enforced.

(2) Fire shall be controlled by methods that require the least disturbance to soils and vegetation, and use of heavy equipment shall be limited to situations where an eminent threat to life or personal property exists. Any fire hazard reduction or replanting after fire shall be coordinated with the division.

Section 15. Signs. (1) The posting of commercial signs, advertisements, announcements, campaign slogans or other written messages other than those related to permitted uses shall be prohibited.

(2) As otherwise allowed by law, signs may be installed by the management agency, local government, landowner or public utility for the purpose of public safety, posting of property boundaries or property protection, identification of river corridor boundaries and public access points or as otherwise deemed necessary for resource protection, interpretation or regulatory purposes.

(3) Signs shall be of a design and construction conforming to the natural setting in which they are located, and shall not exceed sixteen (16) [twelve (12)] square feet in size.

(4) Any person with the permission of the landowner may post informational and directional signs within a corridor as are necessary to the continuance of an existing use[, provided the sign does not exceed four (4) square feet in size].

Section 16. Enforcement and Hearings. (1) Whenever the cabinet has reason to believe a violation of 401 KAR Chapter 4 has occured, a notice of violation shall be issued.

(2) The provisions of KRS 224.081 shall apply to any cabinet order or determination made pursuant to the provisions of 401 KAR Chapter 4.

(3) Hearings required to be conducted due to the issuance of a notice of violation issued pursuant to subsection (1) of this section or the filing of a petition pursuant to subsection (2) of this section shall be conducted pursuant to KRS 224.083.

(4) Appeals may be taken from any final order of the cabinet pursuant to KRS 224.085.

(5) Violations of the provisions of 401 KAR Chapter 4 shall be liable to the civil penalty set forth in KRS 146.990(1).

(6) Orders for remedial action and recovery of penalties will be sought pursuant to KRS 146.350.

Section 17. Severability. In the event that any provision of KRS 146.200 to 146.360 or any regulation promulgated pursuant hereto is found to be invalid by a court of competent jurisdiction, the remaining wild rivers regulations shall not be affected or diminished thereby.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 7, 1988
FILED WITH LRC: September 8, 1988 at 9 a.m.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(As Amended)

401 KAR 5:005. Permits to discharge sewage; industrial and other wastes; definitions.

RELATES TO: KRS Chapter 224
STATUTORY AUTHORITY: KRS 224.033(17)
NECESSITY AND FUNCTION: This regulation provides definitions and administrative procedures authorized for the issuance of permits for the construction and operation of sewage systems authorized under KRS Chapter 224. The regulation also establishes a schedule of fees to recover the costs of issuance for certain classes of permits.

Section 1. Definitions. (1) "Agricultural wastes handling system" means a no-discharge structure or equipment that conveys, stores, or treats manure from a concentrated animal feeding operation prior to land application.

(2) "Cabinet," means the Natural Resources and Environmental Protection Cabinet.

(3) "Division" means the Division of Water.

(4) "Establishment" means any industrial plant, mill, factory, tannery, paper or pulp mill, mine or mineral processing or producing facility, quarry, oil refinery, boat, vessel or other type of commercial, manufacturing or industrial works or facility in the operation of which sewage, industrial wastes or other wastes are produced or stored.

(5) "Facility" for the purpose of this regulation means a sewage system as defined in KRS 224.005[(20)] except for septic tanks, pretreatment facilities, and disposal wells as defined in 401 KAR 5:090.

(6) "Industrial wastes" means any liquid, or other waste resulting from any process of industry, manufacture, trade or business, or from the depletion of any natural resource.

(7) "Intermediate facility" means a treatment facility with an average daily design flow of 10,000 to 49,999 gallons per day or of sewer lines of more than 2,500 feet to 5,000 feet in length including appurtenances.

(8) "Large facility" means a treatment facility with an average daily design flow of 50,000 gallons per day or more or of sewer lines of more than 5,000 feet in length including appurtenances.

(9) "Other wastes" means sawdust, bark or other wood debris, garbage, refuse, ashes, offal, tar, oil, chemicals, acid drainage, wastes from agricultural enterprises, and all other foreign substances not included within the above definitions of industrial wastes and sewage which may cause or contribute to the pollution of any waters of the Commonwealth.

(10) "Permit" means written permission in whatever form by the cabinet to construct and operate a facility.

(11) "Professional engineer" or "engineer" means a person registered to practice engineering pursuant to KRS Chapter 322.

(12) "Publicly owned treatment works" for the purpose of this regulation means treatment facilities eligible for funding under United States Environmental Protection Agency's 205(g) (33 U.S.C. Section 1285(g)) Construction Grants program as provided in 40 CFR Part 30, Part 33 and Part 35.

(13) "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments or other places together with such industrial wastes, underground, surface, storm or other water, as may be present.

(14) "Sewer line" means those devices used for collecting, pumping, and disposing of sewage, but not those devices used for tap-ons by individual discharges.

(15) [(14)] "Small facility" means a treatment facility with an average daily design flow less than 10,000 gallons per day or a sewer line of less than 2,500 feet in length including appurtenances.

Section 2. Applicability. No person shall construct, modify or operate a facility without having received a permit from the cabinet. However, the cabinet may exempt from the provisions of this regulation any facility which it determines will not at any time discharge into waters of the Commonwealth. In addition, the operational permit provisions of this regulation will be deemed met by those facilities which have a valid KPDES permit as defined in 401 KAR 5:050.

Section 3. The Permit. (1) A permit to construct a facility shall be effective upon issuance unless otherwise conditioned. If construction is not commenced within the twelve (12) months following a permit's issuance, a new permit shall be obtained prior to any construction.

(2) A permit to construct a facility shall automatically become an operational permit when:

(a) The applicant notifies the cabinet that the facility has been properly constructed; and,

(b) A cabinet representative inspects the site and determines that the facility is properly operating.

(3) The applicant shall notify the cabinet in writing within thirty (30) days of completed construction and commencement of trial operation.

(4) Permits may contain special conditions not found in this regulation. Such conditions shall be in writing and treated as a part of a permit.

(5) Issuance of a permit represents a judgment of the cabinet that a proposed facility will protect water quality or achieve certain effluent reductions if constructed in accordance with approved plans and specifications. Construction shall be in accord with approved plans and specifications.

Section 4. Permit Application. An application for a permit shall be submitted not less than thirty (30) days prior to the date a permit is desired.

Section 5. The Application; Preliminary Considerations. (1) Where a river basin plan, an areawide waste management plan and/or a regional or facility plan has been developed, the applicant shall provide the cabinet with a statement from the agency developing any such plan, that the applicant's proposed facility is compatible with any applicable plan.

(2) Any proposed large facility shall submit a preliminary or facilities plan to the cabinet. Said plan shall include:

(a) A seven and one-half (7 1/2) minute, United States Geological Survey topographic map

with the projected service area outlined and the discharge point identified thereon.

(b) A schematic of the facility layout and detailed explanation of the proposed facility and its method of operation;

(c) All wastes shall be identified in regard to the processes giving rise to the waste, the character and quantity of the waste, its treatability; and

(d) A statement regarding the expected degree of reduction in pollution load to be accomplished by the facility.

(3) Where the discharge point of a proposed facility fails to coincide with an intermittent or perennial stream as indicated by a blue line on U.S. Geological Survey topographic maps, the applicant shall demonstrate that he has a legal right to discharge his effluent across any other land owner's property which comes between the point of discharge and a blue line stream. The cabinet may require the applicant to provide it with an opinion of counsel to that effect.

Section 6. Plans and Specifications. (1) Not fewer than three (3) sets of detailed plans and specifications shall be submitted to the cabinet. The submittal shall be accompanied by a completed permit application form provided by the cabinet.

(2) The cabinet may request such additional information as it needs to evaluate the facility.

(3) Once cabinet approval is obtained, no changes shall be made to the plans and specifications which would alter or affect the location, type of process or quality of effluent without prior written approval from the cabinet.

(4) Where a proposed or existing facility is part of or may become a part of a comprehensive sewer system and has a projected capacity of 50,000 gallons per day or more, the plans and specifications shall be prepared by a professional engineer. The plans shall be accompanied by such engineering calculations as are necessary for the understanding of the basis and design of the facility.

Section 7. Design Considerations. (1) Specific design criteria for any facility shall be controlled by current engineering practice. Some references to current engineering practice can be found in the following: "Guidelines for Design, Operation and Maintenance of Waste Water Treatment" by the United States Environmental Protection Agency; the latest edition of "Recommended Standards for Sewage Works of the Great Lake-Upper Mississippi River Board of Sanitary Engineers," and the Water Pollution Control Federation's "Manual of Practice No. 8 and 9."

(2) Consideration should be given to the treatment requirements of the United States Environmental Protection Agency for specific types of facilities and processes.

(3) The applicant shall demonstrate to the cabinet that the effluent from a proposed facility will:

(a) Protect those minimum conditions applicable to all waters of the Commonwealth found in Section 2 of 401 KAR 5:031.

(b) Not cause those waters classified by 401 KAR 5:035 to be of lesser quality than the numeric criteria applicable to those waters in Section 3 to 9 of 401 KAR 5:031; and

(c) Be in accord with any general or particular facility requirement mandated by other regulations. An example of a general facility requirement is the "best practicable control technology" found in 401 KAR 5:080.

(4) A recording flow-measuring device shall be installed at each large facility. Any facility may estimate flow from a measuring device at the plant.

(5) Infiltration/exfiltration.

(a) The entrance of ground water into or loss of waste from a sewer system shall be limited to 250 gallons per inch of diameter per mile per day with a maximum of 6,000 gallons per mile per day regardless of the pipe diameter. This limitation is inclusive of manholes, sewers, and appurtenances.

(b) The integrity of a new system shall be verified by means of either smoke testing or low pressure air testing or both testing methods. The use of smoke testing shall depend on prevailing ground water conditions at the time of testing. Sewers over eighteen (18) inches in diameter shall be tested by the exfiltration method and/or smoke testing if ground water conditions permit.

(6) Inflow. No new combined, extension or replacement of combined sewers shall be permitted. All points of entrance of inflow to a separate sanitary system will be identified and eliminated.

Section 8. Application; Other Supporting Documents. (1) The applicant shall demonstrate that provision has been made for continuous inspection of a facility under construction to assure its conformity with approved plans and specifications. Those facilities designed by an engineer shall be inspected by an engineer.

(2) The applicant shall demonstrate that laboratory services shall be provided for self-monitoring to assure facility operation in accord with any permit conditions and to substantiate protection of the receiving waters.

(3) Where a proposed facility will serve multiple users, the applicant shall demonstrate the financial ability to guarantee continuous operation and maintenance to the cabinet's satisfaction. Such guarantee may take the form of a supporting promise by another person to operate the facility if the applicant fails to properly do so, or by posting a bond payable or depositing money in escrow to be available for making necessary repairs only upon the cabinet's determination that the facility's operation and maintenance is not achieving permit conditions. The above requirement can be demonstrated by a certification from the Public Service Commission.

Section 9. Operation. (1) The cabinet's permit may specify the type of analysis required for a facility and the frequency that such analysis shall be performed and reported to the cabinet.

(2) The cabinet may provide forms for self-monitoring reports.

Section 10. Fees. (1) The applicant shall submit a permit fee as provided in subsection (5) of this section with the construction permit application.

(2) Should the cabinet deny a construction permit, the fee for the construction permit will be refunded.

(3) Checks or money orders shall be made payable to the Kentucky State Treasurer.

(4) Construction permit fees shall be as shown on the following schedule:

Facility Category	Construction Permit Fee
Large Facility	$1,800 [$1,000]
Intermediate Facility	$ 900 [$ 500]
Small Facility	$ 450 [$ 250]
Large Facility: Sewer Lines	$ 800
Intermediate Facility: Sewer Lines	$ 400
Small Facility: Sewer Lines	$ 200

(5) If the cabinet has delegated to a local or regional agency, through formal written agreement, review responsibility for sewer lines, a twenty (20) dollar fee per approval letter will be charged in lieu of the sewer line fees described in subsection (4) of this section.

(6) [(5)] Fees in this section do not apply to publicly owned treatment works or agricultural wastes handling systems designed by the U.S. Soil Conservation Service (SCS) in accordance with the cabinet's May 15, 1980 memorandum of understanding with SCS, incorporated herein by reference.

[(7) The provisions of this section shall apply to permit applications submitted on or after October 1, 1988 and to applications which are not completed by October 1, 1988. Permit applications which are completed by October 1, 1988 shall be subject to this section as in effect on December 10, 1985.]

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(As Amended)

401 KAR 5:085. KPDES discharge permit and variance fees.

RELATES TO: KRS 224.020, 224.033, 224.034, 224.060, 224.073
STATUTORY AUTHORITY: KRS 224.033, 224.045
NECESSITY AND FUNCTION: This regulation defines the assessment of fees applicable to the issuance of discharge permits and variances. This regulation establishes permit and variance requirements in addition to those requirements of 401 KAR 5:005, 5:031, 5:045, 5:055, 5:060, 5:065, 5:070, 5:075, and 5:080 as are necessary to implement the fee schedule established herein.

Section 1. Applicability. The provisions of this regulation shall apply to the owner or operator of each source required by 401 KAR 5:060, Section 1 to have a permit except for publicly owned sources and sources permitted under a general permit issued under 401 KAR 5:055, Section 5.

Section 2. Definitions. The following definitions described terms used in this regulation. Terms not further defined in this regulation have the meaning given by KRS 224.005 or, if not defined, the meaning attributed by common use.

(1) "Agriculture operation" means operations that use confined feeding in livestock or livestock-by-product production with manure handling facilities that qualify as concentrated animal feeding operations in accordance with 401 KAR 5:050.

(2) "Conventional pollutant" means biochemical oxygen demand (BOD), chemical oxygen demand (COD), total organic carbon (TOC), total suspended solids (TSS), ammonia (as N), bromide, chlorine (total residual), color, fecal coliform, fluoride, nitrate, kjeldahl nitrogen, oil and grease, and phosphorus.

(3) "Intermediate nonpublicly owned treatment works" means facilities which discharge a design flow rate of between 10,000 gallons per day and 49,999 gallons per day wastewater containing only conventional pollutants and which are not eligible for funding under United States Environmental Protection Agency's construction grants program, CWA Section 205(g) (33 U.S.C. Section 1285(g)), as implemented by 40 CFR Parts 30, 33, and 35.

(4) "Large nonpublicly owned treatment works" means facilities which discharge a design flow rate greater than or equal to 50,000 gallons per day of wastewater containing only conventional pollutants and which are not eligible for funding under United States Environmental Protection Agency's construction grants program, CWA Section 205(g) (33 U.S.C. Section 1285(g)), as implemented by 40 CFR Parts 30, 33, and 35.

(5) "Major industry" means industries that generate and discharge process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. These industries discharge a design flow rate greater than or equal to 50,000 gallons per day of process wastewater containing conventional, nonconventional, or thermal pollutants. A "major industry" designation, as defined in this regulation, is not a criteria for classification as a major facility, as defined in 401 KAR 5:050, Section 1.

(6) "Minor industry" means industries that generate and discharge process-related wastewater while engaged in commercial activities including, but not limited to, resource recovery, manufacturing, products distribution, and wholesale and retail trade. These industries discharge a design flow rate less than 50,000 gallons per day of process wastewater containing conventional, nonconventional, or thermal pollutants. If a facility discharges process-related wastewater and does not qualify under this definition, then the facility shall be considered to be a "major industry."

(7) "Nonconventional pollutant" means all pollutants not considered to be a conventional pollutant as defined in this regulation and including priority pollutants identified in 401 KAR 5:060, Section 13.

(8) "Nonprocess industry" means industries that generate and discharge only nonprocess wastewater while engaged in commercial activities including manufacturing, resource recovery, products distributions, and wholesale and retail trade. These industries discharge nonprocess wastewater, for example, noncontact cooling or stockpile run-off, and discharge wastewater that neither contains nor is likely to contain toxic pollutants in concentrations equal to or greater than the ninety-six (96) hour lethal concentration (LC) for fifty (50) percent mortality (ninety-six (96) hr. LC 50) for a representative indigenous aquatic

organism. If any of the above conditions is not met, then the discharge is considered to be a "minor industry."

(9) "Publicly owned treatment works (POTW)" for the purpose of this regulation shall be those facilities as defined in 401 KAR 5:050, Section 1, and which are eligible for funding under United States Environmental Protection Agency's construction grants program, CWA Section 205(g) (33 U.S.C. Section 1285(g)), as implemented by 40 CFR Parts 30, 33, and 35.

(10) "Small nonpublicly owned treatment works" means facilities which discharge a design flow rate less than 10,000 gallons per day of wastewater containing only conventional pollutants and which are not eligible for funding under United States Environmental Protection Agency's construction grants program, CWA Section 205(g) (33 U.S.C. Section 1285(g)), as implemented by 40 CFR Parts 30, 33 and 35.

(11) "Surface mining operation" means only those facilities required to have a permit by 405 KAR Chapters 7 through 26.

Section 3. Filing Fees. (1) Any owner or operator who submits an application for a permit to discharge from a wastewater treatment unit will be assessed a filing fee in the amount of twenty (20) percent of the base fee in Section 4(2)(a) of this regulation.

(2) Any owner or operator who submits an application for a variance will include with the application a filing fee in the amount of the base fee in Section 6(2)(a) of this regulation.

(3) A filing fee is not refundable if a discharge permit or variance application to which it is related is denied or withdrawn.

(4) The filing fee will be applied toward the discharge permit or variance fee assessed respectively in Sections 4 and 6 of this regulation.

Section 4. Discharge Permit Fees. (1)(a) Every owner or operator who is issued a discharge permit shall be assessed a discharge permit fee in accordance with the provisions set forth in subsection (2) of this section.

(b) Upon making the determination that the discharge permit can be issued, under 401 KAR 5:075, Section 11, the cabinet will notify the applicant and send a bill for the discharge permit fee. The discharge permit will be issued by the cabinet upon receipt of the total amount of the permit fee less the filing fee. Failure by the applicant to pay the assessed permit fee on or before the due date shall result in the forfeiture of the filing fee and denial of the permit.

(c) Facilities which fall into multiple categories as specified in Section 2 of this regulation shall be assessed the highest fee.

(2) Each discharge permit fee will be determined by adding the base fee in paragraph (a) of this subsection to all other applicable component fees listed in paragraph (b) of this subsection.

(a) Base fee. The base fee for a discharge permit for any point source water pollutant shall depend on the type of wastewater treatment unit or facility and the required permit action. The amount of the base fee will be assessed according to the following schedule:

Facility Category	First Issuance and Renewals New and Existing Facilities
Major industry	$\underline{\$3,200}$ [1600]
Minor industry	$\underline{2,000}$ [1200]
Nonprocess industry	$\underline{1,000}$ [450]
Large non-POTW	$\underline{1,700}$ [1100]
Intermediate non-POTW	$\underline{1,500}$ [650]
Small non-POTW	$\underline{1,000}$ [350]
Agriculture	$\underline{1,200}$ [200]
Surface mining operation	$\underline{1,200}$ [350]

(b) Component fees. The component fee for each addition necessary to complete the evaluation of the discharge permit shall be as follows:

1. Fees for major modifications of permits will be prorated based on the life of the permit in accordance with subsection (3) of this section.

2. Public hearing and CWA Section 301 (33 U.S.C Section 1311) technology-based variances - $325.

(3) The provisions of this section will apply with respect to fees for temporary discharge permits except that the fee as determined by subsection (2) of this section will be multiplied by the ratio of the length of time covered by the temporary discharge permit to five (5) years.

[(4) The provisions of this section shall apply to permit applications submitted on or after October 1, 1988. Permit applications which are submitted by October 1, 1988 shall be subject to this section as in effect on December 10, 1985.]

Section 5. Duplicate Discharge Permit Fee. Upon application for the issuance of a duplicate discharge permit, the duplicate permit shall be issued by the cabinet upon receipt of a fifteen (15) dollar fee.

Section 6. Water Quality Variance Fee. (1) Any owner or operator granted a variance by the cabinet shall be assessed a variance fee. Upon determining that the variance can be granted, the cabinet shall notify the applicant and send a bill for the variance fee. Failure by the applicant to pay the variance fee on or before the due date shall result in the forfeiture of the filing fee and denial of the variance. The variance shall be granted by the cabinet upon receipt of the total amount of the variance fee less the filing fee.

(2) Variance fees shall be determined by adding the base fee in paragraph (a) of this subsection with the component fee, if applicable, listed in paragraph (b) of this subsection.

(a) Base fee. The base fee for a variance for any point source water pollutant shall be equal to $270, the cost of reviewing the feasibility of the variance request and reviewing the applicant's plan of study for the hydrologic-water quality investigation, assessment, or appraisal.

(b) Component fee. The component fee for completing an evaluation of a variance request shall be equal to $690, the cost of a technical review of the study data, results, and conclusions, and for making the variance recommendation.

Section 7. Terms of Payment. (1) Payment of a discharge permit or variance fee, and a

duplicate discharge permit fee, as the case may be, will be made within thirty (30) days of the billing date.

(2) Payment of a filing fee shall accompany the application for a discharge permit or variance.

(3) With respect to all fees assessed in Sections 3, 4, 5, and 6 of this regulation, payment, if mailed, should be sent by certified mail. Certified checks or money orders, if used, shall be payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water
(As Amended)

401 KAR 6:300. Water well drillers certification; examination; fees.

RELATES TO: KRS 223.400 through 223.460, 223.991

STATUTORY AUTHORITY: KRS 223.420

NECESSITY AND FUNCTION: This regulation contains provisions for the general practice of water well drilling, including application requirements, conduct of examinations and a schedule of fees. The schedule of fees included herein will partially reimburse the cabinet's expenses for this program and implementation of this fee schedule is required by law.

Section 1. Examinations. (1) The water well drillers certification examination shall consist of two (2) parts. The first part shall be the National Water Well Drillers standardized examination. All examinees shall take both the general examination and the speciality examination in their area of practice. This part shall constitute seventy (70) percent of the total value of the examination. The second portion of the examination shall consist of questions relating to applicable laws and regulations and other issues as the cabinet deems necessary.

(2) A passing grade for the examination shall be seventy (70) percent correct answers on the composite examination. Any person who does not obtain a passing grade on the total examination, but scores higher than seventy (70) percent on the first part of the examination, need only take the second portion as defined in subsection (1) of this section and score at least seventy (70) percent thereon for certification.

(3) The examination will be offered only to those persons who have verified to the cabinet that they have two (2) years of water well drilling experience under a certified water well driller.

(4) The cabinet will schedule water well drillers examinations at least twice a year.

(5) Drillers who have passed all applicable portions of the National Water Well Drillers examination previously or who have passed this examination when administered by someone other than the cabinet shall be required to take only the second portion of the examination as defined in subsection (1) of this section. A seventy (70) percent score shall be required for passing.

Section 2. Fees. (1) A nonrefundable fee of twenty-five (25) dollars shall be submitted with each application.

(2) The cabinet will require an advance payment of forty (40) [twenty-five (25)] dollars for each examination administered.

(3) An applicant, upon notification that all requirements have been met for certification, shall remit a certification fee of $250 [100] for initial certification.

(4) The fee for certificate renewal shall be $250 [100] per year.

(5) Certified [All fees shall be in the form of a] checks or money orders shall be payable to the Kentucky State Treasurer.

[(6) The provisions of this regulation shall apply to applications, examinations, and initial certifications submitted on or after October 1, 1988. The certificate renewal fee shall become effective upon the beginning of the next certification year after October 1, 1988.]

Section 3. Issuance, Expiration, and Reinstatement of Certificates. (1) All certificates will be valid from the date of issuance until the next June 30th. Renewed certificates will bear as their date of issue July 1 of the appropriate year. Newly issued certificates will bear as date of issuance the date that all certification requirements are deemed fulfilled.

(2) Any certificate for which the renewal fee is not paid within ninety (90) days of the beginning of the certification year, which shall be July 1, shall be considered expired. Such expired certificates may be reinstated without examination within two (2) years of the beginning of the certification year in which they expire by the driller's paying the current year's renewal fee. After two (2) years the certificate is invalid and the driller shall be required to meet all requirements for certification established in this regulation.

Section 4. Wallet Cards. (1) The cabinet will provide upon certificate issuance and again upon each annual renewal a card of suitable size to be carried in a wallet and bearing at least the name and certificate number of the driller and indicating the period for which the card is issued. This wallet card shall be carried by the driller at all times while on a job site.

(2) The cabinet will also provide wallet cards which shall be used by the driller's employees who will at any time be in charge of well construction in the drillers absence. This card shall bear the driller's certification number and signature and shall be carried by such employees at all times on the construction site.

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

401 KAR 39:020. Delisting and exemption fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.871

NECESSITY AND FUNCTION: KRS 224.033(20) states that the Natural Resources and Environmental Protection Cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fees for a petition to delist a hazardous waste and for applications for specific exemptions.

Section 1. Applicability of [for] Delisting Fees. [(1)] A petition to delist a hazardous waste in accordance with Section 1 of 401 KAR 31:060 [31:062] shall be accompanied by payment of a fee of $6,000 for each hazardous [2,000 per] waste petitioned. If a hazardous waste has been granted a temporary exclusion and is listed in Section 3 of 401 KAR 31:070 and the generator petitions to have that waste delisted in accordance with Section 1 of 401 KAR 31:040, then a payment of $3,000 [1,000] per waste shall accompany the petition to delist.

[(2) The provisions of this regulation shall apply to delisting petitions submitted on or after October 1, 1988, and to such petitions which are not complete, as determined by the cabinet, by October 1, 1988. Delisting petitions which are complete, as determined by the cabinet, by October 1, 1988, shall be subject to this regulation as in effect on December 2, 1983.]

Section 2. Applicability for Exemption Fees. (1) An application for an exemption of a hazardous constituent in a permit in accordance with Section 4(2) of 401 KAR 34:060 or an application to establish alternate concentration limits in accordance with Section 5(2) of 401 KAR 34:060 shall require submittal of a fee to the cabinet. The fee charged shall be the cost of the review. [The cost shall not exceed $30,000 for the first constituent reviewed and $7,500 for each additional constituent reviewed.] All fees collected shall be used to defray the costs for performing the required review activities to determine whether or not the exemption shall be granted or the alternate concentration limit established. [Such fees shall be deposited in the Division of Waste Management's Agency Receipt Account.]

(2) The provisions of this regulation shall apply to applications for exemptions of a hazardous constitutent and applications to establish alternate concentration limits submitted on or after October 1, 1988, and to such applications which are not complete, as determined by the cabinet, by October 1, 1988. Applications for exemptions and applications to establish alternate concentration limits which are complete, as determined by the cabinet, by October 1, 1988, shall be subject to this regulation as in effect on December 2, 1983.

Section 3. Submittal of Fee. The fee for delisting shall be submitted to the cabinet with the petition for delisting. The fee for an application for a specific exemption shall be submitted upon the cabinet's request at the completion of the review. The checks shall [should] be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

401 KAR 39:030. Part B treatment, storage, or disposal facility fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871

STATUTORY AUTHORITY: KRS 13A.210, 224.033, 224.871

NECESSITY AND FUNCTION: KRS 224.033(20) states that the cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for Part B permits for treatment, storage, or disposal facilities.

Section 1. Applicability. [(1)] This regulation applies to all treatment, storage, or disposal facilities required by Section 4 of 401 KAR 38:010 to obtain a construction/operating permit from the cabinet.

[(2) The provisions of this regulation shall apply to permit applications for treatment, storage, or disposal facilities submitted on or after October 1, 1988, and to such applications which are not complete, as determined by the cabinet, by October 1, 1988. Permit applications for treatment, storage, or disposal facilities which are complete, as determined by the cabinet, by October 1, 1988, shall be subject to this regulation as in effect on December 2, 1983.]

Section 2. Filing Fees. Any owner or operator who submits an application for a permit for a treatment, storage, or disposal facility shall submit with the application a nonrefundable filing fee in the amount of $6,800.

Section 3. [2.] Review Fees. Any owner or operator who submits [Schedule of Fees for Part B Permit Applications and Permit Renewals for Treatment Facilities. A fee shall be required in order to obtain] a permit application for [the construction and/or the operation of] a hazardous waste treatment, storage, or disposal facility or [and] for a permit renewal shall submit with the application a nonrefundable review fee. Any owner or operator who has submitted an application but has not received a permit shall be subject to these fees. [The fee will include a Review of General Facility Requirements Fee of $4,000 assessed for each facility. The Review of General Facility Requirements Fee will be charged once per permit

application and will not be charged in duplicate or triplicate for an application for any combination of treatment, storage and disposal activities for the same facility if application for all activities is made at the same time.] The review [A] fee shall [will] be the sum of the unit fees charged for each type of hazardous waste management [regulated] unit at the facility. The incinerator unit fee shall be paid once for each different type of incinerator unit at the facility. The types of incinerator units are liquid injection, rotary kiln, fluidized bed and multiple hearth. The unit fees shall be [are as follows]:

(1) Incinerator - $19,400 [4,250];
(2) Waste piles - $12,200 [3,000];
(3) Surface impoundments - $14,000 [3,000]; [and]
(4) Tanks - $11,000; [2,700];
(5) Containers - $7,700;
(6) Land treatment - $15,800; and
(7) Landfills - $15,000.

Section 4. RCRA Facility Assessment Fees. Any owner or operator who submits an application for a treatment, storage, or disposal facility shall submit with the application a nonrefundable RCRA Facility Assessment Fee. Any owner or operator who has submitted an application but has not received a permit shall be subject to these fees. The RCRA Facility Assessment Fee shall be $11,500.

Section 5. [3.] Submittal of Fees. All fees shall be paid by check or money order [The $4,000 Review of General Facility Requirements Fee shall be submitted to the cabinet with the permit application. The cabinet shall notify the applicant of the additional amount owed. All checks should be] made payable to the Kentucky State Treasurer.

Section 6. Repeal. 401 KAR 39:040, Storage facility fees, and 401 KAR 39:050, Disposal facility fees, are repealed.

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

401 KAR 39:060. Short-term fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871
STATUTORY AUTHORITY: KRS 13A.210, 224.033, 224.871
NECESSITY AND FUNCTION: KRS 224.033(20) states that the Cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for short-term permits.

Section 1. Applicability. [(1)] This regulation applies to facilities which require emergency permits[, trial burn permits] and land treatment demonstration permits.

[(2) The provisions of this regulation shall apply to short-term permit applications submitted on or after October 1, 1988, and to such applications which are not complete, as determined by the cabinet, by October 1, 1988. Short-term permit applications which are complete, as determined by the cabinet, by October 1, 1988, shall be subject to this regulation as in effect on December 2, 1983.]

Section 2. Fees. The fees for short-term permits are as follows:

(1) Emergency permits - $750 [250];
[(2) Trial-burn permits - $2,000;] and
(2) [(3)] Land treatment demonstration - $5,500 [3,500].

Section 3. Submittal of Fees. The appropriate fee for short-term permits shall be submitted to the cabinet with the permit application. The check shall [should] be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

401 KAR 39:070. Modification fees.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871
STATUTORY AUTHORITY: KRS 13A.210, 224.033, 224.871
NECESSITY AND FUNCTION: KRS 224.033(20) states that the cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. The purpose of this regulation is to establish fees for modification of permits for hazardous waste management.

Section 1. Applicability. [(1)] This regulation applies to all owners and operators of hazardous waste facilities in Kentucky who apply for [require] a modification to their hazardous waste management permit as specified in Section 2 of 401 KAR 38:040 and Section 2 of 401 KAR 38:050.

[(2) The provisions of this regulation shall apply to applications for permit modifications submitted on or after October 1, 1988, and to such applications which are not complete, as determined by the cabinet, by October 1, 1988. Applications for permit modifications which are complete, as determined by the cabinet, by October 1, 1988, shall be subject to this regulation as in effect on December 2, 1983.] [In the event modification of a permit is

required as a result of changes in Kentucky Statute or the Hazardous Waste Management Regulations, no modification fee shall be imposed.]

Section 2. Minor Modifications. A nonrefundable fee of $300 [fifty (50) dollars] per minor modification shall [must] be submitted to the cabinet with the application for minor modification. Minor modifications are defined in Section 2 of 401 KAR 38:050.

Section 3. Major Modifications. Major modifications are defined in Section 2 of 401 KAR 38:040. Subsection (1) of this section sets forth the nonrefundable major modification fees for the addition of one (1) or more new waste streams and for the addition or modification of one (1) or more of the following units: tanks, surface impoundments, waste piles, incinerators, containers, land treatment units or landfill cells. Subsection (2) of this section sets forth the major modification fees for any major modification which does not meet the criteria of subsection (1) of this section. The incinerator units in subsections (1) and (2) of this section shall be paid once for each different type of incinerator unit at the facility. The types of incinerator units are liquid injection, rotary kiln, fluidized bed and multiple hearth.

(1) This subsection sets forth the major modification fees for the addition of one (1) or more new waste streams [and for the addition of one (1) or more of the following units: tanks, surface impoundments, waste piles, incinerators, containers, land treatment units or landfill cells].

(a) For the addition of new waste [- $1,500;

(b)] for treatment, storage or disposal facilities:

1. Tanks - $4,000 [1,900];
2. Surface impoundments - $5,000 [2,500];
3. Waste piles - $4,500 [2,500];
4. Incinerators - $6,500; [3,250.]

[(c) For storage facilities:]

5. [1.] Containers - $3,500 [2,100];
[2. Tanks - 1,900;]
[3. Surface impoundments - 2,500;]
[4. Waste piles - 2,500.]

[(d) For disposal facilities:]

[1. Surface impoundments - $2,500;]
6. [2.] Land treatment - $5,500; and [3,600;]
7. [3.] Landfills - $5,500 [4,000].

(b) For the addition or substantial modification of treatment, storage or disposal units (expansions, structural changes, or process changes in a unit shall be considered substantial modifications):

1. Tanks - $13,250;
2. Containers - $10,700;
3. Incinerators - $20,000;
4. Landfills - $16, 250;
5. Land treatment - $16,250;
6. Waste piles - $14,000; and
7. Surface impoundments - $16,000.

(2) This subsection sets forth the major modification fees for any major modification which does not meet the criteria of subsection (1) of this section.

(a) For treatment, storage, or disposal facilities:

1. Tanks - $6,000 [825];
2. Surface impoundments - $7,000 [900];
3. Waste piles - $6,500 [900];
4. Incinerators - $8,500; [1,275.]

[(b) For storage facilities:]

5. [1.] Containers - $5,500 [800];
[2. Tanks - 825;]
[3. Surface impoundments - 900;]
[4. Waste piles - 825.]

[(c) For disposal facilities:]

[1. Surface impoundments - $1,125;]
6. [2.] Land treatment - $7,500; and [1,375;]
7. [3.] Landfills - $7,500 [1,500].

(b) This paragraph sets forth the major modification fees for RCRA facility investigations and corrective action for solid waste management units (if applicable) at a facility in accordance with Section 12 of 401 KAR 34:060. These fees shall be:

1. RCRA facility investigation - $14,500;
2. Corrective action - $29,000.

(c) This paragraph sets forth the fees for modification of detection, compliance, and corrective action programs at a regulated unit as contained in Sections 9, 10, and 11 of 401 KAR 34:060. These fees shall be:

1. Change from detection to compliance monitoring - $6,000;
2. Change from compliance to corrective action - $8,000;
3. Modification of detection, compliance or corrective action program - $5,000.

Section 4. Submittal of Fees. The appropriate fee shall be submitted to the cabinet with the application for modification. The checks shall [should] be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

401 KAR 39:090. Postclosure fees.

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.871

NECESSITY AND FUNCTION: KRS 224.033(20) states that the cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for permits for the postclosure care period for land disposal hazardous waste sites or facilities.

Section 1. Applicability. [(1)] This regulation applies to all owners and operators of hazardous waste sites or facilities in Kentucky who submit an application for a postclosure permit as specified in Section 1(2) of 401 KAR 38:010. This fee does not apply to owners and operators of hazardous waste sites or facilities that submit a postclosure plan as part of an application for an [a construction

or] operation permit for a landfill [as] required in Section 4 of 401 KAR 38:010 and pay the fees required by 401 KAR 39:030[, 39:040, or 39:050].

[(2) The provisions of this regulation shall apply to postclosure permit applications submitted on or after October 1, 1988, and to such applications which are not complete, as determined by the cabinet, by October 1, 1988. Postclosure permit applications which are complete, as determined by the cabinet, by October 1, 1988, shall be subject to this regulation as in effect on March 10, 1988.]

Section 2. Filing [Schedule of] Fees [for Postclosure Permits]. Any owner or operator who submits an application for a postclosure permit or permit renewal for a hazardous waste site or facility shall submit with the application a nonrefundable filing fee in the amount of $2,000 [A fee shall be required in order to obtain a permit for postclosure of a hazardous waste site or facility. The fee for a postclosure permit is $7,000].

Section 3. Review Fee. Any owner or operator who submits an application for a postclosure permit or permit renewal for a hazardous waste site or facility shall submit with the application a nonrefundable review fee. Any owner or operator who has submitted an application but has not received a permit shall be subject to these fees. The review fee shall be $7,000.

Section 4. [3.] Submittal of Fees. (1) The [required] fees shall be submitted to the cabinet with the permit application.

(2) All checks or money orders shall [should] be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

401 KAR 39:110. Marketer and burner registration fees.

RELATES TO: KRS 224.033, 224.830 through 224.877, 224.994
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.871
NECESSITY AND FUNCTION: KRS 224.033(20) states that the cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes annual fees for the registration of marketers and burners of hazardous waste fuel or used oil burned for energy recovery.

Section 1. Applicability. This regulation applies to marketers or burners of hazardous waste fuel or used oil burned for energy recovery in accordance with the criteria established in 401 KAR 36:040 and 401 KAR 36:050.

Section 2. Annual Registration and Schedule of Fees. Marketers and burners of hazardous waste fuel or used oil burned for energy recovery shall register annually with the cabinet. The fee to register as a marketer or burner [blender] is $300.

Section 3. Submittal of Fees. The required fees shall be submitted to the cabinet with the registration form. All checks shall be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

401 KAR 39:120. Part A application fee.

RELATES TO: KRS 224.033, 224.864, 224.866, 224.871, 224.994
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.871
NECESSITY AND FUNCTION: KRS 224.033(20) states that the Natural Resources and Environmental Protection Cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.871 requires the cabinet to promulgate regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. The purpose of this chapter is to establish a fee schedule for hazardous waste management. This regulation establishes the fee schedule for submitting Part A of the application for storage, treatment or disposal facility permits.

Section 1. Applicability. [(1)] This regulation applies to all treatment, storage, or disposal facilities required by Section 2(1) of 401 KAR 38:070 to submit Part A of the application for a hazardous waste site or facility permit.

[(2) The provisions of this regulation shall apply to Part A applications for hazardous waste site or facility permits submitted on or after October 1, 1988, and to such applications which are not complete, as determined by the cabinet, by October 1, 1988. Part A applications for hazardous waste site or facility permits which are complete, as determined by the cabinet, by October 1, 1988, shall be subject to the provisions of this regulation.]

Section 2. Filing Fees. Any owner or operator who submits a part A application for a treatment, storage, or disposal facility shall submit with the application a filing fee in the amount of $1,000.

Section 3. Review Fees. (1) Any owner or operator who submits a closure plan for a treatment, storage, or disposal facility shall submit with the application the following fees:

(a) A closure plan fee of $3,600;
(b) A RCRA facility assessment fee of $11,500; and
(c) A review fee for each type of hazardous waste management unit being closed. The fee for incinerators shall be submitted one (1) time for each different type of incinerator. The fees shall be:
1. Incinerator - $2,000;
2. Waste piles - $1,000;
3. Surface impoundments - $1,500;
4. Tanks - $1,000;
5. Containers - $600;
6. Land treatment - $2,000; and
7. Landfill - $2,000.

(2) Any owner or operator who is required to submit to the cabinet a RCRA facility investigation plan or a corrective action plan shall submit with the plans the applicable review fee. These fees shall be:
(a) RCRA facility investigation plan - $14,500; and
(b) Corrective action plan - $29,000.

Section 4. Submittal of Fees. (1) Fees shall not be refunded if an application is withdrawn.
(2) All checks or money orders shall be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Waste Management
(As Amended)

401 KAR 47:060. Permit fees.

RELATES TO: KRS 224.846, 224.855
STATUTORY AUTHORITY: KRS 13A.210, 224.033
NECESSITY AND FUNCTION: KRS 224.033(20) states that the cabinet may provide by regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. This chapter establishes standards for solid waste sites or facilities. The purpose of this regulation is to establish a fee schedule for the issuance and modification of solid waste disposal permits or variances.

Section 1. Applicability. [(1)] The provisions of this regulation shall apply to the owner or operator of each solid waste site or facility required to apply for a permit, permit renewal or exemption except publicly-owned facilities.
[(2) The provisions of this regulation shall apply to solid waste site or facility permit applications submitted on or after October 1, 1988, and to such applications which are not complete as determined by the cabinet, by October 1, 1988. Solid waste site or facility permit applications which are complete as determined by the cabinet, by October 1, 1988, shall be subject to this regulation as in effect on March 1, 1983.]

Section 2. Filing Fees. (1) Any owner or operator may submit a preliminary application for a solid waste facility permit, permit modification, or variance for initial review and shall include with the preliminary application a check or money order for the filing fee determined by the schedule below: [without payment of any fee.]

Preliminary Application Type	Fee
Preliminary application review to determine site suitability	$500
Preliminary permit modification application review to determine site suitability for expansion	$500
Preliminary request for variance of design criteria	$500

(2) Any owner or operator who submits an application for a permit to construct for new solid waste facility sites or for expansions to existing facility sites shall include with the application a check or money order for the filing fees determined by this subsection. [in the amount of $1,000 payable to the Kentucky State Treasurer. This fee does not apply to landfarming applications.]
(a) The filing fees listed below for construction permit applications shall be submitted with the initial application.

Solid Waste Facility Type	Fee
Inert landfill	$2,500
Residential landfill	$5,000
Contained landfill	$5,000
Residual landfill	$2,500
Landfarming facility	$2,500

(b) Upon notification by the cabinet that the application is complete in accordance with Section 3(4) of 401 KAR 47:020, the owner or operator shall submit the fees for technical review of the construction permit application. The fees for technical review are listed below:

Solid Waste Facility Type	Fee
Inert landfill	$1,500
Residential landfill	$3,500
Contained landfill	$5,000
Residual landfill	$2,500
Landfarming facility	$3,000

(3) Upon notification by the cabinet that the construction application is technically in compliance with the requirements of 401 KAR 47:040 for sanitary landfills or 401 KAR 47:050 for landfarming, any owner or operator who submits an application for a permit to operate shall include with the application a check or money order in the amount of the filing fee, assessed in accordance with the [provisions set forth in subsection (4) of this section, payable to the Kentucky State Treasurer.]
[(4) Filing fee for the original permit to operate shall be determined by the] following schedule:

Solid Waste Facility Type	Fee
Contained landfill	$800
Residual landfill	$500
Residential landfill	$500
Land farming facility	$500
Inert landfill	$200

(4) Any owner or operator who submits an

application for renewal of an existing solid waste facility permit shall include with the application a check or money order in an amount equal to the number of years for which the facility permit will be renewed multiplied by the amounts listed below:

Solid Waste Facility Type	Amount per year
Inert landfill	$ 300
Residential landfill receiving less than 200 tons per day	$ 500
Residential landfill receiving 200 or more tons per day	$3,000
Contained landfill	$3,000
Residual landfill	$ 500
Landfarming facility	$ 300

(5) Any owner or operator who submits an application for a solid waste facility permit [exemption, variance, major] modification [or renewal] shall include with the application a check or money order for the fee listed below: [in the amount of $250 payable to the Kentucky State Treasurer. Any request for permit modification or issuance of a variance that does not require prior administrative review and analysis before approval can be granted will receive a letter of acknowledgment and will not require the payment of a fee.]

(a) $1,000 for modifications involving operating methods or proposed closure.

(b) Fifty (50) dollars for modifications for additional wastes not listed in the approved permit application.

(c) $500 for a variance from an existing permit requirement.

(d) $500 for change of ownership of an existing permitted facility.

(6) Any owner or operator who submits an application for the following permits shall include a check or money order as listed below:

(a) $500 for application for approval of a permit by rule granted pursuant to Section 1 of 401 KAR 47:020 or Section 1 of 401 KAR 47:050.

(b) $1,000 for application for closure of a solid waste site not under a current solid waste facility permit.

(7) [(6)] Filing fees are not refundable if an application for a permit, modification, or variance [or exemption] is denied or an application is withdrawn after the review is initiated.

(8) Submittal of Fees. The required fees shall be submitted to the cabinet with the preliminary application or application. All checks or money orders shall be made payable to the Kentucky State Treasurer.

CARL H. BRADLEY, Secretary
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NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)

401 KAR 50:036. Permit and exemption fees.

RELATES TO: KRS 224.320, 224.330, 224.340 [Chapter 224]

STATUTORY AUTHORITY: KRS 224.033

NECESSITY AND FUNCTION: KRS 224.033 permits the Natural Resources and Environmental Protection Cabinet to prescribe regulations establishing a schedule of fees for the costs of processing applications for permits authorized by KRS Chapter 224 and for exemptions or partial exemptions. This regulation defines the assessment of fees applicable to stationary air contaminant sources for issuance of permits to construct, permits to operate and exemptions. This regulation also establishes permit requirements in addition to those requirements of 401 KAR 50:035 as are necessary to implement the fee schedule established herein.

Section 1. Applicability. The provisions of this regulation shall apply to the owner or operator of each source required to have a permit by 401 KAR 50:035 except for publicly owned sources. [The provisions of this regulation shall apply to permit applications submitted on or after October 1, 1988, and to applications which are not complete by October 1, 1988. Permit applications which are complete by October 1, 1988, shall be subject to this regulation as in effect on May 6, 1981.]

Section 2. Definitions. As used in this regulation, all terms not defined herein shall have the same meaning given them in 401 KAR 50:010.

(1) "Air pollution control equipment" means any mechanism, device, or contrivance used to control or prevent air pollution.

(2) "Construction permit fee" means a fee assessed by the cabinet according to the schedule in Section 4 of this regulation for the cost of processing applications for construction permits. ["Capital cost" means the estimated monetary resources which will have to be expended to make a proposed air contaminant source operational including the cost of installation, real estate, buildings, pollution abatement equipment, and any other equipment necessary for the operation of an air contaminant source.]

(3) "Level I model" means any of the following models as specified in the "Guideline on Air Quality Models," filed by reference in 401 KAR 50:015: PTMAX, PTPLU2, or PTDIS, or any model approved by the U.S. EPA for use in place of these models. ["Category I source" means any stationary source or modification to which 401 KAR 51:016E applies.]

(4) "Level II model" means any model specified in the "Guideline on Air Quality Models" or approved for use by the U.S. EPA, other than a Level I model. ["Category II source" means any source that is not a Category I source but has a potential to emit of 100 tons per year or more of any one (1) pollutant.]

(5) "Operating permit fee" means a fee assessed by the cabinet according to the schedule in Section 5 of this regulation for the cost of processing applications for operating permits. ["Category III source" means any source that is not a Category I or Category II source.]

(6) "Pollutant" means any air contaminant reviewed by the cabinet for the purpose of issuing a permit required by 401 KAR 50:035, except for toxic air pollutants listed in 401 KAR 63:022, or potentially hazardous material or toxic substances. ["Potential to emit" means the maximum capacity of a stationary source to emit

a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.]

(7) "Potentially hazardous material or toxic substance" means any pollutant the emission of which would cause a source to be subject to 401 KAR 63:020.

(8) [(7)] "Publicly owned facility" means any facility owned by the state, or any political subdivision thereof, municipality, or other public entity.

(9) "Toxic air pollutant" means any substance listed in 401 KAR 63:022.

Section 3. Filing Fees. (1) Any owner or operator who submits an application for a permit to construct shall include with the application a [certified check or money order in the amount of the] filing fee in the amount of $705. Filing fees shall be in the form of a check or money order, [assessed in accordance with the provisions set forth in subsection (2) of this section,] payable to the Kentucky State Treasurer.

[(2) Filing fee for permit to construct shall be determined by the following schedule:]

[Capital Cost of Proposed Construction Fee
(Millions of Dollars)

500 or more	$2,500
100 up to 500	$1,500
50 up to 100	$1,000
10 up to 50	$ 750
1 up to 10	$ 250
Less than 1	$ 50]

(2) [(3)] Any owner or operator who submits an application for a permit to operate or an application for an exemption shall include with the application a [certified] check or money order, payable to the Kentucky State Treasurer, in the amount of $410 [250].

(3) [(4)] Filing fees are not refundable if a permit or exemption is denied or an application is withdrawn.

(4) [(5)] Filing fees shall be applied toward the permit or exemption fee assessed in Sections 4, 5, and 7 of this regulation.

Section 4. Construction Permit Fees. (1)(a) Every owner or operator who is issued a permit to construct shall be assessed a construction permit fee by the cabinet in accordance with the provisions set forth in subsection (2) of this section.

(b) Upon making the determination that the permit can be issued, the cabinet shall so notify the applicant and send a bill for the permit fee. The permit fee shall be paid within thirty (30) days of the billing date by [and shall be a certified] check or money order for the indicated amount payable to the Kentucky State Treasurer. The permit shall be issued by the cabinet upon receipt of the total amount of the permit fee. Failure by the applicant to pay the assessed permit fee on or before the due date shall result in the forfeiture of the filing fee and denial of the permit.

(2) Fees shall be determined by summing the applicable base fee in paragraph (a) of this subsection with all [other] applicable component fees listed in paragraph (b) of this subsection.

(a) Base fees. The base fee [for each of the following category of sources] shall be derived from the number of affected facilities and the number of pollutants that are reviewed by the cabinet in the issuance of the permit and shall be determined by the formula in Appendix A to this regulation, except that the construction permit base fee shall not exceed $10,000. [:]

[1. Category III source: $400.]

[2. Category II source or sources subject to Title 401, Chapter 57: $1,000.]

[3. Category I source: $1,650.]

(b) Component fees. The component fees for each additional task [addition] necessary to complete the evaluation of the permit shall be:

1. Air quality analysis reviewed (each model): [$150 each application.]

a. Level I model: $50.

b. Level II model, except for permits requiring the application of 401 KAR 51:017: $150.

c. Level II model for permits requiring the application of 401 KAR 51:017: $350.

2. Air quality analysis performed for verification purposes (each model):

a. Level I model: $100.

b. Level II model except for permits requiring the application of 401 KAR 51:017: $200.

c. Level II model for permits requiring the application of 401 KAR 51:017: $1,840.

3. [2.] Lowest achievable emission rate (LAER), reasonably available control technology (RACT), or best available control technology (BACT) determination: $225 [150] each determination [application].

4. [3.] Preconstruction monitoring reviewed: $1,600 [: $610].

5. Review of an application for a major source or major modification: $650.

6. Review of an application with toxic air pollutants emitted at a rate equal to or greater than the adjusted significant level as determined in 401 KAR 63:021 for existing sources or 401 KAR 63:022 for new sources: as determined in Appendix B to this regulation.

7. Review of an application with potentially hazardous material or toxic substances: $60 for any permit issued to a source with one (1) or more potentially hazardous materials or toxic substances.

Section 5. Operating Permit Fees. (1) Every owner or operator issued a permit to operate shall be assessed an operating permit fee by the cabinet in accordance with the provisions set forth in this section. Upon making the determination that the permit will be issued, the cabinet shall so notify the applicant and send a bill for the permit fee payable by [certified] check or money order to the Kentucky State Treasurer within thirty (30) days of the billing date. Failure by the applicant to pay the assessed permit fee on or before the due date shall result in the forfeiture of the filing fee and denial of the permit. The permit shall be issued by the cabinet upon receipt of the permit fee.

(2) Operating permit fees shall be determined by summing the base fee in paragraph (a) of this

subsection with all [other] applicable component fees listed in paragraph (b) of this subsection.

(a) Base fees. The base fee [for each of the following categories of sources] shall be determined by the formula in Appendix C to this regulation, except that the operating permit base fee shall not exceed $10,000. [:]

[1. Category III source; operating permit not preceded by a construction permit or permit following exemption expiration: $500.]

[2. Category III source; operating permit following a construction permit for initial construction or an amendment to an operating permit following reconstruction, modification, or alteration: $330.]

[3. Category I and II sources and sources subject to Title 401, Chapter 57; operating permit not preceded by a construction permit or permit following exemption expiration: $1,100.]

[4. Category I and II sources and sources subject to Title 401, Chapter 57; operating permit renewal or operating permit following a construction permit for initial construction or an amendment to an operating permit following reconstruction, modification, or alteration: $750.]

(b) Component fees. The component fee for each additional task [addition] necessary to complete the evaluation of the permit shall be as follows, except that no fees shall be charged for tests or monitoring unless such tests or monitoring are a prerequisite for issuance of the permit:

1. Stack test or equivalent: $1,505 [1,300] each test.

2. Air quality analysis: as specified in Section 4(2)(b)1 or 2 of this regulation, as applicable [$150 each application].

3. Review of an application for a major source or for a major source following a major modification: $250.

4. Review of an application with toxic air pollutants emitted at a rate equal to or greater than the adjusted significant level as determined in 401 KAR 63:021 for existing sources or 401 KAR 63:022 for new sources; as determined in Appendix B to this regulation.

5. Review of an application with potentially hazardous material or toxic substances: $60 for any permit issued to a source with one (1) or more potentially hazardous materials or toxic substances.

[(3) The provisions of this section shall apply with respect to fees for temporary operating permits except that:]

[(a) The fee as determined by subsection (2)(a) of this section shall be multiplied by the ratio of the length of time covered by the temporary operating permit to three (3) years.]

[(b) Operating permit fees are due in full within thirty (30) days of the billing date by the cabinet.]

Section 6. Duplicate Permit Fee. Upon application for the issuance of a duplicate permit, the duplicate permit shall be issued by the cabinet upon receipt of a $300 [fifty (50) dollar] fee by [certified] check or money order payable to the Kentucky State Treasurer.

Section 7. Exemption Fees. (1) Any owner or operator granted an exemption by the cabinet pursuant to KRS 224.073 shall be assessed an exemption fee. Upon determining that the exemption can be granted, the cabinet shall so notify the applicant and send a bill for the exemption fee. The exemption fee shall be paid within thirty (30) days of the billing date, and shall be paid by [certified] check or money order, payable to the Kentucky State Treasurer. Failure by the applicant to pay the exemption fee on or before the due date shall result in the forfeiture of the filing fee and denial of the exemption. The exemption shall be granted by the cabinet upon receipt of the total amount of the exemption fee and any applicable penalties.

(2) Exemption fees shall be determined by summing the applicable base fee in Section 5(2)(a) of this regulation and all applicable component fees from Section 5(2)(b) of this regulation.

APPENDIX A TO 401 KAR 50:036
CONSTRUCTION PERMIT BASE FEE

The base fee for processing construction permit applications shall be determined by the following formula, rounded to the nearest five (5) dollar amount:

$$\text{Base Fee} = \$500\ (1 + F/4)(1 + P/8)$$

Where:

$F \equiv$ Number of affected facilities emitting pollutants which were reviewed for issuance of the permit.

$P \equiv \sum_{i=1}^{F} n_i$

$\equiv$ The sum of all pollutants emitted from each affected facility reviewed for issuance of the permit.

$n_i \equiv$ Number of pollutants reviewed at the ith affected facility.

APPENDIX B TO 401 KAR 50:036
TOXIC AIR POLLUTANT COMPONENT FEE

The component fee for toxic air pollutants shall be determined by the following formula, rounded to the nearest five (5) dollar amount:

$$\text{Component Fee} = \$50\ (TP)(1 + AF/4)$$

Where:

$TP \equiv$ Number of toxic air pollutant emitted at a rate equal to or greater than the adjusted significant level as determined in 401 KAR 63:021 for existing sources or 401 KAR 63:022 for new sources which were reviewed for issuance of the permit.

$AF \equiv \sum_{i=1}^{TP} n_i$

$\equiv$ The sum of all toxic air pollutants emitted from each facility reviewed for issuance of the permit.

$n_i \equiv$ Number of affected facilities where the ith toxic air pollutant was reviewed.

APPENDIX C TO 401 KAR 50:036
OPERATING PERMIT BASE FEE

The base fee for processing operating permit applications shall be determined by the

following formula, rounded to the nearest five (5) dollar amount:

Base Fee = $380 (1 + F/20)(1 + P/40)

Where:

F ≡ Number of affected facilities emitting pollutants which were reviewed for issuance of the permit.

$P \equiv \sum_{i=1}^{F} n_i$

≡ The sum of all pollutants emitted from each affected facility reviewed for issuance of the permit.

n_i ≡ Number of pollutants reviewed at the ith affected facility.

CARL H. BRADLEY, Secretary
APPROVED BY AGENCY: September 7, 1988
FILED WITH LRC: September 8, 1988 at 9 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Local Services
(As Amended)

702 KAR 7:090. Requirements for coaches and other personnel staffing interscholastic athletic programs.

RELATES TO: KRS 156.070, 161.010, 161.044, 161.180
STATUTORY AUTHORITY: KRS 156.070, 161.044
NECESSITY AND FUNCTION: KRS 156.070 gives the State Board **for Elementary and Secondary** [of] Education the management and control of all programs, including interscholastic athletics, operated in the common schools, and further requires that the rules, regulations, and bylaws of any organization or agency designated by the state board to manage interscholastic athletics be approved by the state board; and KRS 161.010, 161.044, and 161.180 authorizes the employment of teachers' aides as paraprofessionals in the public schools. This regulation sets forth requirements for coaches and other personnel staffing interscholastic athletic programs.

Section 1. **Except as provided in Section 2 of this regulation,** Head coaches and assistant coaches of interscholastic athletic teams and sponsors of cheerleading squads representing the common schools shall be certified teachers and members of their regular school faculties. They shall be duly employed by their respective boards of education, and their entire salaries shall be paid by such board. They shall be employed a minimum of three (3) regular periods for teaching classes, including physical education; for supervision of study halls; [and/]or for exercising responsibilities in other activity assignments within the school schedule.

Section 2. (1) In the event a local board of education is unable to staff **head or** assistant coaching, **or head or assistant cheerleader sponsor,** positions under the provision of Section 1 of this regulation, the superintendent of the local school district may request the local board of education [Superintendent of Public Instruction] to approve the qualifications of persons holding a provisional or standard teaching certificate or having completed a minimum of sixty-four (64) semester hours of college credit as nonteaching paraprofessional **head or** assistant [[]coaches[]] **or sponsors** under the following provisions:

(a) The local board of education shall declare, **after reasonable notice of a relevant position,** that no qualified and certified member of the regular school faculty has applied for the position, pursuant to Section 1 of this regulation;

(b) The position shall be filled by the best qualified person available, giving preference to the factors of academic preparation and teacher certification, prior teaching experiences or related educational work, and personal attributes compatible with the demands of the position [coaching profession];

(c) The applicant shall have at least sixty-four (64) semester hours of credit from an accredited college or university, as documented by an official transcript;

(d) The applicant shall provide documentation of successful completion of a first aid course, including CPR, as approved by a college or university, the American Red Cross, or the American Heart Association, and such shall be timely and appropriately updated as required by the approving agency;

[(e) The local board of education must submit an application, including a job description and a current college transcript to the Department of Education on an annual basis;]

(e) [(f)] Nonteaching paraprofessional assistants [coaches] shall be employed and act under the direct supervision of a head coach or head cheerleader sponsor and under the authority of the principal and shall be evaluated annually; [and]

(f) [(g)] The entire salary for the position shall be paid by the local board of education; **and** [.]

(g) Paraprofessional head coaches shall not, in any manner, be utilized with respect to high school varsity football or basketball teams.

(2) Nonteaching paraprofessional **head and** assistant **coaches and sponsors utilized under this section** shall have the full and same authority and responsibility, consistent with applicable law, as fully certified, teaching **counterparts** [assistants] hired under the provisions of Section 1 of this regulation, but such assistants may not:

(a) Act as head coaches or sponsors, except in emergencies where the head coach or sponsor is unavailable, of junior varsity, freshman, elementary or middle school, or any other nonvarsity, athletic team or cheerleading squad; or

(b) Act as the school faculty member or administrator required to accompany students on school-sponsored or school-endorsed trips pursuant to KRS 161.185. [As long as a noncertified paraprofessional is acting within the scope and authority set forth in 704 KAR 15:080 and KRS 161.010 and 161.044, he or she may be employed by a local board of education to carry out assigned responsibilities upon approval by the Superintendent of Public Instruction of a job description limited to the following duties:]

[(a) Assists the coaches in daily and

long-range athletic activities;]
[(b) Assists the coaches in planning the program;]
[(c) Conducts learning experiences, under the direction of the coaches, with small groups of student athletes;]
[(d) Assists the coaches in guiding participants toward a harmonious team spirit;]
[(e) Alerts the head coach to the special need of individual athletes;]
[(f) Provides escort, assistance, and supervision to athletes during periods of team travel;]
[(g) Recommends to the head coach the purchase of equipment, supplies, and uniforms as appropriate for the health, safety, and welfare of student athletes;]
[(h) Performs other noncoaching duties assigned by the principal, athletic director, or head coach.]

Section 3. As long as a noncertified paraprofessional, with fewer than sixty-four (64) semester hours of college credit, is acting within the scope and authority set forth in 704 KAR 15:080 and KRS 161.010 and 161.044, he or she may be employed by a local board of education to carry out assigned responsibilities upon approval of the local board of a job description limited to the following duties:
(1) Assists the coaches in daily and long-range athletic activities;
(2) Assists the coaches in planning the program;
(3) Conducts learning experiences, under the direction of the coaches, with small groups of student athletes;
(4) Assists the coaches in guiding participants toward a harmonious team spirit;
(5) Alerts the head coach to the special needs of individual athletes;
(6) Provides escort, assistance, and supervision to athletes during periods of team travel;
(7) Recommends to the head coach the purchase of equipment, supplies, and uniforms as appropriate for the health, safety, and welfare of student athletes;
(8) Performs other noncoaching duties assigned by the principal, athletic director, or head coach.

Section 4. [3.] No person failing to meet the provisions of Sections 1, 2, or 3 [1 or 2] of this regulation shall be employed or allowed to participate in any supervisory capacity with interscholastic athletic teams or cheerleading squads.

Section 5. [4.] [3.] The requirements of this regulation shall be made a part of the rules, regulations, and bylaws of any organization or agency designated by the state board to manage interscholastic athletics, and shall be made to apply by said organization or agency to all its member schools.

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: January 13, 1988
FILED WITH LRC: January 15, 1988 at 11 a.m.

EDUCATION AND HUMANITIES CABINET
Department of Education
Office of Instruction
(As Amended)

704 KAR 15:080. Paraprofessional employees and volunteer personnel.

RELATES TO: KRS 161.010, 161.030, 161.044
STATUTORY AUTHORITY: KRS 156.070, 161.044
NECESSITY AND FUNCTION: KRS 161.010 defines a teacher's aide [paraprofessional], KRS 161.030 vests the certification of all teachers and other school personnel with the State Board for Elementary and Secondary [of] Education, and KRS 161.044 directs the State Board to establish a plan for the qualification and utilization of adult teachers' aides [paraprofessional employees] and adult volunteer personnel in the schools. This regulation prescribes the guidelines by which local school districts may utilize and supervise adult teachers' aides, [paraprofessional employees and] adult volunteer personnel, and paraprofessional coaches.

Section 1. Local boards of education may utilize adult volunteer and adult teachers' aides [paraprofessional employees] in accordance with KRS 161.044 and 161.010(4) and (5), and subject to the following provisions:
(1) All instructional teachers' aides working in kindergarten classes and all instructional teachers' aides initially hired by the local board of education after July 1, 1986, except those with teacher certification, shall be subject to the following requirements:
(a) A high school diploma or a high school equivalency certificate.
(b) A passing score on an achievement test. Beginning with the 1986-87 school year, the Adult Basic Learning Examination (ABLE) shall be utilized to measure achievement in the areas of reading and mathematics. Passing scores on the appropriate subtests of the ABLE shall be those scores which are equivalent to the scores obtained by the norming groups at the 22nd percentile.
(c) Successful completion of an in-service training program. The program shall consist of a minimum of twelve (12) hours of formal, documented instruction to include training in the areas of the role of the paraprofessional, educational terminology, school practices and policies, interpersonal relationships, learning atmosphere and tutorial instruction. Local school districts shall utilize the in-service program designated by the State Board for Elementary and Secondary [of] Education or an alternative program approved by the Department of Education which meets the requirements of this subsection.
(d) An annual evaluation by the appropriate school administrator with input from the supervising teacher or teachers. Local districts shall adopt a policy which sets forth the evaluation process for teachers' aides and the use to be made of such evaluations in future employment decisions.
(2) All full time noninstructional teachers' aides shall achieve a passing score on an achievement test. The test shall be the same test which is administered to instructional teachers' aides and the passing scores shall be identical to those established for instructional

teachers' aides.
(3) Local boards of education shall give preference to an applicant for the position of teacher's aide [or paraprofessional] who has a regular or emergency teacher certification.
(4) For each **teacher's aide** [paraprofessional employee] the local school district shall prepare and maintain an up-to-date job description which outlines the duties that the individual is authorized to perform.
(5) The professional administrative and teaching staff, as well as the paraprofessional employees, shall have copies of the job descriptions of the **teacher's aide** [paraprofessional] personnel under their direction and shall limit the work assignment of **such** [the paraprofessional] personnel to the duties outlined in the job descriptions.
(6) **Teachers' aides** [Paraprofessional employees] and volunteer personnel may be assigned within the limitations of their competency to assist with classroom and any otherwise authorized community-based instruction, as appropriately directed and supervised by the professional administrative and teaching staff. Such assistance shall not include the continuing day-to-day responsibility for teaching a particular academic subject or group of pupils in the role ordinarily ascribed to a teacher in the regular, special education, and vocational education program areas, and **teachers' aides** [paraprofessional employees] and volunteer personnel involved in regular and remedial classroom instruction shall be personally supervised on a continuing day-to-day basis by the supervising teacher.

Section 2. In the event a local board of education is unable to fully staff an athletic program with qualified personnel under 702 KAR 7:090 Section[s] 1 [and 2,] the local district [superintendent] may staff **the athletic [said]** program in accordance with 702 KAR 7:090, Sections 2, 3 and 4 [and 3] [request annual approval from the Superintendent of Public Instruction for an alternative staffing arrangement for noncertified paraprofessionals performing routine, assignments, pursuant to 702 KAR 7:090, Section 2(2). Appropriate justification shall be submitted in writing on forms provided by the head of the Office of Instruction].

DR. JOHN BROCK, Superintendent
APPROVED BY AGENCY: January 13, 1988
FILED WITH LRC: January 15, 1988 at 11 a.m.

LABOR CABINET
Department of Workers' Claims
Workers' Compensation Board
(As Amended)

803 KAR 25:080. Workers' compensation rehabilitation procedures.

RELATES TO: KRS Chapter 342
STATUTORY AUTHORITY: KRS Chapter 13A, 342.260, 342.710
NECESSITY AND FUNCTION: KRS 342.260 requires the Workers' Compensation Board to prepare such rules and regulations as it considers necessary to carry on its own work and the work of the administrative law judges and for carrying out the provisions of KRS Chapter 342. The function of this proposed administrative regulation is to regulate the provision of rehabilitation services pursuant to KRS 342.710.

Section 1. Definitions. (1) Rehabilitation services include both medical rehabilitation services and vocational rehabilitation services provided pursuant to KRS 342.710. The purpose of rehabilitation services is to help the injured employee accomplish reasonable physical rehabilitation goals and return to suitable gainful employment.
(2) Medical rehabilitation services are those medically oriented services beyond basic medical, surgical and hospital treatment which assist an injured employee in reaching physical rehabilitation goals.
(3) Vocational rehabilitation services are those vocationally related services which help an injured employee resume suitable gainful employment.
(4) Suitable gainful employment means employment which will produce substantial income, and which is reasonably attainable taking into consideration the injured employee's age, education, previous employment, place of resident and limitations.
(5) A rehabilitation plan is a written proposal prepared by a qualified rehabilitation provider stating the vocational goal to be met, the kinds and costs of services necessary to meet that goal, the names and addresses of the vendors, and a justification for the recommended services. While preparing a rehabilitation plan, the qualified rehabilitation provider shall consider utilization of the employee's transferrable job skills for job placement into suitable gainful employment prior to recommending training.
(6) Qualified rehabilitation provider means an individual who has met the minimum requirements for listing in and is listed in the Registry of Qualified Rehabilitation Providers. A qualified rehabilitation provider is a case coordinator and not a direct provider of therapeutic services.
(7) In-house qualified rehabilitation provider means an individual who has met the minimum qualifications for listing in and is listed in the Registry of In-house Qualified Rehabilitation Providers.
(8) Qualified rehabilitation facility or institution means a rehabilitation facility or institution which has met the minimum requirements for listing in and is listed in the Directory of Qualified Rehabilitation Facilities.
(9) Qualified rehabilitation agency means the Office of Vocational Rehabilitation, Department of Education.

Section 2. Responsibilities. (1) The employer/carrier shall provide appropriate rehabilitation services to injured employees in accordance with KRS 342.710 and the administrative regulations of the Workers' Compensation Board.
(2) Injured employees shall be entitled to rehabilitation services to help them accomplish reasonable physical rehabilitation goals and to help them return to suitable gainful employment, and shall be responsible for accepting such services in accordance with KRS 342.710 and th administrative regulations of the Workers Compensation Board.
(3) It shall be the responsibility of

qualified rehabilitation providers, facilities and agencies to provide services within their areas of competencies and to submit such information as is required by the Workers' Compensation Board for registration and monitoring purposes.

Section 3. Application for Listing in Directory of Qualified Rehabilitation Facilities. (1) To apply for listing in the Director of Qualified Rehabilitation Facilities, a rehabilitation facility or institution shall submit an application as provided by the Workers' Compensation Board and such supporting documentation as may be required. Rehabilitation facilities shall also provide such information as may be deemed necessary for monitoring purposes. A qualified rehabilitation facility may be either a freestanding facility or a rehabilitation unit in a general, acute care hospital.

[(2) Recognizing that injured employees with significant physical rehabilitation problems may benefit most from a broad range of rehabilitation services administered in an organized, goal oriented, team approach, the Workers' Compensation Board endorses rehabilitation programs which have met strict licensure and accreditation standards.]

(2) [(3)] To assure the availability of the broad range of medical rehabilitation and vocational rehabilitation services necessary pursuant to KRS 342.710, and to facilitate vigorous monitoring of rehabilitation facilities, a qualified rehabilitation facility must meet certain licensure and accreditation requirements.

(3) [(4)] The facility must be licensed through the Division for Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources, or accredited through the Commission on Accreditation of Rehabilitation Facilities to provide [inpatient physical] rehabilitation services [pursuant to 902 KAR 20:016 or 902 KAR 20:240].

(4) [(5)] Out-of-state rehabilitation facilities or institutions providing rehabilitation services to Kentucky workers' compensation claimants must meet similar licensure or accreditation requirements.

(5) [(6)] A facility or institution which has been listed in the Directory of Qualified Rehabilitation Facilities but loses any required license or accreditation shall immediately be removed from the Directory of Qualified Rehabilitation Facilities.

(6) [(7)] The Directory of Qualified Rehabilitation Facilities lists those facilities which met certain minimal licensure or accreditation standards to provide rehabilitation services. They have applied to be listed as resources to which an injured employee may be referred by an administrative law judge on his own motion, or upon application of any party, for evaluation of the types of services needed to return him to a remunerative occupation and for provision of rehabilitation services.

[(5) The facility must be accredited through the Commission on Accreditation of Rehabilitation Facilities in the following program areas:]

[(a) Comprehensive inpatient rehabilitation;]

[(b) Outpatient medical rehabilitation;]

[(c) Vocational evaluation.]

[Section 4. Application for Provisional Listing in the Directory of Qualified Rehabilitation Facilities. (1) In order to permit a period of transition for facilities or institutions which may be affected by this policy, provisional listing in the Directory of Qualified Rehabilitation Facilities may be granted by the Workers' Compensation Board to a facility or institution which meets certain licensure and certification requirements.]

[(2) The facility must be licensed through the Division for Licensing and Regulation in the Office of Inspector General, Cabinet for Human Resources to provide inpatient physical rehabilitation services pursuant to 902 KAR 20:016 or 902 KAR 20:240.]

[(3) The facility must certify to the Workers' Compensation Board in the application process that diligent efforts will be made to obtain accreditation through the Commission on Accreditation of Rehabilitation Facilities in the following program areas within one (1) year from the date of approval as a qualified rehabilitation facility on a provisional basis:]

[(a) Comprehensive inpatient rehabilitation;]

[(b) Outpatient medical rehabilitation;]

[(c) Vocational evaluation.]

[The Certificate of Qualification issued to a facility on a provisional basis expires one (1) year from the date of approval. However, the Workers' Compensation Board may grant an extension of time upon written request and a determination that diligent efforts have resulted in significant progress toward obtaining the required accredited programs through the Commission on Accreditation of Rehabilitation Facilities.]

[Section 5. Removal from Directory of Qualified Rehabilitation Facilities. (1) A facility or institution which has been listed in the Directory of Qualified Rehabilitation Facilities but loses any licensure requirement shall immediately be removed from the Directory of Qualified Rehabilitation Facilities.]

[(2) A facility or institution which has been listed in the Directory of Qualified Rehabilitation Facilities but loses any accreditation requirement may be granted provisional listing in the Directory of Qualified Rehabilitation Facilities upon application and approval by the Workers' Compensation Board.]

Section 4. [6.] Registry of Qualified Rehabilitation Providers. (1) To apply for listing in the Registry of Qualified Rehabilitation Providers, an individual shall submit an application as provided by the Workers' Compensation Board and submit such supporting documentation as may be required. Qualified Rehabilitation Providers shall also provide such information as may be required for monitoring purposes.

(2) For those applications received within sixty (60) days of the effective date of this regulation, the minimum qualifications for rehabilitation nurses are:

(a) Registered nurse with a current Kentucky license; and

(b) Subsequent employment as a rehabilitation nurse.

(3) For those applications received within sixty (60) days of the effective date of this regulation the minimum qualifications for

rehabilitation counselors are:
(a) Doctorate or master's degree in rehabilitation counseling, or related to rehabilitation counseling, as most recently defined by the Commission on Rehabilitation Counselor Certification; or
(b) Baccalaureate degree in rehabilitation counseling, or related area; or
(c) Other baccalaureate degree and subsequent experience as a rehabilitation counselor.
(4) For those applications received sixty-one (61) or more days after the effective date of this regulation, the minimum qualifications for rehabilitation nurses are:
(a) Registered nurse with a current Kentucky license; and
(b) Certification as a certified rehabilitation registered nurse or certified insurance rehabilitation specialist within one (1) year after the education and work experience requirements for certification are met, or one (1) year after the date of application, whichever date is later.
(5) For those applications received sixty-one (61) or more days from the effective date of this regulation, the minimum qualifications for rehabilitation counselors are:
(a) Doctorate or master's degree in rehabilitation counseling, or related to rehabilitation counseling, as most recently defined by the Commission on Rehabilitation Counselor Certification; or
(b) Baccalaureate degree in rehabilitation counseling, or related area; and
(c) Certification as a certified rehabilitation counselor or certified insurance rehabilitation specialist within one (1) year after the education and work experience requirements for certification are met, or one (1) year after the date of application, whichever date is later.

Section 5. [7.] Registry of In-house Qualified Rehabilitation Providers. (1) Nothing in this regulation shall prevent self-insured employers or workers' compensation insurance carriers from referring cases to qualified rehabilitation providers on their staff, contingent upon rehabilitation services being provided in accordance with KRS 342.710 and the administrative regulations of the Workers' Compensation Board.
(2) In-house qualified rehabilitation providers shall be subject to the same qualifications and reporting requirements as rehabilitation nurses and rehabilitation counselors listed in the Registry of Qualified Rehabilitation Providers.
(3) A separate Registry of In-house Qualified Rehabilitation Providers shall be maintained by the Workers' Compensation Board.

Section 6. [8.] Continuing Education Requirements. (1) The Workers' Compensation Board may, at its discretion, require qualified rehabilitation providers and in-house qualified rehabilitation providers to attend training sessions sponsored by the Workers' Compensation Board at such times and places as may be deemed necessary.
(2) A qualified rehabilitation provider or in-house qualified rehabilitation provider who, without good cause, fails to attend training sessions required by the Workers' Compensation Board, may be removed from the Registry of Qualified Rehabilitation Providers or Registry of In-house Qualified Rehabilitation Providers.

Section 7. [9.] Requests for Registration Renewal. (1) By July 15th of each year, qualified rehabilitation providers, and in-house qualified rehabilitation providers who want to continue in those roles shall submit a letter to the Workers' Compensation Board requesting registration renewal. The letter shall also list all pertinent continuing education by title, location, dates, and provider which was completed the previous twelve (12) month period ending June 30. The letter shall also list by name, address, telephone number, social security number, and Workers' Compensation Board file number all workers' compensation claimants who were served during that same time period.
(2) A qualified rehabilitation provider who, without good cause, fails to submit a request for registration renewal with all required information, may be removed from the Registry of Qualified Rehabilitation Providers or Registry of In-house Qualified Rehabilitation Providers.
(3) A qualified rehabilitation provider who does not list any workers' compensation claimants served in two (2) consecutive requests for registration renewal shall be removed from the Registry of Qualified Rehabilitation Providers.

Section 8. [10.] Removal from Registry of Qualified Rehabilitation Providers, or Registry of In-house Qualified Rehabilitation Providers. (1) In the event of evidence of a violation of the Workers' Compensation Board's rules and regulations, or receipt of a written complaint against a qualified rehabilitation provider or in-house qualified rehabilitation provider, he shall be notified in writing of the alleged rule violation or nature of the complaint.
(2) Within ten (10) days of receipt of the notice, he shall file a written response.
(3) If it is determined that further investigation is required, a hearing shall be scheduled. After reviewing the evidence, an administrative law judge may issue an order dismissing the complaint, placing the qualified rehabilitation provider, or in-house qualified rehabilitation provider on probation, or revoking his registration.
(4) Any appeal from the order of the administrative law judge shall be governed by procedures applicable to appeals from the order of administrative agencies generally.
(5) A qualified rehabilitation provider or in-house qualified rehabilitation provider may reapply for registration after 180 days from the date of revocation.

Section 9. [11.] Provision of Rehabilitation Services. (1) It shall be the responsibility of the employer/carrier to identify injured employees who may benefit from rehabilitation services and to provide appropriate rehabilitation services pursuant to KRS 342.710 and the administrative regulations of the Workers' Compensation Board.
(2) In their selection of individuals to whom they must refer injured employees for coordination of medical rehabilitation services and vocational rehabilitation services, the employer/carrier shall be limited to qualified rehabilitation providers listed in the Registry of Qualified Rehabilitation Providers or

Registry of In-House Qualified Rehabilitation Providers.

(3) The types of services to be provided by qualified rehabilitation providers include, but are not limited to:

(a) Assessment of current level of medical care and needs;

(b) Discharge planning, follow-up services, and assessment of future rehabilitation needs;

(c) Assessment of need for referral for medical rehabilitation services;

(d) Serving as liaison between physicians, patient, family, employer/carrier, attorney;

(e) Assessment of home modification and vehicle modification requirements;

(f) Arrangements for transfers, attendant care, medical supplies and equipment;

(g) Patient and family education regarding the employee's injury;

(h) Medical clarification and general coordination of medical rehabilitation services;

(i) Vocational evaluation;

(j) Vocational counseling;

(k) Job analysis;

(l) Job modification;

(m) Job placement;

(n) Referral for diagnostic vocational and psychological testing;

(o) Determining vocational goals and writing rehabilitation plans outlining services and costs needed to attain that goal;

(p) General coordination of vocational services.

(4) In order to retain control over the costs of rehabilitation, the employer/carrier representative may establish guidelines for services to be provided by qualified rehabilitation providers and may reassign cases from one qualified rehabilitation provider to another at his discretion.

[(5) All medical rehabilitation services shall be provided at a qualified rehabilitation facility listed in the Directory of Qualified Rehabilitation Facilities.]

Section 10. [12.] Referral of Catastrophic Injury Cases. (1) Any case other than catastrophic injury cases may be referred to a qualified rehabilitation provider at any time for routine coordination of medical and vocational services. However, in catastrophic injury cases, the employer/carrier shall refer the injured employee to a rehabilitation nurse listed in the Registry of Qualified Rehabilitation Providers or Registry of In-House Qualified Rehabilitation Providers within fifteen (15) days of knowledge of such an injury.

(2) Referral of catastrophic injury cases shall be made on a form provided by the Workers' Compensation Board, a copy of which shall be sent to the Workers' Compensation Board by the claim manager.

(3) Catastrophic injury cases include:

(a) Spinal cord injuries;

(b) Amputation of a hand or foot;

(c) Severe brain or closed head injuries;

(d) Blindness;

(e) Second or third degree burns over twenty-five (25) percent or more of total body surface, or third degree burns to twenty-five (25) percent or more of face or hands;

(f) Other injuries or conditions expected to result in need for substantial medical rehabilitation services beyond acute care hospitalization.

(4) Within seven (7) days of receipt of a catastrophic injury case, the rehabilitation nurse shall make an initial report to the claim manager on a form provided by the Workers' Compensation Board, a copy of which shall be sent to the Workers' Compensation Board by the rehabilitation nurse. The initial report shall summarize the current level of medical care and needs, and the long-term medical and physical rehabilitation needs. Copies of subsequent written reports to the claim manager shall be sent to the Workers' Compensation Board by the rehabilitation nurse.

(5) The rehabilitation nurse shall submit a final report to the employer/carrier on a form provided by the Workers' Compensation Board, a copy of which the rehabilitation nurse shall send to the Workers' Compensation Board, which shall summarize the types of services provided and the total charges billed to the employer/carrier. The rehabilitation nurse shall not bill for time or expenses related to completing and submitting forms and reports required by the Workers' Compensation Board.

Section 11. [13.] Referral of Ninety (90) Day Lost Time Cases. (1) In all cases in which an injured employee has not been referred to a qualified rehabilitation provider at an earlier date, then within seven (7) days after an injured employee has ninety (90) days of temporary total disability, the employer/carrier shall submit a report to the Workers' Compensation Board on a form supplied by the Workers' Compensation Board which will indicate:

(a) The name, address and telephone number of the qualified rehabilitation provider to whom the case has been assigned; or

(b) States that, following maximum medical improvement, the injured employee will be able to resume his usual customary employment or other suitable gainful employment; or

(c) States the injured employee is so seriously impaired as to be unable to benefit from vocational rehabilitation services; or

(d) States the injured employee voluntarily elects not to be referred to a qualified rehabilitation provider due to retirement plans; or

(e) Other (explain).

(2) The assertion of the employer/carrier of the injured employee's ability to return to work following maximum medical improvement, or inability to benefit from vocational rehabilitation services due to the severity of his impairment, shall be supported by an attached statement from the employee's treating or examining physician.

Section 12. [14.] Referral of Other Cases. (1) If in addition to catastrophic injury cases and ninety (90) day lost time cases, the employer/carrier elects to voluntarily refer other cases for coordination of medical or vocational services or for medical clarification, such cases shall be referred only to qualified rehabilitation providers.

(2) The employer/carrier shall make such referrals on a form provided by the Workers' Compensation Board and shall submit a copy to the Workers' Compensation Board within seven (7) days of case assignment.

Section 13. [15.] Limitations on Duties of Qualified Rehabilitation Providers. (1) On any

case to which an individual is assigned as a qualified rehabilitation provider, he shall be prohibited from performing any claims investigation or claims adjusting functions such as, scheduling medical, vocational, or rehabilitation evaluations for the purpose of securing adverse testimony or discussing settlements.

(2) Qualified rehabilitation providers shall not interpret workers' compensation law for injured employees other than to explain the role of qualified rehabilitation providers and to discuss rehabilitation services and procedures pursuant to KRS 342.710 and administrative regulations for workers' compensation rehabilitation procedures.

(3) Absent the written permission of the physician, chiropractor, osteopath, psychologist, or other medical personnel and the injured employee, the qualified rehabilitation provider shall not be present in the examination area or treatment area during examination or treatment of the injured employee.

Section 14. [16.] Supplemental Report by the Employer/Carrier. (1) In the event an injured employee previously designated by the employer/carrier as likely to return to suitable gainful employment following maximum medical improvement has not done so within 180 days of temporary total disability, the employer/carrier shall within seven (7) days thereafter submit a supplemental report to the Workers' Compensation Board stating the name and address of the qualified rehabilitation provider to whom the employee has been referred, or a statement from the employee's treating physician describing the employee's current condition and likelihood of returning to suitable gainful employment.

(2) For those employees still designated as likely to return to suitable gainful employment following maximum medical improvement, subsequent supplemental reports shall be submitted by the employer/carrier every ninety (90) days thereafter.

Section 15. [17.] Submission of Rehabilitation Plan by Qualified Rehabilitation Provider. (1) If the qualified rehabilitation provider determines the injured employee is unlikely to return to suitable gainful employment without the intervention of vocational rehabilitation services, he shall submit a rehabilitation plan to the employer/carrier listing the vocational goal to be met, the kinds and costs of services necessary to meet that goal, the names and addresses of the vendors, and a justification for the recommended services.

(2) Within thirty (30) days of receipt of the referral, the qualified rehabilitation provider shall submit a rehabilitation plan to the employer/carrier on a form provided by the Workers' Compensation Board, and the qualified rehabilitation provider shall send a copy to the Workers' Compensation Board.

(3) The rehabilitation plan, and the copy to the Workers' Compensation Board, shall be accompanied by copies of medical, psychological, and vocational evaluation reports on which the vocational goal is based. Labor market information documenting a reasonable chance for successful placement shall be included. The medical and psychological reports shall expressly state the permanent physical and psychological restrictions under which the employee is placed.

(4) If additional services not listed on the original rehabilitation plan become necessary, the qualified rehabilitation provider shall submit rehabilitation plan amendments to the employer/carrier representative for his approval. Rehabilitation plan amendments shall have the same format and requirements as the original rehabilitation plan, including submission of copies to the Workers' Compensation Board.

(5) Medical, surgical, hospital treatment, medical rehabilitation services, supplies and appliances normally required for the cure or relief of the effects of occupational injuries and diseases shall not be included in rehabilitation plans or rehabilitation plan amendments.

(6) Rehabilitation plans and rehabilitation plan amendments shall include any specific diagnostic medical, psychological, and vocational testing and evaluation necessary to determine a vocational goal, and any specific vocational rehabilitation service needed to attain that goal, such as counseling, job placement, job analysis, job modification, training, and related costs. Rehabilitation plans and rehabilitation plan amendments shall be signed by the qualified rehabilitation provider proposing the services, by the injured employee, and by the employer/carrier representative authorizing the services.

(7) Copies of all rehabilitation plans and rehabilitation plan amendments shall be supplied to the injured employee by the qualified rehabilitation provider.

Section 16. [18.] Submission of Progress Reports by Qualified Rehabilitation Provider. (1) In the event a rehabilitation plan cannot be developed within thirty (30) days, then in lieu of the rehabilitation plan, the qualified rehabilitation provider shall submit a progress report to the employer/carrier, on a form provided by the Workers' Compensation Board, summarizing activities, problems, and progress, a copy of which the qualified rehabilitation provider shall send to the Workers' Compensation Board.

(2) Such progress reports shall be submitted every thirty (30) days until a rehabilitation plan is submitted and every sixty (60) days thereafter until the injured employee returns to work, or until vocational rehabilitation services are discontinued.

(3) Copies of all progress reports shall be supplied to the employee by the qualified rehabilitation provider.

Section 17. [19.] Submission of Final Report by Qualified Rehabilitation Provider. (1) The qualified rehabilitation provider shall submit a final report to the employer/carrier on a form provided by the Workers' Compensation Board, a copy of which shall be sent by the qualified rehabilitation provider to the Workers' Compensation Board, which shall include a description of the job to which the injured employee has returned, his rate of pay, the name and address of the employer, or the reason vocational rehabilitation services were discontinued, and such other information as may be required.

(2) The final report shall include the total costs of vocational rehabilitation services by

category and vendor, such as: tuition, books, fees, room, board, and transportation, and any other categories required by the Workers' Compensation Board. The final report shall also include a summary of the services provided by the qualified rehabilitation provider and the total charges billed to the employer/carrier by the qualified rehabilitation provider.

(3) The final report shall be submitted within thirty (30) days of case closure and final billing. The qualified rehabilitation provider shall not bill for time or expenses related to completing and submitting forms and reports required by the Workers' Compensation Board. A copy of the final report shall be provided to the employee by the qualified rehabilitation provider.

Section 18. [20.] Written Request for Rehabilitation Services. (1) In the event the employer/carrier fails to refer an injured employee for rehabilitation services pursuant to KRS 342.710 and the administrative regulations for workers' compensation rehabilitation procedures, the injured employee, or anyone on his behalf, may file a written request for rehabilitation services.

(2) If the dispute cannot be resolved voluntarily, interlocutory relief may be sought by filing a Form 101 or Form 102.

Section 19. [21.] Dispute Resolution. (1) Any dispute involving the provision or acceptance of rehabilitation services that cannot be resolved without a formal hearing process shall be resolved according to the procedures in KRS 342.710(3).

(2) In the event a dispute regarding rehabilitation arises prior to the filing of an application for adjustment of claim, the aggrieved party may file a Form 101 or Form 102 to seek interlocutory relief.

Section 20. [22.] Forms. Forms R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, R11, R12, R13, and R14 are hereby adopted by reference.

ARMAND ANGELUCCI, Chairman
APPROVED BY AGENCY: August 25, 1988
FILED WITH LRC: August 26, 1988 at 10:30 a.m.

AMENDED AFTER HEARING

TOURISM CABINET
Department of Fish and Wildlife Resources
(Amended After Hearing)

301 KAR 4:070. Scientific, educational and commercial nuisance wildlife control collecting permits.

RELATES TO: KRS 150.010, 150,025, 150.180, 150.183, 150.275, 150.305, 150.365, 150.460, 150.990

STATUTORY AUTHORITY: KRS 13A.350, 150.025

NECESSITY AND FUNCTION: The commissioner, with the concurrence of the commission, finds it necessary to regulate the collecting of wildlife species for scientific, educational and commercial nuisance control purposes while continuing to protect the wildlife resource. The purpose of this regulation is to detail procedures and responsibilities necessary for the prudent collecting of wildlife and for deposition of data collected.

Section 1. Definitions. (1) "Protected wildlife" means all wildlife except woodchuck, coyote, starling, crow, house sparrow and all species of moles, mice, rats, shrews, insects, [and other] terrestrial invertebrates, **and microscopic life forms** unless listed or included by reference in Section 2 of this regulation.

(2) "Scientific wildlife collecting" means the taking by specified means and the subsequent possession of wildlife specimens for the purposes of conducting scientific investigations or evaluations for which a remuneration is received.

(3) "Educational wildlife collecting" means the taking by specified means and subsequent possession of wildlife specimens by an individual or nonprofit organization for the purposes of conducting educational studies, scientific investigations, evaluations, or for use in the bona fide instruction of students.

(4) "Commercial nuisance wildlife control" means the capture, transportation and release of protected wildlife specimens for the purposes of removing problem wildlife from private or public property and for which a remuneration is received.

(5) "Federally protected wildlife" means any federally threatened or endangered species listed by the U.S. Fish and Wildlife Service and included in this regulation by reference, any threatened or endangered species listed in Section 2(2) of this regulation by the U.S. Fish and Wildlife Service, and any native bird species except crow.

Section 2. Items Incorporated by Reference. (1) "Endangered and Threatened Wildlife and Plants," U.S. Fish and Wildlife Service, Department of the Interior, 1986.

(2) In addition to the species listed in the reference in subsection (1) of this section, the following species are included:

[PELECYPODS:	
Little-winged pearly-mussel]	Pegias fabula
CRUSTACEANS:	
Clifton Cave isopod	Caecidotea barri
Crayfish	Cambarus batchi
Big South Fork crayfish	Cambarus bouchardi
Bousfield's amphipod	Gammarus bousfieldi
Louisville crayfish	Orconectes jeffersoni
GASTROPODS:	
Onyx rocksnail	Leptoxis praerosa
Armored rocksnail	Lithasia armigera
Ornate rocksnail	Lithasia geniculata
Rustic rocksnail	Lithasia salebrosa
Varicose rocksnail	Lithasia verrucosa
PELECYPODS:	
Cumberland elktoe	Alasmidonta atropurpurea
Spectacle case	Cumberlandia monodonta
Fanshell	Cyprogenia stegaria
Cumberland combshell	Epioblasma brevidens
Oyster mussel	Epioblasma capsaeformis
Catspaw	Epioblasma obliquata
Crackling pearlymussel	Hemistena lata
Scaleshell	Leptodea leptodon
Ring pink	Obovaria retusa
Little-winged pearlymussel	**Pegias fabula**
Clubshell	Pleurobema clava
Tennessee clubshell	Pleurobema oviforme
Pyramid pigtoe	Pleurobema pyramidatum
Rabbitsfoot	Quadrula cylindrica
Winged mapleleaf	Quadrula fragosa
Salamander mussel	Simpsonaias ambigua
Bean villosa	Villosa fabalis
Kentucky creekshell	Villosa ortmanni
FISHES:	
Blackside dace	Phoxinus cumberlandensis
Lake sturgeon	Acipenser fulvescens
Northern cavefish	Amblyopsis spelaea
Crystal darter	Ammocrypta asprella
Eastern sand darter	Ammocrypta pellucida
Blue sucker	Cycleptus elongatus
Johnny darter	Etheostoma nigrum susanae
Sturgeon chub	Hybopsis gelida
Sicklefin chub	Hybopsis meeki
Palezone shiner	Notropis sp.
Longhead darter	Percina macrocephala
Pallid sturgeon	Scaphirhynchus albus
AMPHIBIANS:	
Green salamander	Aneides aeneus
Hellbender	Cryptobranchus alleganiensis
REPTILES:	
Kirtland's snake	Clonophis kirtlandii
Alligator snapping turtle	Macroclemys temminckii
Copperbelly water snake	Nerodia erythrogaster neglecta
BIRDS:	
Bachman's sparrow	Aimophila aestivalis
American swallow-tailed kite	Elanoides forficatus forficatus
Migrant loggerhead shrike	Lanius ludovicianus migrans
Bewick's wren	Thryomanes bewickii

MAMMALS:	
Gapper's red-backed mouse	Clethrionomys gapperi maurus
Pygmy shrew	Microsorex hoyi winnemana
Southeastern myotis	Myotis austroriparius
Small-footed myotis	Myotis subulatus leibii
Eastern wood rat	Neotoma floridana magister
Rafinesque's big-eared bat	Plecotus rafinesquii
Long-tailed shrew	Sorex dispar
New England cottontail	Sylvilagus transitionalis
INSECTS:	
Midget snaketail dragonfly	Ophiogomphus howei
Six-banded longhorn beetle	Dryobius sexnotatus
American burying beetle	Nicrophorus americanus
Black lordithon rove beetle	Lordithon niger

(3) "Endangered, Threatened, and Rare Plants and Animals of Kentucky," Warren, M.L., Jr., W.H. Davis, R.R. Hannan, M. Evans, D.L. Batch, B.D. Anderson, B. Palmer-Ball, Jr., J.R. MacGregor, R.R. Cicerello, R. Athey, B.A. Branson, G.J. Fallo, B.M. Burr, M.E. Medley, and J.M. Baskin, Volume 47, Transactions of the Kentucky Academy of Science, pages 83-98, 1986.

Section 3. Permit Required. Except as provided in Section 4(4) of this regulation, a permit is required by all persons involved in scientific wildlife collecting, educational wildlife collecting or commercial nuisance wildlife control activities involving any protected wildlife in the state of Kentucky. This requirement does not apply to employees of the department engaged in their official duties.

Section 4. Applications, Fees, Issuance Procedures, Possession Requirements, and Revocation. (1) Applications. Available from the department.

(2) Fees. Fees are based on permit type and are listed in 301 KAR 3:021. The type of permit for which to apply shall be determined by consulting Section 1(2), (3) and (4) of this regulation. Remittance shall be by check or money order payable to the Kentucky Department of Fish and Wildlife Resources. Fees shall accompany the application.

(3) Issuance. A permit shall be issued upon receipt of a satisfactorily completed application, remittance of the correct fee and any testaments required in Section 7(2) of this regulation. Noncompliance with any provisions of this regulations shall be grounds to deny the issuance of a permit. If permit modifications are necessary after the permit is issued, the applicant shall notify the department.

(4) Possession requirements. At least one (1) person in a field party whose name appears on the permit shall carry a valid collecting permit or a photocopy of the same.

(5) Revocation. Permittees shall obey all applicable wildlife laws and regulations or have the permit revoked without refund if convicted of a violation. The offending person shall be ineligible to apply for another permit or be an assistant on any other permit for a period of three (3) years following revocation.

Section 5. Federal Permit Requirements. No federally protected wildlife, living or dead, may be collected unless the collector holds a valid federal permit or a letter designating him as an agent of the department, in addition to a valid Kentucky collecting permit.

Section 6. Reporting Requirements. (1) A written report of the collecting activities carried out during the year for which a scientific or educational collecting permit was issued shall be submitted to the department by no later than January 31 of the following year. Each report shall include the common name, scientific name **(to lowest possible taxon)**, date of collection, condition (living or dead), method of disposal or retention, and specific locality of collection for each specimen or series collected. **No report is required to document the taking of unprotected aquatic and terrestrial invertebrates.** Locality data shall include the county in which the specimens were collected and the location at which the collection was made. Photocopies of county maps (or topographic maps) and field notes may suffice for locality reporting provided that all pertinent information is included. Permittees shall immediately report the discovery or collection of any federally protected or Kentucky threatened or endangered wildlife, that are incorporated by reference in Section 2(3) of this regulation, (whether collected or not) to the department.

(2) Commercial nuisance wildlife control collecting permittees shall report annually by January 31 of the following year on forms provided by the department.

Section 7. Deposition of Specimens, Special Conditions for Taking Specified Wildlife and Disposal of Specimens. (1) Deposition of specimens. If specimens have been retained for verification, the name and address of any museum or recognized collection in which these voucher specimens have been deposited or the names and addresses of those persons or institutions that are maintaining the specimens shall be provided.

(2) Special conditions for taking specified wildlife. Commercial nuisance wildlife control permittees shall not kill protected wildlife unless such protected wildlife is taken during an open season for that species or such taking is otherwise authorized by the commissioner. Applicants for any permit that would allow them to collect bats shall attest by written affidavit that they possess the ability to identify federally protected bat species in the field, in life, so that such species shall not be inadvertently killed. Permittees shall not collect more than two (2) living specimens of any Kentucky endangered or threatened species, that are incorporated by reference in Section 2(3) of this regulation, from any one locality during the permit year without additional authorization from the commissioner. Road kills or specimens found dead of natural causes may be taken in unlimited numbers for study unless they are federally protected wildlife.

(3) Disposal of specimens. All captured protected wildlife not killed shall be immediately released in a rural habitat suitable to that species. All other collected specimens shall either be appropriately preserved, disposed of or released as specified on the permit.

Section 8. Other General Prohibitions. (1) A collecting permit of any type shall not be used in lieu of a standard hunting or fishing license.
(2) Under no circumstances shall toxicants be used to take bats of any species.

DON R. McCORMICK, Commissioner
MARY RAY OAKEN, Secretary
DAVID GODBY, Chairman
APPROVED BY AGENCY: October 11 1988
FILED WITH LRC: October 11, 1988 at 2 p.m.

WORKERS' COMPENSATION BOARD
Department of Workers' Claims
(Amended After Hearing)

803 KAR 25:025. Joint self-insurers.

RELATES TO: KRS 342.350
STATUTORY AUTHORITY: KRS 342.350
NECESSITY AND FUNCTION: This regulation establishes the procedure and minimum requirements through which groups of employers may join together to self-insure their workers' compensation liability.

Section 1. Definitions. (1) "Group members" means employers who form a self-insurance group and who have common ownership, common interests or both.
(2) "Common ownership" means two (2) or more entities with more than fifty (50) percent common ownership. For the purpose of creating a group of self-insured employers and certification thereof as such under this regulation, all group member employers having more than fifty (50) percent common ownership shall constitute one (1) group member employer.
(3) "Common interests" means two (2) or more entities that are members of a bona fide trade association or are engaging in similar activities and with similar worker's compensation risks.
(4) "Manual premium" means the premium produced by using applicable manual rates, manual classifications and payrolls without regard to premium discounts and experience modifications.
(5) "Normal premium" means the premium produced by the application of a percentage to the manual premium. This percentage shall be agreed upon by the trustees and the excess insurers, and shall be based upon the actual past and anticipated future premiums and losses of the group members.
(6) "Aggregate excess insurance" means an insurance policy which covers statutory claims in excess of a certain percentage of the normal premium subject to a maximum dollar amount **and is written on the basis of claims incurred during the policy period.** ["Statutory claims" means all occurrences taking place within the liability period of the aggregate excess insurance policy for which liability is or may be imposed on an employer under KRS Chapter 342.]
(7) "Specific excess insurance" means an insurance policy which covers the amount of any claim from any one (1) occurrence involving one (1) or more employees in the same accident or occurrence in excess of a specified dollar amount subject to a maximum dollar amount.
(8) "Loss fund" means the amount of the total retained liability for claims by the group members as set forth in the aggregate excess insurance policy.
(9) "Self-insurance fund" means the loss fund together with all other expenses of the group related to the self-insurance program, including aggregate and specific excess insurance, servicing organization fees, bonds, related taxes and other reasonable and necessary expenses.
(10) "Assessments" means charges to group members to sustain the self-insurance fund.
(11) "Surplus funds" means monies in the self-insurance fund resulting from investment income and resulting from earned premiums in excess of all losses and other costs for the period in which premiums were earned, including all reserves for outstanding liabilities.
(12) "Dividends" means periodic payments to group members from surplus funds.
(13) "Trustees" means persons to be elected by the group members and/or selected by the board of directors of the association for stated terms to direct the administration of the self-insurance fund.
(14) "Fiscal agent" means a person, partnership or corporation, other than a servicing organization or employees or agents of a servicing organization, with whom the trustees enter into a contract for the receipt, investment and disbursement of the self-insurance fund.
(15) "Servicing organization" means a person, partnership or corporation with whom the trustees enter into a contract to perform one (1) or more of the following services:
(a) Adjustment of claims;
(b) Safety engineering;
(c) Purchase of excess insurance;
(d) Accumulation of statistics and the preparation of needed premium and loss reports and tax reports;
(e) Development of members, assessments and dividends;
(f) Administration of a revolving fund; and
(g) Preparation of self-insurance reports as may be required by the trustees or law.
(16) "Manual" means the manual on worker's compensation insurance as filed by the National Council on Worker's Compensation and approved by the Kentucky Department of Insurance.
(17) "Board" means the Workers' Compensation Board, Department of Workers' Claims [Labor], Commonwealth of Kentucky.

Section 2. Requirements for Group Self-insurance. (1) A group of employers must file an application and an indemnity agreement in the form prescribed by the board to become group self-insurers. Such application must be filed not later than thirty (30) days prior to the proposed inception date of the self-insurance program. The indemnity agreement shall jointly and severally bind the group and each member thereof to comply with the provisions of the Kentucky Workers' Compensation Act, the rules and regulations of the board, and the decision of the trustees for operation of the group fund.
(2) Applicants must either meet the requirements of common ownership or common interests, or both. **The liability of no one group member may exceed sixty (60) percent of the normal premium nor sixty (60) percent of the liabilities of the group.**
(3) Group members must have a total estimated

annual normal premium of not less than $100,000. The total group must have a combined net worth of not less than $500,000 as shown by sworn statements by the owners or officers of each group member. Statements need not be certified, but must have been prepared by a certified public accountant.

Section 3. New Members. New members of a group must meet all the requirements of an original member.

Section 4. Withdrawals. (1) Members of a group. In order to withdraw from a self-insurance group a member must give sixty (60) days notice to the trustees and the board, must receive written acknowledgment from the trustees, and is not entitled to receive any dividends for at least two (2) years after the effective date of its withdrawal.

(2) Entire group. Should a group determine to withdraw from its self-insurance program, the trustees must give thirty (30) days notice to the board and to each of the group members by certified mail and may pay no dividends without the specific written approval of the board for at least three (3) years following the close of each self-insurance year during which it operated. It must also show the board that it has made satisfactory arrangements for the continued payment and servicing of all outstanding claims.

Section 5. Trustees; Duties. (1) Trustees shall consist of not less than three (3) nor more than seven (7) persons, none of whom are to be officers, employees or agents of a servicing organization. The trustees shall have the authority to administer the operations of the self-insurance fund.

(2) The trustees on behalf of the group members shall be responsible for the assessment and collection of all funds from the group members for the self-insurance fund, and for the disbursements of all funds in accordance with written agreements between the trustees and all group members. Such disbursements shall include the payment of claims, or payments into a revolving fund from which such claim payments shall be made, payments of insurance and bond premiums, payment of fees under agreements with servicing organizations and fiscal agents, payment of dividends to members, payment of self-insurance taxes and payment of all other expenses which may be reasonable and necessary.

(a) The trustees may contract with a fiscal agent and/or servicing organization to perform these functions.

(b) A revolving fund of not more than twenty (20) percent of estimated annual normal premiums may be established for the use by a servicing organization for the payment of claims.

(3) The trustees may perform, if qualified, any or all of the functions of a servicing organization or may contract with a servicing organization to perform these functions.

(a) A servicing organization must be qualified to perform the functions that it contracts to perform. Its employees and/or agents must be duly licensed to perform those functions for which a license is required under Kentucky law.

(b) Any contract with a servicing organization that includes the adjustment and settlement of claims must include a requirement that the servicing organization will adjust to final conclusion any and all claims that result from an occurrence during the period for which the contract is effective.

(c) If there is to be a revolving fund, the servicing organization must maintain a fidelity bond as required herein.

(4) Excess insurance.

(a) With the exception of group self-insurers qualified under paragraph (b) of this subsection, the trustees must purchase aggregate excess insurance for losses in excess of a percentage of the normal premium which shall be the retained liability of the group members. That retained liability and other fixed costs of the fund must not exceed 100 percent of the assessment of the group members, unless such amount over 100 percent is secured by unencumbered surplus monies of the group fund. The limit of liability of the aggregate excess insurance shall not be less than $1,000,000 or fifty (50) percent of the normal premium, whichever is higher.

(b) A group self-insured shall not be required to purchase aggregate excess insurance under the following conditions:

1. The group self-insured has been in continuous operation for at least five (5) years.

2. The group self-insured's annual normal premium has exceeded five (5) million dollars in each of the most recent three (3) policy periods.

3. The group self-insured's reserves for unpaid incurred losses and expenses and its premium structure for the current policy period have been established so as to provide adequately for the losses expected to arise from its underwritings. Proof of adherence to this requirement must be provided by way of a certified opinion expressed by a member of the American Academy of Actuaries in conjunction with an actuarial study of both of the above items, and shall include the elements considered in expressing the foregoing opinion. The study must include or be accompanied by a statement by the actuary that the reserve funding and premium schedule as set forth in the study and adopted by the fund are reasonable and have been established using generally accepted actuarial principles. The group self-insured may select the actuary to perform this study; however, such selection must be made from a group of actuaries or actuarial firms approved by the board. This list will be made available by the board upon request.

(c) [(b)] The trustees shall purchase specific excess insurance with a limit of at least $2,000,000 [1,000,000] per occurrence.

(d) [(c)] Contracts for excess insurance. Any casualty insurance company, to be eligible to write excess liability coverage for self-insurers in the State of Kentucky, shall at all times, in its financial statement on file with the Insurance Commissioner, show assets, including surplus to policy holders, at least equal to the latest Insurance Department requirements for admission of a new company to do business in the state. The financial and policyholder's ratings, as shown in the most current issue of "Best's Insurance Reports, Property-Liability," shall not be less than "IX" and "A," or "XII" and "B+" respectively. (The ratings are to be read separately, i.e., a rating of "X" and "B+" is not acceptable.) If, upon the publishing of "Best's" the company does not have a minimum rating of "A" policyholder's and "IX" financial or "B+" policyholders and

"XII" financial, then the authorization for the company to write excess coverages shall be withdrawn immediately. In the event a company is not rated by "Best's", that company may be approved at the discretion of the board.

(5) Fund balances.

(a) Not less than thirty (30) days prior to inception of each self-insurance year, the trustees must collect from its group members an amount equal to not less than twenty-five percent of the anticipated self-insurance fund for the ensuing year and must collect not less than one-third (1/3) of the remaining balance each thirty (30) days thereafter. The amount to be collected shall be based upon estimated annual assessments and shall be adjusted each year accordingly. The assessment to each member shall bear a relationship to the normal premium chargeable to that member.

(b) Disbursements from the fund shall be only for those purposes related to the self-insurance program. Dividends may not be paid for at least twenty-four (24) months after the expiration of the self-insurance term and may be paid only from surplus funds. The distribution of dividends between members shall be based upon a formula which may or may not reflect any individual member's claim experience. Additional dividends may be paid periodically thereafter from surplus funds.

(c) The formula to be used for assessments and for the distribution of dividends shall be in accordance with a written agreement between all members of the group.

(d) The trustees or its fiscal agent shall not utilize any of the monies collected as premiums for any purpose unrelated to worker's compensation. Further, it shall be prohibited from borrowing any monies from the fund. The trustees may, at their discretion, invest any surplus monies not needed for current obligations, but such investments shall be limited to U.S. Government bonds, U.S. Treasury notes, investment share accounts in any savings and loan association whose deposits are insured by a federal agency, and certificates of deposit if issued by a duly chartered commercial bank. Such deposits in savings and loan associations and commercial banks shall be limited to institutions in the state of Kentucky and the safety of any investments which exceed the federally insured amounts shall be the responsibility of the trustees.

(e) Any variation from the requirements set forth in this subsection must be specifically authorized by a written order of the board.

(6) Group members.

(a) The trustees shall not accept as a member of the group, any employer that does not have a net worth of at least two (2) times its estimated annual assessment, unless such employer pays its full annual assessment in advance. The trustees shall not accept as a member of the group any employer that does not meet all other qualifications for being a member of the group as set forth in the bylaws of the group.

(b) At the discretion of the trustees, the self-insurance program may include the Kentucky employees of foreign (out-of-state) employers.

(c) The trustees may suspend or expel any member from the group due to adverse claims experience and/or lack of cooperation with safety and loss prevention policies by giving the member and the board thirty (30) days notice.

(d) The trustees shall secure from each member of the group within forty-five (45) days of the close of the self-insurance year a report of actual payrolls for the year and shall produce from such report a premium adjustment. The trustees shall secure from each member an agreement to report such payrolls in accordance with the rules and classifications of the manual. Willful failure to properly report in accordance with such rules may result in immediate expulsion from the group. Such expulsion shall be reported to the board.

(e) At least thirty (30) days prior to due date, the trustees shall notify each group member of all assessments due, including annual adjustments, and failure by any member to pay such assessments within thirty (30) days if such notice may, at the discretion of the trustees, result in immediate suspension or expulsion from the group.

(7) Reports.

(a) The trustees shall utilize the services of a certified public accountant and shall file a certified audit each year with the board within 180 days of the end of the self-insured term.

(b) Within 120 days of the end of each self-insurance term, the trustees shall furnish group members a statement setting forth all premiums, losses and expenses and the allocation of assessments and the distribution of dividends among its members.

(c) The trustees shall file such additional reports as may be required by appropriate agencies of the Commonwealth.

(8) Bonds.

(a) The trustees **and fund administrators** shall provide a fidelity bond to the board in the amount of not less than **$300,000** [$100,000]**, which may be subject to a deductible of not exceeding $10,000, for each trustee and for each fund administrator and the administrator's employees**.

(b) The fiscal agent shall provide a fidelity bond to the trustees for not less than fifty (50) percent or $1,000,000, whichever is the lower, of the funds to be handled by the fiscal agent. This requirement shall be waived if the fiscal agent is a national bank.

(c) The servicing organization shall provide a fidelity bond to the trustees of not less than two (2) times the amount of the revolving fund.

(d) In lieu of the bonds required under paragraphs (a), (b) and (c) of this subsection, the trustees may secure a fidelity blanket bond in an amount not less than fifty (50) percent of the self-insurance fund or **$2,000,000** [1,000,000], whichever is the lower; said bonds to include the trustees, personnel of the servicing organization and the fiscal agent, unless the fiscal agent is a national bank.

(e) The fund must provide [a self-insurance] surety [bond] to the board on a form prescribed by the board in an amount **not less than $250,000 or five (5) percent of the annual normal premium as established in the most recent certified audit on file with the board, whichever is higher** [not less than seventy-five (75) percent of the aggregate reinsurance retention level] [annual normal premium, but not exceeding $250,000].

(f) Any corporate surety, to be eligible for writing self-insurers' bonds in the state of Kentucky, shall be authorized by the insurance commissioner of the state of Kentucky to transact such a business in the state, and its

latest financial statement on file with the insurance commissioner shall at all times show assets, including surplus to policyholders, at least equal to the latest Insurance Department requirements for admission of a new company to do business in the state. The policyholders' and financial ratings, as shown in the most current issue of "Best's Insurance Reports, Property-Liability," shall not be less than "B+" and "XII," or "A" and "IX," respectively. (The ratings are to be read separately, i.e., a rating of "X" and "B+" is not acceptable.) In the event a company is not rated by "Best's," a corporate surety may be approved at the discretion of the board. No surety shall expose itself to any loss on any one (1) risk in an amount exceeding its current U.S. Treasury limit.

(9) The group shall be considered as an individual employer for all purposes of taxation and the individual members of said groups shall not be exposed to tax liability other than liability existing as a result of the interindemnity agreement with the other group members and the self-insurance fund.

ARMAND ANGELUCCI, Chairman
APPROVED BY AGENCY: October 7, 1988
FILED WITH LRC: October 7, 1988 at 11 a.m.

CABINET FOR HUMAN RESOURCES
Department for Mental Health/Mental Retardation Services
(Amended After Hearing)

902 KAR 12:020. Patient's rights.

RELATES TO: KRS Chapters 202A, 202B
STATUTORY AUTHORITY: KRS 194.050, 202A.191, 202A.196, 202B.060
NECESSITY AND FUNCTION: KRS Chapters 202A and 202B, relating to the hospitalization of mentally ill and mentally retarded persons, direct that the Secretary for the Cabinet for Human Resources shall adopt rules and regulations which insure proper administration and enforcement of these chapters. The function of this regulation is to describe the rights of mentally ill and mentally retarded patients and to establish rules for the use of seclusion, restraint, and treatment under emergency situations, in the treatment of such patients.

Section 1. Title. This regulation may be cited as the "Kentucky Mental Patients' Bill of Rights."

Section 2. Right to be Adequately Informed. (1) Each patient shall be adequately informed as to his individual treatment plan.

(a) A written individual treatment plan shall be prepared and entered into the medical record of each patient. Such treatment plan shall be subject to periodic review and shall be modified in the event of substantive changes;

(b) Each patient and his or her authorized representative shall have access to a written copy of his individual treatment plan;

(c) Upon written request, each patient and his or her authorized representative shall also be provided access to his entire medical record. In the event that full access to the medical record is refused, the patient shall be given a response in writing documenting the reasons for such refusal;

(d) In the case of minors or other persons who appear incapable of reading or understanding a written treatment plan, a summary of pertinent features of the treatment plan may be presented orally, and the responses of parents, guardians or other members of the immediate family shall be entered into the medical record if such persons can be located.

(2) For purposes of this regulation, the following definitions shall apply:

(a) "Individual treatment plan" means a written document which is a part of each patient's medical record and which must contain, but is not limited to:

1. A statement of the diagnosis of the patient;
2. The short and long-range objectives of care and treatment;
3. The methods of treatment to be employed;
4. The names of persons responsible for preparing and implementing the plan.

(b) "Substantive changes" means those changes which reflect distinct changes in goals of treatment, methods to be employed and the names of persons primarily responsible for overall review or implementation of the individual treatment plan:

1. Changes in the amount, frequency of administration, or specific type of medication shall not be considered substantive changes unless such changes involve introduction of new classes of medication including antipsychotic or anticonvulsant drugs;
2. Changes in the frequency, duration, place or supervision of daily activities shall not be considered substantive changes unless such changes exclude participation in the activities previously identified in the treatment plan or initiation of new activities which could not be reasonably anticipated on the basis of short and long-term treatment goals.

(c) "Emergency situation" means the presence of a situation in which a patient's behavior in his present environment is such that it presents an immediate and substantial danger or threat of immediate or substantial danger to that person or to others.

1. Behavior included in this definition extends to verbal threats or abuse toward other patients which creates a substantial risk that such other patients may react in a manner which poses an immediate substantial danger or threat of immediate substantial danger to themselves or others, or which will interfere in a substantial manner with the realistic opportunity of other patients to improve their own level of functioning through care and treatments in a hospital or residential treatment center;
2. Substantial deviation from an individual treatment plan which is formulated with the mutual consent of the staff and the patient or which is approved pursuant to a court hearing, or the overt or repetitious violation of rules and procedures of the hospital or residential treatment center by the patient may also be considered as an emergency situation, provided the patient has previously been fully informed as to the content of his individual treatment plan and as to the rules and procedures which may be applicable to his behavior.

(d) "Restraint" means the application of any physical device, the application of physical body pressure by another person in such a way as to control or limit physical activity, or the intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical

agent to a mentally ill patient or mentally retarded resident with the sole or primary purpose of controlling or limiting the physical activities of the patient or resident.

(e) "Seclusion" means the confinement of a mentally ill or mentally retarded patient alone in a locked room.

(f) "Authorized representative" means the patient's attorney, guardian of a disabled adult, parent or guardian of a juvenile, or an individual authorized in writing by the patient to act in the patient's behalf.

Section 3. Right to Assist in Treatment Plan. Each patient shall have the right to assist in the planning of his treatment program.

(1) Each patient shall be informed of the contents of his individual treatment plan and his verbal, written or behavioral responses to this information shall be entered in the medical records. Whenever possible, the responses of a patient to his treatment plan shall be used to review and modify its contents including, but not limited to, the objectives and methods of treatment to be employed;

(2) In the cases of minors and other patients who appear incapable of reading or understanding their treatment plans, the responses of parents, guardians, or other members of the immediate family shall be entered into the medical records if such persons can be located.

Section 4. Right to Refuse Treatment. (1) Patients may, under certain conditions, refuse treatment offered to them by the hospital. Such refusal shall be clearly documented in the medical records.

(a) **All patients, whether admitted voluntarily, or committed on an involuntary basis as the result of a hearing held pursuant to KRS Chapter 202A or 202B, have the right to refuse treatment. A patient who refuses treatment may be forcibly treated only pursuant to a court order after a de novo review as set forth in KRS 202A.196.** [In the case of voluntary patients and patients who are minors admitted with the consent of their parents or guardian, treatment plans may be implemented or continued until such time as the patient or his parents or guardian request the discharge of the patient or [requests the] review of the treatment plan.]

[(b) Involuntary patients, whether committed as the result of a hearing pursuant to KRS 202A.026 or 202B.040 or committed by a guardian pursuant to his powers under KRS 387.660(1), have the right to refuse treatment. A patient who refuses treatment may only be forcibly treated pursuant to a court order, after a de novo review, with a determination that such treatment is appropriate and in the best interests of the patient.] [In the case of mentally ill or mentally retarded patients involuntarily admitted without a court order, or pursuant to a hearing, treatment in accordance with the initial or revised treatment plan may be implemented or continued until such time as a formal application for further hospitalization is submitted and a hearing held on the matter. In the event that a hearing for further hospitalization is requested, the attorney for the respondent and the judge shall be informed prior to the time of the hearing of the current individual treatment plan and recent use of medication which might affect the ability of the respondent to communicate with his attorney or the judge;]

(b) [(c)] If no court findings exist to support the implementation of a specific treatment plan which is unacceptable to the patient, such treatment may be implemented or continued only in the event of an emergency situation documented
in the medical records of the patient.

(2) Refusal to participate in the treatment plan shall be clearly documented in the medical record and shall be honored unless an emergency situation exists or the activity has been reviewed and approved in a court hearing.

(3) In the absence of an emergency situation, the patient shall not be subjected to loss of any other privileges which he has at the time of his refusal unless such privileges are clearly documented in the individual treatment plan as being contingent upon his participation in that area where participation has been refused.

(4) If the emergency situation persists for a period of more than seventy-two (72) hours, the treatment team shall evaluate the treatment plan and make changes necessary to meet the needs of the patient. If the patient refuses the revised treatment program, emergency treatment may continue as long as the emergency continues to be documented in the patient's record and the treatment review committee shall be informed and [the committee] shall proceed according to law.

Section 5. Right to Personal Effects. (1) Each patient shall have the right to maintain, keep, and use personal effects, items or money except in the following instances:

(a) Retention of the item would be contrary to the patient's individual treatment plan;

(b) Retention of the item poses a threat of subjecting the patient or others to substantial physical harm;

(c) Retention of the item would subject it to a substantial risk of loss, theft or destruction by the patient or other persons;

(d) Retention of the item would substantially impair the opportunity of the patient or other patients to benefit from care and treatment in the hospital; or

(e) Retention of the item is contrary to rules and regulations of the hospital which are reasonably related to the health and safety of the patient or other patients, except that such rules and regulations shall be waived when possession of such item is a part of the patient's individual written treatment plan.

(2) After written notice to a discharged patient, hospitals and residential treatment centers may dispose of all unclaimed personal items 180 days after discharge. Any proceeds from the sale of such items shall be used for the benefit of persons residing at the hospital or residential treatment center.

Section 6. Right to Receive Visitors. (1) All patients shall have the right to meet with friends and relatives. This right shall not be waived except in the following instances:

(a) Exercise of the right would be inconsistent with the written provisions of the individual treatment plan, or

(b) An emergency situation exists.

(2) Each hospital or residential treatment center shall establish and post conspicuously rules governing visitors and visiting hours.

(3) All patients shall also have the right to

refuse to meet with friends or relatives except that such right may be waived if such meetings are prescribed in the patient's individual treatment plan.

(4) Patients shall have the right to meet their authorized representative during nonvisitation hours, if suitable arrangements are made in advance with the hospital or residential treatment centers.

Section 7. Right to Receive Compensation for Work Done. Each patient shall have the right to receive payment for work performed on behalf of the hospital.

(1) All patients shall be provided compensation as designated by appropriate federal and state statutes and regulations for work performed at a hospital or residential treatment center where such work is of consequential economic benefit to the hospital or residential treatment center, any person, agency, or organization outside the hospital or the Commonwealth of Kentucky.

(2) The patient shall have the absolute right to refuse to perform any and all work except activities of immediate and direct benefit to the patient and his personal comfort.

Section 8. Right to **De Novo Review** [Refuse Intrusive Treatment. All patients shall have the right to refuse intrusive treatments]. Involuntarily committed patients [including electroshock therapy or psychosurgery, subject to the following limitation. Any patients committed on an involuntary basis or who are minors, or who have been declared disabled pursuant to KRS Chapter 387,] may [only] be provided electroshock therapy or psychosurgery **only** pursuant to a court order **after a de novo review as set forth in KRS 202A.196.** [with a determination that such treatment is in the best interest of the patient as providing him the optimal opportunity to reasonably benefit from care and treatment in the hospital or residential treatment center.]

Section 9. Use of Seclusion and Restraint. The use of seclusion and other mechanical restraints in hospitals or residential treatment facilities shall be limited and shall be carried out only with appropriate precautions.

(1) Seclusion and other mechanical restraints used for the sole or principal purpose of controlling behavior which is the result of mental illness shall be instituted only when part of an individual treatment plan or in the event of an emergency situation.

(2) If use of seclusion or restraints is warranted under this section, the following rules shall apply:

(a) The medical records shall document the conditions which prevail at the time of the use of such treatments and shall include the order of a licensed physician prescribing or justifying such treatment;

(b) Mentally ill persons placed in seclusion or subjected to the use of mechanical restraints other than to prevent or treat self-inflicted injury or to treat a concomitant medical or surgical disorder shall be individually observed and the need for continuing restraints or seclusion determined by a hospital or residential treatment facility employee at least every fifteen (15) minutes. In addition, the patient shall be seen daily by a physician and the reasons for continued use of this treatment procedure shall be documented in the medical records;

(c) The patients shall be permitted access to toilet facilities at least every two (2) hours and to bathing facilities every forty-eight (48) hours;

(3) No order by a licensed physician for seclusion or use of mechanical restraints shall be effective longer than twenty-four (24) hours after such treatment is implemented, and must be renewed if such treatment continues to be necessary, except where such treatment is prescribed to prevent or treat self-inflicted injury or a concomitant medical or surgical disorder; provided that any renewal order shall state the necessity for such continued treatment.

(4) In no circumstances shall restraints or seclusion be used principally or solely for the treatment of mental illness except as part of the documented individual treatment plan or in response to a documented emergency unless such treatment has received a review and approval by the court.

DENNIS D. BOYD, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 5, 1988
FILED WITH LRC: October 7, 1988 at 10 a.m.

PROPOSED AMENDMENTS RECEIVED THROUGH OCTOBER 15, 1988

GENERAL GOVERNMENT CABINET
State Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:016. Restriction on use of amphetamines and amphetamine-like anorectic controlled substances.

RELATES TO: KRS 311.530 to 311.620
STATUTORY AUTHORITY: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.597 empowers the State Board of Medical Licensure to determine those acts that shall constitute dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or any member thereof by a licensee. In accordance therewith, the purpose of this regulation is to regulate and control the use of amphetamine and amphetamine-like anorectic controlled substances.

Section 1. A physician shall not prescribe, order, dispense, administer, supply, sell or give any amphetamine or amphetamine-like anorectic controlled substance designated as Schedule II pursuant to KRS 218A.0780 or by duly promulgated regulation without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or distribute to others and the presence of an illicit market for the drug. The patient's record and the prescription order shall indicate the specific diagnosis/purpose for which the drug is being given. Such diagnosis/purpose shall be restricted to:

(1) The treatment of narcolepsy;
(2) The treatment of hyperkinesis;
(3) The treatment of drug-induced brain dysfunction;
(4) The treatment of epilepsy;
(5) The differential diagnostic psychiatric evaluation of depression;
(6) The treatment of depression shown to be refractory to other therapeutic modalities;
(7) The treatment of attention deficit disorder; however, when Ritalin is prescribed for the treatment of attention deficit disorder in minor children, this regulation does not require the diagnosis/purpose to be noted on the prescription order; and
(8) The clinical investigation of the effects of such drugs or compounds in which case an investigative protocol therefrom shall have been submitted to, reviewed and approved by the board before such investigation has begun.

Section 2. Amphetamine means all Schedule II controlled substances in this group, including but not limited to dextroamphetamine and methamphetamine. Amphetamine-like means all Schedule II controlled substances with pharmacologic activity similar to the prototype drugs of the amphetamine class, including but not limited to phenmetrazine and methylphenidate.

Section 3. Amphetamine and amphetamine-like controlled substances shall not be prescribed, ordered, dispensed, administered, supplied, sold or given except as provided in this regulation. A departure from this regulation shall constitute dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public or a member thereof.

Section 4. For legitimate medical purposes, a physician may apply in writing for a written waiver of any of these requirements. The board may issue such waivers with terms and conditions it deems appropriate.

C. WILLIAM SCHMIDT, Executive Director
APPROVED BY AGENCY: October 13, 1988
FILED WITH LRC: October 14, 1988 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on Wednesday, November 23, 1988, at 10 a.m. EST, at the office of the Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, at least five days prior to the hearing at 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt, Executive Director
(1) Type and number of entities affected: All physicans who are licensed to practice medicine in the Commonwealth of Kentucky.
(a) Direct and indirect costs or savings to those affected: There will be no monetary costs or savings to physicians other than in time, no longer will physicians be required to write a diagnosis on prescriptions for Ritalin to minor children from attention deficit disorder.
1. First year: Same as 1(a), see above.
2. Continuing costs or savings: Same as 1(a), see above.
3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.
(b) Reporting and paperwork requirements: Time requirements will be lessened for all physicians in that they do not have to write diagnosis of attention deficit disorder on Ritalin prescriptions to minor children.
(2) Effects on the promulgating administrative body: This regulation will lessen the investigators workload and free them to investigate more pressing matters pending before the board.
(a) Direct and indirect costs or savings: Will free up much needed time for both the physician and the board employees.
1. First year: Costs and savings will remain the same during duration of this regulation.
2. Continuing costs or savings: Costs and savings will remain the same during duration of this regulation.
3. Additional factors increasing or decreasing costs: No additional factors.
(b) Reporting and paperwork requirements: Savings in time management for both physicians and board employees. No reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues.
(4) Assessment of alternative methods; reasons

why alternatives were rejected: No other alternative methods available for board to accomplish goal of excluding Ritalin from prescription order requirement of the regulation.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation does not conflict, overlap or duplicate any statute, regulation or government policy.
(a) Necessity of proposed regulation if in conflict: See above, not applicable.
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See above, not applicable.
(6) Any additional information or comments: The intent of this regulation is to alleviate some unneeded reporting requirements that do not effect the stated purpose of the regulation to regulate and control the use of Schedule II amphetamines and amphetamine-like substances.
TIERING: Was tiering applied? Yes.

GENERAL GOVERNMENT CABINET
State Board of Medical Licensure
(Proposed Amendment)

201 KAR 9:041. Fee schedule.

RELATES TO: KRS 311.530 to 311.620, 311.990
STATUTORY AUTHORITY: KRS 311.565
NECESSITY AND FUNCTION: KRS 311.565 empowers the State Board of Medical Licensure to exercise all the administrative functions of the state in the prevention of empiricism and in the regulation of the practice of medicine and osteopathy and authorizes the board to establish requirements and standards relating thereto. The purpose of this regulation is to establish a schedule of fees for services rendered by the board.

Section 1. Fee Schedule.
(1) Fee for sitting for both components of examination administered by board - $450.
(a) Component I - $225.
(b) Component II - $275.
(2) Fee for initial issuance of regular license - $150.
(3) Fee for initial issuance of limited license - $65.
(4) Fee for annual registration or renewal of any license - $65.
(5) Penalty for late annual registration or renewal:
(a) March 1 - April 1 - $25.
(b) After April 1 - $100.
(6) Fee for reregistration of inactive license - $90.
(7) Endorsement of licensee to licensing agency of another jurisdiction - $20.
(8) Certification of licensee's examination grades to licensing agency of another jurisdiction - $10.
(9) Fee for temporary permit (credited to fee for regular license if subsequently issued) - $50.
(10) Fee for emergency permit - $15.
(11) Fee for duplicate license certificate - $10.
(12) Fee for copy of "Kentucky Medical Directory" (fee waived for licensees, hospitals, schools and other licensure boards) - $10 [5].
(13) Fee for one (1) year subscription to Newsletter (fee waived for licensees) - $5.

C. WILLIAM SCHMIDT, Executive Director
APPROVED BY AGENCY: October 13, 1988
FILED WITH LRC: October 14, 1988 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on Wednesday, November 23, 1988, at 10 a.m. EST, at the office of the Kentucky Board of Medical Licensure, 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207. Those interested in attending this hearing shall notify C. William Schmidt, Executive Director, Kentucky Board of Medical Licensure, in writing, at least five days prior to the hearing at 400 Sherburn Lane, Suite 222, Louisville, Kentucky 40207.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: C. William Schmidt, Executive Director
(1) Type and number of entities affected: All groups except licensees, hospitals, schools or other licensure boards who request copies of the Kentucky Medical Directory.
(a) Direct and indirect costs or savings to those affected: The direct costs to those effected will be $10 per copy, an increase of $5 over current cost.
1. First year: Costs will be same throughout duration of regulation.
2. Continuing costs or savings: Costs will remain the same throughout the duration of the regulation.
3. Additional factors increasing or decreasing costs (note any effects upon competition): No additional factors.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(2) Effects on the promulgating administrative body: The change in fees will allow the board to recoup its preparation and printing costs expended in getting the directory together.
(a) Direct and indirect costs or savings: The board will be saving approximately $5 for every directory as the preparation and printing costs are now approximately $10.
1. First year: Costs and savings will remain the same during duration of this regulation.
2. Continuing costs or savings: Costs and savings will remain the same throughout duration of this regulation.
3. Additional factors increasing or decreasing costs: No additional factors.
(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.
(3) Assessment of anticipated effect on state and local revenues: Applicable state sales tax will be assessed on all purchases.
(4) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods available to recoup the costs of the directory other than raising the price to meet our expenses.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation does not conflict, overlap or duplicate any statute, regulation or government policy.
(a) Necessity of proposed regulation if in conflict: See above, not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: See above, not applicable.

(6) Any additional information or comments: The board will not make any money from this amendment, but rather, will attempt to "break-even".

TIERING: Was tiering applied? Yes.

GENERAL GOVERNMENT CABINET
Occupational Therapy Board
(Proposed Amendment)

201 KAR 28:140. Grounds for denial, refusal to renew [probation], suspension, [or] revocation, or imposition of probationary conditions [of license].

RELATES TO: KRS 319A.160, 319A.190

STATUTORY AUTHORITY: KRS 319A.070(3), 319A.190(1), (6)

NECESSITY AND FUNCTION: KRS Chapter 319A provides, in [pertinent] part, for the denial, refusal to renew, [probation,] suspension, [or] revocation, or imposition of probationary conditions upon [of] a license for various violations of the Act or violation of the regulations promulgated pursuant thereto. This regulation describes the type of conduct [violations] which may result in the denial, refusal to renew, [probation,] suspension, [or] revocation, or imposition of probationary conditions upon [of] a license and the application of appropriate sanctions[, the sanctions which may be imposed,] and the procedure for reinstatement of a license.

Section 1. Grounds for Denial, Refusal to Renew [Probation,] Suspension, [or] Revocation, or Imposition of Probationary Conditions. (1) The board may deny, refuse to renew, suspend, revoke, or impose probationary conditions where the licensee or applicant for licensure has engaged in unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct shall include [suspend a license or place a license holder on probation for any of the following statutory reasons set forth in KRS 319A.190]:

(a) Engaging in fraud, [or] misrepresentation or concealment of material facts in the obtaining of the license.

(b) Engaging in unprofessional conduct as defined in Section 1(2) [2] of this regulation or violating the code of ethics as adopted and published by the board in Section 1(3) of this regulation.

(c) Being convicted of a felony offense [denominated as such] in any court [of competent jurisdiction] if the act for which the licensee or applicant for licensure [holder] was convicted is determined by the board [after a hearing] to have a direct bearing on whether the licensee or applicant for licensure [holder] should be entrusted to serve the public in the capacity of a L.O.T.R. or a L.O.T.A.

(d) Violating any lawful order or regulation rendered or promulgated by the board.

[(e) Failing to timely renew a license.]

(e) [(f)] Violating any provision of KRS Chapter 319A [et seq].

(2) [The board may revoke or suspend a license or place a license holder on probation for engaging in] Unprofessional conduct as used in 201 KAR 28:140 Section 1(1)(b) [which] is defined as [the failure of the L.O.T.R. or the L.O.T.A. to comply with the following rules of ethical conduct and practice for occupational therapy and] violation of any of the following provisions[, if proven, shall constitute a danger to the health, safety or welfare of the public]:

[(a) A L.O.T.R. or a L.O.T.A. shall not practice outside the scope of his or her license.]

[(b) When the L.O.T.R. or the L.O.T.A. does not possess the skill to evaluate a patient, plan the treatment program or carry out the treatment, the L.O.T.R. or the L.O.T.A. shall inform the referring practitioner and assist in identifying a professional qualified to perform the service.]

(a) [(c) The L.O.T.R.] An O.T.R./L. or a C.O.T.A./L. [the L.O.T.A.] shall not delegate to an unlicensed employee or person under his or her control or supervision a service which requires the skill, knowledge or judgment of an O.T.R./L. [L.O.T.R.] or a C.O.T.A./L. [L.O.T.A., whichever is appropriate.]

(b) [(d) The L.O.T.R.] An O.T.R./L. or an O.T.R./L. [the L.O.T.A.] shall inform the referring source when any requested treatment procedure is inadvisable or contraindicated, and shall refuse to carry out the orders of a referring practitioner when the requested treatment is inadvisable or contraindicated.

(c) [(e) Treatment] An O.T.R./L. or a C.O.T.A./L. shall not continue treatment [be continued] beyond the point of possible benefit to the patient or by treating more frequently than necessary to obtain the maximum therapeutic effect.

(d) [(f) The L.O.T.R.] An O.T.R./L. or a C.O.T.A./L. [the L.O.T.A.] shall not directly or indirectly request, receive or participate in the dividing, transferring, assigning, rebating or refunding of an unearned fee nor shall an O.T.R./L. or a C.O.T.A./L. [or to] profit by means of a credit or other valuable consideration as an unearned commission, discount or gratuity in connection with the furnishing of occupational therapy assessment or treatment.

(e) [(g) The L.O.T.R.] An O.T.R./L. or a C.O.T.A./L. [the L.O.T.A.] shall not exercise influence on patients to purchase equipment produced or supplied by a company in which the L.O.T.R. or the L.O.T.A. owns stock or has any other direct or indirect financial interest.

(f) [(h) A L.O.T.R.] An O.T.R./L. or a C.O.T.R./L. [L.O.T.A.] shall not permit another person to use his or her license for any purpose.

(g) [(i) A L.O.T.R.] An O.T.R./L. or a C.O.T.R./L. [L.O.T.A.] shall not obtain, possess, or attempt to obtain or possess a controlled substance without lawful authority, nor shall an O.T.R./L. or a C.O.T.R./L. [or] sell, prescribe, give away, or administer controlled substances in the practice of occupational therapy.

(h) [(j) A L.O.T.R.] An O.T.R./L. or a C.O.T.R./L. [L.O.T.A.] shall not verbally or physically abuse a patient.

(i) [(k) A L.O.T.R.] An O.T.R./L. or a C.O.T.R./L. [L.O.T.A.] shall not engage in [unethical business practices, consisting of any of the following:

1.] false or misleading advertising, [.
2.] betrayal of a professional confidence, or[.
3.] falsification of [Falsifying] patients' records.

(j) [(l) A L.O.T.R.] An O.T.R./L. or a C.O.T.R./L. [L.O.T.A.] shall report a change of name or address to the board within thirty (30) days after a change of name or address [it] occurs.

(k) [(m) At such time as the regulations provide for mandatory continuing education as a requirement for renewal, a L.O.T.R. or a L.O.T.A.] An O.T.R./L. or a C.O.T.R./L. shall not submit a false report of continuing education or fail to submit the annual report on continuing education.

(l) [(n) A L.O.T.R.] An O.T.R./L. or a C.O.T.A./L. [L.O.T.A.] shall notify the board within thirty (30) days after occurrence of any judgment or settlement of a malpractice claim or action.

(m) [(o) A L.O.T.R.] An O.T.R./L. or a C.O.T.A./L. [L.O.T.A.] shall comply with any subpoena issued by the board.

(n) [(p) A L.O.T.R.] An O.T.R./L. or a C.O.T.A./L. [L.O.T.A.] shall report to the board any violation of these regulations [or of the act committed by another licensee in the presence of the licensee].

(3) Unethical conduct as used in 201 KAR 28:140 Section 1(1)(b) is defined as violation of any of the following provisions:

(a) An O.T.R./L. or a C.O.T.A./L. is responsible for providing services without regard to race, creed, national origin, sex, age, handicap, disease, entity, social status, financial status or religious affiliation.

(b) An O.T.R./L. or a C.O.T.A./L. shall inform those people served of the nature and potential outcomes of treatment and shall respect the right of potential recipients of service to refuse treatment.

(c) An O.T.R./L. or a C.O.T.A./L. shall inform subjects involved in education or research activities of the potential outcome of those activities.

(d) An O.T.R./L. or C.O.T.A./L. shall include those people served in the treatment planning process.

(e) An O.T.R./L. or a C.O.T.A./L. shall maintain goal-directed and objective relationships with all people served.

(f) An O.T.R./L. or a C.O.T.A./L. shall protect the confidential nature of information gained from educational practice, and investigational activities unless sharing such information is necessary to protect the well-being of a third party.

(g) An O.T.R./L. or a C.O.T.A./L. shall take all reasonable precautions to avoid harm to the recipient of services or detriment to the recipient's property.

(h) An O.T.R./L. or a C.O.T.A./L. shall establish fees, based on cost analysis, that are commensurate with services rendered.

(i) An O.T.R./L. or a C.O.T.A./L. shall hold the appropriate credentials for providing service.

(j) An O.T.R./L. or a C.O.T.A./L. shall function within the parameters of his or her competence and the standards of the profession.

(k) An O.T.R./L. or a C.O.T.A./L. shall refer clients to other service providers or consult with other service providers when additional knowledge and expertise is required.

(l) An O.T.R./L. or a C.O.T.A./L. shall be acquainted with applicable local, state, federal, and institutional rules and shall function accordingly.

(m) An O.T.R./L. or a C.O.T.A./L. shall inform employers, employees and colleagues about those laws and policies that apply to the profession of occupational therapy.

(n) An O.T.R./L. or a C.O.T.A./L. shall require those whom they supervise to adhere to ethical standards of conduct.

(o) An O.T.R./L. or a C.O.T.A./L. shall accurately record and report client information.

(p) An O.T.R./L. or a C.O.T.A./L. shall accurately represent his or her competence and training to the public.

(q) An O.T.R./L. or a C.O.T.A./L. shall not use or participate in the use of any form of communication that contains a false, fraudulent, deceptive, or unfair statement or claim.

(r) An O.T.R./L. or a C.O.T.A./L. shall report any illegal, imcompetent or unethical practice to the appropriate authority.

(s) An O.T.R./L. or a C.O.T.A./L. shall not disclose privileged information when participating in reviews of peers, programs, or systems.

(t) An O.T.R./L. or a C.O.T.A./L. who employs or supervises colleagues shall provide appropriate supervision.

(u) An O.T.R./L. or a C.O.T.A./L. shall recognize the contributions of colleagues when disseminating professional information.

[(3) The following activities or conditions, if proven, shall constitute grounds for revocation or suspension of license or placing a L.O.T.R. or a L.O.T.A. on probation as presenting a danger to the health, welfare or safety of the public or individual client patient:]

[(a) Professional incompetency as determined after an investigation and hearing by the board.]

[(b) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public with proof of actual injury not needing to be established.]

[(c) Habitual intoxication or addiction to the use of any controlled substance or alcohol.]

[(d) Fraudulent representation as to the skill or ability.]

[(e) The use of untruthful or improbable statements in any advertisement authorized by the statutes of the Commonwealth of Kentucky.]

[(f) Mental or physical inability reasonably related to and adversely affecting a license holder's ability to practice in a safe and competent manner as determined by investigation and after a hearing by the board.]

[(g) Involuntary commitment by reason of judicial order for treatment of mental illness, drug addiction or alcoholism.]

[(h) Practicing of the profession while a license is suspended.]

[(i) Suspension or revocation of license by another state.]

[(j) Negligence by the license holder in the practice of the profession which includes, but is not limited to, the failure to exercise due care (including negligent delegation to or supervision of employees or other individuals) whether or not injury results; or any conduct, practice or conditions which may impair the license holder's ability to safely and

skillfully practice the profession of occupational therapy.]

[(k) Failure to comply with 201 KAR 28:130 pertaining to the supervision of occupational therapy assistants and occupational therapy aides.]

Section 2. Sanctions. (1) After a hearing, as provided under 201 KAR 28:150 and 201 KAR 28:160, the board may, in its discretion, revoke or suspend a license for such period of time as the board believes to be warranted by the facts and circumstances of the violation. Such findings and determinations shall be rendered in accordance with the provisions of 201 KAR 28:160.

(2) After a hearing, as provided under 201 KAR 28:150 and 201 KAR 28:160, the board may, in lieu of revoking or suspending a license, place the licensee on probation for a period not to exceed one (1) year, except that if the adjudication of the violation is the second such adjudication within five (5) years, the licensee shall not be entitled to probation.

Section 3. Reinstatement. (1) A suspended license shall be reinstated upon the filing of an application for reinstatement by the licensee and a determination by the board that the period of suspension has expired and, if applicable, that the licensee has renewed his license in accordance with the provisions of 201 KAR 28:090.

(2)(a) A revoked license shall only be reinstated if the applicant has fully complied with all of the provisions of 201 KAR 28:060.

(b) An individual whose license has been revoked may not apply for reinstatement under the provisions of this regulation for a period of one (1) year from the entry of the order of the board or, if the decision is appealed, from the date the appeal is finally resolved or an endorsement of finality is entered by the appropriate appellate court. Hearings upon application for reinstatement shall be held in accordance with the provisions of 201 KAR 28:160.

THOMAS FISHER, Chairman

APPROVED BY AGENCY: October 10, 1988

FILED WITH LRC: October 10, 1988 at 1 p.m.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1988, at 10 a.m., at the Office of the Attorney General Library, Room 141, Capitol, Frankfort, Kentucky. Anyone interested in attending this hearing shall give written notice to William B. Pettus, Office of the Attorney General, Capitol Building, Frankfort, Kentucky 40601-3494, at least five days before the hearing.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: William B. Pettus

(1) Type and number of entities affected: Approximately 200 persons licensed by the Kentucky Occupational Therapy Board and applicants for licensure.

(a) Direct and indirect costs or savings to those affected: There are no costs or savings to those affected.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: There are no additional reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: There are no effects on the Kentucky Occupational Therapy Board.

(a) Direct and indirect costs or savings: There are no costs or savings associated with this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no change.

(3) Assessment of anticipated effect on state and local revenues:

(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods considered.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This regulation partially duplicates KRS 319A.190.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:040. Kentucky State Penitentiary.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on October 14 [June 10], 1988 and hereinafter should be referred to as Kentucky State Penitentiary Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

KSP 000000-06	Administrative Regulations
KSP 010000-04	Public Information and Media Communication
KSP 020000-01	General Guidelines for KSP Employees
KSP 020000-02	Service Regulations, Attendance, Hours of Work, Accumulation and Use of Leave
KSP 020000-03	Work Planning and Performance Review (WPPR)
KSP 020000-04	Employee Disciplinary Procedure
KSP 020000-05	Proper Dress for Uniformed and NonUniformed Personnel
KSP 020000-06	Employee Grievance Procedure
KSP 020000-07	Personnel Registers and Advertisements
KSP 020000-09	Maintenance, Confidentiality, and Informational Challenge of Material Contained in Personnel Files

KSP 020000-10	Overtime Policy
KSP 020000-15	Legal Assistance
KSP 020000-20	Equal Employment Opportunity Complaints
KSP 020000-23	Recruitment and Employment of Ex-Offenders
KSP 020000-24	Educational Assistance Program
KSP 020000-29	Promotional Opportunity Announcement Program
KSP 030000-01	Inventory Records and Control
KSP 030000-04	Requisition and Purchase of Supplies and Equipment [(Amended 6/10/88)]
KSP 030000-05	Inmate Personal Funds (Amended 10/14/88)
KSP 030000-06	Inmate Commissary Program
KSP 040000-01	Management Information System
KSP 040000-02	Inmate Records
KSP 040000-08	Inmate Equal Opportunity Policy
KSP 050000-14	Searches and Preservation of Evidence
KSP 060000-01	Special Security Unit (Amended 10/14/88)
KSP 060000-02	Operational Procedures for Disciplinary Segregation, Administrative Segregation, Administrative Control and Behavioral Control Units
KSP 060000-04	Protective Custody Unit [(Amended 6/10/88)]
KSP 060000-11	Criteria for Disciplinary Segregation and Incentive Time Reduction Program
KSP 070000-01	Hospital Services
KSP 070000-02	Sick Call
KSP 070000-03	Health Evaluations
KSP 070000-04	Consultations
KSP 070000-05	Emergency Medical Procedure
KSP 070000-13	Pharmacy Procedures
KSP 070000-14	Medical Records
KSP 070000-16	Psychiatric and Psychological Services (Amended 10/14/88)
KSP 070000-17	Dental Services for Special Management Units
KSP 070000-19	Optometric Services
KSP 070000-20	Menu Preparation and Planning
KSP 070000-24	Food Service, General Sanitation, Safety, and Protection Standards and Requirements
KSP 070000-25	Food Service Inspections
KSP 070000-30	Therapeutic Diets
KSP 090000-01	Inmate Work Programs
KSP 090000-03	Correctional Industries (Amended 10/14/88)
KSP 100000-02	Visiting Program
KSP 100000-03	Disposition of Unauthorized Property
KSP 100000-04	Inmate Grooming and Dress Code
KSP 100000-05	Procedures for Providing Clothing, Linens and Other Personal Items
KSP 100000-06	Inmate Mail and Packages (Amended 10/14/88)
KSP 100000-07	Inmate Telephone Access
KSP 100000-08	Behavioral Counseling Record
KSP 100000-09	Due Process/Disciplinary Procedures
KSP 100000-11	Authorized and Unauthorized Inmate Property
KSP 100000-14	Property Room: Clothing Storage and Inventory
KSP 100000-15	Uniform Cell Standards for Fire Safety, Sanitation and Security (Amended 10/14/88)
KSP 100000-18	Inmate Grievance Committee Hearings
KSP 100000-20	Legal Services Program
KSP 100000-21	Photocopies for NonIndigent Inmates with Special Court Deadlines
KSP 110000-04	Preparole Progress Report
KSP 110000-06	General Guidelines of the Classification Committee
KSP 110000-07	Statutory Good Time Restoration
KSP 110000-08	Award of Meritorious Good Time
KSP 110000-10	Special Needs Inmates
KSP 110000-11	Classification Committee - Transfer Requests
KSP 110000-12	Classification Committee - Inmate Work Assignments
KSP 110000-13	Classification Document
KSP 110000-14	Vocational School Placement
KSP 110000-15	Transfers to Kentucky Correctional Psychiatric Center (KCPC)
KSP 110000-16	Consideration of Further Treatment Requirements for Inmates Prior to Release
KSP 120000-04	Academic Education
KSP 120000-07	Community Center Program
KSP 120000-08	Inmate Furloughs
KSP 120000-11	Religious Services - Staffing
KSP 120000-18	Religious Services - Religious Programming
KSP 120000-20	Marriage of Inmates
KSP 120000-31	Extended Furloughs
KSP 120000-32	Discharge of Inmates by Shock Probation
KSP 130000-10	Execution Plan

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: October 13, 1988
FILED WITH LRC: October 13, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 23, 1988 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones
(1) Type and number of entities affected: 316 employees of the Kentucky State Penitentiary, 802 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons

why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. These regulations are in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on October 14 [September 13], 1988 and hereinafter should be referred to as Northpoint Training Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

NTC 01-03-01	Organization and Assignment of Responsibilities
NTC 01-05-01	Extraordinary Occurrence Reports
NTC 01-10-01	Legal Assistance for Staff
NTC 01-11-01	Political Activities of Merit Employees
NTC 01-15-01	Establishment of the Warden as Chief Executive Officer
NTC 01-17-01	Relationships with Public, Media and Other Agencies
NTC 02-02-02	Warden's Participation in the Agency Budgeting Process
NTC 02-03-01	Fiscal Management: Audits
NTC 02-04-01	Internal Control and Monitoring of Accounting Procedures
NTC 02-07-02	Chapel Fund [(Added 9/13/88)]
NTC 02-08-01	Inmate Canteen
NTC 02-10-01	Insurance Coverage
NTC 02-12-01	Inmate Personal Accounts
NTC 03-01-01	Employee Dress and Personal Appearance
NTC 03-02-01	Prohibited Employee Conduct
NTC 03-03-01	Staff Members Suspected of Being Under the Influence of Intoxicants
NTC 03-04-01	Shift/Post Assignments and Transfers
NTC 03-06-01	Worker's Compensation
NTC 03-08-01	Procedures for New Employees Reporting for Employment
NTC 03-09-01	Maintenance, Confidentiality and Challenge of Information Contained in Employee Personnel File
NTC 03-10-01	Employment of Ex-offenders
NTC 03-11-01	Submission of Northpoint Training Center Staff Recommendation/ Changes
NTC 03-11-02	Employee Suggestion System
NTC 03-13-01	Travel Reimbursement for Official Business and Professional Meetings (Amended 10/14/88)
NTC 03-14-01	Procedures for Selection, Retention, Promotion, and Lateral Transfer of Merit System Employees
NTC 03-14-02	Procedures for Promotional Opportunities
NTC 03-15-01	Time and Attendance; Accumulation and Use of Accrued Time
NTC 03-15-02	Procedures for Control of Excessive Leave Use
NTC 03-15-03	Inclement Weather and Emergency Conditions
NTC 03-16-01	Affirmative Action and EEO
NTC 03-17-01	Employee Grievance Procedure
NTC 03-18-01	Educational Assistance Program
NTC 03-19-01	Holding of Second Jobs by Employees
NTC 03-20-01	Assistance and Counseling Services for Employees and their Families
NTC 03-21-01	Procedures for Employee Evaluation System
NTC 04-01-01	Training and Staff Development
NTC 04-04-01	Firearms and Chemical Agents Training
NTC 06-01-01	Offender Records
NTC 06-01-02	Records - Release of Information
NTC 06-01-03	Taking Offender Record Folders onto the Yard
NTC 08-05-01	The Fire and Safety Officer
NTC 08-05-02	Fire Procedures
NTC 08-05-03	Fire Prevention
NTC 08-05-04	Storage of Flammables and Dangerous Chemicals and Their Use
NTC 08-07-01	Safety Standards
NTC 10-01-01	Special Management Inmates (SMU)
NTC 10-02-01	Security Guidelines for Special Management Inmates
NTC 10-03-01	Protective Custody
NTC 11-03-01	Food Services: General Guidelines
NTC 11-04-01	Food Service: Meals
NTC 11-04-02	Menu, Nutrition and Special Diets [(Amended 9/13/88)]
NTC 11-05-02	Health Standards/Regulations for Food Service Employees
NTC 11-06-01	Inspections and Sanitation
NTC 11-07-01	Purchasing, Storage and Farm Products [(Amended 9/13/88)]
NTC 12-01-01	Institutional Inspections
NTC 12-02-01	Personal Hygiene for Inmates; Clothing and Linens
NTC 12-02-02	Issuance of Personal Hygiene Products [(Amended 9/13/88)]
NTC 13-01-01	Emergency Medical Care Plan
NTC 13-01-02	Emergency and Specialized Health Services
NTC 13-02-01	Administration and Authority for Health Services
NTC 13-03-01	Sick Call and Pill Call
NTC 13-04-01	Utilization of Pharmaceutical Products
NTC 13-05-01	Dental Services
NTC 13-06-01	Licensure and Training Standards
NTC 13-07-01	Provisions for Health Care Delivery
NTC 13-08-01	Medical and Dental Records
NTC 13-09-01	Special Diets
NTC 13-11-01	Inmate Health Screening and Evaluation
NTC 13-12-01	Special Health Care Programs [(Amended 9/13/88)]
NTC 13-17-01	Inmates Assigned to Health Services

NTC 13-19-01	Mental Health Care Program
NTC 13-19-03	Suicide Prevention and Intervention Program
NTC 13-20-01	Infectious Disease
NTC 13-21-01	Vision Care/Optometry Services
NTC 13-22-01	Informed Consent
NTC 13-23-01	Special Needs Inmates
NTC 14-01-01	Legal Services Program [(Amended 9/13/88)]
NTC 14-01-02	Video Viewing of Trials [(Added 9/13/88)]
NTC 14-02-01	Inmate Grievance Procedure
NTC 14-03-01	Inmate Rights and Responsibilities
NTC 14-03-02	Board of Claims
NTC 14-04-01	Inmate Search Policy
NTC 15-01-01	Restoration of Forfeited Good Time [(Amended 9/13/88)]
NTC 15-02-01	Due Process/Disciplinary Procedures
NTC 15-02-02	Extra Duty Assignments [(Amended 9/13/88)]
NTC 15-02-03	Hearing Officer [(Amended 9/13/88)]
NTC 15-03-01	Rules for Inmates Assigned to Outside Detail
NTC 15-03-02	Rules and Regulations for General Population Dormitories
NTC 15-04-01	Inmate Identification
NTC 16-01-01	Mail Regulations
NTC 16-02-01	Visiting [(Amended 9/13/88)]
NTC 16-02-02	Extended and Special Visits
NTC 16-02-03	Honor Dorm Visiting
NTC 16-03-01	Inmate Furloughs
NTC 16-05-01	Telephone Use and Control
NTC 17-01-01	Personal Property Control
NTC 17-01-02	Authorized Inmate Personal Property [(Amended 9/13/88)]
NTC 17-01-03	Unauthorized Inmate Property
NTC 17-01-04	Disposition of Unauthorized Property
NTC 17-03-01	Assessment/Orientation
NTC 18-01-01	Preparole Progress Report (Amended 10/14/88)
NTC 18-02-01	Classification (Amended 10/14/88)
NTC 18-02-02	Classification - 48 Hour Notification
NTC 18-03-01	Special Notice Form (Amended 10/14/88)
NTC 18-05-01	Transfers of Inmates (Amended 10/14/88)
NTC 18-05-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 19-01-01	Inmate Work Program
NTC 19-01-03	Temporary Leave from Job Assignment
NTC 19-02-01	Correctional Industries
NTC 19-02-02	Guidelines for Correctional Industries
NTC 20-01-01	Academic School Program
NTC 20-02-01	Vocational School
NTC 20-02-02	Live Work Projects in Vocational School Classes [(Added 9/13/88)]
NTC 21-01-01	Library Services
NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs
NTC 23-01-01	Religious Services
NTC 23-03-01	Marriage of Inmates
NTC 24-04-01	Honor Status
NTC 24-05-01	Unit Management
NTC 25-01-01	Release Preparation Program
NTC 25-01-02	Temporary Release/Community Center Release
NTC 25-01-03	Graduated Release
NTC 25-02-01	Funeral Trips and Bedside Visits
NTC 25-03-01	Inmate Release Procedure
NTC 26-01-01	Citizen Involvement and Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: October 13, 1988
FILED WITH LRC: October 13, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 23, 1988 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones
(1) Type and number of entities affected: 285 employees of the Northpoint Training Center, 929 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CORRECTIONS CABINET
(Proposed Amendment)

501 KAR 6:130. Western Kentucky Farm Center.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the secretary to adopt, amend or rescind regulations necessary and suitable for the proper administration of the cabinet or any division therein. This regulation is in conformity with those provisions.

Section 1. Pursuant to the authority vested in the Corrections Cabinet the following policies and procedures are incorporated by reference on October 14 [September 13], 1988 and hereinafter

should be referred to as Western Kentucky Farm Center Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Corrections Cabinet, State Office Building, Frankfort, Kentucky 40601.

WKFC 01-09-01	Duty Officers, External and Internal Inspections, and Staff Tours
WKFC 02-01-01	Inmate Funds
WKFC 02-00-03	Invoice/Voucher Processing
WKFC 02-00-06	Purchasing Procedures
WKFC 02-01-01	Inmate Funds
WKFC 02-02-01	Agency Funds and Accounting Procedures
WKFC 02-08-01	Property Receipt and Inventory Procedures
WKFC 04-01-01	Travel Reimbursement for Official Business in Attendance at Professional Meetings
WKFC 04-02-01	Employee Training and Development
WKFC 04-04-01	Educational Assistance Program
WKFC 05-01-01	Research, Consultants, and Student Interns
WKFC 06-00-01	Offender Records and Information Access
WKFC 06-00-02	Court Orders, Orders of Appearance, Warrants, Detainers, Etc.
WKFC 09-00-01	Drug Abuse Testing
WKFC 10-02-01	Special Management Inmate(s)
WKFC 11-00-02	Food Service Inmate Work Responsibilities, Evaluations, and Health Requirements
WKFC 11-00-03	Food Service Inspections, Sanitation, Purchasing, Storage, and Corrections Cabinet Farm Products
WKFC 11-02-01	Food Service General Guidelines
WKFC 11-02-02	Food Service Security
WKFC 11-03-01	Food Service Meals, Menus, Nutrition and Special Diets
WKFC 12-01-01	Inmate Clothing
WKFC 13-00-01	Special Health Programs
WKFC 13-01-01	Use of Pharmaceutical Products
WKFC 13-02-01	Health Care Services
WKFC 14-00-01	Inmate Rights and Responsibilities
WKFC 14-04-01	Legal Services Program
WKFC 14-06-01	Inmate Grievance Procedure
WKFC 15-01-01	Hair and Grooming Standards
WKFC 15-03-01	Meritorious Good Time
WKFC 15-05-01	Restoration of Forfeited Good Time
WKFC 16-01-01	Visiting Policy and Procedures (Amended 10/14/88) [(Amended 9/13/88)]
WKFC 16-02-01	Inmate Correspondence [(Amended 9/13/88)]
WKFC 16-03-01	Inmate Access to Telephones
WKFC 16-04-01	Inmate Packages
WKFC 17-01-01	Inmate Personal Property
WKFC 17-02-01	Inmate Reception and Orientation
WKFC 18-01-01	Structure, Guidelines, and Functions of the Classification Committee
WKFC 18-13-01	Meritorious Housing (Amended 10/14/88)
WKFC 19-03-01	Inmate Wage Program
WKFC 19-04-01	Work/Program Assignments
WKFC 20-04-01	Academic Education Program(s)
WKFC 20-03-01	Vocational Education Program(s)
WKFC 22-00-01	Inmate Recreation and Leisure Time Activities
WKFC 22-00-02	Inmate Clubs & Organizations
WKFC 23-00-01	Religious Services
WKFC 25-01-01	Gratuities
WKFC 25-02-01	Inmate Release Process
WKFC 25-03-01	Prerelease Programs
WKFC 26-01-01	Volunteer Services Program

JOHN T. WIGGINTON, Secretary
APPROVED BY AGENCY: October 13, 1988
FILED WITH LRC: October 13, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 23, 1988 at 9 a.m., in the State Office Building Auditorium. Those interested in attending this hearing shall notify in writing: Barbara Jones, Office of General Counsel, 5th Floor, State Office Building, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Barbara Jones
(1) Type and number of entities affected: 84 employees of the Western Kentucky Farm Center, 325 inmates, and all visitors to state correctional institutions.
(a) Direct and indirect costs or savings to those affected:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: None - All of the costs involved with the implementation of the regulations are included in the operational budget.
2. Continuing costs or savings: Same as 2(a)1.
3. Additional factors increasing or decreasing costs: Same as 2(a)1.
(b) Reporting and paperwork requirements: Monthly submission of policy revisions.
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: None
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. All policies are administered in a uniform manner.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 13:080. Authorized procedures.

RELATES TO: KRS 211.960 to 211.968, 211.990(5)
STATUTORY AUTHORITY: KRS 211.964
NECESSITY AND FUNCTION: KRS 211.964 directs the Cabinet for Human Resources to adopt rules and regulations relating to emergency medical technicians. The function of this regulation is to establish procedures which EMTs are authorized to perform.

Section 1. Authorized Certified EMT

Procedures. (1) Except as otherwise provided in subsections (2) and (3) of this section, certified EMTs may perform any of the procedures as set forth in the "Basic Emergency Medical Technician: National Standard Curriculum," Third Edition, 1984, published by the United States Cabinet of Transportation, National Highway and Traffic Safety Administration, Washington, D. C. 20590, and in the accompanying text entitled "Emergency Care," Fourth Edition, 1986, published by The Brady Company, Prentice-Hall, Inc., Englewood Cliffs, N.J. 07632. A copy of both publications, included by reference as if fully incorporated herein, shall be on file in the office of the Emergency Medical Services Branch, Department for Health Services, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621 [40602], and shall be available for public inspection.

(2) EMTs shall not perform any of the following procedures:

(a) The administration of intravenous fluids or plasma expanders, or both;

(b) Perform a cricothyrotomy;

(c) Relieve a tension pneumothorax through the use of needles;

(d) Insert an esophageal obturator airway or esophageal gastric tube airway.

(3) An EMT shall not use medical antishock trousers unless:

(a) He has completed a Kentucky emergency medical technician course during which the use of medical antishock trousers was taught after July 1, 1985; or

(b) He is currently certified as an emergency medical technician and completes the four (4) hour training session on the medical antishock trousers and successfully passes an examination administered by the cabinet consisting of both written and practical application examinations. The standards for such examinations shall be the same as for an EMT course. The training and examination shall be conducted by an EMT instructor or instructor trainer in accordance with the criteria set forth in the "Basic Emergency Medical Technician: National Standard Curriculum," Third Edition, 1984 and the standards and protocols of the Cabinet for Human Resources; or

[(c) He is currently certified as an emergency medical technician and, prior to the effective date of this regulation, has received training in the use of medical antishock trousers conducted under the authorization of a licensed physician. An EMT so trained may continue to use medical antishock trousers until September 1, 1986. The EMT must submit on or before April 1, 1986, satisfactory evidence of such training to the cabinet and must successfully pass both written and practical application examinations administered by the cabinet. The standards for such examinations shall be the same as for an EMT course. If the EMT does not successfully pass the examinations by September 1, 1986, authorization to use medical antishock trousers shall lapse and he must then comply with subsection (b) of this section; or]

(c) [(d)] He has completed an emergency medical technician course in another state which included the use of medical antishock trousers and has taken and passed, as a part of his Kentucky challenge examination, an examination in the use of medical antishock trousers; and

(d) [(e)] He uses medical antishock trousers in accordance with the standards and the protocol of the cabinet.

Section 2. All EMTs are to be certified in use of medical antishock trousers prior to January 1, 1988. Any EMT who is not certified in the use of medical antishock trousers as provided in this regulation shall obtain such certification by a method provided herein no later than January 1, 1988 in order to qualify for renewal of his certification as an EMT in Kentucky.

Section 3. EMT-defibrillation Pilot Program. EMTs who have successfully completed the cabinet's ten (10) hour training course for the automatic and semiautomatic defibrillation pilot program and have successfully passed an examination consisting of both written and practical application examinations, shall be authorized to perform defibrillation procedures in accordance with the standards and protocols established by the cabinet. Such authorization shall expire on June 30, 1990.

C. HERNANDEZ, M.D., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 13, 1988
FILED WITH LRC: September 28, 1988 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Pat Loar Jones

(1) Type and number of entities affected: Four ambulance services will be participating in this pilot program.

(a) Direct and indirect costs or savings to those affected: Ambulance services selected for voluntary participation in the pilot program will be responsible for purchasing the necessary equipment. There are no mandated costs involved, since participation will be on a voluntary basis if implemented statewide.

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: This regulation willl not increase reporting and paperwork requirements.

(2) Effects on the promulgating administrative body: This will create a slight increase in duties for staff, who will monitor and evaluate

the program.
(a) Direct and indirect costs or savings: Regulation affects no costs or savings.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: Will require a written evaluation of the program.
(3) Assessment of anticipated effect on state and local revenues: This regulation will not affect state and local revenues.
(4) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives at this time due to this being a pilot program.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No other statute, regulation or policy conflicts with, overlaps or duplicates this regulation.
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Regulation applies equally to all participants in the emergency medical technician-defibrillation pilot program.

CABINET FOR HUMAN RESOURCES
Department for Health Services
(Proposed Amendment)

902 KAR 17:010. State health plan.

RELATES TO: KRS 216B.040(2)(a)
STATUTORY AUTHORITY: KRS 194.050, 1986 Acts Chapter 474
NECESSITY AND FUNCTION: Pursuant to 1986 Acts Chapter 474 the Statewide Health Coordinating Council is created to prepare and review, as necessary, a state health plan which establishes a health planning policy for the Commonwealth and describes the health services needed to provide for the well being of persons residing in the state. The Cabinet for Human Resources prepares a Preliminary State Health Plan for the Statewide Health Coordinating Council in preparing the state health plan. The plan becomes final upon approval of the governor. [The Cabinet for Human Resources is authorized by KRS 194.050 to adopt such rules and regulations as are necessary to operate the programs and fulfill the responsibilities vested in the cabinet. The cabinet and the Statewide Health Coordinating Council are responsible for development of the state health plan.] The Commission for Health Economics Control in Kentucky utilizes the state health plan in review of applications for certificates of need to establish and modify health services and health facilities in the Commonwealth. The function of this regulation is to assist in the inventory of existing health resources and to set planning goals and guidelines.

Section 1. The Kentucky State Health Plan 1988-1990 [1986-1988], was adopted by the Statewide Health Coordinating Council on June 7, 1988, amended after a public hearing on August 3, 1988 [November 8, 1985, amended on January 22, 1986, January 9, 1987, and December 2, 1987,] and approved by Governor Wallace G. Wilkinson on September 15, 1988 as the document that sets out planning policies and guidelines for use by the Commission for Health Economics Control in Kentucky. A copy of the Kentucky State Health Plan 1988-1990 [1986-1988 as amended on January 22, 1986, January 9, 1987, and December 2, 1987] is on file in the Office of the Commissioner for Health Services, 275 East Main Street, Frankfort, Kentucky 40621 and is open and available for public inspection during normal business hours.

Section 2. The Review Criteria and Standards Section, pages 175 through 199 [198], of the Kentucky State Health Plan 1988-1990 [1986-1988] is hereby adopted by reference as regulations of the Cabinet for Human Resources as if fully set out herein.

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 9 1988
FILED WITH LRC: September 21, 1988 at 11 a.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled for November 21, 1988 at 10 a.m. in the Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1988, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Robert L. Nelson
(1) Type and number of entities affected: The review criteria being referenced contains criteria that is used by the Commission for Health Economics Control in Kentucky when reviewing applications to add a health facility or health service. The certificate of need (CON) application review criteria appearing in the 1988-1990 State Health Plan relating to long term care/home health services, magnetic resonance imaging (MRI), and radiation therapy was amended by the Statewide Health Coordinating Council on June 6, 1988. Entities to be affected can include an existing health facility or service, or any person or combination of persons requesting approval to provide such services.
(a) Direct and indirect costs or savings to those affected: The one-year extension of the State Health Plan moratorium establishing new long term care beds and new or expansion of existing home health agencies, unless specific exemptions are met, beginning on July 1, 1988, will result in a fewer number of health care facilities from submitting CON applications requesting approval to construct new beds or establishing a new service. This will result in the applicant not incurring the cost of a sliding application fee, which is based on the dollar value of the application, by a facility considering entering the CON process. The revision to the MRI review criteria merely updates the State Health Plan by replacing the existing methodology used to determine service need with the most recently recognized methodology, which is currently being utilized in the CON process. A clarified definition of a

radiation therapy procedure was inserted to improve the accuracy of the survey of numbers of procedures provided during a reporting period. Neither the MRI nor the radiation therapy revisions will cause any costs or savings to the affected entitites.

1. First year: The moratorium on establishing new long term care beds and new or expansion of existing home health agencies will be affective for the first year beginning on July 1, 1988, and ending on June 30, 1989. This will result in a fewer number of potential sliding application fees, based on the dollar value of the application, being incurred by health care entitites.

2. Continuing costs or savings: There will be no continuing costs or savings after the first year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The moratorium on establishing new long term care beds and home health services will result in fewer potentially competing CON applications from health care facilities requesting approval to establish or increase services for the same geographical area.

(b) Reporting and paperwork requirements: There are no specific reporting or paperwork requirements as a result of the State Health Plan Review Criteria. Through the CON process, potential applicants would address, in narrative form, the consistency of the proposed application with the specific review criteria being referenced. Review criteria contain various planning methodologies describing the need for particular health services in the state. The extension of the long term care and home health services moratorium will result in a fewer number of CON applications being completed by health care entities considering entering the process.

(2) Effects on the promulgating administrative body: There are not any effects on the promulgating administrative body to be listed for this question.

(a) Direct and indirect costs or savings: The extension of the long term care and home health services moratorium will result in a fewer number of CON applications which will lessen potential increased obligation of Kentucky and federal Medicaid dollars that would be used to subsidize eligible new long term care facility residents and home health service recipients.

1. First year: The moratorium on establishing new long term care beds and home health services will be effective for the first year beginning on July 1, 1988, and ending on June 30, 1989. This will result in fewer CON applications and in smaller obligation of state and federal Medicaid dollars that would be used to subsidize eligible new long term care facility residents or home health service recipients.

2. Continuing costs or savings: There will be no continuing costs or savings beyond the first year.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: The one-year extension of the long term care and home health service moratorium will result in fewer CON applications and will not require additional staff time, paper or postage costs, for processing applications.

(3) Assessment of anticipated effect on state and local revenues: The one-year extension of the long term care and home health service moratorium will result in fewer CON applications being submitted and a lesser amount of application fees being paid into the State Treasury.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Consideration was given to not extend the long term care moratorium and allow new long term care facility beds and home health services to be established. However, that alternative was rejected because of the increased obligation of state and federal Medicaid dollars that would result.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy that will be in conflict, overlapped, or duplicated.

(a) Necessity of proposed regulation if in conflict: There is no regulation in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no regulation in conflict.

(6) Any additional information or comments: There is no additional information or comments.

TIERING: Was tiering applied? No. The long term care and home health services moratorium is applied equally to all individuals or entities submitting applications to the CON process, with the following exemptions:

(a) Facilities which fail to meet life safety codes may be replaced if such replacements are limited to their current licensed bed complement. Such facilities may change their bed complement only if conversions are allowed under 1.b. below.

(b) In areas with unmet need for intermediate or personal care beds, as determined by the methodology, surplus skilled, nursing home, or intermediate care beds may be converted to meet the unmet need so long as the conversions do not result in an unmet need in the category of beds from which they are drawn and are conversions to a less intensive level of care.

(c) In areas with unmet need for skilled care beds, as determined by the long term care methodology, criteria and standards (pages 127-130, 197-198), unneeded or underutilized acute care beds, as determined by the acute care methodology (pages 177-178), may be utilized as skilled beds in accordance with the swing beds policy (page 198). Such utilization of acute care beds shall be shown to be a cost effective means of providing care.

CABINET FOR HUMAN RESOURCES
Department for Employment Services
Division of Unemployment Insurance
(Proposed Amendment)

903 KAR 5:100. Claimant's reporting requirements.

RELATES TO: KRS 341.350, 341.380

STATUTORY AUTHORITY: KRS 13A.100, 194.050, 341.115

NECESSITY AND FUNCTION: This regulation sets forth the registration and reporting requirements that the claimant must meet to draw benefits and the date when the claim will be valid. It further sets out the length of time a

claim may be backdated and the procedures for mail claims.

Section 1. Registration for Work. A worker must be registered for work with the state employment service before he shall be eligible to receive benefits. The procedures a claimant shall follow to meet the work registration requirement depend on the claimant's reemployment prospects. At the time a claimant completes an initial application for benefits, he is assigned a group classification code (A, B, C, or D) based upon his reemployment prospects. Group A includes claimants who definitely have depended on their work for their individual or family support and whose employment record indicates a firm attachment to the labor market. This group includes, but is not limited to, workers unemployed due to a temporary layoff with good return prospects but no definite recall date, workers with a steady employment record and unemployment due to lack of work, or workers with a highly specialized employment record. Group B includes workers unemployed as a result of a mass layoff who have positive return prospects with their last employer, workers unemployed because of a labor dispute in the establishment where they have been employed, unemployed workers of a local employer whose performance strongly indicates reemployment for such workers even though a definite recall date has not been set, claimants who are working part time with a regular employer but who are eligible for partial benefits, and claimants who are members of unions which are responsible for securing their future employment. Group C includes workers whose work record indicates continuing questions of availability or ability for work. Those claimants who provide incomplete information shall be placed temporarily in group C. Group D is the same as group C except availability or ability questions require closer and more frequent scrutiny. During any benefit year, a claimant may be assigned a different group classification code if review of his reemployment prospects reveals that a different classification is appropriate.

(2) The completion of an initial application for benefits shall serve as work registration for "B" claimants. "A," "C," and "D" claimants shall report to the state employment service for an in-depth interview and completion of an ES-511 form in order to receive full job placement service. Such registration shall remain active during the worker's benefit year as defined in KRS 341.090(2). [The completion of an initial application for benefits shall also serve as the registration for work. Such registration shall remain active during the worker's benefit year as defined in KRS 341.090(2).]

Section 2. Initial and Reopened [(Additional)] Claims for Benefits. (1) In order for a worker to file an initial or reopened claim for benefits he shall report in person with the following proof of identity: social security card, valid driver's license with a photograph or other acceptable photo-identification to a state [public] employment office which serves unemployment insurance claimants to complete an initial claim form and certifications required by the secretary to make a determination as to the worker's benefit eligibility. If any issues regarding the claimant's eligibility as defined in KRS 341.350 or a potentially disqualifying circumstance as defined in KRS 341.360 or 341.370 are detected, a fact-finding interview shall be scheduled at which the claimant may present all facts in support of his application. [and complete such forms and conform to such procedures as are approved by the secretary. Such procedures are contained in the local office manual in the following sections: 2010, which requires the claimant to provide proper identification before filing a claim for benefits; 2020, which provides for scheduling of claimants for fact-finding interviews to resolve potential issues, describes the forms to be completed by the claimant and claimstaker and provides for exceptions to in-person reporting requirements; 2060, which provides completion instructions for the UI-401, Initial Claim for Benefits; 2065, which requires video entry of a group classification code by which the claimant is scheduled for eligibility review interviews; 2120 and 2130, which relate to the completion of the UI-465A, Eligibility Review Form, and guidelines for assignment to a particular group; 2160, which provides instances when claimants will be required to register for work with the Department for Employment Services; 2170, which requires the conduct of a benefit rights interview; 2230, which provides procedures for taking additional and reactivated claims for benefits; and 3040, which provides continued claims procedures for assuring that the claimant has registered for work, has certified that he meets the eligibility requirements, has presented proper identification and has not claimed benefits by mail unless permitted to do so.]

(2) In areas serviced by a full-time state [public] employment office which serves unemployment insurance claimants, such initial or reopened claim shall be dated as of the first day of the week in which such worker first reports to such state [public] employment office for the purpose of filing a claim for benefits.

(3) In areas serviced by a part-time state [an itinerant public] employment office which serves unemployment insurance claimants, such initial or reopened claim shall be dated as of the first day of the week in which the worker becomes unemployed provided he reports to such part-time [itinerant] office for the purpose of filing a claim for benefits on the first day such office is open following his last day of work; otherwise such claim shall be dated as of the first day of the week in which the worker reports at a part-time [an itinerant] or full-time state [public] employment office which serves unemployment insurance claimants.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section such initial or reopened claim may be dated as of the first day of any week of unemployment in which the worker worked less that his customary full-time hours for his regular employer, provided such worker reports to a state [public] employment office which serves unemployment insurance claimants for the purpose of filing a claim for benefits within fourteen (14) days after the date he was paid for such week.

(5) Upon the presentation by the worker of reasons found to constitute good cause for failure to report at an earlier date, the secretary may authorize the backdating of initial or reopened claims in an area serviced

by a full-time state [public] employment office which serves unemployment insurance claimants to the first day of a week which ended not earlier than fourteen (14) days prior to the day on which he first reported or indicated his desire to file such claim, and in an area serviced by a part-time state employment [an itinerant] office which serves unemployment insurance claimants, to the first day of the week which ended not earlier than twenty-eight (28) days prior to the day on which he first reported.

Section 3. Continued Claims for Benefits. (1) In order for a worker, who has filed his initial claim for benefits and has established a benefit year, to file a continued claim for benefits he shall report in person, except as hereinafter provided, to a state [public] employment office which serves unemployment insurance claimants to complete a continued claim form and certification required by the secretary to determine the worker's continued eligibility for benefits as defined in KRS 341.350, 341.360 or 341.370 [and complete such forms and conform to such procedures as are approved by the secretary].

(2) Continued claims for benefits shall cover the week or the two (2) weeks of unemployment (depending on whether the worker is reporting on a weekly or biweekly basis) immediately prior to the date on which they are filed.

(3) Upon the presentation by the worker of reasons found to constitute good cause for failure to file at an earlier date, the secretary may authorize the backdating of continued claims in an area serviced by a full-time state [public] employment office to cover a week or weeks of unemployment ended not earlier than twenty-eight (28) days prior to the date on which they are filed and in an area serviced by a part-time state [an itinerant public] employment office which serves unemployment insurance claimants to cover a week or weeks of unemployment ended not earlier than thirty-five (35) days prior to the date on which they are filed.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, such continued claim may be dated as the first day of any week of unemployment in which the worker worked less than his customary full-time hours for his regular employer and for which week he filed a continued claim, provided such worker reports to a state [public] employment office which serves unemployment insurance claimants for the purpose of filing a claim for benefits within fourteen (14) days after the date he was paid for such week.

(5) Continued claims for partial benefits shall be certified as to earnings when so required by [procedures approved by] the secretary, except that the failure of an employer to properly certify earnings shall not result in a denial of benefits otherwise due under the law.

Section 4. Mail Claims. (1) The secretary may authorize [establish procedures whereby] an individual to [may] file his continued claims by mail if reporting in person would require expenditure of an unreasonable amount of travel or money. Such continued claim shall cover the week or weeks indicated on the claim form.

(2) Claims filed by mail shall be considered filed on the day they are deposited in the mail and postmarked. The provisions of this regulation governing the dating and backdating of continued claims filed in areas serviced by a full-time state employment office shall also apply to claims filed by mail, and unless such claims are filed within the time prescribed herein, they shall not be allowed.

Section 5. Claims by Reemployed Workers. Notwithstanding the provisions of Section 3 of this regulation, a worker, who having filed his initial claim for benefits and having established a benefit year and who by reason of having returned to full-time employment is unable to report in person to a state [public] employment office, may file a continued claim for benefits by completing a continued claim form and certifications required by the secretary to determine the worker's continued eligibility for benefits [such forms in accordance with such procedures as are approved by the secretary] and submitting such form by mail to the Division of Unemployment Insurance. Such continued claim shall cover the week of unemployment indicated on the claim form provided that such week of unemployment ended not earlier than thirty-five (35) days prior to the date on which such claim was deposited in the mail.

Section 6. Eligibility Review. An unemployed worker claiming benefits shall report in person to a state [public] employment office, as directed, on a periodic basis for the purpose of continued benefit eligibility review.

Section 7. Failure to Comply with Regulations. Notwithstanding any other provisions of this regulation, if the secretary finds that the failure of any worker to file a claim for benefits, and register for work within the specified time, was due to the failure on the part of the employer to comply with any of the provisions of these [the commission's] regulations, or to coercion or intimidation exercised by the employer to prevent the prompt filing of such claim or to failure by the division's personnel to discharge necessary responsibilities, the worker shall have fourteen (14) days after he has received appropriate notice of such findings of the secretary, within which to file such claim, provided that no claim shall be allowed which is filed later than thirteen (13) weeks subsequent to the end of the actual or potential benefit year involved.

MARGARET WHITTET, Acting Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 21, 1988
FILED WITH LRC: October 5, 1988 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Health Services Auditorium, Health Services Building, 1st Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Office of General Counsel, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Margaret Whittet

(1) Type and number of entities affected: Thousands of UI claimants.

(a) Direct and indirect costs or savings to those affected: No direct or indirect costs; regulation sets out specific registration and reporting procedures.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Claimants required to report in person to local DES Office to register for work and file claims for benefits.

(2) Effects on the promulgating administrative body: Provides a more effective and efficient procedure for registering claimants for work.

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Claimants required to report in person to local DES Office to register for work and file claims for benefits.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternate method of having initial application for benefits serve as work registration, proved ineffective and less efficient.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: This change in the regulation reflects actual practice and thus would not entail an increase in costs. The initial application for unemployment insurance benefits is completed by all claimants and is sufficient as work registration only for those claimants who have a definite job connection and are not in need of job placement services. We are not asking other claimants to register twice but are requiring an in-depth interview and completion of the Employment and Training ES-511 work registration form in order to provide full job placement services to claimants without a definite job connection. This must be done to meet the intent of the work registration requirement of KRS 341.350(2).

TIERING: Was tiering applied? Yes

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
(Proposed Amendment)

904 KAR 2:110. Refugee assistance.

RELATES TO: KRS 194.050, P.L. 96-212

STATUTORY AUTHORITY: KRS 194.050, P.L. 96-212

NECESSITY AND FUNCTION: The Cabinet for Human Resources is authorized by KRS 194.050 to administer programs to qualify for the receipt of federal funds providing cash and medical assistance to eligible Kentucky residents. This regulation establishes [sets forth the] eligibility criteria and types and amounts of assistance for refugees residing in Kentucky.

Section 1. Definitions. [Terms used in this regulation are defined as follows:]

(1) "Refugee" is [defined as] any person of any nationality who:

(a) Because of persecution or fear of persecution due to [on account of] race, religion, nationality, membership in a particular social group, or political opinion fled from their country or the country where the [such] person habitually resided and cannot return there because of fear of persecution due to [on account of] race, religion, nationality, membership in particular social group, or political opinion; and

(b) Has been granted status by the United States Department for Immigration and Naturalization Service (INS) as refugee, asylee, parolee, voluntary departure, permanent resident alien, conditional entrant, Amerasian immigrant or Cuban Haitian entrant.

[(2) "Cuban Haitian Entrant Program (CHEP)" is the program for Cuban or Haitian persons who meet the status, documentation, and period of eligibility criteria as set forth in 45 CFR Parts 401.2 and 401.12(c).]

(2) [(3)] "Refugee Resettlement Program (RRP)" is the [that] program for refugees [persons] who meet the following criteria[, excluding those persons who qualify for the Cuban Haitian Entrant Program]:

(a) Have been United States residents for not more than twelve (12) [eighteen (18)] months beginning with the month a refugee entered the United States; and

(b) Meet one (1) of the following status criteria of [as determined by] the Immigration and Naturalization Service (INS):

1. A person from any country who has parolee status as a refugee or asylee under Section 212(d)(5) of the Immigration and Nationality Act (INA).

2. A person admitted from any country with a conditional entrant status under Section 203(a)(7) of the INA.

3. A person from any country admitted as a refugee under Section 207 of the INA (as added by the Refugee Act of 1980).

4. A person from any country who has been granted asylum status under Section 208 of the INA (as added by the Refugee Act of 1980).

5. A person admitted as an Amerasian immigrant under Public Law 100-202.

6. [5.] A person from any country who previously held one (1) of the above statuses [identified above] whose status has [subsequently] been adjusted to [that of] permanent resident alien.

Section 2. Application. Each refugee household requesting assistance shall [be required to] complete an application and provide [such] information [as may be deemed] necessary to determine eligibility in accordance with the procedural requirements of [prescribed by] the cabinet.

Section 3. Eligibility Criteria. The applicant shall meet the following conditions of eligibility for receipt of cash and[/or] medical assistance under the Refugee Resettlement Program [or Cuban Haitian Entrant Program]:

(1) The applicant shall be [meet the definition of] a refugee [as contained in Section 1 of this regulation], however, a child[(ren)] of a recipient of refugee assistance who is a United States Citizen by [virtue of] birth within the United States is eligible while [under this regulation for as long as] the eligible refugee parent remains eligible for refugee assistance; and

(2) The applicant shall be ineligible for Aid to Families with Dependent Children (AFDC) and Medical Assistance Programs; and

(3) The applicant shall be a Kentucky resident as specified in 904 KAR 2:006, [AFDC] Technical requirements; AFDC; and

(4) The applicant shall meet the financial need and resource limitations criteria of Aid to Families with Dependent Children [as set forth] in 904 KAR 2:016, Standards for need and amount; AFDC, or if the application is for medical assistance only, the applicant shall meet the AFDC-related Medical Assistance Program financial eligibility standard[, as set forth] in 904 KAR 1:004, Resource and income standard of medically needy; and

(5) For receipt of cash assistance the applicant shall participate in any available and appropriate social service program providing job or language training in the area in which the refugee resides. In addition, the applicant shall register for employment with the state employment office, unless exempt under one (1) of the following criteria:

(a) A child under age sixteen (16);

(b) A child age sixteen (16) through seventeen (17), if enrolled as a full-time student at the high school level or the equivalent level of vocational or technical school;

(c) An individual who has a medically determined temporary illness or injury with recovery anticipated within ninety (90) days;

(d) An individual who has a medically determined physical or mental incapacity which is expected to exist longer than ninety (90) days;

(e) An individual age sixty-five (65) or over;

(f) An individual whose presence is required in the home to care for another member of the household who has been medically determined unable to care for himself [to be precluded from self-care] and for whom alternate care arrangements are not feasible;

(g) A mother or other caretaker relative of a child under age six (6);

(h) A mother, if the father is required to register; and

(i) A woman who is medically verified to be in the third trimester of pregnancy.

(6) For receipt of cash assistance, the refugee shall [must] not refuse an appropriate offer of employment, terminate employment or refuse to participate in an available and appropriate social service program [as referenced in subsection (5) of this section]. Any refugee not meeting this requirement shall be ineligible for a period of three (3) [payment] months for the first [such] occurrence and for a period of six (6) [payment] months for [the second and] subsequent occurrence.

(7) For receipt of cash assistance, the refugee shall [must] not be a full-time student [(defined as a student who is] carrying a full time workload that is equal to or greater than those specified at 34 CFR 690.2(1)-(6)[)] in an institution of higher education (defined by 34 CFR 668.2(a)(4), 668.3(a)(5), and 668.4(a)(4)) other than a correspondence school.

(8) The applicant shall meet the period of eligibility and status criteria of [contained in the definition of the Cuban Haitian Entrant Program or] the Refugee Resettlement Program [in Section 1 of this regulation].

(9) A child[(ren)] born to a woman [eligible for and] receiving medical assistance under the Refugee Assistance Program is eligible for medical assistance if [so long as] the child[(ren)] has not reached his[/her] first birthday, resides in the household of the woman, and the woman remains eligible for medical [such] assistance. In this situation, an application is deemed to have been made and the child found eligible for medical assistance [MA] as of the date of birth.

Section 4. Benefit Levels. (1) Cash assistance shall be the same as for AFDC [as set forth] in 904 KAR 2:016, standards for need and amount; AFDC, except that the thirty (30) dollars plus one-third (1/3) disregard of earned income does not apply.

(2) Medical assistance benefits shall include all benefits available to [all other] Medicaid recipients. In addition, children eligible for medical assistance under the refugee assistance program are [deemed] eligible for coverage of hepatitis B immune globulin (HBIG) and hepatitis B virus (HBV) vaccine inoculations. Costs incurred for these inoculations will be covered by the Refugee Assistance Program.

(3) Payment of benefits depends upon [is subject to] the availability of federal funds. [, i.e.,] Payments may be reduced, suspended or terminated if federal funds are insufficient or are not provided to the state in a timely manner.

Section 5. Recoupment. Action shall be taken to recoup cash assistance overpayments in accordance with [the manner set forth in] 904 KAR 2:016, Section 10, Recoupment.

Section 6. Time and Manner of Payment. Time and manner of payment shall be in accordance with [the standards for AFDC as shown in] 904 KAR 2:050, Time and manner of payments.

Section 7. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055, Hearings and appeals.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 27, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. at Health Services

Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director

(1) Type and number of entities affected: This regulation is being amended as a result of federal statutory and regulatory changes relative to the 100% federally funded Refugee Resettlement Program. The amendments are made to include aliens with immigration status of Amerasian immigrant as a group eligible to receive refugee assistance and to reduce the period of eligibility in the program from 18 to 12 months from the date of entry to the country. Technical amendments are also being made to conform with changes made to KRS Chapter 13A enacted by the 1988 General Assembly.

Up to 150 Amerasian aliens are expected to be resettled in Kentucky in the coming federal fiscal year and an indeterminate number of them will enter as immigrants instead of as refugees (already an eligible group under the regulation and thus unaffected by this change). 8 refugee cases will have their refugee assistance terminated effective October 1 due to the reduction in the period of eligibility and thereafter all refugee assistance will be limited to 12 months.

(a) Direct and indirect costs or savings to those affected: Cash and medical assistance benefits (at levels equivalent to the level of AFDC and Medicaid) will be available as transitional support for refugees to self-sufficiency for only 12 months. Cash assistance (averaging $202 per case) will not be available after the 12th month but since the average period of receipt of refugee assistance is five months per case we do not anticipate that many refugees will be unable to achieve self-sufficiency prior to their 12th month. Inclusion of Amerasian immigrants as an eligible group assures that refugee cash and medical assistance will be available to assist these children of American servicemen in Vietnam (including their families) in their transition to self-sufficient life in America.

1. First year: The first year costs and savings cannot be estimated since most refugees receive assistance for an average of 5 months and since we do not know how many of the Amerasians destined for Kentucky will enter as immigrants. The 8 cases to be discontinued on October 1 due to the reduced period of eligibility would cost a total of $9,696 assuming the average assistance of $202 per case and assuming that all 8 would be eligible for 6 more months.

2. Continuing costs or savings: Continuing costs or savings similarly cannot be estimated since costs in the program vary depending upon federal admission levels of refugees which fluctuate from year to year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no other additional factors increasing or decreasing costs or savings. There is no competition to be affected.

(b) Reporting and paperwork requirements: All applicants for refugee assistance complete an application. The amendments do not affect the level of reporting or paperwork requirements.

(2) Effects on the promulgating administrative body: The Department for Social Insurance shall be responsible for assuring refugees, including Amerasian immigrants, receive assistance for no more than 12 months from the date of entry.

(a) Direct and indirect costs or savings: Refugee assistance and administrative costs are 100 percent federally funded. The reduction in the period of eligibility only moves forward the date on which cases must be discontinued due to the time limit on eligibility. It is possible that there will be an increase in the percentage of cases discontinued for this reason but this has no effect on the promulgating body. The eligibility of Amerasian immigrants will have very little net effect. Kentucky's level of refugee resettlements including the Amerasians is not expected to be higher than the number resettled in the previous year. Thus, we anticipate approximately the same number of applications as in the previous year.

1. First year: Normal costs associated with the program administration are anticipated.

2. Continuing costs or savings: Continuing costs or savings shall be the normal costs associated with program administration.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Administrative requirements for grants under appropriate state and federal law and regulations shall be met. Manual material will be revised to reflect the changes.

(3) Assessment of anticipated effect on state and local revenues: The amendments shall have no effect on state or local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Federal statutory and regulatory changes necessitate the amendments and thus no alternatives are possible.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or governmental policy is in conflict with, overlapping, or a duplication of these amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: No additional information or comments.

TIERING: Was tiering applied? No. The amendments are a direct result of federal activities mandating the specific changes.

Tiering regarding these changes is not possible under the federal mandate although eligibility and benefit levels are tiered based upon income and household size.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. P.L. 100-202, the Foreign Operations Appropriations Act within the FY 1988 continuing appropriations mandates eligibility for Amerasian immigrants. 45 CFR Part 400, revised by Federal Register Volume 53, No. 165, Page 32222, on August 24, 1988, mandates the reduction in the period of eligibility from 18 to 12 months.
2. State compliance standards. This regulation includes aliens with Amerasian immigrants as an eligible group for refugee resettlement and reduces the period of eligibility from 18 to 12 months.
3. Minimum or uniform standards contained in the federal mandate. The federal mandate specifically includes refugee assistance eligibility for Amerasian immigrants and the reduction in the period of eligibility from 18 to 12 months.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation will not impose stricter, additional, or different requirements or responsibilities than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard is being applied.

CABINET FOR HUMAN RESOURCES
Department for Social Insurance
Division of Management & Development
(Proposed Amendment)

904 KAR 2:116. Low income home energy assistance program.

RELATES TO: KRS 194.050
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility as prescribed by Public Law 97-35 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981 as amended) to administer a program to provide assistance for eligible low income households within the Commonwealth of Kentucky to help meet the costs of home energy. KRS 194.050 provides that the secretary shall, by regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This regulation states the eligibility and benefits criteria for each of <u>two (2)</u> [three (3)] components of energy assistance, subsidy <u>and</u> crisis [and emergency summer aid], under the Home Energy Assistance Program (HEAP).

Section 1. Definitions. Terms used in HEAP are defined as follows:
(1) "Principal residence" is the place where a person is living voluntarily and not on a temporary basis; the place he considers home; the place to which, when absent, he intends to return; and the place is identifiable from other residences, commercial establishments, or institutions.
(2) "Energy" means electricity, gas, and any other fuel that is used to sustain reasonable living conditions.
(3) "Household" means any individual or group of individuals who are living together in the principal residence as one (1) economic unit for whom residential energy is customarily purchased in common or who make undesignated payments for energy in the form of rent.
(4) "Economic unit" is one (1) or more persons sharing common living arrangements.
(5) "Subsidy component" is the portion of benefits reserved as energy assistance for heating.
(6) "Crisis component" is the component administered by local organizations under contract with the cabinet to provide heating crisis assistance.
(7) "Life threatening situation" under the crisis component means without heat or will be without heat within forty-eight (48) hours and temperatures at a dangerous level for household members. [Under the emergency summer aid program it means the life of a household member is threatened due to a medical condition and that loss of life may be prevented by receipt of assistance under this component.]
[(8) "Emergency summer aid program" is the component administered by local organizations under contract with the cabinet to provide cooling assistance to medically needy households.]
<u>(8)</u> [(9)] An "authorized representative" is the person applying on behalf of a household who presents to the cabinet or its representative a written statement signed by the appropriate household member authorizing that person to apply on the household's behalf.

Section 2. Application. Each household or authorized representative of the household requesting assistance shall complete an application and provide information necessary to determine eligibility and benefit amount. An application shall not be considered completed until all information needed to determine eligibility and benefit amount is received.

Section 3. Eligibility Criteria. (1) A household shall meet the following conditions of eligibility for receipt of a HEAP payment under the subsidy and crisis components:
(a) The amount of continuing and noncontinuing earned and unearned gross income including lump sum payments received by the household during the calendar month preceding the month of application shall be considered. Income received on an irregular basis shall be prorated.
(b) Gross income for the calendar month preceding the month of application shall be at or below the applicable amount shown on the income scale for the appropriate size household. Excluded from income are payments received by a household from a federal, state, or local agency designated for a special purpose and which the applicant shall spend for that purpose, payments made to others on the household's behalf, loans, reimbursements for expenses, incentive payments (WIN and JTPA) normally disregarded in AFDC, federal payments or benefits which shall be excluded according to federal law, and Supplemental Medical Insurance premiums.

Income Scale

Family Size	Monthly	Yearly
1	$ 529	$ 6,347
	[504]	[6,050]
2	709	8,503
	[678]	[8,140]
3	888	10,659
	[852]	[10,230]
4	1,068	12,815
	[1,027]	[12,320]
5	1,248	14,971
	[1,201]	[14,410]
6	1,427	17,127
	[1,375]	[16,500]

(c) For each household member more than six (6), the above income eligibility limitation for six (6) shall be increased by $180 [174] monthly or $2,156 [2,090] yearly.

(d) The household shall have total liquid assets at the time of application of not more than $5,000. Excluded assets are cars, household or personal belongings, principal residence, cash surrender value of insurance policies, prepaid burial policies, real property, and cash on hand or in a bank account if the cash is income considered under paragraph (a) of this subsection.

(e) Applicants for the crisis component shall be without heat, be without fuel within five (5) days, have received a notice of disconnection of service, or require a heat system repair to obtain adequate heat.

(2) Households are eligible to receive benefits under the subsidy component once and [,] under the crisis component not to exceed the maximum amount of benefits [and under the emergency summer aid program not to exceed the benefit maximums].

[(3) Applicants for the emergency summer aid program shall meet the income and resource criteria under subsection (1)(a) through (d) of this section and have a written statement from a physician or registered nurse that a household member is medically in need of assistance under this component. For life threatening situations, a written statement from a physician attesting to a life threatening situation is required.]

Section 4. Benefit Levels. Payment amounts for the subsidy and crisis components are set at a level to serve a maximum number of households while providing a reasonably adequate benefit relative to energy costs. In the subsidy component, the highest level of assistance shall be provided to households with lowest incomes and highest energy costs in relation to income, taking into account family size.

(1) Payments to eligible households under the subsidy component shall be made for the full benefit amount based on type of energy for heating, monthly household income, and household size as follows:

Benefit Scales
Subsidy Component

Scale A.
Energy Sources: Electricity

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$123	$135
$401 - $800	$105	$117
Over $800	---	$101

Scale B.
Energy Sources: LP Gas (Propane), Fuel Oil, Kerosene, Natural Gas

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$113	$125
$401 - $800	$ 95	$107
Over $800	---	$ 88

Scale C.
Energy Sources: Coal, Wood

Monthly Household Income	Payment Amount Household Size 1 and 2	Household Size 3 or More
$ 0 - $400	$100	$112
$401 - $800	$ 82	$ 94
Over $800	---	$ 75

(2) If the cabinet receives a percentage of the federal funds authorized by Congress, benefits to eligible households under the subsidy component may be reduced proportionately.

(3) Benefits to eligible households under the crisis component shall be in the form of fuel or other energy for heating, heaters, blankets, sleeping bags, vouchers to purchase these item, or repair to a heating system to obtain adequate heat. The contracting agency shall determine the type and value of assistance necessary to alleviate the crisis, not to exceed a maximum of $300 total benefit value for each eligible household.

[(4) Benefits under the emergency summer aid program shall be the minimum type and amount needed to alleviate the crisis as follows:]

[(a) A maximum of two (2) fans per household may be provided not to exceed a total of eight (80) dollars.]

[(b) An additional payment of up to $100 for energy for cooling may be made if the eligible household is without energy for cooling or has received a disconnection of service notice for their cooling energy.]

[(c) For households with members in a life threatening situation, up to $350 for each household may be provided in the form of fans, air conditioners, repairs of cooling systems, or energy payments (when without or threatened to be without energy for cooling). If a local administering agency has donated materials for cooling, the delivery and installation of these donated materials may be provided.]

Section 5. Benefit Delivery Methods. Benefits shall be provided to eligible households as follows:

(1) When feasible, payment under the subsidy component is authorized by a two (2) party check made payable to the recipient and the provider or landlord if the heating is included as an undesignated portion of rent.

(2) When a two (2) party check is not issued under the subsidy component, the recipient shall sign a statement on the application prior to receipt of funds affirming that benefits received under HEAP shall be used solely for home energy.

(3) Under the subsidy component, at the recipient's discretion, the total benefit may be made in separate authorizations to more than one (1) provider (for example, when the recipient heats with both a wood stove and electric space heaters). However, the total amount of the payments shall not exceed the maximum for the primary source of energy for heating. The household may decide how to divide payment if more than one (1) provider is used.

(4) For the crisis component, no direct cash payments shall be made to the recipient. Benefits shall be provided to eligible households by the contracting agency in the amount and value determined by the contracting agency necessary to alleviate the crisis, not to exceed the maximum allowable payment. Payments under the crisis component shall be authorized to the energy provider by one (1) party checks upon delivery of fuel, heaters, blankets, sleeping bags, restoration or continuation of service, or upon repair of the heating system.

[(5) For the emergency summer aid program, no direct cash payments shall be made to the recipient. Benefits shall be provided to eligible households by the contracting agency in the type and amount determined by the contracting agency to be the minimum amount needed.]

Section 6. Right to a Fair Hearing. Any individual has a right to request and receive a fair hearing in accordance with 904 KAR 2:055, Hearings and appeals.

Section 7. Time Standards. Under the subsidy component, the cabinet shall make an eligibility determination promptly after receipt of a completed and signed application but not to exceed thirty (30) days. Under the crisis component [and the emergency summer aid program], completed applications shall be processed so that the crisis is resolved within forty-eight (48) hours and in life threatening situations within eighteen (18) hours. Applicants under the crisis component shall have ten (10) working days from the date of application to provide information necessary to complete the application. [Applicants under the emergency summer aid program shall have five (5) working days from the date of application to provide information needed to complete the application.]

Section 8. Effective Dates. The following shall be the implementation and termination dates for HEAP depending upon the availability of funds:

(1) Applications for the subsidy component shall be accepted from households containing at least one (1) member who is elderly (age sixty (60) or older) or receiving benefits due to 100 percent disability beginning October 17, 1988 [19, 1987] and ending by October 28, 1988 [30, 1987].

(2) Applications for the crisis component shall be accepted beginning January 9, 1989 [11, 1988] and ending by April 28, 1989 [29, 1988].

(3) Applications shall be processed in the order taken until funds are expended. HEAP subsidy component shall be terminated [by the secretary] when actual and projected component expenditures have resulted in utilization of available funds or October 28 [December 30], 1988.

(4) HEAP may be reactivated after termination under the same terms and conditions as shown in this regulation if additional federal funds are made available.

[(5) Applications for the emergency summer aid program shall be accepted beginning July 11, 1988 and ending by September 15, 1988.]

Section 9. Allocation of Funds. (1) Up to fifteen (15) percent of the total HEAP allocation shall be reserved for weatherization assistance.

(2) Up to $9,677,341 [10,512,922] of benefit funds shall be reserved for the crisis component. Eighty-five (85) percent of the funds reserved for the crisis component shall be allocated, by local administering agency, based upon the 1980 Census poverty levels of the counties served by the local administering agency. Fifteen (15) percent of the funds plus any additional funds made available from the subsidy component or from the Energy Assistance Trust Fund shall be held by the contracting agency as a contingency fund to be allocated to any local administering agency of the state chosen at the discretion of the contracting agency to provide low income home energy assistance in accordance with its contract. On February 6, 1989 [8, 1988], all unobligated allocations may be reallocated by the contracting agency with the concurrence of the Department for Social Insurance.

(3) Up to $5,900,000 [5,000,000] of benefit funds shall be reserved for the subsidy component. Any funds remaining unobligated from the subsidy component may be made available under the crisis component.

(4) Up to $300,000 [400,000] of the contingency fund under subsection (2) of this section shall be reserved to assure component availability until March 15, 1989 [1988] for emergency crisis assistance for households who are without heat.

(5) Up to $25,000 shall be reserved for the Preventive Assistance Program administered by the Department for Social Services to assist families with an energy payment not to exceed $300 for each family if the payment shall prevent the removal of a child from a family or if it shall assist in reuniting a child with the family.

[(6) Up to $450,000 shall be reserved as benefits under the emergency summer aid program. Seventy (70) percent of these funds shall be allocated to the local administering agencies based upon the 1980 Census poverty levels of the counties served by the local administering agencies. Thirty (30) percent shall be reserved as a contingency fund by the contracting agency and provided as needed to local administering agencies to assist households in a life threatening situation after the local agency allocation is obligated.]

Section 10. Energy Provider Responsibilities. Any provider accepting payment from HEAP for energy or services provided to eligible recipients shall comply with the following:

(1) Reconnection of utilities and delivery of fuel shall be accomplished upon certification for payment;

(2) The household shall be charged in the normal billing process the difference between the actual cost of the home energy and the amount of payment made through this program. For balances remaining after acceptance of the HEAP payment, the customer shall be offered the opportunity for a deferred payment arrangement or a level payment plan;

(3) HEAP recipients shall not be treated worse than households not receiving benefits;

(4) The household on whose behalf benefits are paid shall not be discriminated against, either in the costs of goods supplied or the services provided; and

(5) A landlord shall not increase the rent of recipient households due to receipt of this payment.

MIKE ROBINSON, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 5, 1988
FILED WITH LRC: October 7, 1988 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: James E. Randall, Director

(1) Type and number of entities affected: This regulation is being substantially amended to provide for the implementation and administration of the Home Energy Assistance Program (HEAP) in accordance with the federal fiscal year 1989 Low Income Home Energy Assistance Program (LIHEAP) Block Grant Application and Plan Narrative. HEAP shall have two components, subsidy providing home heating assistance for up to 56,200 low income elderly or disabled households and crisis providing home heating crisis assistance to low income households experiencing a home heating crisis. The 23 local community action agencies shall locally administer the crisis component. The $500,000 emergency summer aid component, which was developed in response to the severe summer, was not included in the FFY 1989 State Plan. The cabinet used a state FY 1989 appropriation to LIHEAP for this emergency situation. However, use of these funds to serve low income medically needy households reduces the funds available for heating assistance. Since Kentucky does not usually have such severe summers and since the need for heating assistance greatly exceeds the funds available, this component was not included in the State Plan.

(a) Direct and indirect costs or savings to those affected: Eligible households under the subsidy component shall receive to the extent funds remain available an average home heating payment, estimated based upon previous experience, of $105.18 per household. In the crisis component, a home heating crisis benefit of blankets, heaters, emergency fuel supplies, utility service, or heating system repairs shall be provided to eligible households to the extent funds remain available. The average value of crisis benefits per household is estimated at $118.18. Administrative funds of up to ten percent of the crisis benefits provided shall be made available to reimburse local community action agency reasonable and allowable administrative costs. The emergency summer aid component shall not be available to provide fans, air conditioners or energy payments to up to 5,000 low income medically needy households.

1. First year: A total of up to $15.6 million shall be available for benefits under HEAP. Up to $5.9 million shall be allocated for subsidy and up to $9.7 million for crisis. Up to $970,000 shall be available to reimburse crisis component administrative costs.

2. Continuing costs or savings: The LIHEAP Block Grant Application and Plan Narrative is submitted annually and is based upon the estimated federal appropriation level. There will not be any continuing costs or savings under the amendments being made to the regulation in accordance with the requirements of the current State Plan.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The Cabinet for Human Resources is not aware of any additional factors increasing or decreasing costs. This regulation has no effect on competition.

(b) Reporting and paperwork requirements: All HEAP applicants shall complete an application and provide materials to verify eligibility. The local crisis component administering agencies shall report services provided, submit invoices necessary for reimbursement and shall be subject to reporting and paperwork requirements necessary for appropriate administration of energy assistance programs including audits.

(2) Effects on the promulgating administrative body: The Department for Social Insurance shall be responsible for the overall administration of HEAP and shall administer directly the subsidy component.

(a) Direct and indirect costs or savings: Up to ten percent of the LIHEAP Block Grant allocation (including Energy Assistance Trust Funds appropriated to LIHEAP by the 1988 General Assembly) and not transferred to another block grant may be used for administration.

1. First year: Normal costs associated with administration of this program and contract management shall be incurred.

2. Continuing costs or savings: There will not be any continuing costs or savings under the current State Plan.

3. Additional factors increasing or decreasing costs: The Department for Social Insurance is not aware of additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: Administrative requirements for grants under appropriate state and federal law and regulations shall be met. This includes maintenance of the state plan and regulation, revisions as necessary to manual and outreach material, computer system maintenance, annual reports, audits, and all such other usual and normal administrative requirements for grants management.

(3) Assessment of anticipated effect on state and local revenues: The Home Energy Assistance Program shall have little impact upon state or local revenues. Increased tax revenues will be generated from recipient expenditures for or receipt of energy assistance benefits. The expenditure of the state fiscal year 1989 Energy Assistance Trust Fund appropriation ($3.6 million) will reduce the amount of funds invested in the Trust Fund and thus reduce the amount of interest revenues earned by the Trust Fund.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The regulation is being amended in accordance with the requirements of the federal fiscal year 1989 LIHEAP State Plan which was subject to substantial public review and comment, a legislative review and public hearing, and a Kentucky intergovernmental review through the Kentucky State Clearinghouse. As a block grant, LIHEAP provides flexibility within broad statutory guidelines. However, declining federal support, partially offset by an appropriation from the Kentucky Energy Assistance Trust Fund, limited alternative since program criteria were already at a level to maximize the number of households assisted with the minimum amount necessary for a reasonable benefit. Various levels of funding for the two (2) components were examined. Balancing a federal intent that funds be used for heating assistance with the need for adequate crisis assistance funding, the cabinet proposed the funding levels reflected in the State Plan. The public review and comment supported the funding levels and agreed with continuing the restriction of subsidy component eligibility to the elderly and disabled as the most needy in light of the decline in funding.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, administrative regulation or governmental policy is in conflict, overlapping or a duplication.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: No additional information or comment.

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 97-35 as amended (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, as amended).

2. State compliance standards. This regulation specifies income eligibility at 110 percent of poverty. It also provides for local administration by community action agencies in the provision of heating crisis assistance.

3. Minimum or uniform standards contained in the federal mandate. The federal statute permits income eligibility to range between 110 percent and 150 percent of poverty. The statute requires that local administering agencies, which prior to enactment of the statute administered similar energy assistance programs be given priority for selection. The statute requires crisis assistance that is weather or supply related or other energy crisis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The block grant concept permits states flexibility within broad guidelines contained in the statute. In order to target assistance to the most needy, the state has adopted the minimum income eligibility criteria permitted under the statute. Other criteria designed to target benefits to the most in need are a resources test of $5,000 and for noncrisis heating assistance, targeting eligibility to households with elderly or disabled members. The statute does not address benefit type or amount. This regulation sets the type and value of assistance at a level to provide a reasonable benefit to serve the maximum number of households with the available funds.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Due to the limited amount of funds and a need in excess of our ability to serve at the level of available funds, the imposition of stricter standards is necessary to target assistance to those households most in need.

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 X No____

2. State whether this administrative regulation will affect the local government or only a part or division of the local government.

The regulation will affect cities which own and operate utilities for heating.

3. State the aspect or service of local government to which this administrative regulation relates.

Municipal utilities.

4. How does this administrative regulation affect the local government or any service it provides?

The provision of energy assistance benefits helps low income households pay for and maintain heat. Municipal utilities, and thus the cities, will benefit through reductions in the amount of payments in arrears and through helping households to maintain service.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:004. Resource and income standard of medically needy.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with requirements of Title XIX of the Social Security Act. KRS 205.520(3) empowers the cabinet, by regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This regulation sets forth the resource and income standards by which eligibility of the medically needy is determined.

Section 1. Resource Limitations and Exclusions of the Medically Needy. The following provisions are applicable with regard to computation of allowable resources:

(1) The upper limit for resources for family size of one (1) and for family size of two (2) is set at $1,700 and $3,400 respectively, effective January 1, 1986; at $1,800 and $3,600 respectively, effective January 1, 1987; at $1,900 and $3,800 respectively, effective January 1, 1988; and at $2,000 and $4,000 respectively, effective January 1, 1989, with fifty (50) dollars for each additional member.

(2) A homestead, occupied or abandoned, household equipment, and farm equipment without limitation on value are excluded from consideration.

(3) Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, is excluded from consideration. In addition, for AFDC related MA only cases the value of otherwise countable real property (whether income producing or nonincome producing) may be excluded from consideration for six (6) months if a good faith effort is being made to dispose of the property properly; an additional three (3) months may be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

(4) Equity of $4,500 in automobiles is excluded from consideration; however, if an automobile is used for employment, to obtain medical treatment of a specific or regulation medical problem, of if specially equipped (e.g., as for use by the handicapped) the total value of such automobile is excluded.

(5) Burial reserves of up to $1,500 per individual, which may be in the form of burial agreement(s) (prepaid burials or similar arrangements), trust fund(s), life insurance policies, or other identifiable funds are excluded from consideration. The cash surrender value of life insurance is considered when determining the total value of burial reserves. When burial funds are commingled with other funds, the applicant has up to thirty (30) days to separately identify the burial reserve amount. Interest or other appreciation of value of an excluded burial reserve is excluded so long as such amount is left to accumulate as a part of the burial reserve.

(6) Burial spaces, plots, vaults, crypts, mausoleums, urns, caskets, and other repositories which are customarily and traditionally used for the remains of deceased persons are excluded from consideration as a countable resource without regard to value.

(7) Resources determined in accordance with subsections (3), (4), and (5) of this section to be in excess of excluded amounts must be considered countable resources when determining whether the individual or family group exceeds the upper limits specified in subsection (1) of this section. If resources exceed the upper limits, the individual or family group is ineligible.

(8) The following exclusions are also applicable as stated:

(a) Proceeds from the sale of a home are excluded from consideration for three (3) months from date of receipt if used to purchase another home.

(b) Resources of a blind or disabled person necessary to fulfill an approved plan for achieving self-support are excluded from consideration.

(c) Payments or benefits from federal statutes, other than Title XVI (Supplemental Security Income), are excluded from consideration (as either a resource or income) if precluded from consideration in Title XVI determinations of eligibility by the specific terms of the statute.

(d) Disaster relief assistance is excluded from consideration.

(e) Cash or in-kind replacement for repair or replacement of an excluded resource is excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(f) Effective with regard to determinations of eligibility made on or after April 16, 1988, and applicable with regard to the usual three (3) month period for retroactive eligibility, the life interest that Medicaid applicants or recipients may have in real estate or other property shall be excluded from consideration as an available resource.

(g) Effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988 real property is excluded from consideration for adult medical assistance and state supplementation recipients if:

1. Such property is jointly owned and its sale would cause undue hardship due to loss of housing for the other owner or owners; or

2. Its sale is barred by a legal impediment; or

3. The owner's reasonable efforts to sell have been unsuccessful.

Section 2. Income and Resource Exemptions. Income and resources which are exempted from consideration for purposes of computing eligibility for the comparable money payment program (Aid to Families With Dependent Children and Supplemental Security Income) shall be exempted from consideration by the cabinet, except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) may not be allowed in determining eligibility for medical assistance only.

Section 3. Income Limitations of the Medically Needy. Eligibility from the standpoint of income is determined by comparing adjusted income as

defined in Section 4 of this regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	$2,500	$208
2	3,000	250
3	3,500	292
4	4,400	367
5	5,100	425
6	5,800	483

For each additional member, $600 annually or fifty (50) dollars monthly is added to the scale. The change shown in this section of the regulation shall be effective with regard to determinations of eligibility made on or after July 1, 1988.

Section 4. Additional Income Considerations. (1) In comparing income with the scale as contained in Section 3 of this regulation, gross income is adjusted as follows in all cases with exceptions as contained in Section 5 of this regulation:

(a) In cases of adults and children, the standard work related expenses of adult members and out-of-school youth are deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction is seventy-five (75) dollars per month. All earnings of an in-school child are disregarded. Full-time and part-time employment, and school attendance, shall be as defined in 904 KAR 2:016, Standards for need and amount; AFDC.

(b) In cases of adults and children, dependent care as a work expense is allowed not to exceed $160 per child or incapacitated adult per month for full-time employment (as defined in subsection (1) of this section) or $110 per child or incapacitated adult per month for part-time employment (as defined in subsection (1) of this section). A dependent care work expense deduction is allowed only when the dependent is included in the assistance unit.

(2) The following special factors are applicable for pregnant women, infants and children eligible pursuant to Section 9401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA 86):

(a) Such pregnant women and children may have family income up to, but not to exceed, 100 percent of the [nonfarm income] official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of July 1 of the particular state fiscal year;

(b) Pregnant women, infants and children who would be eligible under the provisions of OBRA 86 except for income in excess of the allowable standard may not become eligible by spending down to the official poverty guidelines;

(c) Available liquid assets for the family may not exceed the usual upper limits specified for the medically needy, and all other resources shall be disregarded;

(d) The Aid to Families with Dependent Children (AFDC) budgeting methodology (except for application of the AFDC earned income disregard of the first thirty (30) dollars and one-third (1/3) of the remainder) shall be used; and

(e) Changes of income and, effective for determinations of eligibility made on or after August 1, 1988, changes of resources that occur after the determination of eligibility of a pregnant woman shall not affect such pregnant woman's eligibility through the remainder of the pregnancy including the usual post partum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

(3) Effective with regard to determinations of eligibility for Medical Assistance furnished on or after October 1, 1988, pregnant women and children eligible pursuant to Section 4101 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) shall be subject to the same special factors applicable to pregnant women, infants, and children as specified in Section 4(2)(b), (c), (d) and (e) of this regulation, and this additional special factor: such pregnant women and children under age one (1) may have family income up to, but not to exceed, 125 percent of the official poverty income guidelines as promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year will be the latest poverty guidelines available as of July 1 of the particular state fiscal year.

Section 5. Individuals in Chronic Care Institutions. For aged, blind or disabled individuals in chronic care facilities, the following requirements with respect to income limitations and treatment of income shall be applicable.

(1) In determining eligibility, the appropriate medically needy standard is used as are appropriate disregards and exclusions from income. In determining patient liability for the cost of institutional care, gross income is used as shown in subsections (2) and (3) of this section.

(2) Income protected for basic maintenance, effective July 1, 1986, is forty (40) dollars monthly in lieu of the figure shown in Section 3 of this regulation. All income in excess of forty (40) dollars is applied to the cost of care except as follows:

(a) Available income in excess of forty (40) dollars is first conserved as needed to provide for needs of the spouse and minor children up to the appropriate family size amount from the scale as shown in Section 3 of this regulation.

(b) Remaining available income is then applied to the incurred costs of medical and remedial care that are not subject to payment by a third party (except that, effective for determinations of eligibility for periods beginning on or after December 1, 1988, the incurred costs may be reimbursed under another public program of the state or political subdivision of the state), including Medicare and health insurance premiums and medical care recognized under state law but not covered under the state's Medicaid plan.

(3) The basic maintenance standard allowed the individual during the month of entrance into or exit from the long term care facility shall reasonably take into account home maintenance costs.

(4) When an individual loses eligibility for a supplementary payment due to entrance into a participating long term care facility, and the

supplementary payment is not discontinued on a timely basis, the amount of any overpayment is considered as available income to offset the cost of care (to the Medical Assistance Program) if actually available for payment to the provider.

Section 6. Spend-down Provisions. No technically eligible individual or family is required to utilize protected income for medical expenses before qualifying for medical assistance. Individuals with income in excess of the basic maintenance scale as contained in Section 3 of this regulation may qualify for any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

Section 7. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard is applied to the special need which results in the supplementary payment.

Section 8. Special Needs Contributions for Institutionalized Individuals. Voluntary payments made by a relative or other party on behalf of a long term care facility resident or patient shall not be considered as available income if made to obtain a special privilege, service, or item not covered by the Medical Assistance Program. Examples of such special services or items include television and telephone service, private room [and/]or bath, private duty nursing services, etc.

Section 9. Pass-through Cases. Increases in social security payments due to cost of living increases but for which the individual would be eligible for supplemental security income benefits or state supplementary payments, and which are received after April 1, 1977, shall be disregarded in determining eligibility for medical assistance benefits; such individuals shall remain eligible for the full scope of program benefits with no spend-down requirements. Beginning on November 1, 1986, the additional amount specified in Section 12202 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) shall be disregarded, i.e., that amount of social security benefits to which certain widows or widowers were entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) such individuals would be eligible for federal supplemental security income benefits; eligibility as a result of such disregard shall not exist prior to July 1, 1986. To be eligible, applicants must apply [within fifteen (15) months of the date of the Act, i.e.,] by July 1, 1988 [1987].

Section 10. Relative Responsibility. For purposes of the Medical Assistance Program, spouses are considered responsible for spouses and parents are considered responsible for dependent minor children. Effective for determinations of eligibility made on or after December 1, 1987, children under age twenty-one (21) living with parents (but not including children age eighteen (18) and above who are blind or disabled) are considered dependent minor children for purposes of deeming of income and resources under the Medicaid Program even if such children are emancipated under state law. Stepparents are responsible for their stepchildren as shown in this section and Section 11 of this regulation. This responsibility, with regard to income and resources, is determined as follows:

(1) "Living with" is defined as sharing a common living arrangement or household, but not including living in the same room in a long term care facility. "Living apart" is defined as not sharing a common household, whether due to estrangement, disability, or illness. Effective July 1, 1987, a husband and wife sharing a room or comparable accommodation in a long term care facility may be considered to be "living with" each other after they have continuously shared such a room or accommodation for six (6) months, if treating such husband and wife as living apart would prevent either of them from receiving medical assistance.

(2) In cases of aged, blind, or disabled applicants or recipients living with their eligible spouse, total resources and adjusted income of the couple is considered in relation to the resource and income limitations for a family size of two (2), or if other dependents live with the couple, the appropriate family size including the dependents.

(3) In cases of aged, blind or disabled applicants or recipients living with an ineligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined below.

(a) Determine the potential spend-down amount of the eligible individual by comparing the countable income to the Medically Needy Income Level (MNIL) for one (1) as shown in Section 3 of this regulation.

(b) Allocate to other dependents in the household from the ineligible spouse income in an amount equal to one-half (1/2) of the MNIL for a family size of one (1) for each dependent.

(c) If the ineligible spouse's income is more than one-half (1/2) of the MNIL for a family size of one (1), combine the income of the ineligible spouse with that of the eligible individual and compare that figure with the MNIL for a couple to determine the spend-down amount.

(d) Compare the amount resulting from paragraph (a) of this subsection with the result of paragraph (c) of this subsection and determine eligibility using the spend-down amount, if any, which is greater.

(e) Resources shall be considered in the same manner as for an eligible spouse.

(4) In cases of aged, blind, or disabled couples, living apart for any reason other than institutionalization, both of whom are concurrently applying for or receiving MA only, income and resources are considered in relation to resource and income limitations for a family size of two (2), or if other dependents live with either spouse, the family size including such dependents, but only for the first six (6) months after the month of separation, that such couple lives apart; however, if mutual consideration of income and resources causes the individuals to lose eligibility as a couple, eligibility for the individuals is determined in accordance with subsection (4) of this section. If the separation is due to the institutionalization of a spouse, mutual

consideration of income ceases in the month after the month of separation but resources are considered mutually available to each other the month of separation, and for the six (6) months following that month unless such would act to preclude eligibility of the individual in long-term care.

(5) In cases of an aged, blind, or disabled individual living apart from a spouse (for a reason other than institutionalization) who is not a recipient of MA only, eligibility is determined on a couple basis for the month of separation and as a single individual after the month of separation.

(6) For an individual whose case is being worked as if he[/she] were a single individual due to living apart from his[/her] spouse, as shown in Section 10(3) and (4) of this regulation, who has jointly held resources with his[/her] spouse, one-half (1/2) of the jointly held resource would be considered a resource; except that the entire amount of a jointly held checking or savings account is considered a resource if the resource may be accessed independently of the spouse.

(7) Total resources and adjusted income of parent(s) and children for whom application is made is considered in relation to limitations for family size. Excluded, however, is the income and[/or] resources of an SSI parent and the SSI essential person spouse whose medical assistance eligibility is based on inclusion in the SSI case. Resources and income of an SSI essential person, spouse or nonspouse, whose medical assistance eligibility is not based on inclusion in the SSI case must be considered.

(8) In cases of a blind or disabled child under eighteen (18) living with his[/her] parent(s) (including stepparent, if applicable), total resources and adjusted income of the parent(s) is related to limitations for family size, including the applicant or recipient child and other dependent children of parent using the adult scale. The income and resources of the parent(s) shall also be considered available to such child who is aged eighteen (18) through twenty-one (21), if in school, when to do so will work to the child's benefit and the individual was aged eighteen (18) through twenty-one (21) in September, 1980, and was MA eligible at that time.

(9) Income and resources of parent(s) are not considered available to a child living apart from the parent(s), but any continuing contribution actually made is considered as income. Living apart may mean living in a medical institution, special school or in foster care and such status continues even if the child makes visits to the parent(s) home. For comparison with the resource and income limitations, the child's individual resources and[/or] income are considered in relation to family size of one (1). Effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988, the following criteria should be used to determine whether a child institutionalized in a psychiatric facility is living with his parents; a child is to be considered as living with his parents unless he has been in the facility for thirty (30) or more days or a physician specifies that it is anticipated he will remain in the facility for thirty (30) or more days (regardless of whether the child actually does so).

(10) When a recipient (but not including a child) in a family case has income and resources considered in relation to family size and enters a long term care facility, his[/her] income and resources are considered in the same manner as previously for up to one (1) year with, effective with regard to determinations of eligibility made on or after February 1, 1988, the individual allowed forty (40) dollars as his[/her] basic maintenance standard. When a child in a family case is in the long term care facility, eligibility of the child is determined in the same manner for up to a year but his[/her] liability for the cost of care is determined by allowing to the child from his[/her] own income forty (40) dollars and considering the remainder available for the cost of care. (Note: in this situation any welfare payment made to the child is disregarded when determining liability for cost of care.) The eligibility of the individual, with regard to income and resources, shall [must] be determined on the basis of living apart from the other family members whenever it becomes apparent that the separation will last for more than one (1) year.

Section 11. Treatment of Income of the Stepparent or Parent/Legal Guardian of a Minor Parent/Legal Guardian ([hereinafter] referred to as a "Grandparent") and Effect on Eligibility of the Assistance Group. An incapacitated (as determined by the department) stepparent's income, or a grandparent's income, is considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. When the stepparent or grandparent living in the home is not being included in the family case the stepparent's or grandparent's gross income is considered available to the spouse or minor parent in accordance with the policies set forth in this section.

(1) Disregards/exclusions from income. The following disregards/exclusions from income shall be applied:

(a) The first seventy-five (75) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time (with full-time and part-time employment as defined in Section 4(1) of this regulation).

(b) An amount equal to the medically needy income limitations scale as shown in Section 3 of this regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals living in the home but whose needs are not taken into consideration in the medical assistance eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining his[/her] federal personal income tax liability.

(c) Any amount actually paid by the stepparent or grandparent to individuals not living in the home who are claimed by him[/her] as dependents for purposes of determining his[/her] personal income tax liability.

(d) Payments by the stepparent or grandparent for alimony or child support with respect to individuals not living in the household.

(e) Income of a stepparent or grandparent receiving supplemental security income.

(f) Verified medical expenses for the stepparent or grandparent and his[/her] dependents in the home.

(2) Determining eligibility of the children.

When a stepparent or grandparent has available income remaining after disregards/exclusions are applied, the [such] income may be deemed to the spouse (of the stepparent) or minor parent (child of the grandparent) but not to the stepchild(ren) or grandchild(ren). Eligibility of the stepchild(ren) or grandchild(ren) is determined in the following manner in order to take this requirement into consideration.

(a) The available income deemed to the spouse or minor parent shall be the lesser of the amount available or the medically needy income level for one (1), as shown in Section 3 of this regulation.

(b) The income of the spouse or minor parent (including the amount deemed) shall be combined with that of the child(ren) and the total compared against the medically needy income level for the appropriate family size. If there is no excess income, the child is eligible. If there is an excess, the excess amount may be spent down in the usual manner.

(3) Determining eligibility of the spouse or minor parent. Available income of the stepparent or grandparent remaining after exclusions/disregards are applied shall [must] be considered fully available to the spouse or minor parent. The eligibility of the spouse or minor parent is therefore determined in the same manner as shown in subsection (2) of this section, except that the full amount available (including that portion of the available income, if any, which is in excess of the medically needy income level for one (1)) is deemed to the spouse or minor parent.

(4) When the spouse or minor parent, or both the spouse or minor parent and child(ren) has a spend-down case(s), uncovered incurred medical expenses of all members of the budget unit may be used to meet the spend-down amount(s).

Section 12. Companion Cases. When spouses or parent(s) and children living in the same household apply separately for assistance, relative responsibility must be taken into consideration.

(1) In the case of an application for assistance for a dependent child(ren), the income, resources and needs of the parent(s) must be included in the determination of need of the child(ren) even when the parent(s) applies for assistance for himself[/herself] on the basis of age, blindness, or disability (except as shown in subsection (3) of this section).

(2) In the case of a spouse, income and resources of both spouses are combined and compared against the medically needy income and resources limits for a family size of two (2) even though a separate determination of eligibility shall [must] be made for each individual.

(3) In the case of families with children with a parent eligible for supplemental security income (SSI), neither the income, resources, nor needs of the SSI eligible individual are to be included in the determination of eligibility of the children.

Section 13. Treatment of Lump-sum Income. The following policy is effective January 1, 1986: for adult related cases, lump-sum income is prorated over the three (3) month period following the agency's notice of receipt by the client, with any amount spent by the client prior to notification of the agency deducted from the total considered available; any portion of the income remaining available after the three (3) month period is considered in relation to resource limitations; for AFDC related cases, lump sum income is divided by the medically needy income level and prorated over the resultant number of months.

Section 14. Transferred Resources. The policy relating to transferred resources shown in this section is effective for determinations of eligibility for periods of time beginning on or after July 1, 1988 and transfers of property occurring on or after that date. [When an applicant or recipient transfers a nonexcluded resource(s) for the purpose of becoming eligible for medical assistance, the value of the transferred resource(s) will be considered a resource to the extent provided for by this section. The provisions of this section are applicable to both family related cases and medical assistance only cases based on age, blindness, or disability.]

(1) When an institutionalized individual (defined as an individual in a skilled nursing facility, general intermediate care facility, psychiatric facility, mental hospital, or a participant in a hospice program who is in a skilled nursing or intermediate care facility, or a participant in the home and community based services waiver program or the alternate intermediate services program for the mentally retarded so long as eligibility is being determined using the special income level) applies for medical assistance a period of ineligibility must be computed if at any time during the thirty (30) month period immediately preceding the application the individual disposed of property for less than fair market value. The period of ineligibility (beginning with the month in which the resources were transferred) shall be equal to the lesser of thirty (30) months or the number of months derived by dividing the total uncompensated value of the resources so transferred by the average cost, to a private patient at the time of the application, of nursing facility services in the state (either intermediate care or skilled nursing care as appropriate for the level of care).

(2) An individual shall not be ineligible for medical assistance by virtue of subsection (1) of this section to the extent that the conditions specified in Section 1917(c)(2)(B), (C) and (D) of the Social Security Act are met, nor shall an individual be ineligible for medical assistance due to transfer of resources for less than fair market value except in accordance with this section. Transfers of resources for less than fair market value occurring prior to July 1, 1988 shall not be considered in determinations of eligibility for periods beginning on or after July 1, 1988.

(3) [(1)] The disposal of a resource, including liquid assets, at less than fair market value shall be presumed to be for the purpose of establishing eligibility unless the individual shows the transfer was in accordance with Section 1917(c)(2)(B) or (C)(i) of the Social Security Act or presents convincing evidence that the disposal was exclusively for some other purpose. If the purpose of the transfer is in accordance with Section 1917(c)(2)(B) or (C)(i) or is for some [other] reason other than to qualify for medical

assistance or if the transferred resource was considered an excluded resource at the time it was transferred, the value of the transferred resource is disregarded. If the resource was transferred for an amount equal to at least the assessed value for tax purposes, the resource will be considered as being disposed of for fair market value. Notwithstanding the preceding, if the assessed agricultural value is used for tax purposes the transfer is required to [must] be for an amount equal to the fair market value.

(4) [(2)] After determining that the purpose of the transfer was to become or remain eligible, the cabinet shall first add the uncompensated equity value of the transferred resource to other currently held resources to determine if retention of the property would have resulted in ineligibility. For this purpose, the resource considered available shall be the type of resource it was prior to transfer, e.g., if nonhomestead property was transferred, the uncompensated equity value of the transferred property would be counted against the permissible amount for nonhomestead property. If retention of the resource would not have resulted in ineligibility, the value of the transferred resource would thereafter be disregarded.

(5) [(3)] If retention would result in ineligibility, the cabinet will compute a period of ineligibility as provided for in subsection (1) of this section. [consider the excess transferred resource available for up to twenty-four (24) months, subject to the following conditions:]

[(a) The value of the total excess resources considered available (including the uncompensated equity value of the transferred resource) shall be reduced by $500 for each month that has elapsed since the transfer, beginning with the month of transfer; except]

[(b) The reduction provided for in paragraph (a) shall not be applicable with regard to any month in which the individual received medical assistance but was actually ineligible due to the provisions of this section.]

[(4) For those recipients who were receiving assistance on February 28, 1981, this section is applicable only with respect to resources transferred subsequent to that date.]

(6) [(5)] The uncompensated value may be excluded from consideration when good cause exists. A waiver of consideration of the uncompensated amount will be granted subject to the following criteria:

(a) "Good cause" means that an expense (or loss) was incurred by the individual or family group due to a natural disaster, fire, flood, storm or earthquake; or illness resulting from accident or disease; or hospitalization or death a member of the immediate family; or civil disorder or other disruption resulting in vandalism, home explosions, or theft of essential household items.

(b) The exclusion may not exceed the amount of the incurred expense or loss; the amount of the uncompensated value to be excluded cannot include any amount which is payable by Medicaid, Medicare, or other insurance.

[(6) If the individual is in a long term care facility, the actual cost of long term care (rather than the $500) may be deducted from the uncompensated value excess on a monthly basis.]

Section 15. Special Provisions for AIS/MR Recipients. Medical assistance eligibility for participants in the program of alternative intermediate services for the mentally retarded (AIS/MR) shall be determined taking into consideration the special provisions contained in this section.

(1) Usual institutional deeming rules shall be applicable with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

(2) AIS/MR services program participants who participate in the AIS/MR program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard). Income protected for basic maintenance of the AIS/MR participant in the posteligibility determination of patient liability for individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income program in addition to the SSI general exclusion.

(3) When eligibility is determined using community deeming rules, the attributed cost of care against which monthly available income of the AIS/MR participant shall be applied shall be the projected annual average cost of care for all participants divided by twelve (12) and rounded to the nearest dollar. The amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion.

(4) Eligibility shall continue on the same basis as for an institutionalized individual when the cost of care is greater than the recipient's adjusted monthly income or the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

Section 16. Special Provisions for Hospice Recipients. Medical assistance eligibility for participants under the Medicaid hospice benefit shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of the hospice participant in the posteligibility determination of patient liability for noninstitutionalized individuals eligible on the basis of the special income level of 300 percent of the federal SSI standard shall be the standard for the federal supplemental security income (SSI) program in addition to the SSI general exclusion. For the noninstitutionalized medically needy participants (all of whom must spend-down on a quarterly basis), the amount protected for basic maintenance is the usual medically needy standard as shown in Section 3 of this regulation plus the SSI general exclusion. For the institutionalized medically needy the amount protected for basic maintenance

in the eligibility determination is the medically needy standard for the appropriate family size plus the SSI general exclusion. If a hospice participant is institutionalized in a long-term care facility, the basic maintenance amount is forty (40) dollars per month.

(2) When eligibility is determined for an institutionalized monthly spend-down case, the attributed cost of care against which monthly available income of the hospice participant shall be applied shall be the hospice routine home care per diem (for the hospice providing care) as established by the Medicare program plus the room and board rate for the appropriate level of care (i.e., skilled nursing or intermediate care).

(3) Eligibility shall continue on the same monthly basis as for an institutionalized individual when the recipient is eligible based on the special income level of 300 percent of the SSI level as specified in 907 KAR 1:011, Technical eligibility requirements.

(4) A hospice participant may be eligible for benefits based on this section only if he[/she] has elected coverage under the Medicaid hospice benefit rather than the regular Medicaid program.

(5) Usual institutional deeming rules shall be applicable with regard to the categorically needy including all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

Section 17. Special Provisions for Recipients Participating in the Home and Community Based Services Waiver Program. Medical assistance eligibility for participants under the home and community based (HCB) services waiver program shall be determined (when necessary to establish eligibility for medical assistance benefits for cases with income in excess of the usual basic maintenance standard) taking into consideration the special provisions contained in this section.

(1) Income protected for basic maintenance of HCB services program participants who are eligible under the special income level shown in this section shall be the standard used for an individual in the federal supplemental security income (SSI) program in addition to the SSI general exclusion.

(2) HCB services program participants who participate in the HCB program for thirty (30) consecutive days (including any actual days of institutionalization within that period) and who have income not in excess of 300 percent of the SSI standard for an individual shall be determined to be eligible as categorically needy under a special income level (i.e., the special income level is 300 percent of the SSI standard).

(3) If an HCB services program participant has income in excess of 300 percent of the SSI standard, eligibility of the participant is determined in the usual manner for an individual who is institutionalized, with the cost of HCB services projected if eligibility is determined on a monthly basis, except that the amount protected for basic maintenance is the usual medically needy standard for the appropriate family size as shown in Section 3 of this regulation plus the SSI general exclusion.

(4) Usual institutional deeming rules shall be applicable with regard to all participants eligible on the basis of the special income level of 300 percent of the SSI standard. Community deeming procedures are used for all medically needy individuals not eligible under the special income level.

Section 18. Treatment of Potential Payments from Medicaid Qualifying Trusts. When an individual (or his[/her] spouse for the individual's benefit) creates (other than by will) a trust (or similar legal device) with amounts payable to the same individual, such trust shall be considered a "Medicaid qualifying trust" if the trustee(s) of the trust are permitted to exercise discretion as to the amount of the payments from the trust to be paid to the individual. In this circumstance the amount considered available to the trust beneficiary shall be the maximum amount the trustee(s) may (using the trustee's discretion) pay in accordance with the terms of the trust, regardless of the amount actually paid. The cabinet may, however, consider as available only that amount actually paid if to do otherwise would create an undue hardship upon the individual; the criteria for determining "undue hardship" shall be established by the cabinet.

[Section 19. Implementation. The amendments to this regulation will be effective with regard to determinations of eligibility made on or after July 1, 1988 except as otherwise specified herein.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 5, 1988 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: 2,000 to 2,500 Medicaid eligible recipients.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative

body:
(a) Direct and indirect costs or savings:
1. First year: $7,000,000 to $7,500,000 (costs)*.
2. Continuing costs or savings: $7,000,000 to $7,500,000 (costs).
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Viable alternatives were not identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *These costs are also shown in 907 KAR 1:011, a companion eligibility regulation.
TIERING: Was tiering applied? No. This regulation does not deal with regulated business entities, and tiering is inappropriate for Medicaid recipients.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail). Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:009. Physicians' services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the provisions relating to physicians' services for which payment shall be made by the Medical Assistance Program in behalf of both the categorically needy and the medically needy.

Section 1. Physicians' Services. Covered services shall include those furnished by physicians through direct physician-patient contact in the office, the patient's home, a hospital, a skilled nursing or intermediate care facility or elsewhere. For purposes of the Medical Assistance Program, oral surgeons shall be treated in the same manner as physicians with regard to coverage for services within their scope of licensed practice, and the term "physician" shall be construed to include oral surgeons unless the context in which it is used is to the contrary.

Section 2. Limitations. (1) Coverage for initial and extensive visits shall be limited to one (1) visit per patient per physician per twelve (12) month period.
(2) Payment for outpatient psychiatric services rendered by other than board-eligible and board-certified psychiatrists shall be limited to four (4) such services per patient per physician per twelve (12) month period.
(3) A patient placed in "lock-in" status due to overutilization is to receive services only from his[/her] lock-in provider except in the case of emergency or referral.
(4) Coverage for laboratory procedures performed in the physician's office shall be limited to those procedures listed on the agency's physician laboratory benefit schedule. Physician laboratory procedures are limited to those specified as payable, except that the professional component of laboratory procedures performed by board certified pathologists in a hospital setting or an outpatient surgical clinic are covered so long as the physician has an agreement with the hospital or outpatient surgical clinic for the provision of laboratory procedures.
(5) The cost of preparations used in injections shall not be considered a covered benefit, except for specified immunizations identified in Section 3 of this regulation.
(6) Physicians will be allowed to secure drugs for specified immunizations identified in Section 3 of this regulation free from the Department for Health Services or to purchase drugs from the same specified immunizations from the open market to provide immunizations for Medicaid recipients. Reimbursement for the cost of these drugs will be in accordance with 907 KAR 1:010.
(7) [(6)] Telephone contacts with patients shall not be considered a covered benefit.

Section 3. Specified Immunizations for Medicaid are:
(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);
(2) Measles, mumps, and rubella virus vaccine, live (MMR);
(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and
(4) Hemophilus B conjugate vaccine (HBCV).

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 5, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing

by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating physicians who provide immunizations may be affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: The cost is reflected in 907 KAR 1:010.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail). Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:010. Payment for physicians' services.

RELATES TO: KRS 205.550, 205.560
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer a program of Medical Assistance under Title XIX of the Social Security Act. KRS 205.550 and 205.560 require that the secretary prescribe the methods for determining costs for vendor payments for medical care services. This regulation sets forth the method for establishing payment for physician services.

[Section 1. Amount of Payment. Payment for covered services rendered to eligible medical assistance recipients is based on the physicians' usual, customary, reasonable and prevailing charges.]

Section 1. [2.] Definitions. For purposes of determination of payment:
(1) Usual and customary charge refers to the uniform amount the individual physician charges in the majority of cases for a specific medical procedure or service.
(2) Prevailing charge refers to those charges which fall within the range of charges as computed by the use of a predetermined and established statistical percentile. Prevailing charges for each medical procedure are derived from the overall pattern existing within the state.

Section 2. Amount of Payment. Payment for covered services rendered to eligible medical assistance recipients is based on the physicians' usual, customary, reasonable and prevailing charges.

Section 3. Method and Source of Information on Charges. (1) Effective October 1, 1981, the individual fee profiles for participating physicians were generated from historical data accumulated from charges submitted and processed by the medical assistance program during all of calendar year 1980.
(2) Effective October 1, 1981, the Title XIX prevailing fee maximums were generated from the same historical data as referenced in subsection (1) of this section.
(3) Effective October 1, 1981, the Title XVIII, Part B, current reasonable charge profiles were utilized by the medical assistance program.
(4) Effective October 1, 1981, the Title XVIII, Part B, current prevailing charge data was utilized by the medical assistance program.
(5) Percentile.
(a) The Title XIX prevailing charges were

established by utilizing the statistical computation of the 75th percentile.

(b) The Title XVIII, Part B, prevailing charges were established by utilizing the statistical computation of the 75th percentile.

Section 4. Maximum Reimbursement for Covered Procedures. (1) Reimbursement for covered procedures is limited to the lowest of the following:

(a) Actual charge for service rendered as submitted on billing statement;

(b) The physician's median charge for a given service derived from claims processed or from claims for services rendered during all of the calendar year preceding the start of the fiscal year in which the determination is made.

(2) In no case may payment exceed the prevailing charge established under Part B, Title XVIII for similar service on a statewide basis.

(3) In instances where a prevailing charge has not been established for a specific medical procedure by Part B, Title XVIII, the prevailing charge established under Title XIX is utilized as the maximum allowable fee.

(4) The upper limit for new physicians shall not exceed the 50th percentile.

(5) The amount otherwise payable for outpatient services, as determined in accordance with Sections 1 through 3 of this regulation and subsections (1) through (4) of this section, shall be reduced by five (5) percent to arrive at the final payment amount.

(6) Effective with regard to services provided on or after October 1, 1988, physicians will be allowed to secure drugs for specified immunizations identified in 907 KAR 1:009 free from the Department for Health Services to provide immunizations for Medicaid recipients, with reimbursement for the cost of the drugs made from the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the physicians that the drugs were used to provide immunizations to Medicaid recipients.

(7) Effective with regard to services provided on or after October 1, 1988, physicians will be allowed to purchase drugs for specified immunizations identified in 907 KAR 1:009 in the open market to provide immunizations for Medicaid recipients and the Department for Medicaid Services will reimburse the physician the same amounts that would have been paid to the Department for Health Services if the drugs had been obtained through that agency upon receipt of appropriate notice that the drugs were used to provide immunizations to Medicaid recipients.

Section 5. Exceptions. Exceptions to reimbursement as outlined in other [foregoing] sections are as follows:

(1) Reimbursement for physician's services provided to inpatients of hospitals is made on the basis of 100 percent reimbursement per procedure for the first twenty (20) dollars of allowable reimbursement and on the basis of a percentage of the physician's usual, customary and reasonable charge in excess of twenty (20) dollars per procedure, after the appropriate prevailing fee screens are applied. The percentage rate applied to otherwise allowable reimbursement in excess of twenty (20) dollars per procedure is established at thirty-five (35) percent. The percentage rate will be reviewed periodically and adjusted according to the availability of funds.

(2) Payments for specified obstetrical services provided on or after November 1, 1987, shall be at the lower of the actual billed charge or the following flat rates: for board certified obstetricians, normal delivery and cesarean section, $650; for all other physicians, normal delivery, and cesarean section, $550.

(3) Payment for individuals eligible for coverage under Title XVIII, Part B, Supplementary Medical Insurance, is made in accordance with Sections 1 through 4 of this regulation and subsections (1) and (2) of this section within the individual's deductible and coinsurance liability.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 5, 1988 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All participating physicians who provide immunizations may be effected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: $940,000 (costs)*

2. Continuing costs or savings: $940,000 (costs)*

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: *It is anticipated this expenditure would have been incurred in the preventive health services program in the absence of this action.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation does not set compliance standards.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail). Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:011. Technical eligibility requirements.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet by regulation to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medical Assistance, [hereinafter] referred to as MA, to Kentucky's indigent citizenry. This regulation sets forth the technical eligibility requirements of the MA Program.

Section 1. The Categorically Needy. All individuals receiving Aid to Families with Dependent Children, Title IV-E benefits, Supplemental Security Income or Optional or Mandatory State Supplementation are eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons are included in the program as categorically needy and thus eligible for MA participation.

(1) Children in foster family care or private nonprofit child caring institutions dependent in whole or in part on a governmental or private agency;

(2) Children in psychiatric hospitals or medical institutions for the mentally retarded;

(3) Pregnant women;

(4) Children of unemployed parents;

(5) Children in subsidized adoptions dependent in whole or in part on a governmental agency;

(6) Families terminated from the Aid to Families with Dependent Children (AFDC) program because of increased earnings or hours of employment;

(7) Children (but not their parents) who meet the income and resource requirements of the Aid to Families with Dependent Children program, who were born after September 30, 1983 and who are under the age of five (5); and effective July 1, 1987, children (but not their parents) who meet the income and resource requirements of the Aid to Families with Dependent Children Program, who are under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(8) A child(ren) born to a woman eligible for and receiving medical assistance, so long as the child(ren) has not reached his[/her] first birthday, resides in the household of the woman, and the woman remains eligible for such assistance. In this situation, an application is deemed to have been made and the child found eligible for MA as of the date of birth;

(9) Effective June 1, 1987, individuals in institutions meeting appropriate patient status criteria who (if not institutionalized) would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income, may be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income. Eligibility for similar hospice participants and similar participants in the waiver projects of home and community based services for the mentally retarded and the aged, blind or disabled may also be determined under this provision. Eligibility of an individual whose gross income exceeds 300 percent of the previously specified SSI benefit amount may not be determined in accordance with this provision;

(10) Effective July 1, 1987, qualified severely impaired individuals as specified in Section 9404 of P.L. 99-509 and Sections 2, 3 and 4 of P.L. 99-643 (to the extent such coverage is mandatory in this state);

(11) Effective July 1, 1987, individuals who lose SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in child's insurance benefits based on disability as specified in Section 6 of P.L. 99-643; and

(12) Effective October 1, 1987, women during pregnancy (and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy), and infants and children under two (2) years of age, as permitted by Section 9401 of the Omnibus Budget Reconciliation Act of 1986, and effective with regard to determinations of eligibility made for periods beginning on or after October 1, 1988, pregnant women and children under the age of one (1) as permitted by Section 4101 of the Omnibus Budget Reconciliation Act of 1987, subject to the following:

(a) [Such] Pregnant women, infants and

children are required to meet the income and resource requirements for these [this] eligibility groups as specified in 907 KAR 1:004, Resource and income standard of medically needy; and

(b) When an infant or child eligible under this provision is receiving covered inpatient services on a birthday which will make him[/her] ineligible due to age, the infant or child will remain eligible until the end of the stay for which the covered inpatient services are furnished so long as the infant or child remains otherwise eligible except for age.

Section 2. The Medically Needy. Other individuals (including children as shown in Section 1(7) of this regulation), and pregnant women meeting income and resource standards of the medically needy program), meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for MA with need determined in accordance with income and resource standards prescribed by regulation of the Cabinet for Human Resources. Included within the medically needy eligible groups are pregnant women during the course of their pregnancy; a woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated). For individuals covered on January 1, 1985 pursuant to this section, the usual three (3) month rule on retroactivity (as shown in Section 3(15)) will apply.

Section 3. Technical Eligibility Requirements. Technical eligibility factors of families and individuals included as categorically needy under Section 1(1) through (6) of this regulation, or as medically needy under Section 2 of this regulation are:

(1) Children in foster care, private institutions, psychiatric hospitals or mental retardation institutions must be under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(2) Pregnant women are eligible only upon medical proof of pregnancy, except as otherwise specified in Section 2 of this regulation;

(3) Unemployment relating to eligibility of both parents and children is defined as:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at least fifty (50) dollars during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligible for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent must not have refused suitable employment without good cause as determined in accordance with 45 CFR Section 233.100(a)(3)(ii);

(f) The unemployed parent must meet the requirements for independent employment search as specified herein. That is:

1. The unemployed parent must make not less than twenty-four (24) contacts with prospective employers in each three (3) month period following an approval, reinvestigation or reapproval.

2. The unemployed parent may not contact the same prospective employer more than once in each calendar month.

3. If the unemployed parent does not meet the requirement for the minimum number of employment contacts during the three (3) month period, the parent may, prior to or upon receipt of the advance notice of proposed discontinuance, meet the requirement for the number of contacts for the prior three (3) month period. These contacts shall not offset the requirement for employer contacts during the three (3) month period following the next approval, reinvestigation or reapproval.

(4) Under the definition contained in subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work when it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute when such involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual must be at least sixty-five (65) years of age.

(6) A blind individual must meet the definition of blindness as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(7) A disabled individual must meet the definition of permanent and total disability as contained in Titles II and XVI of the Social Security Act relating to RSDI and SSI.

(8) For families losing AFDC eligibility solely because of increased earnings or hours of employment, medical assistance shall continue for four (4) months to all such family members as were included in the family grant (and children born during the four (4) month period) if the family was eligible for and received AFDC in any three (3) or more months during the six (6) month period immediately preceding the month in which it became ineligible for AFDC. The four (4) month period begins on the date AFDC is

terminated. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated.

(9) Families losing AFDC eligibility solely due to loss of the thirty (30) dollars disregard or the one-third (1/3) disregard from earnings shall be deemed AFDC eligible for nine (9) months after the termination of the disregard, and shall as a result be eligible for continued medical assistance for the nine (9) month period. The nine (9) month period begins on the date the AFDC should have been terminated. Coverage for medical assistance is extended to all family members who were included in the grant (and children born during the nine (9) month period).

(10) Families losing AFDC eligibility as a result (wholly or partly) of the collection or increased collection of child or spousal support, and who were eligible for and received AFDC in at least three (3) of the six (6) months immediately preceding the month in which such ineligibility begins, shall be deemed AFDC eligible for Title XIX purposes for four (4) months beginning with the month in which ineligibility begins. If AFDC benefits are paid erroneously for one (1) or more months in such a situation, the four (4) month period begins with the first month in which AFDC was erroneously paid, i.e., the month in which the AFDC should have been terminated. Coverage for medical assistance is extended to all family members losing eligibility as a result of the receipt of the child or spousal support. The extended eligibility provision contained herein is applicable only with respect to families discontinued on or after July 18, 1984 and before October 1, 1988.

(11) Parents may be included for assistance in the cases of families with children including natural and adoptive parents. Other relatives who may be included in the case (one (1) only) are caretaker relatives to the same extent they may be eligible in the Aid to Families with Dependent Children Program.

(12) An applicant who is deceased may have eligibility determined in the same manner as if he was alive, in order to pay medical bills during the terminal illness.

(13) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. Effective April 1, 1986, for new approvals and at time of reinvestigation for other cases, the family unit must be determined in the same manner as is required for AFDC cases, except that if a family member(s) is pregnant the unborn child(ren) will be considered as a family member(s) for budgeting purposes.

(14) The following citizenship and[/or] residency requirements will be applicable:

(a) To be eligible, an applicant or recipient must be a citizen of the United States, or an alien legally admitted to this country or an alien who is residing in this country under color of law (except as specified in paragraph (b) of this subsection). An alien must have been admitted for permanent residence except as shown in paragraphs (b), (c) and (d) of this subsection. The applicant or recipient must also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to recipients of a state supplementary payment and institutionalized individuals. The conditions for determining state residency are specified in federal regulations at 42 CFR 435.403[, which are hereby incorporated by reference].

(b) Effective January 1, 1987, an alien not legally admitted to this country or residing in this country under color of law may be eligible for medical assistance under the following circumstances and conditions:

1. The alien must meet all other requirements for receipt of medical assistance, however, an alien qualifying as a categorically needy recipient need not actually receive an AFDC or federal supplemental security income (SSI) cash payment so long as the alien meets the income resource and categorical requirements of the applicable cash assistance program;

2. The alien must have (or have had within the usual period for retroactive eligibility) an emergency medical condition, defined as a medical condition (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

3. Approval of eligibility shall be for a time limited period, with such period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period may be extended for an appropriate period of time upon presentation to the cabinet of acceptable documentation that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period; and

4. The medical assistance to which the alien shall be entitled is limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien.

(c) Effective May 5, 1987, select groups of aliens who are illegally residing in this country may qualify for legalization of residence status under Section 201 of P.L. 99-603. Such aliens are prohibited from Medicaid eligibility for a period of five (5) years (beginning on the date temporary resident status is granted) except as follows:

1. The aged, blind or disabled may be eligible;

2. Children under age eighteen (18) may be eligible;

3. Pregnant women may be eligible for pregnancy related services only; and

4. All such aliens may qualify for emergency services to the extent specified in paragraph (b) of this subsection and with the limitations shown [therein].

(d) Effective June 1, 1987, aliens qualifying for legalization of status as seasonal agricultural workers under Section 302 of P.L. 99-603 are subject to the same coverage limitations as shown in paragraph (c) of this subsection.

(15) An individual may be determined eligible for medical assistance for up to three (3) months prior to the month of application if all conditions of eligibility are met. The effective

date of medical assistance is generally the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility may not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met. For individuals eligible on the basis of desertion, a period of desertion must have existed for thirty (30) days, and the effective date of eligibility may not precede the first day of the month in which the thirty (30) day period ends. For individuals eligible on the basis of utilizing their excess income for incurred medical expenses, the effective date of eligibility is the day the spend-down liability is met.

(16) "Child" means a needy dependent child under the age of eighteen (18) (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before the age nineteen (19)), who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, and who is a recipient of or applicant for public assistance. Included within this definition is an individual(s) meeting the age requirement specified above, previously emancipated, who has returned to the home of his parents, or to the home of another relative, so long as such individual is not thereby residing with his spouse.

(17) Benefits shall be denied to any family for any month in which any legally liable caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and no individual's needs shall be considered in determining eligibility for medical assistance for the family if, on the last day of the month, such individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(18) Effective May 1, 1987, an individual sanctioned (removed) from an AFDC case due to failure to meet an AFDC technical eligibility requirement may not be eligible for medical assistance as a medically needy individual unless such individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which such individual has been sanctioned.

Section 4. Institutional Status. No individual shall be eligible for MA if a resident or inmate of a nonmedical public institution. No individual shall be eligible for MA while a patient in a state tuberculosis hospital unless he has reached age sixty-five (65). No individual shall be eligible for MA while a patient in a mental hospital or psychiatric facility unless he is under age twenty-one (21) or age twenty-two (22) if receiving such inpatient services on his[/her] 21st birthday or is sixty-five (65) years of age or over. No individual shall be eligible for MA while a patient in a skilled nursing facility or intermediate care facility classified by the Medicaid program as an institution for mental diseases unless such individual has reached age sixty-five (65).

Section 5. Emergency Shelters. Effective July 1, 1985, an individual (or family group) who is in an emergency shelter for a temporary period of time may be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions are as follows:

(1) The individual (or family group) must be a resident of an emergency shelter no more than six (6) [three (3)] months in any nine (9) [twelve (12)] month period, effective with regard to determinations of eligibility for periods beginning on or after December 1, 1988.

(2) The individual (or family group) must not be in the facility serving a sentence imposed by the court, or awaiting trial.

(3) The individual (or family group) must be otherwise eligible when outside the emergency shelter; that is, eligibility must have existed immediately prior to admittance to the shelter, or it must exist immediately after leaving the shelter.

Section 6. Application for other Benefits. As a condition of eligibility for medical assistance, applicants and recipients must apply for all annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Good cause is considered to exist when such benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensations and pensions, retirement and survivors disability insurance benefits, railroad retirement benefits, and unemployment compensation. Notwithstanding the preceding, no applicant or recipient shall be required to apply for federal benefits when the federal law providing for such benefits shows the benefit to be optional and that the potential applicant or recipient for such benefit need not apply for such benefit when to do so would, in his opinion, act to his disadvantage.

Section 7. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient is deemed to have made an assignment to the Cabinet for Human Resources of any medical support owed for the child not to exceed the amount of medical assistance payments made on behalf of the recipient.

Section 8. Third Party Liability as a Condition of Eligibility. Any individual applying for or receiving medical assistance shall be required as a condition of eligibility to cooperate with the Cabinet for Human Resources in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless such individual has good cause for refusing to cooperate as determined by the cabinet taking into consideration the best interests of the individuals involved. A failure of the individual to cooperate without good

cause shall result in ineligibility of the individual.

Section 9. Provision of Social Security Numbers. Beginning May 1, 1985, each applicant for or recipient of medical assistance shall be required to provide a social security number as a condition of eligibility. However, no one shall be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration when appropriate application for such number has been made. For recipients, the requirement shall be effective with the first full reinvestigation occurring on or after May 1, 1985.

[Section 10. Effective Date. The amendment to this regulation will be effective with regard to determinations of eligibility made on or after May 1, 1988.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 5, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: 2,000 to 2,500 Medicaid eligible recipients.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $7,000,000 to $7,500,000 (costs)*.
2. Continuing costs or savings: $7,000,000 to $7,500,000 (costs).
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Viable alternatives were not identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *These costs are also shown in 907 KAR 1:004, a companion eligibility regulation.
TIERING: Was tiering applied? No. This regulation does not deal with regulated business entities, and tiering is inappropriate for Medicaid recipients.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail). Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:020. Payment for drugs.

RELATES TO: KRS 205.550, 205.560
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Department for Human Resources has responsibility to administer a program of Medical Assistance under Title XIX of the Social Security Act. KRS 205.550 and 205.560 require that the secretary prescribe the methods for determining costs for vendor payments for medical services. This regulation sets forth the method for determining amounts payable by the department for drugs.

Section 1. Maximum Allowable Cost Reimbursement Limits. (1) Reimbursement to pharmacists participating in the Medical Assistance Program for those drugs contained on the Kentucky Medical Assistance Program Outpatient Drug List and provided to eligible recipients is limited to the lowest of:
(a) The maximum allowable cost (MAC) of the drug, if any, whether federal or state or both, plus a dispensing fee; or
(b) The estimated acquisition cost (EAC) of the drug plus a dispensing fee; or
(c) The provider's usual and customary charge to the public for a like product and service.
(2) Reimbursement to skilled nursing and

intermediate care facilities for drugs provided to eligible recipients is allowable in accordance with the following:

(a) The Kentucky Medical Assistance Program Outpatient Drug List (with additions and deletions thereto) shall be provided by the program to each participating facility, and for the drugs contained therein, the limits specified in subsection (1) of this section are applicable;

(b) For drugs not on the drug list, the maximum reimbursement shall be the same as set forth in subsection (1)(a) through (c) of this section. EAC's shall be determined in the same manner as for drugs included on the outpatient drug list. SNF/ICF facilities shall not impose an additional charge on medicaid eligible recipients for drugs because of the limitations set forth in Section 1(2) of this regulation;

(c) A packaging cost allowance of not more than six (6) cents per dose may be added to the drug cost (if not already included) for unit dose packaged drugs. The packaging cost (up to six (6) cents, plus the drug cost is added to the dispensing fee to determine the total reimbursement amount for a unit dose packaged prescription;

(d) There shall be no more than two (2) dispensing fees allowed per drug within a thirty (30) day period, except for Schedules II, III, and IV controlled substances and for nonsolid dosage forms, including topical medication preparations, for which no more than four (4) dispensing fees per drug will be paid within a thirty (30) day period. Though dispensing fees are limited, this shall not be construed as placing a limit on the quantity of reimbursable drugs for which the program will pay for any patient, since the reasonable cost of the drug (as defined herein) is reimbursable as a covered service in whatever quantity is considered medically necessary for the patient. Nonsolid dosage forms include all covered drug items other than oral tablets or capsule forms. Drug items or other related supplies purchased for routine use and which may be purchased without a prescription, including food supplements, are not reimbursable in SNFs or ICFs under the drug program, though the cost of such drug, supply item or food supplement, is an allowable cost for the facility with the cost computed in accordance with the state regulation covering medicaid reimbursement for the facility;

(e) Whenever possible, unused drugs paid for by the department shall be returned to the pharmacy with the credit for the cost of the drug and the unit dose packaging cost (if applicable) accruing to the department as an offset against allowable ancillary cost; and

(f) Interim payments made to participating facilities for allowable drug costs shall be settled at actual allowable costs computed in accordance with the upper limits shown herein at the end of the facilities' fiscal year.

(3) Reimbursement to hospitals for drugs provided to eligible recipients is on the basis of reasonable cost pursuant to 907 KAR 1:013.

Section 2. Physician Maximum Allowable Cost (MAC) Override. The MAC price limitation in Section 1 of this regulation shall not apply in any case where a physician certifies in his own handwriting that in his medical judgment, a specific covered brand is medically necessary for a particular patient. In such instances, reimbursement shall be based on the lower of the EAC plus a professional dispensing fee or the provider's usual and customary charge to the public for the drug.

Section 3. Dispensing Fees. Effective July 1, 1984, the dispensing fee shall be no more than three (3) dollars and twenty-five (25) cents per prescription for drugs reimbursed through the outpatient drug program, as shown in Section 1(1) of this regulation, where the covered drugs are limited to those contained on the Kentucky Medical Assistance Program Outpatient Drug List. The allowable dispensing fee shall be no more than three (3) dollars and twenty-five (25) cents (except for the additional amount for unit dose packaging as shown in Section 1(2)(c) of this regulation) for drugs reimbursed as part of the covered services of skilled nursing and intermediate care facilities, as shown in Section 1(2) of this regulation.

Section 4. Reimbursement to Dispensing Physicians. Participating dispensing physicians who practice in counties where no pharmacies are located are reimbursed for the cost of the drug only, with the cost computed as the maximum allowable cost or estimated acquisition cost as shown in Section 1(1) of this regulation, or the physician's usual and customary charge to the general public for the drug if less, or in accordance with 907 KAR 1:010 for drugs purchased on the open mrket for specified immunizations shown in 907 KAR 1:009.

Section 5. Implementation. The provisions of this regulation as amended shall be effective with regard to services provided on or after October [July] 1, 1988.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 5, 1988 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All participating physicians who provide immunizations may be affected.

(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: The cost was reflected in 907 KAR 1:010.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail). Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:054. Primary care center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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. Primary care centers, as defined by the Health Certificate of Need and Licensure Board, represent an opportunity for the provision of comprehensive medical services to the indigent citizenry of Kentucky. This regulation, therefore, sets forth the provisions relating to primary care center services for which payment shall be made by the Medical Assistance Program in behalf of both the categorically needy and medically needy.

[Section 1. Requirement for Participation. Each primary care center shall be required to meet the standards set for certification by the Health Certificate of Need and Licensure Board, and shall not receive reimbursement for services as a primary care center provider until the cabinet determines that such standards are met and that the provider complies with all requirements for program participation.]

Section 1. [2.] Definitions. As used in this regulation, the following definitions apply:
(1) Basic services. Those services which must be provided by the facility for it to be considered a primary care center by the cabinet;
(2) Supplemental services. Those specified services which are in addition to the basic or required range of services, and for which the cabinet will make payment when appropriately provided by the primary care center;
(3) Element. A specific subprogram within the Medical Assistance Program; for example, primary Care Center Services is a subprogram or element of the Medical Assistance Program;
(4) Requirements for program participation. Those requirements of law or regulation generally applicable throughout the Medical Assistance Program and with which all medical services providers must comply in order to participate and receive reimbursement as a provider of services to eligible medical assistance recipients.

Section 2. Requirement for Participation. Each primary care center shall be required to meet the standards set for certification by the Commission on Health Economics Control in Kentucky, and shall not receive reimbursement for services as a primary care center provider until the cabinet determines that such standards are met and that the provider complies with all requirements for program participation.

Section 3. Covered Services. Each primary care center shall provide directly to eligible program recipients on a regular, full-time basis the basic services, and may provide one or more of the supplemental services.
(1) Basic services.
(a) Medical diagnostic and treatment services for all age groups, as provided by a physician(s), nurse practitioner(s), or physician assistant(s) if licensed under state authority.
(b) Treatment of injuries and minor trauma;
(c) Prenatal and postnatal care;
(d) A program of preventive health services which must include well-baby care, well-child care, and immunization, and which may include other types of preventive care;
(e) Referral services designed to ensure the referral to and acceptance by an appropriate medical resource when services necessary to the health of the patient are not provided directly

by the center;

(f) Health education services. These services must provide as a minimum appropriate personnel to present, on request, information on general health care to local school systems, civic organizations and other concerned local groups. Services are to include distribution of written material on pertinent health subjects.

(g) The services provided by the following professional practitioners must be provided directly:

1. Dentist;

2. Clinical pharmacist. A clinical pharmacist is a licensed pharmacist whose services include taking medication histories, monitoring drug use, contributing to drug therapy, drug selection, patient counseling, administering drug programs and surveillance for adverse reactions and drug interactions;

3. Optometrist.

(h) Any of the following services may substitute on a one for one basis for the services shown in paragraph (g) of this subsection, when provided directly by the center in the context of an identifiable program by appropriately trained personnel:

1. Family planning services. These services must be provided as a package which must include those services required under the family planning element of the Medical Assistance Program.

2. Home health services. These services must include the same services as provided under the home health element of the Medical Assistance Program.

3. Social services counseling. This must include, as a minimum, information and referral services. Intensive counseling is to be limited to crisis situations and health related problems. Individuals with other identified counseling needs are to be referred to appropriate social service agencies. These services must be performed by a licensed, graduate, or certified social worker.

4. Pharmacy services. These services must meet the standards of the pharmacy component of the Medical Assistance Program. Where clinical pharmacist is selected as a basic service in paragraph (g) of this subsection, pharmacy services may not be used as a substitute for one of the two (2) remaining required services in paragraph (g) of this subsection.

5. Nutritional services. These services must include as a minimum individual counseling relating to nutritional problems or nutritional education. Group nutritional services may also be provided. These services must be performed by a professional nutritionist.

6. Nurse midwifery services. These services must be provided as a program which is to include prenatal services to expectant mothers, as well as delivery and postnatal services. These services must be performed by a certified nurse midwife.

(2) Supplemental services.

(a) Other services (excluding institutional care) within the scope of the Medical Assistance Program;

(b) Holding/observation accommodations;

(c) Any of the types of service in subsection (1)(h) of this section, which are not provided as basic services;

(d) Outreach services. These services must be provided as a package structured to identify health care needs in the service area.

Section 4. Drugs for Specified Immunizations. Effective with regard to services provided on or after October 1, 1988, primary care centers will be allowed to secure drugs for specified immunizations from the Department for Health Services free to provide immunizations for Medicaid recipients. The specified immunizations are:

(1) Diptheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine, live (MMR);

(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and

(4) Hemophilus B conjugate vaccine (HBCV).

Section 5. [4.] Limitations on Services. The following limitations are applicable to specified services:

(1) Pharmacy services are limited to those drugs covered through the pharmacy services element of the Medical Assistance Program;

(2) Other drugs and biologicals not covered under pharmacy services are limited to those necessary for the treatment of emergency cases;

(3) Laboratory services are limited to those procedures provided directly by the center, or if purchased, these services are limited to those covered under the independent laboratory element of the Medical Assistance Program;

(4) Dental services are limited to those procedures covered through the dental services element of the Medical Assistance Program;

(5) Vision care services are limited to those services covered through the vision care services element of the Medical Assistance Program;

(6) Audiology services are limited to those services covered through the hearing services element of the Medical Assistance Program;

(7) Abortion and/or sterilization services must be performed in accordance with guidelines specified by the cabinet;

(8) Durable medical goods and prosthetics are limited to those covered under the home health element of the Medical Assistance Program;

(9) Mental health services are limited to emergency services and appropriate referral;

(10) Holding/observation accommodations are covered for not more than twenty-four (24) hours when provided in accordance with the following:

(a) The patient's record shall document the appropriateness of such utilization;

(b) The physician shall make the decision that such utilization is necessary;

(c) A licensed nurse shall be on duty at the center during the time a patient is held in center accommodations beyond regular scheduled hours;

(d) A licensed physician shall be on call at all times when a patient is held beyond the regular scheduled hours of the center;

(e) A statement of conditions observed and treatment rendered during such holding time must be entered in the patient's medical record;

(11) Radiology procedures must be performed by either a licensed practitioner of the healing arts or an individual holding a valid certificate to operate sources of radiation.

Section 6. [5.] Noncovered Services. The following services are specifically excluded from coverage as primary care center services:

(1) All institutional services;

(2) Housekeeping, babysitting, and other

homemaker services of like nature;
(3) Services which are not provided in accordance with restrictions imposed by law or regulation.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 5, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating primary care centers who provide immunizations may be affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: The cost is reflected in 907 KAR 1:055.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail). Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:055. Payments for primary care center services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the method for determining amounts payable by the cabinet for primary care center services.

Section 1. Primary Care Centers. In accordance with 42 CFR 447.325, the cabinet shall make payment to providers who are appropriately licensed and have met the conditions for participation set by the cabinet, on the following basis:
(1) Payment shall be made on the basis of reasonable allowable cost.
(2) Payment amounts shall be determined by application of the "Primary Care Center General Policies and Guidelines and Principles of Reimbursement" (revised July 1, 1986, and hereby incorporated by reference) developed and issued by the cabinet, supplemented by the use of title XVIII-A reimbursement principles.
(3) Allowable costs shall not exceed customary charges which are reasonable.
(4) For services provided prior to July 1, 1985, reimbursement for medical and nursing cost center costs shall be subject to adjustment for a growth allowance. The growth allowance shall be computed for the year beginning each July, and shall be based on a projection of the change in the medical component of the Consumer Price Index over the previous year as applied to the median service cost of medical and nursing services, on a per visit basis, for all participating providers. Increases in medical and nursing center costs in excess of the growth allowance shall be disallowed. For those facilities with medical and nursing cost

increases which are less than the growth allowance, the difference between the two (2) shall be reimbursable as a cost containment incentive payment at the time of the usual cost settlement.

(5) For services provided on or after July 1, 1985, the average allowable cost per visit for the medical and nursing services cost center shall not exceed the lesser of actual allowable costs, or charges, or the actual allowable average cost per visit for medical and nursing center services for the facility fiscal year ending prior to July 1, 1985 (not adjusted to the lower of cost or charges) plus an additional growth allowance of twenty (20) cents per visit per month (if such cost is incurred) for each month after the facility's fiscal year end but prior to July 1985. Primary care centers beginning participation on or after July 1, 1985, or which have less than two (2) full years of program participation on that date, shall be reimbursed on the basis of the lower of reasonable allowable costs or charges (as shown in subsections (1) through (3) of this section) for the first two (2) years of participation in the program. For the third and subsequent years, the average allowable cost per visit may not exceed the lower of the facility's actual allowable costs, or charges, or the facility's actual allowable costs (not adjusted to the lower of cost or charges) for the second year of participation.

(6) During the first six (6) months after the implementation of the policy contained in subsection (4) of this section, centers with fiscal year endings occurring in the six (6) month period shall not have medical and nursing center costs disallowed as a result of imposition of the growth allowance upper limit, but shall be entitled to receive any applicable incentive payment.

(7) The amount of any allowable incentive payment determined pursuant to the policy specified in subsection (4) of this section may not exceed the growth allowance, and must be added to allowable costs for application of the lower of costs or charges principle.

(8) Effective with regard to services provided on or after October 1, 1988, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 which are provided free from the Department for Health Services to primary care centers shall be paid by the Department for Medicaid Services to the Department for Health Services upon receipt of notice from the primary care centers that the drugs were used to provide immunizations to Medicaid recipients.

(9) Effective with regard to services provided on or after January 1, 1989, the cost of drugs for specified immunizations as shown in 907 KAR 1:054 shall not be considered an allowable cost even though the drugs are purchased on the open market so long as the drugs could have been obtained free from the Department for Health Services.

Section 2. Implementation of the Payment System. (1) The reimbursement system developed by the cabinet for primary care centers is supported by the Title XVIII-A reimbursement principles which will serve as guidelines for determining reasonable allowable cost in areas not addressed specifically by the cabinet.

(2) The system shall utilize a method whereby primary care providers are paid an interim rate based on a reasonable estimation of current year costs followed by a year end adjustment to actual reasonable allowable costs. When the need can be demonstrated, adjustment to an interim rate will be made.

(3) The vendor shall complete an annual cost report on forms provided by the cabinet not later than sixty (60) days from the end of the vendor's accounting year and the vendor shall maintain an acceptable accounting system to account for the cost of total services provided, charges for total services rendered, and charges for covered services rendered eligible recipients.

(4) Each primary care center provider shall make available to the cabinet at the end of each fiscal reporting period, and at such intervals as the cabinet may require, all patient and fiscal records of the provider, subject to reasonable prior notice by the cabinet.

(5) Interim payments due the primary care center shall be made at reasonable intervals but not less often than monthly.

Section 3. Prohibition against Joint Participation. Dual or joint participation in the medical assistance program by a primary care center is not permitted. When a primary care center elects to participate as such in the medical assistance program it may not participate concurrently under other regular ongoing elements of the medical assistance program, including the rural health clinic services element. In addition, when a center elects to participate as such in the medical assistance program, it is considered to elect participation for all eligible service elements, components, or subunits of the center.

Section 4. Nonallowable Costs. The cabinet shall not make reimbursement under the provisions of this regulation for services not covered by 907 KAR 1:054, primary care center services, nor for that portion of a primary care center's costs found unreasonable or nonallowable in accordance with the cabinet's "Primary Care Center General Policies and Guidelines and Principles of Reimbursement." In addition, when the utilization review processes of the cabinet find that costs have been incurred through provision of unnecessary medical treatment services, such costs shall be disallowed.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 5, 1988 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating primary care centers who provide immunizations may be affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $50,000 (cost)*
2. Continuing costs or savings: $50,000 cost
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *It is anticipated this expenditure would have been incurred in the preventive health services program in the absence of this change.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail). Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:080. Payments for rural health clinic services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the method for determining amounts payable by the cabinet for rural health clinic services.

Section 1. Definitions. (1) A "provider based rural health clinic" is one which is an integral part of a hospital, skilled nursing facility, or home health agency that is participating in Medicare and is licensed, governed, and supervised with other cabinets of the facility.
(2) A "freestanding rural health clinic" is one which is participating in Medicare and which is not provider based.
(3) "Visit" means a face-to-face encounter between a clinic patient and any clinic health professional whose services are reimbursed under the rural health clinic payment method. Encounters with more than one (1) health professional, and multiple encounters with the same health professional, that take place on the same day and at a single location constitute a single visit, except when the patient, after the first encounter, suffers illness or injury requiring additional diagnosis or treatment.

Section 2. Method of Reimbursement. (1) The cabinet shall reimburse licensed participating provider based rural health clinics on the following basis:
(a) The cabinet shall pay the reasonable cost for provider based rural health clinic services and other ambulatory services provided to eligible medical assistance recipients on the basis of Medicare methodology.
(b) Payments shall be made at interim rates which approximate costs on a per visit basis. For Medicare covered services, which are also covered by Medicaid, the interim rate shall be the rate set by the Medicare intermediary. For Medicaid only services, the interim rate shall be set by the cabinet taking into account prior year data when possible. For new facilities, the cabinet shall set the interim rate using a methodology which is expected to approximate costs and review the interim rate approximately six (6) months after the [such] rate has been set to ensure the reasonableness of the rate.
(2) The cabinet shall reimburse licensed participating freestanding rural health clinics at a single rate per visit that is based on the cost of all services furnished by the clinic. The rate shall be determined by the Medicare carrier under the provisions shown in federal regulations at 42 CFR 405.2426 through 405.2429.
(3) Interim payments made to either provider based or freestanding facilities shall be settled back to reasonable costs at the end of the facilities' fiscal year, applying the lesser

of cost or usual and customary charges principle, on the basis of the Medicare methodology.

Section 3. Effective with regard to services provided on or after October 1, 1988, the cost of drugs for specified immunizations as shown in 907 KAR 1:082 which are drugs provided free from the Department for Health Services to rural health clinics shall be paid to the Department for Health Services upon receipt of notice from the rural health clinics that the drugs were used to provide immunizations to Medicaid recipients. [The provisions of Section 1 and 2 of this regulation shall be effective May 1, 1982.]

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 5, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating rural health clinics who provide immunizations may be affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $10,000 (costs)*
2. Continuing costs or savings: $10,000
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: *It is anticipated this expenditure would have been incurred in the preventive health services program in the absence of this action.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail). Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services
(Proposed Amendment)

907 KAR 1:082. Rural health clinic services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the provisions relating to coverage of rural health clinic services for which payment shall be made by the Medical Assistance Program on behalf of both categorically needy and medically needy.

Section 1. Conditions of Participation. Each rural health clinic wishing to participate as a rural health clinic in the Medical Assistance Program must be certified as a rural health clinic provider pursuant to Title XVIII of the Social Security Act in accordance with conditions set forth at 42 CFR Part 481.

Section 2. Conditions of Coverage. Each participating rural health clinic may provide for eligible medical assistance recipients the same services it may provide to Medicare recipients, i.e., physicians' services, nurse practitioners' services, and, where permitted under state law, physicians' assistants'

services. In addition, rural health clinics may provide any other ambulatory service covered under the Medical Assistance Program so long as the rural health clinic meets the conditions for participation for that service element and provides the services in accordance with the applicable state regulation covering that service; except, however, the rural health clinic need not be certified or licensed as the other type of provider (except to the extent provided for and/or required by law), nor have a separate participation agreement with the Medical Assistance Program for the provision of that type of service.

Section 3. Immunizations. Effective with regard to services provided on or after October 1, 1988, rural health clinics will be allowed to secure drugs for specified immunizations from the Department for Health Services free to provide immunizations for Medicaid recipients. The specified immunizations are:

(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);

(2) Measles, mumps, and rubella virus vaccine, live (MMR);

(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and

(4) Hemophilus B conjugate vaccine (HBCV).

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 5, 1988 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All rural health services who provide immunizations may be affected.
(a) Direct and indirect costs or savings to those affected:
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: The cost was reflected in 907 KAR 1:080.
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail). Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements or responsibilities are imposed.

PROPOSED REGULATIONS RECEIVED THROUGH OCTOBER 15, 1988

REVENUE CABINET
Department of Professional & Support Services

103 KAR 5:140. Property valuation administrator qualification examination.

RELATES TO: KRS 118.165, 132.370, 132.375, 132.380
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: This regulation provides that the qualifying examination for candidates seeking the office of property valuation administrator (hereinafter referred to as the "PVA exam") be conducted in a uniform manner resulting in a fair evaluation of candidates seeking this office.

Section 1. Applicability of Regulation. This regulation applies to PVA exams conducted after January 1, 1989 for both interim vacancies and the general quadrennial PVA exam.

Section 2. Content of the PVA Exam. (1) The PVA exam shall contain 100 questions. The written portion of the PVA exam will contain a problem solving skills section and a verbal skills section. The weight of the oral portion of the examination required by KRS 132.380(1) shall not exceed five (5) percent of the overall weight of the examination.

(2) The verbal skills section will contain terminology encountered in the modern assessor's environment, but will not test candidates on their knowledge of specialized terms or acronyms used only in the administration of the office of property valuation administrator.

(3) The problem solving skills section will contain problems based on situations to be encountered in the modern assessor's environment, but will not contain problems requiring knowledge of special formulas or specific skills known only to those with experience in the office of property valuation administrator.

(4) The oral portion of the examination will be based on a question and answer format. The questions will have a factual basis and may be based on reading material supplied to examinees, who may consult such reading material during the examination. No question may be posed which could be construed as discriminatory, nor may any question assume prior knowledge of the office of property valuation administrator on the part of the examinee.

(5) The solutions to problems or questions on the examination will be presented in a multiple-choice format. "True-false" solutions may not be utilized. "None-of-the-above" or "all-of-the-above" solutions may not be utilized. Trick questions or problems may not be utilized.

Section 3. Administration of PVA Exam. (1) The procedures utilized during the administration of the PVA exam will be uniform among all testing centers.

(2) The PVA exam will be administered only by personnel from the Department of Property Taxation of the Kentucky Revenue Cabinet.

(3) Since KRS 132.380(1) requires that the general quadrennial PVA exam be given during February of each year in which property valuation administrators are to be elected, and KRS 118.165 requires that candidates file during January of the same year, no one will be allowed to take the general quadrennial PVA exam who has not filed to run for the office of property valuation administrator.

(4) Special PVA exams administered under KRS 132.380(3) will be open to all residents of the county in which the vacancy has occurred.

(5) Every examination booklet issued to candidates will be uniquely identified according to an inclusive numbering system. The examination booklet number must be recorded on separate answer sheets and registration forms.

(6) Positive identification must be required of all test takers. Photographs of test takers may be required, and fingerprints of test takers shall be required.

(7) Calculators, electronic or otherwise, may not be used during the PVA exam and are not allowed inside testing centers.

(8) No one will be admitted to testing centers after the PVA exam has begun.

(9) A time limit of three and one-half (3 1/2) hours shall be allowed for completion of the written portion of the PVA exam.

(10) Oral examinations shall be administered by at least two (2) Department of Property Taxation employees. Candidates will be given oral examinations in order of completion of the written portion of the PVA exam.

(11) The Department of Property Taxation shall have the authority to design and implement any reasonable rules which would enhance the security and the credibility of the PVA exam.

Section 4. Grading of the PVA Exam. ( ) The PVA exam shall be graded in strict confidence by the Department of Property Taxation.

(2) A grade of seventy (70) percent or higher constitutes successful completion of the PVA exam.

(3) An individual's grade may not be revealed to any other person. Grades may not be revealed in any event over the telephone or without a specific written authorization from the individual test taker.

(4) A list of all applicants within each county achieving a passing score on the PVA exam shall be provided to the respective county clerks and county judge executives by the Revenue Cabinet in cases of vacancies under KRS 132.375.

(5) The results of the general quadrennial PVA exam for each county shall be provided to the respective county clerks by the Revenue Cabinet within fifteen (15) days of the test. The county clerk shall not allow any person's name to appear on a ballot who has not passed the PVA exam.

C. EMMETT CALVERT, Secretary
APPROVED BY AGENCY: October 13, 1988
FILED WITH LRC: October 14, 1988 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1988, at 2 p.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. If no written notice of intent to attend the public hearing is received within five days before the scheduled hearing, the hearing will be cancelled. Those interested in attending shall notify in writing: Scott

Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: Those effected are persons who wish to be candidates for the county office of property valuation administrator (PVA) and who accordingly are required by law to pass a qualifying examination administered by the Revenue Cabinet. The exam is essentially presented at four year intervals to coincide with county elections for four year term offices but may be required at any time to fill vacancies created by resignation, retirement, death, or otherwise. Exams given prior to general elections will have about 500 applicants and applicants during the interim for vacancy positions have averaged 100 per year.

(a) Direct and indirect costs or savings to those affected: Since the proposed regulation codifies the current procedures and requirements for PVA exams, there will be no change in cost to those taking the exam except for the requirement that applicants must file for election prior to taking the exam. The filing fee is $20, which is an added cost to those persons who either fail to pass the exam or choose not to be a candidate for the office.

1. First year: The added cost discussed above will apply primarily in general election years. It is estimated that 200 persons may pay this added cost without becoming a candidate creating an added cost of $4,000.

2. Continuing costs or savings: Interim year additional costs will vary based upon vacancies but are anticipated to be $900.

3. Additional factors increasing or decreasing costs (note any effects upon competition): None known.

(b) Reporting and paperwork requirements: The only additional paperwork required is related to filing for election, which will be required of all persons taking the exam and not just those persons successfully completing the exam who wish to actually run for office. The extent of this is unknown.

(2) Effects on the promulgating administrative body: Revenue Cabinet costs associated with administration of PVA exams will remain unchanged if the number of test takers remains unchanged. If the filing requirement causes a decline in the number of test takers, a small savings in personnel time and supplies will occur. It is anticipated that any savings will not exceed $1,000 in general election years and substantially less in interim years as vacancy tests are required.

(a) Direct and indirect costs or savings:

1. First year: See above. Possible savings of $1,000.

2. Continuing costs or savings: See above. Unknown but much less than in 1 above.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: Potential saving in personnel time, supplies and exam grading costs.

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: See item 6.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: See item 6.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: While the primary purpose of this proposed regulation is to formally document current testing procedures, it is also intended to resolve a conflict in statutes. KRS 172.280(1) requires the Revenue Cabinet to hold PVA qualifying examinations in February preceding county office elections while KRS 118.165 was amended by the 1988 General Assembly to require candidates to file for office 120 days prior to the May election. Thus, filing must be done in January which precedes the PVA exam. Since successful completion of the exam is required of candidates, test takers must file prior to taking the exam to comply with KRS 118.165. The proposed regulation insures that those who pass the exam are eligible to run for the office.

TIERING: Was tiering applied? Yes.

REVENUE CABINET
Department of Professional & Support Services

103 KAR 43:280. Repeal of 103 KAR 43:150, 103 KAR 43:160, and 103 KAR 43:170.

RELATES TO: KRS 138.220

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: Passage of House Bill 591 by the 1988 General Assembly shifts the incidence of special fuels taxation from dealers to the ultimate consumer in most instances. This regulation repeals regulations effective in 1975 which implemented prior law.

Section 1. 103 KAR 43:150, 103 KAR 43:160, and 103 KAR 43:170 are repealed.

C. EMMETT CALVERT, Secretary

APPROVED BY AGENCY: October 13, 1988

FILED WITH LRC: October 14, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation will be held on November 21, 1988, at 11 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. If no written notice of intent to attend the public hearing is received within five days before the scheduled hearing, the hearing will be cancelled. Those interested in attending shall notify in writing: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: The entities affected are the approximately 350 licensed special fuels dealers. House Bill 591 enacted by the 1988 General Assembly repealed the special fuels tax law upon which regulations 103 KAR 43:150, 103 KAR 43:160, and 103 KAR 43:170 are based. Effective August 1, 1988, the taxation of special fuels was incorporated into the existing gasoline tax law which, as a result, totally alters the manner in which the

special fuels tax is reported and paid thus making the provisions of these regulations obsolete.

(a) Direct and indirect costs or savings to those affected: The affected dealers will save administrative costs involved in complying with these regulations, but will incur new costs of an equal or greater amount in complying with the provisions of the amended gasoline tax statutes which now incorporate the special fuels tax. Costs under House Bill 591 are about the same as those under prior law.

1. First year: None
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: There is a reduction in paperwork requirements due to repeal of these regulations and the former law, but new paperwork requirements of an equal or greater amount will result from incorporating the special fuels tax into the amended gasoline tax statutes. Paperwork requirements remain about the same.

(2) Effects on the promulgating administrative body: The Revenue Cabinet will save administrative costs associated with these regulations and the former special fuels tax law, but will incur equal or greater costs in administering the provisions of the amended gasoline tax statutes which now incorporate the special fuels tax.

(a) Direct and indirect costs or savings:

1. First year: None
2. Continuing costs or savings: Same
3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reduction in paperwork requirements due to repeal of these regulations and the former law, but new paperwork requirements of an equal or greater amount will result from incorporating the special fuels tax law into the amended gasoline tax statutes. Administrative costs from processing special fuels tax returns under the provisions of House Bill 591 are virtually the same as under prior law.

(3) Assessment of anticipated effect on state and local revenues: Local revenues, except as local governments share in state road fund revenues, will not be impacted. An increase in state road fund revenue is anticipated from the incorporation of the special fuels tax into the amended gasoline tax statutes. Estimates of increased revenue developed during the 1988 session show an additional four million dollars annually from improved compliance.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Not applicable The statutes upon which these regulations were based were repealed.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: These regulations are now in conflict with KRS 138.500 as amended effective August 1, 1988.

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No

(6) Any additional information or comments: Repeal of these regulations is essential since they are in direct conflict with the provisions of the amended former gasoline tax statutes into which the special fuels tax is now incorporated.

TIERING: Was tiering applied? Yes.

REVENUE CABINET
Department of Professional & Support Services

103 KAR 43:290. Dealer nonhighway use deduction.

RELATES TO: KRS 138.224, 138.226, 138.340
STATUTORY AUTHORITY: KRS Chapter 13A
NECESSITY AND FUNCTION: This regulation establishes a procedure necessary for licensed special fuels dealers who distribute special fuels to others to deduct those special fuels used for nonhighway purposes in their distribution activity.

Section 1. Every licensed special fuels dealer using special fuels for nonhighway purposes related to the distribution of special fuels to others shall be entitled to claim a deduction from received special fuels for the amount of such nonhighway special fuels so used, provided, however, such dealer shall retain documentary evidence subject to audit by the Revenue Cabinet for all deductions so claimed.

Section 2. Any use in licensed motor vehicles of special fuels claimed as a deduction from received special fuels pursuant to Section 1 of this regulation shall be deemed a violation of KRS 138.340 for which the license of said dealer may be revoked by the Revenue Cabinet according to law.

C. EMMETT CALVERT, Secretary
APPROVED BY AGENCY: October 13, 1988
FILED WITH LRC: October 14, 1988 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 22, 1988, at 9 a.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. If no written notice of intent to attend the public hearing is received within five days before the scheduled hearing, the hearing will be cancelled. Those interested in attending shall notify in writing: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers

(1) Type and number of entities affected: Approximately 450 licensed special fuels dealers will be affected by the regulation which provides a means for licensed dealers to report the consumption of nonhighway special fuels in fuel distribution activities such as operation of generators, fork lifts and other equipment by dealers.

(a) Direct and indirect costs or savings to those affected: A small savings will result for licensed special fuels dealers who would not be required to pay the tax and then seek refund from the Revenue Cabinet. In addition, the affected dealers would also save minor administrative costs which would be involved if the tax is paid and a refund application filed. Dealers would lose the compensation allowance (2 1/4%) for reporting and paying the tax on that fuel used by the dealer for nonhighway distribution activities. Dealers currently pay

to the cabinet and request refund of about $100,000 annually on fuel used in various tax exempt activities.

1. First year: A small savings will result for licensed special fuels dealers who would not be required to pay the tax and then seek refund from the Revenue Cabinet thus not temporarily impacting the dealers' cash flow. The affected dealers would also save minor administrative costs which would be involved if the tax had to be paid and a refund application filed.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs (note any effects upon competition): None

(b) Reporting and paperwork requirements: Reduction in paperwork requirements since affected dealers would simply claim a deduction on their monthly dealer report rather than paying the tax with such report and subsequently filing a separate refund application to secure refund of that tax.

(2) Effects on the promulgating administrative body: The Revenue Cabinet will save administrative costs which would be associated with processing refund applications from licensed dealers and issuing refund checks to such dealers.

(a) Direct and indirect costs or savings:

1. First year: The Revenue Cabinet will save a negligible amount from the reduction in paperwork but the road fund would not have use of special fuels tax funds which would otherwise be temporarily available until refunded to the licensed dealers who paid such tax. A negligible gain would result from having to allow normal dealer compensation (2 1/4%) for reporting and paying the tax.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minor reduction in paperwork since licensed dealers would claim a deduction on their required monthly dealer report rather than paying the tax and filing a separate refund application.

(3) Assessment of anticipated effect on state and local revenues: An extremely small reduction in state road fund revenues resulting from elimination of the "float" on the tax which would otherwise be paid but refunded in full within two to four months. A very small positive revenue impact would result from dealers not claiming the normal compensation allowance (2 1/4%) for reporting and paying the tax on dealer nonhighway use fuel. Any revenue effect would be negligible. Local revenues would not be impacted, except as they share in state road fund revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative to this regulation would be to require licensed special fuel dealers to pay the tax on that fuel used for nonhighway purposes in their distribution activity. However, such a procedure would create needless paperwork for both dealers and the cabinet without serving any compliance or other purpose.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(6) Any additional information or comments: None

TIERING: Was tiering applied? Yes.

REVENUE CABINET
Department of Professional & Support Services

103 KAR 43:300. Dealer licensing.

RELATES TO: KRS 138.210, 138.224, 138.226, 138.310, 138.990

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY AND FUNCTION: This regulation provides rules and procedures for obtaining gasoline or special fuels dealers license, clarifies the types of activities a person must conduct to qualify for a license, explains operations requirements necessary to retain such license, and describes the consequences for violation of applicable laws and regulations.

Section 1. Except as otherwise specifically provided by law or regulation, no person shall receive, use, sell, transport, store or distribute any gasoline or special fuel in this state upon which the tax imposed by KRS 138.220 has not been paid nor shall any person refine, produce, distill, manufacture, blend or compound gasoline or special fuel in the state unless he is the holder of an uncancelled license issued by the Revenue Cabinet to engage in such business.

Section 2. No person shall be licensed as a gasoline dealer or a special fuels dealer unless such person is:

(1) Regularly engaged in the business of refining, producing, distilling, manufacturing, blending or compounding gasoline or special fuels in this state;

(2) Regularly importing nontaxpaid gasoline or special fuel into this state for distribution in bulk to others;

(3) Distributing gasoline from bulk storage in this state;

(4) Regularly engaged in the business of distributing special fuels in bulk primarily to others in arms length transactions; or

(5) In the case of gasoline, if approved by the Revenue Cabinet, receiving or accepting delivery of gasoline in amounts of not less than 100,000 gallons per month during any prior consecutive twelve (12) month period.

Section 3. Use of nontaxpaid special fuel by a person for nonhighway purposes shall not prohibit issuance of a special fuels dealer's license to such person provided he otherwise meets the requirements for a license as provided in Section 2 of this regulation.

Section 4. Any person who acts in the capacity of a gasoline dealer or a special fuels dealer in this state as provided in Section 2 of this regulation, without holding an uncancelled license to engage in such business, shall pay the tax on all received gasoline or special fuels upon which the tax imposed by KRS 138.220 has not been reported and paid to the Revenue Cabinet and, in addition, shall pay a penalty equal to twenty (20) percent of the amount of the tax on such gasoline or special fuel and shall be fined not less than $100 nor more than

$1,000, or imprisoned in the county jail for not less than thirty (30) days nor more than one (1) year, or both. Each day or part of a day of doing business as a dealer without an uncancelled license shall be a separate offense.

Section 5. To procure the license required under Section 1 of this regulation, every dealer shall file with the Revenue Cabinet an application in such form and containing such information as the cabinet may deem necessary. At the time of filing application for a license, a bond issued by a corporation authorized to do surety business in Kentucky shall be filed with the cabinet in an amount not to exceed three (3) months' estimated tax liability as computed by the cabinet or $5,000 whichever is greater.

Section 6. No license shall be issued upon any application unless accompanied by a bond as provided in Section 5 of this regulation. Further, if application for a dealer license is filed by any person who has previously acted in the capacity of a dealer without securing a dealer's license or, if licensed, whose license has at any time previously been cancelled for cause by the cabinet, or if the cabinet is of the opinion that the application is not filed in good faith, or that the application is filed by some person as a subterfuge for the real person in interest, the cabinet may, after notice and hearing, refuse to issue a dealer's license to that person.

Section 7. A gasoline or special fuels dealer's license may, after notice and hearing, be revoked by the Revenue Cabinet for failure by the licensee to comply with all the provisions of KRS 138.210 to 138.500, including any regulation promulgated thereunder, applicable to such dealer.

C. EMMETT CALVERT, Secretary
APPROVED BY AGENCY: October 13, 1988
FILED WITH LRC: October 14, 1988 at 9 a.m.
PUBLIC HEARING: A public hearing on this regulation will be held on November 22, 1988, at 2 p.m. in Room 406 of the Capitol Annex, Frankfort, Kentucky. If no written notice of intent to attend the public hearing is received within five days before the scheduled hearing, the hearing will be cancelled. Those interested in attending shall notify in writing: Scott Akers, Revenue Cabinet, Division of Tax Policy and Legal Services, New Capitol Annex Building, Frankfort, Kentucky 40620.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Scott Akers
(1) Type and number of entities affected: The entities affected are the approximately 450 licensed special fuels dealers and 350 licensed gasoline dealers as well as any person desiring to become licensed in the future as a gasoline or special fuels dealer.
(a) Direct and indirect costs or savings to those affected: None
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs (note any effects upon competition): None. The regulation applies equally to all persons currently licensed and those who may wish to obtain a license in the future to act in the capacity of a gasoline or special fuels dealer.
(b) Reporting and paperwork requirements: None. Any person desiring to become licensed as a gasoline or special fuels dealer must file an application and bond as required by statute. All licensed dealers are also required by statute to file a monthly tax return reporting all fuel transactions and paying any tax due.
(2) Effects on the promulgating administrative body: None. The regulation consolidates various statutory provisions relating to dealer licensing requirements and operational responsibilities.
(a) Direct and indirect costs or savings:
1. First year: None
2. Continuing costs or savings: None
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative is failure to file a regulation which summarizes these statutory requirements. The Revenue Cabinet believes that this regulation provides needed information in a convenient format.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict: N/A
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Gasoline and special fuels statutes require licensing of all persons engaged in this business.

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

401 KAR 63:045. School asbestos abatement accreditations.

RELATES TO: KRS 224.320, 224.330, 224.340, 224.550, 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, 763.99, Appendices A, B, and D (October 30, 1987), Toxic Substances Control Act II (15 USC 2601 and the related sections which follow, as in effect on July 18, 1988)
STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.550, 224.560, 224.994
NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. KRS 224.550 allows the cabinet to develop, adopt, and maintain a comprehensive statewide asbestos contractor accreditation program relating to asbestos in schools. This regulation provides for the accreditation of individuals who inspect for asbestos in schools, prepare plans addressing potential and actual asbestos hazards in schools, and design, supervise, or perform response actions in schools.

Section 1. Definitions. As used in this

regulation, the following terms shall have the following meanings. If not defined in this section, a term shall have the meaning given it by commonly accepted usage.

(1) "Abatement project designer" means an individual who determines how asbestos abatement work should be conducted and who prepares for purposes of an abatement response action, plans, designs, procedures, workscope, or other substantive direction or criteria.

(2) "Act" means the Toxic Substances Control Act (TSCA), 15 USC 2601 and the related sections which follow, as in effect on July 18, 1988.

(3) "Accredited" means when referring to an individual that the individual is accredited in accordance with section 206 of Title II of the Act.

(4) "Accreditation certificate" means a certificate issued by the cabinet attesting to the training qualifications of an individual to perform specified asbestos abatement projects.

(5) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, and actinolite.

(6) "Asbestos abatement contractor" means the individual responsible for the on-site supervision of the removal, encapsulation, or enclosure of friable ACM in a school.

(7) "Asbestos abatement project" means any project intended to identify, assess, plan for, or respond to an asbestos hazard in a school building.

(8) "Asbestos abatement supervisor" means the individual responsible for the on-site supervision of the removal, encapsulation, or enclosure of friable ACM in a school.

(9) "Asbestos abatement worker" means an individual who cleans, removes, encapsulates, encloses, hauls, or disposes of friable asbestos material or who performs any response action required to be performed by an accredited individual.

(10) "Asbestos-containing material" or "ACM" means, when referring to school buildings, any material or product which contains more than one (1) percent asbestos.

(11) "Asbestos-containing building material" or "ACBM" means surfacing ACM, thermal system insulation ACM, or miscellaneous ACM that is found in or on interior structural members or other parts of a school building.

(12) "Cabinet" has the meaning given it in KRS 224.005.

(13) "Day" means calendar day.

(14) "Discipline" means any of the following: an inspector, management planner, abatement project designer, asbestos abatement contractor, asbestos abatement supervisor, and asbestos abatement worker.

(15) "Encapsulation" means the treatment of ACBM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

(16) "Enclosure" means an airtight, impermeable, permanent barrier around ACBM to prevent the release of asbestos fibers into the air.

(17) "EPA" or "U.S. EPA" means the United States Environmental Protection Agency.

(18) "EPA-approved training course" means a training or refresher course for the discipline for which accreditation is requested which is approved by the U.S. EPA, at the time the course is taken, for the purpose of complying with the requirements of section 206 of the Act.

(19) "Friable" means that the material, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after the previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

(20) "Functional space" means a room, group of rooms, or homogeneous area (including crawl spaces or the space between a dropped ceiling and the floor or roof deck above), such as classrooms, a cafeteria, gymnasium, hallways, designated by an individual accredited to prepare management plans, or design or conduct response actions.

(21) "Homogeneous area" means an area of surfacing material, thermal system insulation material, or miscellaneous material that is uniform in color and texture.

(22) "Inspector" means an individual who identifies, assesses the condition of, or collects preabatement air samples or bulk samples of ACM.

(23) "Inspection" means an identification of the status of asbestos in schools, including identification of, assessment of the conditions of, or collection of preabatement air samples or bulk samples of, ACM. This term also includes reinspections, after the initial inspection has been performed.

(24) "Local education agency" or "LEA" means:

(a) Any local education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 3381), which means, a public board of education or other public authority legally constituted for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision, or any combination of school districts or counties recognized as an administrative agency for its public elementary or secondary schools. This term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(b) The owner of any nonpublic, nonprofit elementary or secondary school building.

(c) The governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 USC 921, and the following related sections).

(25) "Management plan" means a plan submitted by an LEA and which is not disapproved, and which contains the items required in 40 CFR 763.93.

(26) "Management planner" means an individual who uses data gathered by inspectors to assess asbestos hazards, and by doing so determines appropriate response actions and develops management plans.

(27) "Miscellaneous ACM" means miscellaneous material that is ACM in a school building.

(28) "Miscellaneous material" means interior building material on structural components, structural members, or fixtures, such as floor and ceiling tiles, and does not include

surfacing material or thermal system insulation.

(29) "Nonfriable" means material in a school building which when dry may not be crumbled, pulverized, or reduced to powder by hand pressure.

(30) "Operations and maintenance program" or "O&M program" means a program of work practices to maintain friable ACBM in good condition, ensure cleanup of asbestos fibers previously released, and prevent further release by minimizing and controlling friable ACBM disturbance or damage.

(31) "Person" has the meaning given it in KRS 224.005.

(32) "Removal" means the taking out or the stripping of substantially all ACBM from a damaged area, a functional space, or a homogeneous area in a school building.

(33) "Repair" means returning damaged ACBM to an undamaged condition or to an intact state so as to prevent fiber release.

(34) "Response action" means a method, including but not limited to removal, encapsulation, enclosure, repair, operations and maintenance, that protects human health and the environment from friable ACBM.

(35) "School" means any elementary or secondary school as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 2854).

(36) "School building" means:

(a) Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food;

(b) Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

(c) Any other facility used for the instruction or housing of students or for the administration of education or research programs;

(d) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in paragraphs (a) to (c) of this subsection;

(e) Any portico or covered exterior hallway or walkway; or

(f) Any exterior portion of a mechanical system used to condition interior space.

(37) "Surfacing ACM" means surfacing material that is ACM.

(38) "Surfacing material" means material in a school building that is sprayed on, troweled on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, or other purposes.

(39) "Thermal system insulation" means material in a school building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss or gain, or water condensation, or for other purposes.

(40) "Thermal system insulation ACM" means thermal system insulation that is ACM.

Section 2. Applicability. The provisions of this regulation shall apply to all individuals required to be accredited by 401 KAR 63:050.

Section 3. Prohibition. No individual may engage in, nor any person cause or allow any individual to engage in, any asbestos abatement project at a school on or after October 12, 1988, unless an accreditation certificate to so engage in these projects has been issued to that individual by the cabinet, is currently in effect, and is maintained on the person of that individual at all times.

Section 4. Applications. (1) No individual shall be considered for accreditation unless the training requirements of Section 9 of this regulation have been completed prior to application.

(2) Applications for accreditation shall be made on forms prepared by the cabinet for this purpose and shall contain the information that the cabinet deems is necessary to determine whether the accreditation should be issued.

(3) Applications for accreditation shall be signed by the individual requesting accreditation. The signature shall be made under oath and shall constitute personal affirmation that the statements made in the application are true and complete.

(4) Applications shall contain the accreditation fee as indicated in Section 7 of this regulation.

Section 5. Consideration of Applications. (1) Within fifteen (15) days after receipt of an application for accreditation, the cabinet shall advise the applicant as to whether or not the application is complete, and if not complete, what additional information is necessary in order to evaluate the application.

(2) Within fifteen (15) days after the application for accreditation is deemed complete, the cabinet shall make its determination concerning the application unless the cabinet determines that an additional period of time is necessary.

(3) If the application is approved, the cabinet shall issue to the applicant the accreditation certificate to engage in asbestos abatement projects at schools, according to the provisions of the regulation.

(4) The cabinet may deny an application for accreditation if the cabinet determines that the applicant has violated any provision of this regulation, 401 KAR 57:011, 401 KAR 63:042, or 401 KAR 63:050, if the applicant willfully made any misstatements in the application, or if the applicant cannot reasonably be expected to conduct himself in a manner that is consistent with the acceptance of responsibility for asbestos abatement projects at schools. The cabinet shall make determinations regarding issuance or denial of the accreditation based upon the applicant's actions during any prior term of accreditation, the information contained in the application, and any other pertinent information that is available to the cabinet.

(5) Accreditations issued according to this regulation shall be subject to the terms and conditions set forth and embodied in the accreditation certificate as the cabinet deems necessary to ensure compliance with the requirements of this regulation, 401 KAR 57:011, 401 KAR 63:042, and 401 KAR 63:050.

Section 6. Duration and Renewal of Accreditation Certificates. (1) Unless the cabinet revokes an accreditation certificate, both initial and renewed accreditation certificates, shall remain in effect for one (1) year after the date of issuance.

(2) No individual shall be considered for renewal of accreditation unless the training requirements of Section 9 of this regulation have been completed prior to application.

(3) Applications for renewal of accreditation shall be made on forms prepared by the cabinet for this purpose and shall contain the information that the cabinet deems is necessary to determine whether the accreditation should be issued.

(4) Applications for accreditation shall be signed by the individual requesting accreditation. The signatures shall be made under oath and shall constitute personal affirmation that the statements made in the application are true and complete.

(5) Failure to supply information required or deemed necessary by the cabinet to enable it to act upon the renewal application shall result in denial of that renewal.

(6) Any individual who submits an application for renewal of accreditation shall include with the application an accreditation fee, as specified in Section 7 of this regulation.

(7) The cabinet shall make its determination to approve or deny the renewal within fifteen (15) days of receipt of a complete renewal application. The cabinet shall notify the applicant, in writing, of its determination and shall set forth its reasons for any denial.

(8) If the renewal is approved, the cabinet shall issue to the applicant the renewed certificate to engage in asbestos abatement projects in schools, according to the provisions of this regulation and 401 KAR 63:050.

(9) The cabinet may deny an application for renewal of accreditation if the cabinet determines that the applicant has violated any provision of this regulation, 401 KAR 57:011, 401 KAR 63:042, or 401 KAR 63:050, if the applicant willfully made any misstatements in the application, or if the applicant cannot reasonably be expected to conduct himself in a manner that is consistent with the acceptance of responsibility for asbestos abatement projects at schools. The cabinet shall make determinations regarding issuance or denial of the renewed accreditation based upon the applicant's actions during any prior term of accreditation, the information contained in the application, and any other pertinent information that is available to the cabinet.

(10) Renewed accreditations issued according to this regulation shall be subject to the terms and conditions set forth and embodied in the accreditation certificate as the cabinet deems necessary to ensure compliance with the requirements of this regulation, 401 KAR 57:011, 401 KAR 63:042, and 401 KAR 63:050.

Section 7. Fees. All fees shall be submitted to the cabinet by check or money order, payable to the Kentucky State Treasurer. Fees for more than one (1) discipline shall be obtained by summing the fees for the requested accreditations. The fee for accreditation as an inspector, management planner, abatement project designer, asbestos abatement contractor, asbestos abatement supervisor, or asbestos abatement worker shall be twenty (20) dollars. The fee for renewal of accreditation for each of those disciplines shall be ten (10) dollars.

Section 8. Accreditation Revocation. The cabinet may revoke any accreditation issued under this regulation if the accredited individual:

(1) Willfully makes any misstatement or knowingly omits information in the certification application, renewal application, or any amendments to an application;

(2) Fails to comply with the terms or conditions of the accreditation;

(3) Fails to comply with 401 KAR 57:011, 401 KAR 63:042, or 401 KAR 63:050;

(4) Fails to perform a response action in a manner which will protect human health and the environment;

(5) Performs a response action required to be performed by an accredited individual which is disapproved by the cabinet or not contained in an applicable management plan; or

(6) Alters any accreditation certificate.

Section 9. Training Requirements. (1) Initial accreditation. Every individual requesting accreditation shall attend and successfully complete an EPA-approved training course for the appropriate discipline for which accreditation is requested within one (1) year prior to applying for accreditation. Training successfully completed at an EPA-approved training course for the requested discipline since January 1, 1985, shall satisfy the requirement of this subsection for one (1) year from the effective date of this regulation.

(2) Renewal of accreditation.

(a) If an individual successfully completes an EPA-approved refresher course for the discipline for which accreditation is requested prior to the expiration of his certificate and if the individual requests that his accreditation certificate be renewed prior to expiration, then the cabinet may extend the accreditation certificate for one (1) year. The cabinet will issue a renewal certificate for each approved extension.

(b) If an individual fails to successfully complete an EPA-approved refresher course for the discipline for which accreditation is requested within one (1) year of being certified, his accreditation certificate shall expire; however, an expired certificate may be renewed if the applicant successfully completes an EPA-approved refresher course within one (1) year of expiration, and completes all other requirements for renewal of certifications.

(c) If an individual fails to successfully complete an EPA-approved refresher course for the discipline for which accreditation is requested within one (1) year of expiration of his accreditation certificate, the individual shall complete all requirements for initial accreditation in order to receive accreditation.

Section 10. Penalties. Any individual or other person who violates any provision of this regulation shall be subject to the appropriate enforcement action as provided under KRS 224.994.

CARL H. BRADLEY, Secretary
WILLIAM F. KNAPP, JR., Acting Commissioner
APPROVED BY AGENCY: September 30, 1988
FILED BY LRC: October 5, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted on November 30, 1988, at 10 a.m. (EST), in the Auditorium of the New State Office Building, Clinton and High Streets, Frankfort, Kentucky. Persons interested in attending this

public hearing shall notify, in writing at least five days prior to the hearing, Mr. William C. Eddins, Director, Division for Air Quality, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: William C. Eddins, Director

(1) Type and number of entities affected: This regulation establishes procedures whereby individuals requird to be accredited by 401 KAR 63:050 can become accredited. This regulation also stipulates that no individual may inspect, plan, design, or perform any other asbestos abatement project at a school after October 12, 1988, without receiving accreditation from the cabinet. It will affect contractors, local education agencies, and any other individuals who may be involved in asbestos abatement projects in schools.

(a) Direct and indirect costs or savings to those affected: This regulation requires a direct fee of $20 for each individual seeking accreditation from the cabinet to plan, design, oversee, perform, or otherwise work on asbestos abatement projects in schools; individuals are also required to renew their accreditations each year at a cost of $10 per accreditation. An indirect cost is that the individual must first complete an EPA-approved training course (and attend retraining courses) in order to be accredited by the cabinet. The tuition for these courses may be $600; in addition there are travel and room and board expenses during the course. The tuition costs are less for the retraining courses. These costs may vary, depending on the location of the course. These indirect costs for training and retraining are also a cost of the federal regulation which is already imposed on individuals who perform asbestos abatement projects in schools, regardless of Kentucky's promulgation of these regulations.

1. First year: The only direct cost of Kentucky's regulation to each individual requesting accreditation is $20 for the initial accreditation certificate.

2. Continuing costs or savings: The only direct cost of Kentucky's regulation for annual accreditation is $10 per year.

3. Additional factors increasing or decreasing costs (note any effects upon competition): There are no additional factors; the federal regulation at 40 CFR 763, Subpart E, requires that all individuals who perform any type of asbestos abatement projects at schools be accredited.

(b) Reporting and paperwork requirements: Applications for accreditation shall be made on forms prepared by the cabinet for such purpose and shall contain the information the cabinet considers necessary to determine whether the accreditation should be issued. Accredited individuals are also required to keep their current accreditation certificate with them at all times.

(2) Effects on the promulgating administrative body: The cabinet will be required to review forms submitted by applicants, determine their adequacy, and if complete and adequate, grant the applicant an accreditation certificate. If the application is incomplete or inadequate, the cabinet will notify the applicant of what additional information is necessary. If the cabinet denies accreditation, based on past performance or other pertinent information, the cabinet must communicate the reasons for the denial. Accomplishing these tasks will require the use of additional personnel, contractor assistance, overtime, or some combination of these.

(a) Direct and indirect costs or savings:

1. First year: Printing costs for application forms and accreditation certificates will be incurred. The Division's postage costs to mail the application forms and certificates will also increase, depending on the number of applicants. Each application will also require approximately one-half hour to review and complete. The Division estimates that 500 applications will be received from individuals requesting accreditations. General expenses associated with office administration will also increase, such as copying, correspondence, telephones, and storage of accreditation records.

2. Continuing costs or savings: The renewal applications will also be required to be reviewed and renewed certifications will be issued. As time passes and the required activities are completed, it is expected that fewer individuals will request renewals than request initial accreditations.

3. Additional factors increasing or decreasing costs: No additional factors are anticipated.

(b) Reporting and paperwork requirements: The cabinet must prepare application forms and must review the applications submitted by the applicants. The cabinet will also need to maintain current records regarding the accreditation status of each individual involved in asbestos activities at schools.

(3) Assessment of anticipated effect on state and local revenues: State revenues will be increased in the form of agency receipts from the fee for accreditation applications. However, such increase is expected to be offset by printing costs and reviewing time.

(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 224.550 would have allowed the cabinet to not establish a statewide asbestos contractor accreditation program; however, such course would leave the state in the position of relying on a federal program for asbestos abatement in our schools. In view of the cabinet's overall charge to protect air quality, the cabinet believes that this regulation and 401 KAR 63:050 are required to effectively implement such a program.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 401 KAR 63:042 and 401 KAR 57:011 regarding certification of asbestos abatement entities and the federal regulation for asbestos emissions, respectively, overlap this regulation in that those regulations may also apply to LEAs, but do not duplicate or conflict with it.

(a) Necessity of proposed regulation if in conflict: This regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This regulation is not in conflict.

(6) Any additional information or comments: In 1987 the U.S. EPA promulgated 40 CFR 763, Subpart E, which requires all local education agencies to inspect for asbestos in schools, assess the condition of any asbestos, and

develop management plans to remove or repair the asbestos. The regulation also requires that all activities associated with these plans be performed by accredited individuals to ensure that the work will be performed by individuals who know of the hazards of asbestos, know how to best protect themselves and others in schools while performing the work, and know how to complete the work to remove the asbestos hazard.

The 1988 General Assembly subsequently enacted House Bill 631, which authorized the Department for Environmental Protection, Division for Air Quality to develop a comprehensive statewide asbestos contractor accreditation program and to assess fees to recover the costs associated with such a program. This division, in the interest of protecting air quality, has determined that it should develop such a program. KRS 224.550 states that such a program shall include "providing for training and accreditation of asbestos inspectors, management planners, abatement project designers, abatement contractors, supervisors, and abatement workers..." This regulation sets out the procedures for fulfilling that requirement as well as assessing a fee to offset costs of this part of the program since no monies were provided for program implementation, and no funds are available from the U.S. EPA to states which establish such a program.

TIERING: Was tiering applied? No. Tiering was not applied since all individuals who perform asbestos abatement projects in schools are required to be accredited, regardless of whether the individual inspects for asbestos, develops the management plan, or designs, supervises, or performs the actual removal or repair of the asbestos. The different disciplines require the same amount of review time for the cabinet to determine whether accreditation should be issued. An applicant for a specific discipline is required to attend an approved training course for that discipline.

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 will affect those public school systems which elect to have their employees accredited to perform different aspects of an asbestos abatement project. However, school districts are not required to have individual employees accredited; they may hire accredited individuals to perform the work.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224.550 allows the Division for Air Quality to develop a comprehensive statewide asbestos contractor accreditation program. 40 CFR 763, Subpart E requires that any asbestos abatement work including inspections, plan development, assessments, designs, removal, or repairs, be performed by accredited individuals. Schools may elect to have their employees accredited to perform all the work themselves, to perform some of the types of work, or may elect to have no employees accredited and thus have all the work performed by contractors.

4. How does this administrative regulation affect the local government or any service it provides? This regulation will affect public school systems if they elect to have their employees acredited. If so, then this regulation requires that each accredited individual pay a $20 fee for accreditation, and attend an EPA-approved training course. The training course is also a requirement of the federal regulation and applies to school systems which elect to have their employees accredited, regardless of this state regulation. The purpose of this regulation is to ensure that individuals who perform asbestos abatement projects in schools are trained and are registered with the Division for Air Quality. Local government expenditures would be increased by $20 for each individual it elects to have accredited, plus training costs (tuition, travel, room and board) which is a requirement of the federal regulation. This regulation is not expected to have an effect on the number of employees or other cost factors of the public school systems, although school systems could permanently hire individuals to perform all their asbestos work, rather than contracting with outside firms to perform asbestos projects.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 763, Subpart E (October 30, 1987, 52 FR 41846), and the federal Model Plan, codified as 40 CFR 763, Subpart E, Appendix C (April 30, 1987, 52 FR 15876).

2. State compliance standards. This regulation provides the procedures under which individuals can become accredited to perform specified tasks associated with asbestos abatement projects in schools. Individuals must attend an EPA-approved training course (or renewal course for renewed accreditations), and must submit an application for accreditation and an accreditation fee.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 763, Subpart E, requires local education agencies to inspect for asbestos in schools, assess the condition of any asbestos, and develop management plans which provide for the removal or maintenance of the asbestos. It also requires that individuals who perform any work associated with the management plans be accredited. The federal Model Plan provides a mechanism which states can use to accredit individuals to perform the different tasks associated with a specified discipline; it also specifies the curriculum for an EPA-approved training course for the required disciplines.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation requires that individuals submit forms and the required fees in order to be accredited; these requirements are not in the federal regulation. It also stipulates that the accreditation certificate may be revoked if the accredited individual fails to perform a response action in a manner which will protect human health and the environment, or performs a response action which is not contained in an applicable management plan.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The forms

which must be submitted provide documentation that the required courses were completed, and allow the cabinet to effectively implement the program. The initial and renewal accreditation fees are necessary and allowed under House Bill 631 to recover the costs associated with issuing accrddditation certificates. The revocation provisions are not contained in the federal Model Plan; however, the cabinet believes that it needs to have this ability to ensure that management plans are implemented so as to prevent the release of asbestos fibers to the environment, thus protecting students and school employees.

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

401 KAR 63:050. Local education agencies.

RELATES TO: KRS 224.033(10), 224.320, 224.330, 224.340, 224.550, 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, 763.99, Appendices A, B, and D (October 30, 1987), Toxic Substances Control Act II (15 USC 2601 and the related sections which follow, as in effect on July 18, 1988)

STATUTORY AUTHORITY: KRS Chapter 13A, 224.033, 224.550, 224.560, 224.994

NECESSITY AND FUNCTION: KRS 224.033 requires the Natural Resources and Environmental Protection Cabinet to prescribe regulations for the prevention, abatement, and control of air pollution. KRS 224.550 authorizes the cabinet to develop, adopt, and maintain a comprehensive statewide asbestos contractor accreditation program relating to asbestos in schools. This regulation provides for the control of asbestos emissions in schools by requiring local education agencies to submit management plans to provide for the adequate identification and assessment of asbestos in schools and the removal of friable asbestos-containing materials.

Section 1. Definitions. As used in this regulation and applicable portions of 40 CFR Part 763, the following terms shall have the following meanings. If not defined in this section, a term shall have the meaning given it by commonly accepted usage.

(1) "Act" means the Toxic Substances Control Act (TSCA), 15 USC 2601 and the related sections which follow, as in effect on July 18, 1988.

(2) "Accessible" means, when referring to ACM, that the material is subject to disturbance by school building occupants or custodial or maintenance personnel in the course of their normal activities.

(3) "Accredited" means when referring to an individual or a laboratory that the individual or laboratory is accredited in accordance with section 206 of Title II of the Act.

(4) "Accreditation certificate" means a certificate issued by the cabinet attesting to the qualifications of an individual to perform specified asbestos abatement projects.

(5) "Air erosion" means the passage of air over friable ACBM which may result in the release of asbestos fibers.

(6) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, and actinolite.

(7) "Asbestos abatement project" means any project intended to identify, assess, plan for, or respond to an asbestos hazard in a school building.

(8) "Asbestos-containing material" or "ACM" means, when referring to school buildings, any material or product which contains more than one (1) percent asbestos.

(9) "Asbestos-containing building material" or "ACBM" means surfacing ACM, thermal system insulation ACM, or miscellaneous ACM that is found in or on interior structural members or other parts of a school building.

(10) "Asbestos debris" means:

(a) Pieces of ACBM that can be identified by color, texture, or composition; or

(b) Dust, if the dust is determined by an accredited inspector to be ACM.

(11) "Cabinet" has the meaning given it in KRS 224.005.

(12) "Damaged friable miscellaneous ACM" means friable miscellaneous ACM which has deteriorated or sustained physical injury so that the internal structure (cohesion) of the material is inadequate or, if applicable, which has delaminated so that its bond to the substrate (adhesion) is inadequate, or which for any other reason lacks fiber cohesion or adhesion qualities. Damage or deterioration may be illustrated by the separation of ACM into layers; separation of ACM from the substrate; flaking, blistering, or crumbling of the ACM surface; water damage; significant or repeated water stains, scrapes, gouges, mars, or other signs of physical injury on the ACM. Asbestos debris originating from the ACBM in question may also indicate damage.

(13) "Damage friable surfacing ACM" means friable surfacing ACM which has deteriorated or sustained physical injury so that the internal structure (cohesion) of the material is inadequate, or which has delaminated so that its bond to the substrate (adhesion) is inadequate, or which for any other reason lacks fiber cohesion or adhesion qualities. Damage or deterioration may be illustrated by the separation of ACM into layers; separation of ACM from the substrate; flaking, blistering, or crumbling of the ACM surface; water damage; significant or repeated water stains, scrapes, gouges, mars, or other signs of physical injury on the ACM. Asbestos debris originating from the ACBM in question may also indicate damage.

(14) "Damaged or significantly damaged thermal system insulation ACM" means thermal system insulation ACM on pipes, boilers, tanks, ducts, and other thermal system insulation equipment where the insulation has lost its structural integrity, or its covering, in whole or in part, is crushed, water-stained, gouged, punctured, missing, or not intact so that it is not able to contain fibers. Damage may be further illustrated by occasional punctures, gouges, or other signs of physical injury to ACM; occasional water damage on the protective coverings or jackets; or exposed ACM ends or joints. Asbestos debris originating from the ACBM in question may also indicate damage.

(15) "Day" means calendar day.

(16) "Emergency response action" means a response action that was not planned but results from a sudden, unexpected event. This term includes operations necessitated by nonroutine

failure of equipment.

(17) "Encapsulation" means the treatment of ACBM with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

(18) "Enclosure" means an airtight, impermeable, permanent barrier around ACBM to prevent the release of asbestos fibers into the air.

(19) "EPA" or "U.S. EPA" means the United States Environmental Protection Agency.

(20) "EPA-approved training course" means a training or refresher course that is approved by the U.S. EPA, at the time the course is taken as meeting the requirements of section 206 of the Act.

(21) "Fiber release episode" means any uncontrolled or unintentional disturbance of ACBM resulting in visible emission.

(22) "Friable" means that the material, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after the previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

(23) "Functional space" means a room, group of rooms, or homogeneous area (including crawl spaces or the space between a dropped ceiling and the floor or roof deck above), such as classrooms, a cafeteria, gymnasium, hallways, designated by an individual accredited to prepare management plans, or design or conduct response actions.

(24) "High-efficiency particulate air" or "HEPA" means a filtering system capable of trapping and retaining at least 99.97 percent of all monodispersed particles three/tenths (0.3) um in diameter or larger.

(25) "Homogeneous area" means an area of surfacing material, thermal system insulation material, or miscellaneous material that is uniform in color and texture.

(26) "Inspector" means an individual who identifies, assesses the condition of, or collects preabatement air samples or bulk samples of ACM.

(27) Inspection" means an identification of the status of asbestos in schools, including identification of, assessment of the conditions of, or collection of preabatement air samples or bulk samples of, ACM. This term also includes reinspections, after the initial inspection has been performed.

(28) "Local education agency" or "LEA" means:

(a) Any local education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 3381), which means, a public board of education or other public authority legally constituted for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision, or any combination of school districts or counties recognized as an administrative agency for its public elementary or secondary schools. This term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(b) The owner of any nonpublic, nonprofit elementary or secondary school building.

(c) The governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 USC 921, and the related sections which follow).

(29) "Management plan" means a plan submitted by an LEA and which is not disapproved, which contains the items required in 40 CFR 763.93.

(30) "Management planner" means an individual who uses data gathered by inspectors to assess asbestos hazards, and by doing so determines appropriate response actions and develops management plans.

(31) "Miscellaneous ACM" means miscellaneous material that is ACM in a school building.

(32) "Miscellaneous material" means interior building material on structural components, structural members, or fixtures, such as floor and ceiling tiles, and does not include surfacing material or thermal system insulation.

(33) "Nonfriable" means material in a school building which when dry may not be crumbled, pulverized, or reduced to powder by hand pressure.

(34) "Operations and maintenance program" or "O&M program" means a program of work practices to maintain friable ACBM in good condition, ensure cleanup of asbestos fibers previously released, and prevent further release by minimizing and controlling friable ACBM disturbance or damage.

(35) "Person" has the meaning given it in KRS 224.005.

(36) "Potential damage" means circumstances in which:

(a) Friable ACBM is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities; or

(b) There are indications that there is a reasonable likelihood that the material or its covering will become damaged, deteriorated, or delaminated due to factors such as changes in building use, changes in operations and maintenance practices, changes in occupancy, or recurrent damage.

(37) "Potential significant damage" means circumstances in which:

(a) Friable ACBM is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities;

(b) There are indications that there is a reasonable likelihood that the material or its covering will become significantly damaged, deteriorated, or delaminated due to factors such as changes in building use, changes in operations and maintenance practices, changes in occupancy, or recurrent damage; or

(c) The material is subject to major or continuing disturbance, due to factors including, but not limited to, accessibility or, under certain circumstances, vibration or air erosion.

(38) "Preventive measures" means actions taken to reduce disturbance of ACBM or otherwise eliminate the reasonable likelihood of the material's becoming damaged or significantly damaged.

(39) "Removal" means the taking out or the stripping of substantially all ACBM from a damaged area, a functional space, or a

homogeneous area in a school building.

(40) "Repair" means returning damaged ACBM to an undamaged condition or to an intact state so as to prevent fiber release.

(41) "Response action" means a method, including but not limited to removal, encapsulation, enclosure, repair, operations and maintenance, that protects human health and the environment from friable ACBM.

(42) "Routine maintenance area" means an area, such as a boiler room or mechanical room, that is not normally frequented by students and in which maintenance employees or contract workers regularly conduct maintenance activities.

(43) "School" means any elementary or secondary school as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 USC 2854).

(44) "School building" means:

(a) Any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food;

(b) Any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

(c) Any other facility used for the instruction or housing of students or for the administration of education or research programs;

(d) Any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in paragraphs (a) to (c) of this subsection;

(e) Any portico or covered exterior hallway or walkway; or

(f) Any exterior portion of a mechanical system used to condition interior space.

(45) "Significantly damaged friable miscellaneous ACM" means damaged friable miscellaneous ACM where the damage is extensive and severe.

(46) "Significantly damaged friable surfacing ACM" means damaged friable surfacing ACM in a functional space where the damage is extensive and severe.

(47) "State" means a state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(48) "Surfacing ACM" means surfacing material that is ACM.

(49) "Surfacing material" means material in a school building that is sprayed on, troweled on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, or other purposes.

(50) "Thermal system insulation" means material in a school building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss or gain, or water condensation, or for other purposes.

(51) "Thermal system insulation ACM" means thermal system insulation that is ACM.

(52) "Timely manner" means that the LEA has fulfilled or is fulfilling its responsibilities in a manner that is as expeditious as possible, taking into account circumstances which are unique to the LEA. The determination of timeliness shall be made by the cabinet.

(53) "um" means micrometer.

(54) "Vibration" means the periodic motion of friable ACBM which may result in the release of asbestos fibers.

Section 2. Applicability. The provisions of this regulation shall apply to all LEAs.

Section 3. Responsibilities of LEAs. (1) The subject matter of this regulation is governed by 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, and 763.99, and Appendices A, B, and D, as promulgated by the U.S. EPA on October 30, 1987 (52 FR 41846). All LEAs shall comply with the provisions of the federal regulations listed in this subsection.

(2) No LEA may permit, allow, or require any individual or other person to perform any asbestos abatement project after October 12, 1988, unless the individual has been issued by the cabinet an accreditation certificate to so engage in these projects in accordance with the provisions of 401 KAR 63:045, which is currently in effect, and which is maintained on his person.

(3) LEAs shall revise their management plans when changes in the schools, school buildings, status of the ACM, or response actions occur. The LEA may submit only the revised portion of the plan. If the entire plan is resubmitted then the revised portions shall be clearly indicated. These revisions shall comply with the applicable provisions of 40 CFR 763.80, 763.84, 763.85, 763.86, 763.87, 763.88, 763.90, 763.91, 763.92, 763.93, 763.94, 763.95, and 763.99, and Appendices A, B, and D. LEAs shall submit the revisions according to the provisions of Section 5 of this regulation.

Section 4. Deferrals. If a LEA is unable to submit to the cabinet its management plan required in 40 CFR 763.93 by October 12, 1988, it may request a deferral to May 9, 1989, for the submission of the plan for one (1) or more schools under its jurisdiction. Deferral requests shall be submitted to the cabinet by the original due date of October 12, 1988, shall be notarized, and shall contain all of the requirements of subsections (1) to (5) of this section. Deferral requests may be submitted using forms prepared by the cabinet for that purpose.

(1) A listing of all schools covered by the request.

(2) A statement and brief explanation as to why the LEA, despite good faith efforts, will not be able to meet the original October 12, 1988, deadline for submittal of its management plan.

(3) A statement that the LEA has made at least one (1) of the following documents available for inspection at each school for which a deferral is sought:

(a) A solicitation by the LEA to contract with an accredited inspector or accredited management planner for inspection or management plan development, respectively;

(b) A letter certifying that school district personnel are enrolled in an EPA-approved training course for inspection and management plan development;

(c) Documentation showing that suspected ACM from the school is being analyzed at an accredited laboratory; or

(d) Documentation showing that an inspection or management plan has been completed in at

least one (1) other school under the LEA's authority.

(4) A statement giving assurance that the LEA has carried out notification of affected groups and, for public schools, a public meeting. Before filing a deferral request, a LEA shall notify affected parent, teacher, and employee organizations of its intent to file its request. For public schools, the LEA shall discuss the request at a public meeting of the school board, and affected organizations shall be notified in advance of the time and place of the meeting.

(5) A proposed schedule outlining all significant activities leading up to submission of a management plan by May 9, 1989, including the inspection of the school. This schedule shall contain a deadline of no later than December 22, 1988, for entering into a contract with an accredited inspector, unless inspections are to be performed by accredited school personnel. Laboratory analysis and management plan development shall also be included in the activity schedule.

(6) The cabinet shall respond to the LEA in writing within thirty (30) days of receipt of the request to acknowledge whether the deferral request is complete or incomplete. If incomplete, the cabinet shall identify in the response the items which are missing from the request. The LEA may correct and refile its request with the cabinet no later than fifteen (15) days after it has received a response from the cabinet.

(7) The deferral request shall be considered to be granted only when the cabinet has responded in writing that the deferral request is accepted as complete.

(8) An LEA whose deferral request has been approved shall submit to the cabinet a management plan no later than May 9, 1989. The plan shall include a copy of the deferral request and the appropriate assurances of subsections (1) to (5) of this section which accompanied the original request. The cabinet shall review the deferred management plan in accordance with the procedures in Section 6 of this regulation, except the LEA shall submit a revised deferred plan within thirty (30) days of disapproval. The cabinet may extend the thirty (30) day period by not more than thirty (30) days.

(9) Deferral or acceptance of the deferred management plan shall not exempt the LEA from its responsibility to begin implementation of the deferred management plan by July 9, 1989.

Section 5. Submittal of Plans. (1) Management plans required in 40 CFR 763.93, deferred management plans, and revisions to management plans shall be submitted using forms approved by the cabinet for that purpose and shall contain all the information that the cabinet deems is necessary to determine if the plan should be approved, including all information required in 40 CFR 763.93.

(2) Management plans, deferred management plans, and revisions to management plans submitted after October 12, 1988, shall include the fee specified in Section 8 of this regulation. LEAs which submitted plans on or before October 12, 1988, shall submit to the cabinet the fee specified in Section 8 of this regulation by December 12, 1988.

Section 6. Consideration of Management Plans.

(1) At any time, the cabinet shall disapprove the management plan, deferred management plan, or revised management plan if the plan:

(a) Does not conform with the requirements of this regulation, 401 KAR 57:011, or 401 KAR 63:042;

(b) Does not assure that any action or service required to be performed by accredited individuals in any of the regulations contained in 40 CFR 763, Subpart E will be performed by accredited individuals, and does not assure that the provisions of Section 3(2) of this regulation will be met;

(c) Does not contain a response action schedule which is reasonable and timely as determined by the cabinet, taking into account circumstances relevant to the speed at which the friable ACM in the school buildings under the LEAs authority should be responded to, including human exposure to the asbestos while the friable ACM remains in the school building, and the ability of the LEA to continue to provide educational services to the community; or

(d) Does not provide response actions which adequately protect human health or the environment from friable ACBM.

(2) The cabinet shall deny a management plan if the cabinet determines that the LEA willfully made any misstatements in the plan, or the LEA cannot reasonably be expected to fulfill the obligations of the plan.

(3) If the cabinet disapproves a plan, the cabinet shall explain in writing to the LEA the reasons why the plan was disapproved and the changes that shall be made in the plan. Within thirty (30) days after the date on which notice of the plan's disapproval is received, the LEA shall revise the plan to conform with the suggested changes. The cabinet may extend the thirty (30) day period for not more than ninety (90) days.

Section 7. Notification. As required in 40 CFR 763.93 the management plan shall contain the dates when each response action will begin and end. If the schedule is amended, the LEA shall notify the cabinet of any response action which will occur and which must be performed by an accredited individual, at least ten (10) days prior to commencement, unless the response action is an emergency response action that must be performed by an accredited individual. The LEA shall notify the cabinet of these emergency response actions as soon as possible, as determined by the cabinet, prior to commencing the emergency response action. If the notification is not in writing, then written confirmation of the response action shall also be provided as soon as possible, as determined by the cabinet.

Section 8. Fees. Fees required in this section shall be submitted to the cabinet by check or money order, payable to the Kentucky State Treasurer.

(1) The fee for review of each management plan or deferred management plan shall be sixty (60) dollars for each school building that is identified in the plan as containing ACM and thirty (30) dollars for each school building that is identified in the plan as not containing ACM.

(2) The fee for review of a revision to the management plan shall be thirty (30) dollars for each building contained in the revision and in

the original management plan, for which a new response action is proposed. For each new building contained in the revision, the fee shall be sixty (60) dollars if the building contains ACM, and thirty (30) dollars if it does not contain ACM.

Section 9. Penalties. Any LEA which violates any provision of this regulation shall be subject to the appropriate enforcement action as provided under KRS 224.994.

CARL H. BRADLEY, Secretary
WILLIAM F. KNAPP, JR., Acting Commissioner
APPROVED BY AGENCY: September 30, 1988
FILED BY LRC: October 5, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing to receive comments on this proposed regulation will be conducted on November 30, 1988, at 10 a.m. (EST), in the Auditorium of the New State Office Building, Clinton and High Streets, Frankfort, Kentucky. Persons interested in attending this public hearing shall notify, in writing at least five days prior to the hearing, Mr. William C. Eddins, Director, Division for Air Quality, Frankfort Office Park, 18 Reilly Road, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: William C. Eddins, Director

(1) Type and number of entities affected: This regulation provides for the control of asbestos emissions in schools by requiring that all local education agencies (LEAs) inspect for the presence of asbestos, assess the condition of the asbestos, and develop and submit by October 12, 1988, plans to provide for the removal or maintenance of friable asbestos. It will affect all public and private nonprofit school systems, from grades kindergarten through twelve. It is estimated that there are 1200 LEAs in Kentucky, which operate approximately 2500 school buildings across the state. The majority of the requirements in this regulation are also contained in the federal regulations upon which this regulation is based, 40 CFR 763, Subpart E; these are imposed on the LEAs regardless of Kentucky's promulgating this regulation. The remaining requirements are authorized by the federal regulation and are necessary for the adoption of a state program, or are included in the legislative mandate of House Bill 631 (1988 General Assembly) and its references to the federal model plan.

(a) Direct and indirect costs or savings to those affected: A majority of the direct and indirect costs to the LEAs affected by this regulation already are required by federal regulation, including costs to inspect each school building for asbestos-containing material, assess the condition of that material, assess the potential detrimental impact of the material on human health and the environment, and prepare a management plan for controlling those detrimental impacts. The U.S. EPA has estimated that these costs will amount to $4,400 for each public school, and $6,000 for each private school. Other costs generated by the federal requirements include those for plan implementation. Implementation costs will result from additional operation and maintenance requirements, and from undertaking response actions proposed in the plan to reduce the exposure of students and school personnel to asbestos-containing material. Since the number and kind of response actions which will be implemented may vary significantly from one LEA to another, it is not possible to predict the exact costs that may be incurred. However, some LEAs may experience implementation costs of thousands of dollars. Finally, LEAs not complying with the federal regulation are subject to penalties up to $5,000 for each day during which the violation continues.

Adoption of this regulation will add some cost to LEAs not imposed by the federal regulation. As authorized by House Bill 631, the cabinet will charge a fee to defray the costs of the management plan review program created by this regulation. No state or federal money is allocated to the cabinet for that purpose. The fee shall be $30 for each building included in a plan, provided the building contains no asbestos-containing material. For each building which contains asbestos-containing material, the fee shall be $60. Using this fee requirement, the LEA having the greatest number of buildings (163) in Kentucky would be charged $9,780 if all of those buildings contained asbestos-containing material. This represents less than 0.01% (1/100 of 1%) of that LEA's total annual budget, and approximately 0.04% (4/100 of 1%) of its annual maintenance budget. Finally, this regulation also subjects LEAs found to be violating its provisions to a civil penalty of up to $1,000 for each day during which the violation persists.

1. First year: The inspections and management plan development are required to be completed by October 12, 1988, and implementation of the plans must begin by July 9, 1989. Therefore, much of the costs should have occurred prior to the completion of the first year. Costs due to the inspection, management plan development, and implementation are due to the federal regulation, and are imposed on LEAs regardless of the promulgation of this regulation.

2. Continuing costs or savings: The management plans are required to contain schedules as to when the asbestos material will be removed or repaired; this is considered to be implementation of the management plan. Some repairs may occur in the second year after the promulgation of this regulation, or any time thereafter. Schools are also required to periodically inspect their buildings to determine if the condition of any ACM has changed. If any changes occur, then schools are required to revise and submit the revisions to their management plans. The costs for submitting the revised management plans are the same as the initial submittals.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The costs to LEAs will vary, depending on the age of the school buildings and the condition of any asbestos-containing materials found in the school buildings.

(b) Reporting and paperwork requirements: Each LEA is required to submit management plans to the cabinet by October 12, 1988. In lieu of the plans, LEAs may submit deferral requests by October 12, 1988. These deferrals only allow the LEA to defer submitting the plans until May 9, 1989. There are specific paperwork requirements to be completed before deferrals can be granted, as specified in Section 4 of the regulation, including assurances that the LEA, despite good-faith efforts, will not be able to meet the

original deadline, and that the LEA has carried out notification of affected groups and has discussed the request at a public meeting, where required. LEAs are also required to maintain copies of their management plans, including any revisions, in each school, and at the LEA's main office. LEAs shall also report the availability of the management plans to all parent, teacher, and other employee organizations. LEAs are required to maintain reports of all response actions taken, air samples collected, and dates and times of all periodic surveillances. LEAs also must prepare and maintain copies of plan amendments. These and other reporting and recordkeeping requirements are in 40 CFR 763.94. Finally, copies of plan amendments must be submitted to the cabinet.

(2) Effects on the promulgating administrative body: The cabinet will be required to review and approve or disapprove each LEAs management plan. Failure to disapprove the plan within ninety days will mean that the LEA is required to begin implementation of the plan, regardless of its content and whether or not it will provide for the safe removal or repair of the asbestos-containing material. Accomplishing the review will require the use of additional personnel, contractor assistance, overtime, or some combination of these.

The cabinet will also be required to ensure that the LEAs are implementing their management plans and revised management plans, including using accredited individuals. This will place additional responsibilities on the field enforcement staff, and additional clerical work in processing the management plans, any deferred management plans, and revised management plans. These additional responsibilities can only be accomplished through additional personnel, contract assistance, overtime, or some combination of these.

(a) Direct and indirect costs or savings:

1. First year: First year costs are expected to be the highest because of the federal deadline of October 12, 1988, for plan submittals; states have 90 days to review each management plan. The U.S. EPA estimates that it will cost a state $77 to review each of these plans for each school building. The cabinet estimates that its review cost will be approximately $60 for each building that contains asbestos-containing material. This overall estimate is based upon the use of six personnel, and an estimate that at least 50 percent of the school buildings have some form of asbestos-containing material. Other costs include increased telephone, copying, storage, and postage costs associated with maintaining an effective program for all 1200 LEAs. Seminars may also be scheduled to meet with the local officials.

2. Continuing costs or savings: Since plans are required to be resubmitted and revised whenever changes in the status of the asbestos-containing material occurs, there will be some continuing costs associated with plan reviews. Also the cabinet will be monitoring the implementations of the plans.

3. Additional factors increasing or decreasing costs: No additional factors are identified.

(b) Reporting and paperwork requirements: The cabinet will be required to maintain the plans, and any reports submitted to the cabinet by the LEAs. As a result of the federal act which authorized the submittal of deferral requests, the cabinet is also required to submit a status report by December 31, 1988, to the U.S. EPA as to which LEAs submitted their management plans to the cabinet prior to October 12, 1988; which LEAs have received approved deferral requests; each LEA that failed to submit management plans by October 12, 1988, and whose deferral request was disapproved; and each LEA which did not submit a management plan and did not submit a deferral request. By December 31, 1989, the cabinet is required to submit an update to the first report and which contains the elements required in the deferral act. Although these reporting requirements are not a direct impact of this regulation, they are an impact of the cabinet's adopting this program of which these regulations are a part.

(3) Assessment of anticipated effect on state and local revenues: State revenues will increase because of the $60 per building (or $30 per building) fee for submittal of the management plans, but these revenues will be offset by the cabinet's use of additional personnel and overtime, and other general administrative costs in order to effectively implement this program.

(4) Assessment of alternative methods; reasons why alternatives were rejected: KRS 224.550 would have allowed the cabinet to not establish a statewide asbestos contractor accreditation program; however, such course would leave the state in the position of relying on a federal program for asbestos abatement in our schools. In view of the cabinet's overall charge to protect air quality, the cabinet believes that this regulation and 401 KAR 63:045 are required to effectively implement such a program.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 401 KAR 57:011 and 401 KAR 63:042, the cabinet's regulations relating to the federal regulation for asbestos emissions and certification of asbestos abatement entities, respectively, overlap this regulation, in that those regulations may also apply to LEAs. Those two regulations do not duplicate or conflict with the regulation.

(a) Necessity of proposed regulation if in conflict: This regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This regulation is not in conflict.

(6) Any additional information or comments: In 1987 the U.S. EPA promulgated 40 CFR 763, Subpart E, which requires all local education agencies to inspect for asbestos in schools, assess the condition of any asbestos, and develop management plans to remove or repair the asbestos. The regulation also requires that all activities associated with these plans be performed by accredited individuals to ensure that the work will be performed by individuals who know of the hazards of asbestos, know how to best protect themselves and others in schools while performing the work, and know how to complete the work to remove the asbestos hazard.

The 1988 General Assembly subsequently enacted House Bill 631, which authorized the Department for Environmental Protection, Division for Air Quality to develop a comprehensive asbestos contractor accreditation program and to assess fees to recover the costs associated with such a program. This division, in the interest of protecting air quality, has determined that it

should develop such a program. KRS 224.550 states that such a program shall include "identifying and controlling asbestos hazards in public and private schools, grades K-12...and accommodating inspection of schools for asbestos hazards, and the development and review of schools' asbestos management plans." This regulation sets out the procedures for fulfilling those requirements as well as assessing a fee to offset costs of this part of the program since no monies were provided for program implementation, and no funds are available from the U.S. EPA to states which establish such a program.

TIERING: Was tiering applied? Yes. Tiering is applied because different fees are imposed on different-sized local education agencies: LEAs with a small number of school buildings will be assessed a smaller fee than will LEAs with a large number of schools and school buildings. Further, there are different fees for each school building, depending on the presence of asbestos-containing materials.

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 will affect all public school systems.

3. State the aspect or service of local government to which this administrative regulation relates. All public school systems will be required to inspect their schools for the presence of asbestos, assess the condition of the asbestos, and develop and submit to the cabinet management plans which provide for the removal or maintenance of friable asbestos. Fees to recover costs associated with reviewing the plans are also required to be submitted with the plans. The actions required in this regulation are required by federal regulations 40 CFR 763, Subpart E, and are authorized by House Bill 631 (1988 General Assembly).

4. How does this administrative regulation affect the local government or any service it provides? The ultimate goal of this regulation is to remove all asbestos hazards in schools, thus protecting human health and the environment in schools. It accomplishes this by requiring all local education agencies, including public school systems, to inspect, assess, and develop management plans for their school buildings which contain asbestos. This regulation and the federal regulation would increase expenditures by requiring that the various tasks be performed, either by employees of the LEA or by consultants or contractors. Some federal monies were available to the LEAs to implement the federal regulation. This regulation would also increase expenditures of public school systems by requiring that a fee be submitted with the management plans to recover costs associated with the cabinet's review of the plan. No state monies were allocated by the 1988 General Assembly to the cabinet or to LEAs to provide for the review of the plans. However, House Bill 631 did authorize the cabinet to assess fees to recover the costs of implementing the asbestos in schools program.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR 763, Subpart E (October 30, 1987, 52 FR 41846), and the federal Asbestos Hazard Emergency Response Act (AHERA).

2. State compliance standards. This regulation stipulates that local education agencies (LEAs) shall inspect for asbestos, assess the condition of the asbestos, and submit management plans to provide for the removal or repair of friable asbestos in schools. Management plans are required to be submitted to the cabinet by October 12, 1988, except that deferral requests will be accepted by the cabinet for LEAs to defer submittal of the plans until May 9, 1989, provided that specific conditions are met. LEAs are also required to submit with the management plans a fee to recover the costs of reviewing the management plan and for developing and implementing the program.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR 763, Subpart E, requires local education agencies to inspect for asbestos in schools, assess the condition of any asbestos, and develop management plans which provide for the removal or maintenance of the asbestos. It also requires that individuals who perform any work associated with the management plans be accredited. Conditions for the deferral of plans are contained in a separate federal act.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation requires the submittal of fees to recover the cost of reviewing the plans and developing the program. It also requires submittal to the cabinet of substantial revisions to the management plan after the plan's initial approval. Also, the proposed state regulation clearly provides the cabinet with the authority to disapprove management plans subsequent to 90 days from their submittal.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The fees required with the submittal of the plans are necessary and allowed under House Bill 631 to recover the costs associated with review the management plans, and to recover the costs associated with effective implementation of the cabinet's program for asbestos in schools. Submittal of revisions to the plan is necessary to ensure compliance with this regulation, 401 KAR 57:011, and 401 KAR 63:042, and to ensure consistency between the cabinet's records and the schools' records. Finally, the potential exists for a sufficiently large number of plans to be submitted to exceed the cabinet's ability to review each plan within 90 days of its submission. The federal regulation recognizes that states may not be able to properly review the plans within 90 days; therefore, it did not prevent the states from disapproving a plan after the 90 day limit. However, a strict reading of the Asbestos Hazard Emergency Response Act, which is the legal authority for the federal regulation, seems to limit states' actions to 90 days. The cabinet considers it crucial that all management plans be reviewed to ensure that they successfully protect students and school personnel from any unnecessary exposure to asbestos, and cannot advocate a regulation that would allow inadequate response

actions to proceed simply because the volume of plan submissions prevents its detection for more than 90 days. Although the cabinet recognizes that the review process cannot be allowed to delay inordinately the implementation of asbestos abatement projects, it nevertheless believes that inadequate management plans should be revised to properly protect the environment and the health of students and school personnel regardless of when those inadequacies are detected.

JUSTICE CABINET

500 KAR 7:020. Local alternatives to detention fund.

RELATES TO: KRS 15A.270
STATUTORY AUTHORITY: KRS 15A.160, 15A.270
NECESSITY AND FUNCTION: The Justice Cabinet is required to promulgate administrative regulations to govern the local alternatives to detention fund.

Section 1. Definitions. (1) "Applicant" means the county fiscal court or its contractor completing the grant application process for local alternative to detention funds.

(2) "Local alternative to detention fund (LADF)" means the fund established to provide monies for local programs that support alternatives to secure detention projects.

(3) "Demonstration project" means those projects that seek to test and prove the effectiveness and viability of a concept in providing alternative placement to secure detention.

(4) "Disposition" means the placement of a juvenile prior to secure incarceration or post incarceration.

(5) "Alternative to detention" means placement or efforts made to place a juvenile in programs, projects or resources other than secure detention.

(6) "Grant application" means a form supplied by the Kentucky Justice Cabinet to the applicant for delineating programmatically and fiscally what the applicant proposes to do in the project.

(7) "Schedule" means an established listing of times and dates necessary paperwork is due in the grant application process to the Division of Grants Management.

(8) "Grant period" means the period of time the project can incur programmatic and fiscal activity under grant funds.

(9) "Extension" means an increase in time of the active grant period of a project in order to expend surplus funds. An extension shall be granted by Justice Cabinet, Division of Grants Management.

(10) "Seed money" means funds that are granted to allow a project to begin operation and attain self-sufficiency through use of other funds.

(11) "Programmatic report" means the report submitted on a quarterly basis detailing the program activity of a grant project.

(12) "Fiscal report" means the report submitted on a quarterly basis detailing the program activity of a grant project.

Section 2. Application Procedures, Including Granting and Denying Applications. (1) All applicants for the local alternative to detention fund (LADF) shall be a county fiscal court. The fiscal court may, if necessary, subcontract with other organizations, such as a private nonprofit, corporation, to provide an alternative to detention program for the county. The county fiscal court shall maintain the responsibility for all fiscal portions of the grant.

(2) Monies in the LADF shall be awarded for demonstration projects only.

(3) Applications for LADF shall propose to support programs that deal with one (1) or more of the following:

(a) An alternative placement for juveniles other than a jail, intermittent holding facility, juvenile holding facility or secure juvenile detention facility;

(b) Hold juveniles for no more than seventy-two (72) hours in a juvenile holding facility prior to disposition under KRS Chapters 620, 630, 635, and 645; or

(c) Provide transportation of juveniles to and from alternatives to detention programs, intermittent holding facilities, secure juvenile detention facilities, juvenile holding facilities or court appearances.

(4) County fiscal courts seeking to apply for LADF shall contact the Justice Cabinet, Division of Grants Management for grant applications, schedules and instructions.

(5) Applicants shall submit an original and two (2) copies of the completed grant application for review to the Justice Cabinet, Division of Grants Management.

(6) Submission, review and award or rejection of the grant application shall proceed according to a sixty (60) day schedule period established by the Justice Cabinet, Division of Grants Management.

(7) Grant awards shall be awarded on a quarterly basis in March, June, September, and December.

(8) Applications shall be denied or rejected for the following reasons:

(a) Project does not address one (1) or more of the alternative to detention program areas outlined in KRS 15A.260.

(b) An applicant other than county fiscal court submits the grant application but does not provide contractural agreement with county fiscal court to operate project.

(c) An applicant submits an application that is not workable or feasible.

(d) The LADF does not contain adequate funds.

(9) Applicants rejected for funding shall be entitled to appeal by following the steps outlined below. Upon notification by the Justice Cabinet, Division of Grants Management of rejection of the grant application, the applicant may:

(a) Appeal a decision by the Justice Cabinet, Division of Grants Management by filing a notice of appeal with the Secretary of Justice. The notice of appeal shall be sent by certified mail and shall be filed no later than fifteen (15) business days after receipt of the notice of denial by the applicant.

(b) Upon receipt of notice of appeal by the Secretary of Justice, the secretary shall set a date for an appeal hearing within thirty (30) days after the date of receipt of the appeal request. The appeal procedure shall be conducted by the Secretary of the Justice Cabinet or his designee. On the date established, the secretary or his designee shall hear evidence by the applicant relative to reasons the appeal should

be granted. The applicant may present witnesses to support the appeal. The entire hearing shall be recorded. The secretary shall render a decision within thirty (30) working days. The decision of the Secretary, Justice Cabinet shall be final. Nothing herein shall preclude the resubmission of an application through use of regular application process.

Section 3. Program and Funding Restrictions. (1) Projects eligible for funding under the LADF shall be those listed in KRS 15A.260.

(2) Projects funded under the LADF shall be for a grant period not less than six (6) months and no more than twelve (12) months on each individual award.

(3) Projects that do not expend funds on schedule may be eligible for an extension of the grant period. The grantee shall request an extension in writing from the Division of Grants Management.

(4) Funds utilized from the LADF are to be considered seed money. As such, projects can receive no more than three (3) years or thirty-six (36) months funding.

Section 4. Program and Funding Report. (1) Grant projects shall file a programmatic and fiscal report quarterly regarding activity of the preceding quarter. A due date schedule shall be supplied by Division of Grants Management.

(2) The fiscal report used shall be an approved fiscal reporting form supplied by the Division of Grants Management strictly for this purpose.

(3) The programmatic report used shall be an approved programmatic reporting form supplied by the Division of Grants Management strictly for this purpose.

(4) The grantee shall maintain individual client files. Information supplied to the Division of Grants Management for report or statistical purpose shall be by client identification number or client initials.

Section 5. Termination of Programs. (1) Project funding shall be terminated for the following reasons:

(a) Funds have not been expended within ninety (90) days of grant award without justification approved by the Justice Cabinet.

(b) Application is made under false pretenses or information.

(c) Applicant is mishandling grant funds.

(d) Applicant is unable to carry out the project as described under application.

(e) Grant projects may be terminated due to failure of the subgrantee to submit timely programmatic and fiscal reports to the Division of Grants Management.

(2) In case of termination, the Division of Grants Management shall notify the grantee in writing specifying the reason and giving the grantee sufficient time to close out the grant or seek funding from other sources. Once a project is terminated, the grantee shall submit a final fiscal and programmatic report detailing activity for the entire grant period. The project shall remain subject to a close-out audit.

W. MICHAEL TROOP, Secretary
APPROVED BY AGENCY: October 12, 1988
FILED WITH LRC: October 12, 1988 at 2 p.m.
PUBLIC HEARING: A public hearing on this regulation has been scheduled on November 21, 1988, at 9:30 a.m. at 417 High Street, Commonwealth Credit Union Building, 3rd Floor, Conference Room, Frankfort, Kentucky. Anyone interested in attending this hearing shall notify, in writing at least five days before the hearing, the following individual: H. Bradley Smith, Justice Cabinet, 3rd Floor, Commonwealth Credit Union Building, 417 High Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Coleman R. Gilbert

(1) Type and number of entities affected: The entities affected will be 120 county governments.

(a) Direct and indirect costs or savings to those affected: There would be an indirect cost to county government in staff time for administration of the grant project. This administration will consist mainly of oversight of fiscal and programmatic activities and submission of timely reports.

1. First year: Actual costs to local government will be in very limited staff time. The costs of administration can be absorbed in the grant project. This should not require hiring additional personnel.

2. Continuing costs or savings: Continuing costs will be very limited staff time of the local government to provide oversight of grant project(s).

3. Additional factors increasing or decreasing costs (note any effects upon competition): The regulation will increase paperwork for the local government and staff time will be increased due to submission of reports.

(b) Reporting and paperwork requirements: The local government will be required to submit an initial application for funds. If the grant is funded, the local government will be required to submit quarterly reports detailing activities of the previous quarter.

(2) Effects on the promulgating administrative body: The costs and activities of administrative body will be absorbed in current budget and staff.

(a) Direct and indirect costs or savings: The regulations will require additional staff time to administer the program through grant review, paperwork to the grantee, grant application submission, and oversight during the grant period.

1. First year: Costs in the first year will consist of staff time, printing, postage, travel, per diem, and lodging.

2. Continuing costs or savings: The continuing costs will include those listed in the first year. These costs will include staff time, printing, postage, travel, per diem, and lodging.

3. Additional factors increasing or decreasing costs: This administrative regulation will increase costs through additional paperwork required in submission of reports and correspondence to grantees, as well as the grant award process.

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: This administrative regulation will not increase or decrease state and local revenues.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative method was to utilize general fund dollars for this program. However, no general fund dollars

were appropriated.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: These administrative regulations will allow the state program to operate similar to the federal grant program for juvenile justice.

(a) Necessity of proposed regulation if in conflict: Regulation is not in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Regulation was not in conflict.

(6) Any additional information or comments: There are no additional information or comments.

TIERING: Was tiering applied? No. Tiering was not applied because the grant application process is open to all county fiscal courts and those programs which are designated as subgrantees.

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 will affect the fiscal court County Judge/Executive and Treasurer.

3. State the aspect or service of local government to which this administrative regulation relates.

Local government will provide a service of administering the grant by exercising fiscal and programmatic control as specified in KRS 15A.260. Fiscal and programmatic reports are required on a quarterly basis from the local government to the Justice Cabinet.

4. How does this administrative regulation affect the local government or any service it provides?

This regulation details the responsibilities of the local government in applying for and administering projects funded through the local alternatives to detention fund. The regulation will apply to projects funded countywide through this fund. State and local revenues and expenditures should not be increased or decreased as a result of this regulation. Projects under this regulation will be funded through fees and donations by grant award procedure. consequently, federal and local allocations will not be affected by this regulation. Further, this regulation will not increase personnel or costs of local government.

TRANSPORTATION CABINET
Motor Vehicle Commission

605 KAR 1:020. Motor vehicle auction dealer title transfer requirements.

RELATES TO: KRS Chapter 186A, 190

STATUTORY AUTHORITY: KRS 190.020, 190.030(1), 190.073

NECESSITY AND FUNCTION: KRS 190.020 grants the Motor Vehicle Commission authority to supervise its licensees with respect to all provisions of KRS 190.010 to 190.080, under administrative regulations promulgated by it. KRS 190.030 requires a dealer license of anyone engaging in the business of motor vehicle dealer within this state. KRS 190.073 gives the commission authority to promulgate appropriate and reasonable regulations for the purpose of carrying out the provisions of KRS Chapter 190. This regulation is designed to make it incumbent upon motor vehicle auction dealers licensed by the Motor Vehicle Commission to insure that members of the general public who sell or purchase motor vehicles through an auction do so in a legal manner.

Section 1. A motor vehicle auction dealer, defined in KRS 190.010(10), before offering a motor vehicle at auction by any person other than a licensed motor vehicle dealer, defined in KRS 190.010(2), shall have in his possession, unencumbered, all documents required by KRS 186A.215 properly endorsed and executed by the person proposing to sell the vehicle.

Section 2. No motor vehicle auction dealer shall engage in the offering or sale, by any person other than a licensed motor vehicle dealer, of any motor vehicle when the documents required by KRS 186.215 are not made available to the purchaser of the motor vehicle, prior to accepting payment for same.

Section 3. No motor vehicle auction dealer, after the sale of a motor vehicle through the auction to a person other than a licensed motor vehicle dealer, shall allow to be taken out of the possession of the auction dealer the documents required by KRS 186A.215 until such documents have been properly executed by the purchaser of said vehicle.

JAMES O. BUTTS, Chairman

APPROVED BY AGENCY: September 17, 1988

FILED WITH LRC: October 12, 1988 at 9 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 10 a.m., local prevailing time, on Wednesday, November 23, 1988, at the office of the Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency, in writing, by November 18, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: David Garnett, Executive Director, Kentucky Motor Vehicle Commission, 114 West Clinton Street, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Garnett

(1) Type and number of entities affected: Of the 22 motor vehicle auctions ("auctions") licensed by the Motor Vehicle Commission ("Agency" or "Commission"), two are salvage

auctions, and do not allow members of the general public to buy and sell, and six of the remaining auctions are "dealer only", i.e., they allow only licensed motor vehicle dealers to buy or sell motor vehicles, at their auction. Whether an auction is "dealer" or "public" is entirely up to the owners thereof. As the proposed regulation is directed to transfers by those who are not dealers, a total of fourteen auctions are affected. The intent of the proposed regulation is to insure that nondealers who offer a vehicle for sale have previously complied with the requirements of KRS 186A.215 by properly transferring the subject vehicle into their name through their county clerk's office, thereby triggering the collection of usage tax, and providing a complete chain of ownership on a vehicle. Second, it is intended to curtail the instances of an individual jumping title on a vehicle, i.e., buying and selling without transferring the vehicle to himself, without paying taxes which are due upon a transfer, and engaging in the business of a motor vehicle dealer without a license. Finally, it is intended to protect the individual purchaser who may otherwise have to wait several weeks or months to receive the necessary transfer documents.

(a) Direct and indirect costs or savings to those affected: It is not possible to give a specific dollar figure reflecting the direct and indirect costs or savings to the entities affected. The proposed regulation may impact the costs or savings of affected entities insofar as it may have the effect of curtailing, for a short time, the number of vehicles bought or sold by members of the general public. Auctions typically charge a commission or a flat fee for every vehicle offered for sale; if this regulation has the effect of curtailing those numbers, it will affect the income of the auctions to that extent, at least until the general public who attend auctions become aware of the impact of this regulation.

1. First year: See above.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs (note any effects upon competition): The commission will, through the Automated Vehicle Identification System ("AVIS"), monitor the proper transfer of vehicles offered for sale through all public auctions on a random, periodic basis to insure that all affected entities are in compliance with the proposed regulation; a particular auction will not have reason to believe that its competitors enjoy any advantage by not following the requirements of the proposed regulation.

(b) Reporting and paperwork requirements: The affected auctions, as any business, keep records of transfers, to insure the timely collection of purchase money from buyers, and its own fees or commissions from sellers. This being the case, no additional reporting and paperwork requirements are imposed by the proposed regulation. The periodic monitoring by the commission of the affected auctions will be done during normal business hours, by commission personnel, with a minimum of assistance requested from the auction. (All licensed motor vehicle dealers are currently required to allow the commission to inspect their business books and records.)

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The monitoring of the records of transfers through the affected auctions will be done by commission personnel on a random, periodic basis. Currently, the commission has eight field inspectors, whose duties already include the inspection and monitoring of licensees. No additional staff will be required to insure compliance with the proposed regulation, and no additional agency expenditures will be incurred. Direct and indirect factors affecting agency revenues are: a) Persons who are engaged in the business of a dealer but who are not licensed as such may be persuaded to qualify for and obtain a dealer license, with a resulting increase in license fees collected by the commission; b) Inspection of the transfer records of an affected auction after implementation of the the proposed regulation will allow an easier process of identification of those persons who may be engaging in the business of a dealer without a license, thereby cutting down on the investigation time currently spent by a commission inspector in such cases; c) Curtailment of the number of unlicensed dealers will allow licensed dealers the opportunity to compete with others in their market area on a reasonably level playing field, having the effect of helping licensed dealers meet their overhead and maintain their licenses, thereby insuring collections of license fees by the commission at current levels; d) If improper transfers are identified, the agency will impose appropriate sanctions, including the imposition of monetary fines, on offending licensees through a hearing process.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: An additional cost factor to the commission would be, if improper transfers are identified and hearings result, the agency will incur increased costs associated with such hearings.

(b) Reporting and paperwork requirements: Agency field inspectors will have additional reports to make showing the names of persons who seek to sell vehicles at an auction, and the vehicle identification numbers ("VIN's") of said vehicles. It is anticipated that each agency inspector will spend no more than one hour per week on this process. If improper transfers are identified, the agency will impose appropriate sanctions on offending licensees through a hearing process, which is initiated by the issuance of an administrative citation by the agency.

(3) Assessment of anticipated effect on state and local revenues: It is not possible to give an exact dollar amount; however, it is reasonable to expect that state and local revenues will increase as a greater number of vehicle transfers are properly recorded through the various county clerks' offices, and usage taxes and transfer fees are collected. In addition, if the proposed regulation has the effect of persuading those who engage in the business of a dealer without a license to obtain one, the agency will collect additional license fees.

(4) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of requesting auction dealers to voluntarily comply with the requirements set forth in the regulation was considered and rejected as having

no means of enforcement on a uniform basis. This proposed regulation is intended to have the effect of insuring that individuals who buy or sell motor vehicles through an auction comply with the licensing and titling transfer statutes and with the dealer licensing requirement. As auctions are licensed businesses, and as they offer a readily available means whereby these statutes may be enforced, auctions are the logical entities on which to place the requirements contained in the proposed regulation.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This proposed regulation does not conflict with or duplicate any statute, existing regulation or government policy. It may overlap KRS 186A.215, which details the transfer requirements with respect to individual-to-individual sales of motor vehicles, specifying the duties of both the buyer and seller of a vehicle, but it is not duplicative of that statute.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: A draft of the language of the proposed regulation was sent to all auctions in Kentucky, with a request for their consideration and comments. Of the sixteen who responded, only one was opposed. The proposed regulation does not restrict the right of a member of the general public to sell or purchase vehicles at auction.

TIERING: Was tiering applied? No. The current title and recording requirements on individual-to-individual transfers of motor vehicles are uniform. The requirements placed on the affected entities (auctions) by the proposed regulation are uniform.

CABINET FOR HUMAN RESOURCES
Department for Health Services

902 KAR 55:070. Storage of controlled substances in an emergency medication kit in certain long term care facilities.

RELATES TO: KRS Chapter 218A

STATUTORY AUTHORITY: KRS 194.050, 218A.250

NECESSITY AND FUNCTION: KRS 218A.250 directs the Cabinet for Human Resources to adopt rules and regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances. The purpose of this regulation is to authorize the storage, in an emergency medication kit in certain long term care facilities, of limited quantities of controlled substances to be administered when prescribed by a physician.

Section 1. Storage of Controlled Substances in an Emergency Medication Kit. A pharmacy provider may store controlled substances in an emergency medication kit in a nursing home, skilled nursing facility, intermediate care facility, or intermediate care facility for the mentally retarded provided that:

(1) The written policies and procedures of the facility regarding the procurement, use, storage, security, replacement and recordkeeping of controlled substances in the kit are filed with the facility and with the provider pharmacy;

(2) The controlled substances stored in the kit are obtained from a single source;

(3) The controlled substances in the kit are the property of the provider pharmacy who is responsible for their proper labeling, storage, security, and accountability;

(4) The controlled substances stored in the kit are selected jointly by the facility's medical director or other physician, consultant pharmacist and the director of nursing;

(5) The controlled substances selected for inclusion in the kit are injectable and limited to two (2) doses each of three (3) different controlled substances;

(6) The controlled substances in the kit are administered only upon the order of a physician who determines that the patient has an immediate medical need;

(7) The access to the controlled substances in the kit is limited to a physician, pharmacist, registered nurse or other person authorized by law in this state to administer the prescribed medication;

(8) The provider pharmacy is notified by the facility within twenty-four (24) hours after the kit has been opened;

(9) The prescribing physician issues a written prescription for the controlled substances to the provider pharmacy within seventy-two (72) hours after administration of a controlled substance from the kit;

(10) The facility maintains a record of the administration of controlled substances from the kit in accordance with applicable state and federal laws;

(11) The provider pharmacy documents a physical inventory of the controlled substances in the kit at least monthly; and

(12) The loss of any controlled substance from the kit is reported to the Cabinet for Human Resources in accordance with KRS 218A.200(4) and to the Federal Drug Enforcement Administration in accordance with 21 CFR 1301.74(c).

C. HERNANDEZ, M.D., M.P.H., Commissioner
HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 8, 1988

FILED WITH LRC: September 28, 1988 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9:30 a.m. in the Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. However, this hearing will be cancelled unless interested persons notify the following office in writing by November 16, 1988, of their desire to appear and testify at the hearing: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Edward Crews

(1) Type and number of entities affected: This regulation will affect 335 long term care facilities and the pharmacies which service them.

(a) Direct and indirect costs or savings to those affected: There is no cost or savings involved.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: The

only additional paperwork required by this regulation is a statement of policies and procedures regarding the mechanism a facility will use to comply with the statutes and this regulation.

(2) Effects on the promulgating administrative body: There is no significant effect on the administrative body; the regulation is permissive.

(a) Direct and indirect costs or savings: There is no cost or savings generated by this regulation.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this regulation.

(3) Assessment of anticipated effect on state and local revenues: No effect on state or local revenues is anticipated.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were rejected as not being in the best interest of the patient's health. In an emergency situation, certain controlled substances should be readily available.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation or policy will conflict, overlap or duplicate this regulation.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

TIERING: Was tiering applied? Yes

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The related federal requirements were issued in a Statement of Policy (45 FR 24128, April 9, 1980).

2. State compliance standards. In order to comply with this regulation a long term care facility must adopt policies and procedures which define (a) the source of controlled substances, (b) proper security and limited access, (c) the specific controlled substances to be utilized, (d) the circumstances under which the controlled substances may be administered, and (e) the recordkeeping required to meet all federal and state laws.

3. Minimum or uniform standards contained in the federal mandate. The Statement of Policy requires that state delineate the following: (a) the source of controlled substances, (b) proper security and limited access, (c) the specific controlled substances to be utilized, (d) the circumstances under which the controlled substances may be administered, and (e) the recordkeeping required to meet all federal and state laws.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation imposes no requirements stricter than required by the federal Statement of Policy.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:251. Repeal of 907 KAR 1:250, Incorporation by reference of materials relating to the Medical Assistance Program.

RELATES TO: KRS 13A.224, 205.520

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. This regulation acts specifically to repeal 907 KAR 1:250 which is no longer needed.

Section 1. 907 KAR 1:250, Incorporation by reference of materials relating to the Medical Assistance Program is repealed.

ROY BUTLER, Commissioner

HARRY J. COWHERD, M.D., Secretary

APPROVED BY AGENCY: September 27, 1988

FILED WITH LRC: September 30, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All participating providers.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(3) Assessment of anticipated effect on state and local revenues: No effect.

(4) Assessment of alternative methods; reasons why alternatives were rejected: Viable alternatives were not identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected providers because this regulation only repeals a regulation which incorporated by reference all Medicaid manuals and federal material. New individual incorporation by reference regulations are being developed for each program element.
TIERING: Was tiering applied? No. No tiering was used because we are repealing a regulation which was not in compliance with the new sections of KRS Chapter 13.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:370. Incorporation by reference of the Community Mental Health Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the community mental health services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Community Mental Health Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of community mental health services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly

situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
3. Minimum or uniform standards contained in the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:372. Incorporation by reference of the Mental Hospital Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the mental hospital services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Mental Hospital Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of mental hospital services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.
2. State compliance standards. This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
3. Minimum or uniform standards contained in the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:374. Incorporation by reference of the Skilled Nursing Facility Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the skilled nursing facility services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Skilled Nursing Facility Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of skilled nursing facility services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and

participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:376. Incorporation by reference of the Hospital Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the hospital services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Hospital Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All participating providers of hospital services are potentially affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated

by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:378. Incorporation by reference of the Intermediate Care Facility Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the intermediate care facilities services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Intermediate Care Facility Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All participating providers of intermediate care facility services are potentially affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments:

There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:380. Incorporation by reference of the Ambulatory Surgical Center Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the ambulatory surgical center services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Ambulatory Surgical Center Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All participating providers of ambulatory surgical center services are potentially affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to

harmonize the proposed administrative regulation with conflicting provisions:

(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.

TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:400. Incorporation by reference of the Renal Dialysis Center Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act

STATUTORY AUTHORITY: KRS 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the renal dialysis center services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Renal Dialysis Center Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler

(1) Type and number of entities affected: All participating providers of renal dialysis center services are potentially affected.

(a) Direct and indirect costs or savings to those affected: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None

(2) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(3) Assessment of anticipated effect on state and local revenues: None

(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:402. Incorporation by reference of the Physician Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the physician services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Physician Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of physician services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative

regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:404. Incorporation by reference of the Independent Laboratory Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the independent laboratory services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Independent Laboratory Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of independent laboratory services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons

why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:406. Incorporation by reference of the Nurse Anesthetist Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the nurse anesthetist services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Nurse Anesthetist Services Manual, revised September 16, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of nurse anethethist services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state

and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:408. Incorporation by reference of the Nurse-Midwife Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the nurse-midwife services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Nurse-Midwife Services Manual, revised September 16, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of nurse-midwife services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:410. Incorporation by reference of the Vision Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the vision services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Vision Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of vision services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:412. Incorporation by reference of the Podiatry Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the podiatry services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Podiatry Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of podiatry services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None

1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:414. Incorporation by reference of the Dental Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the dental services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Dental Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of dental services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative

body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:416. Incorporation by reference of the Pharmacy Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the pharmacy services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Pharmacy Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of pharmacy services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):

(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:418. Incorporation by reference of the Rural Health Clinic Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the rural health clinic services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Rural Health Clinic Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of rural health clinic services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:420. Incorporation by reference of the Ambulance Transportation Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the ambulance transportation services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Ambulance Transportation Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of ambulance transportation services are potentially affected.
(a) Direct and indirect costs or savings to

those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:422. Incorporation by reference of the Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the early and periodic screening, diagnosis and treatment services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of early and periodic screening, diagnosis and treatment services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:424. Incorporation by reference of the Alternative Intermediate Services/Mental Retardation Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the alternative intermediate services/mental retardation services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Alternative Intermediate Services/Mental Retardation Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of alternative intermediate services/mental retardation services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:426. Incorporation by reference of the Primary Care Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the primary care services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Primary Care Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of primary care services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:428. Incorporation by reference of the Adult Day Health Care Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the adult day health care services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Adult Day Health Care Services Manual, revised September 9, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of adult day health care services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:430. Incorporation by reference of the Home Health Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the home health services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Home Health Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of home health services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:432. Incorporation by reference of the Home and Community Based Waiver Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of this waiver component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Home and Community Based Waiver Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their

intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of home and community based waiver services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.

2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:434. Incorporation by reference of the Family Planning Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the family planning services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Family Planning Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall

notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of family planning services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:436. Incorporation by reference of the Hospice Services Manual.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, materials used by the cabinet in the implementation of the hospice services component of the Medical Assistance Program. In the event of a conflict between manual materials incorporated by reference in this regulation and the primary subject administrative regulations of the cabinet relating to this component, the latter shall prevail.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Hospice Services Manual, revised September 1, 1988, used in the implementation of this component of the Kentucky Medical Assistance Program. This manual contains the policies and procedures issued by the cabinet for the implementation of this program element including benefit descriptions and operating instructions used by agency staff and participating providers.

Section 2. This manual incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main

Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of hospice services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation adopts manual materials incorporated by reference that outline procedures and operating instructions for agency staff and participating providers. Any cost or indirect cost or savings would be addressed in the primary component administrative regulation.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:438. Incorporation by reference of the Kentucky Medical Assistance Outpatient Drug List.

RELATES TO: KRS 205.520, Title XIX of the Social Security Act
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has the responsibility to administer the Medical Assistance Program in accordance with Title XIX of the Social Security Act and KRS 205.520. KRS 205.520 empowers the cabinet to comply with any requirement that is imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This regulation incorporates into regulatory form, by reference, the Kentucky Medical Assistance Outpatient Drug List used by the cabinet in the implementation of the drug component of the Medical Assistance Program.

Section 1. Incorporation by Reference. The cabinet incorporates by reference the Kentucky Medical Assistance Outpatient Drug List, effective July 1, 1988, used in the implementation of the drug component of the Kentucky Medical Assistance Program. The drug list shows those drugs that may be prescribed for and provided to Medicaid recipients in the drug program without prior authorization, and pricing information relating to drug costs and allowable drug cost upper limits.

Section 2. This list incorporated by reference may be reviewed Monday through Friday between the hours of 8 a.m. and 4:30 p.m., Eastern time, in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. Copies may be obtained from that office upon payment of an appropriate fee which will not exceed approximate cost.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: September 28, 1988
FILED WITH LRC: September 30, 1988 at 4 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. in the Department for Health Services Auditorium, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall

notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All participating providers of physician and drug services are potentially affected.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs:
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: There is no direct or indirect cost or savings to affected entities because this administrative regulation incorporates by reference the outpatient drug list used by participating providers. Any cost or indirect cost or savings would be addressed in 907 KAR 1:019 and 907 KAR 1:020.
TIERING: Was tiering applied? No. Federal Medicaid regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation incorporates by reference manual material used by agency staff and participating providers and contains no state compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities on the regulated entities than those required by the federal mandate? (Explain in detail) This regulation incorporates by reference manuals used by agency staff and participating providers and stricter requirements or responsibilities are not imposed.
3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements, or responsibilities are imposed.

CABINET FOR HUMAN RESOURCES
Department for Medicaid Services

907 KAR 1:440. Case management services.

RELATES TO: KRS 205.520
STATUTORY AUTHORITY: KRS 194.050
NECESSITY AND FUNCTION: The Cabinet for Human Resources has responsibility to administer the program of Medical Assistance in accordance with Title XIX of the Social Security Act. KRS 205.520 empowers the cabinet, by 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 regulation sets forth the scope of services for case management and the method for determining amounts payable by the cabinet for case management services.

Section 1. Definition of Services. Case management is a service instrument by which service agencies assist an individual in accessing needed medical, social, educational, and other support services. Case management providers are required to monitor to assure that recipients of case management services receive the services for which they are referred. Case management activities include:
(1) Assessment of client's medical, social, and functional status, and identification of client service needs;
(2) Arranging for service delivery from the client's chosen provider to insure access to required services;
(3) Insure access to needed services by explaining the need and importance of services in relation to the client's condition;
(4) Insure access, quality and delivery of necessary services; and
(5) Preparation and maintenance of case record documentation to include service plans, forms, reports, and narratives, as appropriate.

Section 2. Target Group. The case managment services are limited, as provided for in the Social Security Act at Section 1915(g)(1), to the following targeted groups of Medicaid eligible individuals, with the further provision that these individuals cannot be receiving case management services under a Medicaid waiver program:
(1) Individuals under age twenty-one (21) who meet the medical eligibility criteria of the Commission for Handicapped Children; and
(2) Individuals of all ages who meet the medical eligibility criteria of the Commission for Handicapped Children and who have a

diagnosis of hemophilia.

Section 3. Qualification of Providers. Providers are required to be certified as a Medicaid provider meeting the following criteria:
(1) Demonstrated capacity to provide all core elements of case management including the following:
(a) Assessment;
(b) Care/services plan development;
(c) Linking/coordination of services; and
(d) Reassessment/follow-up;
(2) Demonstrated case management experience in coordinating and linking community resources as required by the target population;
(3) Demonstrated experience with the target population;
(4) An administrative capacity to insure quality of services in accordance with state and federal requirements;
(5) A financial management system that provides documentation of services and costs;
(6) Capacity to document and maintain individual case records in accordance with state and federal requirements;
(7) Demonstrated ability to assure a referral process consistent with section 1902(a)(23), freedom of choice of provider;
(8) Demonstrated capacity to meet the case management service needs of the target population on a statewide basis.

Section 4. Qualification of Case Managers. Case managers shall meet the following criteria:
(1) Be licensed as a registered nurse or possess a valid work permit as a registered nurse issued by the Kentucky Board of Nursing; or
(2) Have a master's degree in social work supplemented by one (1) year of professional social work experience; or
(3) Have a bachelor's degree as a graduate of a college or university supplemented by two (2) years of professional social work experience.

Section 5. Other Limitations. The following limitations on service coverage and payments are applicable:
(1) Recipients shall be allowed to have free choice of case management services; and
(2) Recipients shall be allowed to have free choice of the providers of other Medicaid services; and
(3) Payment will not be made for case management services to the extent that payments have been made by the Medicaid program as a part of other program elements for the same purposes. The purpose of this provision is to assure that there is nonduplication of program payments.

Section 6. Payments. Case management providers will be paid at an interim rate, approximating actual cost, which will be settled back to cost at the end of the state's fiscal year. Providers shall be required to provide acceptable documentation of costs.

Secion 7. Implementation. The provisions of this regulation shall be effective with regard to services provided on or after October 1, 1988.

ROY BUTLER, Commissioner
HARRY J. COWHERD, M.D., Secretary
APPROVED BY AGENCY: October 3, 1988
FILED WITH LRC: October 5, 1988 at 3 p.m.
PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1988 at 9 a.m. at Health Services Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by November 16, 1988, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who 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: Ryan Halloran, General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40601.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Roy Butler
(1) Type and number of entities affected: All Medicaid eligible recipients served by the Commission for Handicapped Children who need case management services.
(a) Direct and indirect costs or savings to those affected: None
1. First year:
2. Continuing costs or savings:
3. Additional factors increasing or decreasing costs (note any effects upon competition):
(b) Reporting and paperwork requirements: None
(2) Effects on the promulgating administrative body:
(a) Direct and indirect costs or savings:
1. First year: $1.8 million (costs)
2. Continuing costs or savings: $1.8 million (costs)
3. Additional factors increasing or decreasing costs: None
(b) Reporting and paperwork requirements: None
(3) Assessment of anticipated effect on state and local revenues: None
(4) Assessment of alternative methods; reasons why alternatives were rejected: Viable alternatives were not identified.
(5) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None
(a) Necessity of proposed regulation if in conflict:
(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
(6) Any additional information or comments: None
TIERING: Was tiering applied? No. Federal regulations require that similarly situated providers be treated in a similar manner.

FEDERAL MANDATE COMPARISON

1. Compare proposed state compliance standards with minimum uniform standards suggested or contained in the federal mandate. (Cite federal mandate.) This regulation does not set compliance standards.
2. Does the proposed regulation impose stricter requirements or other responsibilities

on the regulated entities than those required by the federal mandate? (Explain in detail). Not applicable since the regulation does not set compliance standards or impose requirements or responsibilities in addition to any which may be required in federal mandates.

3. If the proposed regulation imposes additional requirements or responsibilities, justify the imposition of these stricter standards, requirements or responsibilities. No additional standards, requirements or responsibilities are imposed.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of the October 3 and 4, 1988 Meeting

The October meeting of the Administrative Regulation Review Subcommittee was held on Monday, October 3, 1988 at 2 p.m. and on Tuesday, October 4, 1988 at 10 a.m. in Room 107. Representative Mark D. O'Brien, Chairman, called the meeting to order, and the secretary called the roll. On motion of Representative Bruce, seconded by Senator Quinlan, the minutes of the September 6 and 7, 1988 meeting were approved.

Present October 3, 1988 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Harold Haering, Pat McCuiston and Bill Quinlan; Representatives Jim Bruce, Ronny Layman and Joe Meyer.

Present October 4, 1988 were:

Members: Representative Mark D. O'Brien, Chairman; Senators Harold Haering and Pat McCuiston; Representatives Ronny Layman and Joe Meyer.

Guests: Richard Casey, Fred Lawson, Higher Education Assistance Authority; Thomas C. Greenwell, Anne Keating, Department of Personnel; Marlene Rutherford, Wil DeBruler, Personnel Board; Ronald E. Travis, Dan Wilson, Revenue Cabinet; David W. Carby, William Schmidt, KY Board of Medical Licensure; Bill Shouse, KY Board of Nursing; J. Guthrie True, KY Association of Nurse Anesthetists; Lauren Schaaf, Thomas A. Young, Department of Fish & Wildlife; James E. Claycomb, Wanda R. Delaplane, Carl Dills, Department of Agriculture; Tom Bennett, Sherri Evans, Caroline P. Haight, Martha L. Hall, Kay Harker, Bill Knapp, Teresa McGinnis, Robert E. Nickel, George Risk, Robert W. Ware, Natural Resources and Environmental Protection Cabinet; Sharon Caudill, Maribeth Schmitt, Corrections Cabinet; Charles Briggs, Robert D. Evans, Joseph M. Hayse, Sandra G. Pullen, Transportation Cabinet; Gary Bale, Lynette Uhl, Akeel Zaheer, Department of Education; Patrick Watts, Department of Insurance; Rebecca Goodman, Angela Martin, Susan Mastin, Public Service Commission; Carl B. Larsen, KY Harness Racing Commission; Bonnie Clements, Barbara Coleman, Ed Crews, Eva Ellis, Eric Friedlander, Greg Lawther, E. Edsel Moore, Michael Moser, M.D., Mark Yancey, Cabinet for Human Resources; Ava Crow, Maureen Fitzgerald, Sammie Lambert, Protection & Advocacy; Joe Gray, Court of Justice; Walter T. Watts, Central KY Blood Center; Audrey Black, Rachel Rawlins, Linda Shepherd, Comprehensive Rehabilitation Associates, Inc.; Doug Oliver, East Kentucky Power; Leslie Cole, Environmental Quality Commission; Anthony Sturgill, Gulf States Paper Corporation; Therese Marshall, Intracorp; Patrick Pepper, KY Academy of Physician Assistants; Joe E. Clemons, KY Association of Highway Contractors; Tony Sholar, KY Chamber of Commerce; William P. Slaughter, Judith Taylor, KY Chapter American Physical Therapy Association; Tom Duncan, KY Coal Association; Nancy Galvagni, KY Hospital Association; Bill Doll, KY Medical Association; Mike Helton, KY Petroleum Council; W. Weller Head, Jr., KSNS; Rosalie Frederick, Ronald L. Hout, Mike Luvisi, Linda Shelburne, Methodist Evangelical Hospital; Kathleen Ryan, NKC Enterprises, Inc.; Dusty Rhodes, United Parcel Service; Marie Allison, Gene Nochta, Parents of severely handicapped child.

LRC Staff: Susan Wunderlich, Joe Hood, Gregory Karambellas, Donna Pierce, Ann Gordon and Carla Arnold.

The Administrative Regulation Review Subcommittee met on October 3 and 4, 1988, and submits this report:

The Subcommittee determined that the following administrative regulations do not comply with KRS Chapter 13A or other applicable statutes as set forth below:

Revenue Cabinet: Department of Professional and Support Services: Selective Excise Tax; Motor Fuels

103 KAR 43:270 (Export of special fuels used in commercial ships and vessels.) This administrative regulation exempts fuel or gasoline from the fuel tax imposed by KRS 138.445 if it is delivered to certain commercial ships for use in the operation of such ships. Such fuel must be delivered on a river or stream that constitutes an exterior legal boundary of the state. If the delivery occurs on a tributary of such river, and the delivery is within two miles of the tributary's confluence with the border river or stream, the fuel is also exempt from the tax. Chairman O'Brien asked agency personnel why a two mile limit was chosen. Agency personnel stated that it would be unsafe to fuel midstream, and that the operators of such vessels stated that the two mile limit would be adequate. Agency personnel were asked if the Cabinet would increase the limit from two miles. Agency personnel stated they did not believe the Cabinet would agree. Chairman O'Brien pointed out that it appeared that the definition of exported fuels, in KRS 138.240, for which an exemption from the fuel tax is permitted did not include fuel delivered into commercial ships for use by such commercial ships. In addition, KRS 138.445 permitted an exemption of only 90% of the tax on such fuel. The Subcommittee approved a motion that this administrative regulation exceeded statutory authority as expressed in KRS 138.240 and 138.445.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality

Tony Sholar, Kentucky Chamber of Commerce, addressed three issues relating to the following fee regulations: (1) He stated there was a failure to develop an adequate regulatory impact analysis, adding that there were fee increases from 100 to 900 percent. He stated that KRS 224.033(20) requires reasonable fees, but without an adequate RIA, industry has no way of knowing if the fees are reasonable. (2) Mr. Sholar remarked that fees are based on having a completed application in by October 1. Because there is an extremely long time before an application is approved, an entity may have a complete application submitted by October 1, but by the time the application is processed, it may not be considered complete. (3) Mr. Sholar felt that these fee increases amounted to a tax increase.

Art Williams, agency representative, responded that the RIA is quite extensive, and included

additional information in the Statement of Consideration which was filed after the public hearing. Concerning the comment about it being a tax, Mr. Williams said it was not a tax, but a fee for services based on the number of hours spent reviewing the application. Mr. Williams agreed to amend those regulations with the grandfather clause by changing October 1, 1988 to "the effective date of this regulation" (see individual regulations listed below for those that were amended).

Representative Meyer asked extensive questions as to whether the fees were related to the cost of review. Russ Barnett, Deputy Commissioner, responded that the statement of consideration addresses these questions, and pointed out that the agency had determined fees based on manhours required to review applications.

The agency also presented the Subcommittee with a resolution from the Environmental Quality Commission approving the fee revisions and regulations, with certain conditions, those conditions being that the department do an equitable reassessment of the fees based on a time accounting system; seek improvements to more efficiently process permits; dedicate the fees to improving the process of permits; and that the permit fees not be used as a substitute for general fund appropriations.

The Subcommittee attached a statement of objection that the following regulations exceeded statutory authority because KRS 224.033(20) requires reasonable fees and the Subcommittee felt that the fees as increased are unreasonable. Representative Meyer voted no on the motion to attach the objection.

401 KAR 5:005 (Permits to discharge sewage; industrial and other wastes; definitions.) This regulation was amended by replacing the words "October 1, 1988" in the grandfather clause to "the effective date of this regulation" to comply with KRS Chapter 13A.

401 KAR 5:010 (Certification of wastewater system operators.)

401 KAR 5:085 (KPDES discharge permit and variance fees.) This regulation was amended by replacing the words "October 1, 1988" in the grandfather clause to "the effective date of this regulation" to comply with KRS Chapter 13A.

Sanitary Engineering

401 KAR 6:015 (Public and semipublic water supplies.)

401 KAR 6:040 (Water treatment plants; water distribution systems; certification of operators.)

401 KAR 6:300 (Water well drillers certification; examination; fees.) This regulation was amended by replacing the words "October 1, 1988" in the grandfather clause to "the effective date of this regulation" to comply with KRS Chapter 13A.

Hazardous Waste Fees

401 KAR 39:010 (Generator registration fees.)

401 KAR 39:020 (Delisting and exemption fees.) This regulation was amended by replacing the words "October 1, 1988" in the grandfather clause to "the effective date of this regulation" to comply with KRS Chapter 13A.

401 KAR 39:030 (Part B treatment, storage, or disposal facility fees.) This regulation was amended by replacing the words "October 1, 1988" in the grandfather clause to "the effective date of this regulation" to comply with KRS Chapter 13A.

401 KAR 39:060 (Short term fees.) This regulation was amended by replacing the words "October 1, 1988" in the grandfather clause to "the effective date of this regulation" to comply with KRS Chapter 13A.

401 KAR 39:070 (Modification fees.) This regulation was amended by replacing the words "October 1, 1988" in the grandfather clause to "the effective date of this regulation" to comply with KRS Chapter 13A.

401 KAR 39:080 (Recycling fees.)

401 KAR 39:090 (Post closure fees.) This regulation was amended by replacing the words "October 1, 1988" in the grandfather clause to "the effective date of this regulation" to comply with KRS Chapter 13A.

401 KAR 39:110 (Marketer and burner registration fees.) This regulation was amended in Section 2 to replace the word "blender" with the word "burner".

401 KAR 39:120 (Part A application fee.) This regulation was amended by replacing the words "October 1, 1988" in the grandfather clause to "the effective date of this regulation" to comply with KRS Chapter 13A.

Solid Waste Facilities

401 KAR 47:060 (Permit fees.) This regulation was amended by replacing the words "October 1, 1988" in the grandfather clause to "the effective date of this regulation" to comply with KRS Chapter 13A.

Division for Air Quality: General Administrative Procedures

401 KAR 50:036 (Permit and exemption fees.) This regulation was amended by replacing the words "October 1, 1988" in the grandfather clause to "the effective date of this regulation" to comply with KRS Chapter 13A.

Department for Surface Mining Reclamation and Enforcement: Permits

405 KAR 8:010 (General provisions for permits.) Tom Duncan, Kentucky Coal Association expressed concern that this regulation exceeded statutory authority because the regulation is more stringent than federal requirements relating to the transfer of waivers. The Subcommittee attached a letter of objection because Section 22(2)(a)4 is more stringent than the same subject matter addressed in federal regulation, and KRS Chapter 350 requires that state mining regulations be no more stringent than the federal law.

The Subcommittee determined that the following administrative regulations, as amended, complied with KRS Chapter 13A:

Department of Personnel: Classified

101 KAR 2:030 (Compensation plan.) This administrative regulation was amended to delete any reference to nonclassified employees. Chairman O'Brien pointed out that Section 1 appeared to repeat the language of KRS 18A.110. KRS.120(1)(e) does not permit an administrative regulation to prescribe the same or similar procedure established in a statute. The department agreed to review this and other regulations and to amend regulations that repeat statutory language by deleting such language.

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:044 (Taking of migratory wildlife.) This regulation was amended to change the September dove hunting season dates.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Resources

401 KAR 4:120 (Wild rivers administration and management.) Section 4(4)(d) of this regulation was amended to delete the minimum setback requirement of 50 feet. Agency had reflected in the Statement of Consideration that this amendment would be made; however, when the regulation was refiled as "Amended After Hearing", this change had not been made.

Corrections Cabinet: Office of the Secretary

501 KAR 6:020 (Corrections policies and procedures.) CPP 1.4, an item incorporated by reference in this administrative regulation, was amended to comply with KRS 197.170. The amendment listed the officials specified in the statute who must be notified on the release of a prisoner. Agency personnel explained why CPP 25.4 did not need to be amended. This item deals with furlough of prisoners. Furloughs are considered extension of the limit of place of confinement that is governed by KRS 439.600. The list in this item complies with the statute.

Education and Humanities Cabinet: Department of Education: School Terms, Attendance and Operation: Office of Local Services

702 KAR 7:090 (Requirements for coaches and other personnel staffing interscholastic athletic programs.) This regulation was amended to allow head coaches, other than varsity football and basketball, to be individuals with 64 plus hours under certain circumstances.

Office of Instruction: Teacher Education

704 KAR 15:080 (Paraprofessional employees and volunteer personnel.) This regulation was amended as a companion regulation to 702 KAR 7:090.

Labor Cabinet: Department of Workers' Claims: Workers' Compensation Board

803 KAR 25:080 (Workers' compensation rehabilitation procedures.) Bill Doll, Kentucky Medical Association, stated that Section 11 dealing with rehabilitation providers, comes close to the practice of medicine. Agency personnel responded that personnel providing rehab services could not perform outside the scope of their licenses, or they would lose their licenses. Other public citizens addressed concerns relating to meeting the certification requirements in order to be a rehabilitation provider. The Subcommittee and agency agreed to delete Section 3(2) and renumbering the remainder of the section to delete the provision that the board endorses rehab programs that have met strict licensure and accreditation standards. The regulation was also amended to require an effective date on the forms that are incorporated by reference.

The Subcommittee determined that the following regulations complied with KRS Chapter 13A:

Finance and Administration Cabinet: Higher Education Assistance Authority: Kentucky Loan Program

11 KAR 3:060 (Loan Insurance Program.)

KHEAA Grant Programs

11 KAR 5:110 (Dual Enrollment Under Consortium Agreement.)

Department of Personnel: Classified

101 KAR 2:090 (Service regulations.)

101 KAR 2:100 (Leave regulations.) Chairman O'Brien asked agency personnel if, a state employee was on leave for more than 14 working days, would the state make the state contribution for life insurance and health benefits. Agency personnel stated that if an employee is on paid leave the state contribution would be made.

101 KAR 2:110 (Employee evaluation plan.) The Department agreed to review this administrative regulation, and to file an amendment deleting language that appears in KRS Chapter 18A. If the administrative regulation simply repeats statutory language, it would be repealed.

101 KAR 2:120 (Incentive programs.) Chairman O'Brien asked agency personnel why this regulation was limited to classified employees. Agency personnel stated that KRS 18A.202 limited the incentive programs to classified employees.

101 KAR 2:140 (Workers compensation fund and program.)

101 KAR 2:150 (State safety program.)

101 KAR 2:160 (Kentucky employee assistance program.)

Unclassified

101 KAR 3:010 (Leave regulations for unclassified service.) Chairman O'Brien asked agency personnel if, a state employee was on leave for more than 14 working days, would the state make the state contribution for life insurance and health benefits. Agency personnel stated that if an emoloyee is on paid leave the state contribution would be made.

General Government Cabinet: Board of Medical Licensure

201 KAR 9:175 (Physician assistants; certification and supervision.)

Board of Nursing

201 KAR 20:161 (Investigation and disposition of complaints.)

Tourism Cabinet: Department of Fish and Wildlife Resources: Game

301 KAR 2:240 (Special bobcat harvest season.)

Wildlife

301 KAR 4:080 (Taxidermy requirements.)

Commerce Cabinet: Department of Agriculture: Fairs and Shows

302 KAR 15:030 (Beef cattle shows and sales.)

Amusement Rides

302 KAR 16:010 (Procedure for obtaining a permit for operating amusement rides or attractions.)

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Resources

401 KAR 4:100 (Wild rivers boundaries.)

401 KAR 4:110 (Definitions for 401 KAR 4:120 to 4:140.)

401 KAR 4:130 (Wild rivers change of use permit procedures.)

401 KAR 4:140 (Wild rivers change of use permit standards.)

Division of Waste Management: General Administrative Procedures

401 KAR 30:010 (Definitions.)

Identification and Listing of Hazardous Waste

401 KAR 31:010 (General provisions for hazardous wastes.)

401 KAR 31:020 (Criteria for identifying the characteristics of hazardous waste and criteria for listing.)

Standards Applicable to Generators of Hazardous Waste

401 KAR 32:010 (General provisions for generators.)

401 KAR 32:040 (Recordkeeping and reporting.)

Standards for Owners and Operators of Hazardous Waste Storage, Treatment and Disposal Facilities

401 KAR 34:090 (Closure financial requirements.)

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

401 KAR 35:070 (Closure and postclosure (IS).)

401 KAR 35:090 (Closure financial requirements (IS).)

Division for Air Quality: General Administrative Procedures

401 KAR 50:015 (Documents incorporated by reference.)

Department for Surface Mining Reclamation and Enforcement: General Provisions

405 KAR 7:015 (Documents incorporated by reference.)

405 KAR 7:020 (Definitions and abbreviations.)

405 KAR 7:030 (Applicability.)

405 KAR 7:090 (Hearings.)

Permits

405 KAR 8:020 (Coal exploration.)

405 KAR 8:050 (Permits for special categories of mining.)

Bond and Insurance Requirements

405 KAR 10:010 (General requirements for performance bond and liability.)

405 KAR 10:020 (Amount and duration of performance bond.)

405 KAR 10:030 (Types, terms and conditions of performance bonds and liability insurance.)

405 KAR 10:040 (Procedures, criteria and schedule for release of performance bond.)

405 KAR 10:050 (Bond forfeiture.)

Performance Standards for Surface Mining Activities

405 KAR 16:010 (General provisions.)

405 KAR 16:070 (Water quality standards and effluent limitations.)

405 KAR 16:080 (Diversions.)

405 KAR 16:100 (Permanent and temporary impoundments.)

405 KAR 16:110 (Surface and groundwater monitoring.)

405 KAR 16:120 (Use of explosives.)

405 KAR 16:150 (Disposal of noncoal mine waste.)

405 KAR 16:190 (Backfilling and grading.)

Performance Standards for Underground Mining Activities

405 KAR 18:010 (General provisions.)

405 KAR 18:070 (Water quality standards and effluent limitations.)

405 KAR 18:080 (Diversions.)

405 KAR 18:100 (Permanent and temporary impoundments.)

405 KAR 18:110 (Surface and groundwater monitoring.)

405 KAR 18:120 (Use of explosives.)

405 KAR 18:150 (Disposal of noncoal mine waste.)

405 KAR 18:190 (Backfilling and grading.)

Special Performance Standards

405 KAR 20:010 (Coal exploration.)

405 KAR 20:060 (Steep slopes.)

Areas Unsuitable for Mining

405 KAR 24:020 (Petition requirements.)

405 KAR 24:030 (Process and criteria for designating lands unsuitable for surface mining operations.)

405 KAR 24:040 (Areas unsuitable for mining.)

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:115 (Coal haul highway system; reporting requirements.)

Transportation Scholarship Program

603 KAR 8:010 (Transportation scholarship program.) An objection had been raised concerning the statutory authority for the scholarship program. Agency personnel pointed out that the scholarship program is an item specified in the budget memorandum prepared by the General Assembly under KRS 48.300 prior to the enactment of the budget bill. The budget memorandum specifies the items making up an appropriation by the General Assembly and is statutory authority for the item. Agency personnel provided the subcommittee with a copy.

Education and Humanities Cabinet: Department of Education: Office of Instruction: Teacher Certification

704 KAR 20:240 (Speech and communication disorders; teacher's provisional certificate.)

704 KAR 20:460 (Examination prerequisites for principal certification.)

Office of Education for Exceptional Children: Exceptional and Handicapped Programs

707 KAR 1:051 (Exceptional children's programs.)

707 KAR 1:110 (Kentucky School for the Blind; admission policies.)

Public Protection and Regulation Cabinet: Department of Insurance: Authorization of Insurers and General Requirements

806 KAR 3:130 (Liability insurance closed claims reporting.)

806 KAR 3:140 (Liability and health insurance statistical reports.)

Fees and Taxes

806 KAR 4:010 (Fees of the Department of Insurance.)

Public Protection and Regulation Cabinet: Public Service Commission: Utilities

807 KAR 5:069 (Water district and water association construction cases.) Chairman O'Brien pointed out that Section 1 and at least parts of Section 2 restated the language of KRS 278.023. Agency personnel said that this was done because most people would not consult the KRS or would find the statute difficult to understand. Chairman O'Brien pointed out that KRS 13A.120 prohibited this practice. He instructed agency personnel to delete statutory language from this and other administrative regulations the next time they were amended.

Harness Racing Commission: Harness Racing Rules

811 KAR 1:035 (Claiming races.)

811 KAR 1:055 (Declaration to start; drawing horses.)

811 KAR 1:180 (Personnel to be licensed; fees.)

Cabinet for Human Resources: Department for Health Services: Communicable Diseases

902 KAR 2:110 (Reportable communicable diseases and sexually transmitted diseases which

are transmissible through blood.)

902 KAR 2:120 (Standardized risk factor history form and blood donor consent form.) Walter T. Watts, Central Kentucky Blood Center, spoke against this administrative regulation. He stated that it did not conform to federal requirements and that this regulation conflicted with such requirements. Chairman O'Brien and Rep. Meyer asked agency personnel if the Kentucky Risk Factor History Form and the Blood Donor Consent Form complied with federal requirements and if the state regulation conflicted with federal law or regulation. Agency personnel pointed out that the state regulation and forms complied with food and drug administration requirements. They added that federal requirements for blood centers differ. They stated that they would prefer that all concerned use one format. However, the regulation and form before the Committee were required by KRS Chapter 214. The Subcommittee approved a motion requesting the Cabinet to submit the state form to federal personnel for review in order to determine whether it met federal requirements.

Controlled Substances

902 KAR 55:015 (Schedule I substances.)
902 KAR 55:025 (Schedule III substances.)
902 KAR 55:030 (Schedule IV substances.)
902 KAR 55:035 (Schedule V substances.)

Department for Social Insurance: Public Assistance

904 KAR 2:016 (Standards for need and amount; AFDC.)
904 KAR 2:022 (Kentucky Administrative process for child support.)

Office of Inspector General: Office of Inspector General

906 KAR 1:040 (Blood establishment licensure.)

The Subcommittee had no objections to emergency regulations which had been filed.

The Subcommittee adjourned at 11:30 a.m. until November 1, 1988.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following report(s) were forwarded to the Legislative Research Commission by the appropriate jurisdictional committee(s) 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 HEALTH AND WELFARE
Meeting of September 21, 1988

The Interim Joint Committee on Health and Welfare met on September 21, 1988 and submits this report:

The Committee determined that the following administrative regulation does not comply with KRS Chapter 13A or other applicable statutes and approved a motion to concur in the objection raised by the Administrative Regulation Review Subcommittee at its September 7, 1988 meeting. The objection of the Subcommittee is noted below:

Cabinet for Human Resources: Office of Administrative Services: Vital Statistics

901 KAR 5:110 (Blood and body fluid precautions) This administrative regulation lists 93 diseases and conditions for which blood and body fluid precautions must be taken, with proper notification to funeral directors and their employees, among others. This administrative regulation also provides that, in addition to the 93 specified diseases and conditions, such notification shall be given with regard to "all other communicable diseases." Representatives Bruce, Meyer and O'Brien objected on the grounds that it was not sufficiently established that all listed diseases would require such precautions and notice. They added that "all other communicable diseases" was too inclusive and did not provide sufficient notice or standards to the regulated entities. The Subcommittee approved a motion that this regulation exceeded statutory authority.

The Committee determined that the following regulations complied with KRS Chapter 13A:

902 KAR 10:081 & E
902 KAR 10:085 & E
902 KAR 50:120 & E
904 KAR 2:020
904 KAR 2:116 & E
904 KAR 2:170
907 KAR 1:004 & E
907 KAR 1:008 & E
907 KAR 1:015 & E
907 KAR 1:020 & E
907 KAR 1:028 & E
907 KAR 1:029 & E
907 KAR 1:031 & E
907 KAR 1:042 & E
907 KAR 1:170 & E

Upon agreement by the Commissioner of the Department for Medicaid Services, Cabinet for Human Resources, the Committee recommended that the following regulation be deferred for 30 days:

907 KAR 1:360 & E

The Committee had no objections to emergency regulations which had been filed.

The Committee adjourned at 4:30 p.m. until October 18, 1988.

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE
Meeting of September 22, 1988

The Interim Joint Committee on Appropriations and Revenue met on September 22, 1988, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A:

Revenue Cabinet: Department of Professional and Support Services

103 KAR 16:100 (Apportionment and allocation; telephone and telegraph companies);
103 KAR 16:110 (Apportionment and allocation; pipeline companies);
103 KAR 16:130 (Apportionment and allocation; railroad companies); and
103 KAR 16:145 (Apportionment and allocation; barge line companies).

The Committee adjourned at 12:45 p.m. until October 27, 1988.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Meeting of September 28, 1988

The Interim Joint Committee on Agriculture and Natural Resources met and determined that the following regulation complied with KRS Chapter 13A:

302 KAR 20:056

The committee adjourned at 2:05 p.m., September 28, 1988.

INTERIM JOINT COMMITTEE ON CITIES
Meeting of October 4, 1988

The Interim Joint Committee on Cities met on September 28, 1988, and submits this report:

The Committee determined that the following regulations complied with KRS Chapter 13A:

815 KAR 7:020 - Building Code
815 KAR 20:060 - Quality and Weight of Materials
815 KAR 20:100 - Joints and Connections
815 KAR 20:120 - Water Supply and Distribution
815 KAR 20:191 - Minimum Fixture Requirements

INTERIM JOINT COMMITTEE ON TRANSPORTATION
Meeting of October 4, 1988

The Interim Joint Committee on Transportation met on Tuesday, October 4, 1988, and submits this report:

The Committee determined that the following administrative regulations complied with KRS Chapter 13A:

600 KAR 2:020 and Emergency
600 KAR 4:010
601 KAR 1:025
601 KAR 9:090
601 KAR 9:140
601 KAR 14:010
603 KAR 3:051
603 KAR 5:070

The Committee determined that the following administrative regulations do not comply with KRS Chapter 13A or other applicable statutes:

601 KAR 1:005 and Emergency
601 KAR 13:020 and Emergency

The Committee adjourned at 2:45.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT
Meeting of October 12, 1988

The Interim Joint Committee on State Government met October 12, 1988, and submits this report.

The Committee determined that the following administrative regulations--amended October 12 by the Interim Joint Committee on State Government as indicated below--comply with KRS Chapter 13A:

101 KAR 2:030 (Compensation plan.) - Amended Section 6, subsection (1), page 8, lines 1 and 2, after the word "government" by deleting the words "or after a full time nonmerit employee initially served 6 months in the unclassified service". **COMPILER'S NOTE: The above amendment was also made at the October 3, 1988, meeting of the Administrative Regulation Review Subcommittee meeting (see minutes preceding these reports).**

101 KAR 2:090 (Service regulations.) - Amended new Section (8), page 4, after subsection (1), by deleting subsections (2) through (9) in their entirety.

The Committee deferred the following regulations until the November meeting, at the agency's request:

101 KAR 2:100 (Leave regulations.)
101 KAR 2:110 (Employee evalution plan.)
101 KAR 3:010 (Leave regulations, unclassified service.)

The Committee determined that the following regulations comply with KRS Chapter 13A:

101 KAR 2:120 (Incentive programs.)
101 KAR 2:140 (Workers compensation fund and program.)
101 KAR 2:150 (State safety program.)
101 KAR 2:160 (Kentucky Employee Assistance Program.)

The Committee adjourned at 11:35 a.m. until November 9, 1988.

CUMULATIVE SUPPLEMENT

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LOCATOR INDEX -- EFFECTIVE DATES

NOTE: Emergency regulations expire 90 days from publication or upon replacement or repeal.

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102 KAR 7:090		
Amended	1651	(See 15 Ky.R.)
704 KAR 15:080		
Amended	1652	(See 15 Ky.R.)

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101 KAR 1:325E	107	6-16-88
Replaced	950	9-14-88
105 KAR 1:010E	108	6-22-88
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106 KAR 1:060E	911	9-14-88
107 KAR 1:050E	3	6-10-88
Replaced	97	8-17-88
201 KAR 8:400E	3	6-13-88
201 KAR 8:410E	4	6-13-88
201 KAR 9:175E	777	7-27-88
201 KAR 10:050E	5	6-2-88
Replaced	950	9-9-88
201 KAR 26:240E		4-14-88
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301 KAR 2:044E	913	8-16-88
301 KAR 2:220E	1207	9-23-88
301 KAR 2:240E	914	8-16-88
302 KAR 20:056E	110	6-27-88
Replaced	275	9-28-88
401 KAR 30:010E	111	7-14-88
401 KAR 31:020E	121	7-14-88
401 KAR 32:040E	122	7-14-88
401 KAR 34:090E	123	7-14-88
401 KAR 35:070E	131	7-14-88
401 KAR 35:090E	137	7-14-88
401 KAR 63:045E	1212	10-5-88
401 KAR 63:050E	1215	10-5-88
501 KAR 1:030E	915	9-14-88
501 KAR 1:040E	918	9-14-88
501 KAR 1:050E	921	9-14-88
501 KAR 6:020E	6	6-14-88
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501 KAR 6:080E	7	6-14-88
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501 KAR 6:110E	781	7-19-88
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501 KAR 6:130E	8	6-14-88
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501 KAR 6:140E	783	7-19-88
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501 KAR 9:020E	145	6-20-88
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501 KAR 9:030E	146	6-20-88
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501 KAR 9:040E	147	6-20-88
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501 KAR 9:050E	147	6-20-88
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501 KAR 9:060E	150	6-20-88
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501 KAR 9:120E	155	6-20-88
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501 KAR 9:140E	156	6-20-88
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601 KAR 13:020E	162	7-15-88
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603 KAR 5:072E	11	6-14-88
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702 KAR 7:065E	1220	9-23-88
704 KAR 5:060E	1220	9-23-88
705 KAR 5:140E	164	7-15-88
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803 KAR 25:011E		4-19-88
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806 KAR 4:010E	174	7-15-88
806 KAR 13:110E	175	7-15-88
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902 KAR 3:060E	177	6-20-88
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902 KAR 3:115E	179	6-20-88
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902 KAR 3:205E	181	6-20-88
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902 KAR 3:210E	182	7-1-88
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902 KAR 3:225E	184	6-20-88
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902 KAR 3:250E	185	6-20-88
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902 KAR 10:085E	194	7-13-88
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902 KAR 17:010E	214	7-6-88
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904 KAR 2:022E	800	7-25-88
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907 KAR 1:020E	236	7-1-88
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907 KAR 1:055E	1242	10-7-88
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103 KAR 5:140	1331	
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103 KAR 16:130		
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103 KAR 16:145	691	9-22-88
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103 KAR 43:260	96	*(No eff. date)
*Since statement of consideration was not received by 15th day following hearing, regulation must be refiled (KRS 13A.280)		
103 KAR 43:270	890	
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