

# ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION  
FRANKFORT, KENTUCKY

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## MEETING NOTICE

The Administrative Regulation Review Subcommittee is scheduled to meet on July 10, 1995.  
See tentative agenda on pages 1-3 of this Administrative Register.

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

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

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**ADMINISTRATIVE REGISTER - 1**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

**AGENDA - July 10, 1995 at 10 a.m.**

**Room 149, Capitol Annex**

**(& E) - means that the emergency administrative regulation has been reviewed previously by the subcommittee**

**EXECUTIVE BRANCH ETHICS COMMISSION**

**Ethics Commission**

9 KAR 1:010. Statement of financial disclosure.

9 KAR 1:040. Initial registration statement and registration card, Executive Agency Lobbying Handbook, including registration forms, expenditure statements, financial disclosure forms and termination forms.

**STATE BOARD OF ELECTIONS**

**Forms and Procedures**

31 KAR 4:100. Evaluation of precinct election officers.

31 KAR 4:110. Division of county into precincts.

**FINANCE AND ADMINISTRATION CABINET**

**Personnel Pilot Programs**

200 KAR 22:030E. Comprehensive Employment Manual of Department of Vocational Rehabilitation for Use in the Pilot Personnel Program. (Agency Requests Deferral)

**GENERAL GOVERNMENT CABINET**

**Board of Accountancy**

201 KAR 1:064. Verification of experience for teaching.

201 KAR 1:300. Rules of professional conduct.

**Real Estate Commission**

201 KAR 11:400. Agency disclosure requirements.

**Kentucky Real Estate Appraisers Board**

201 KAR 30:050. Examination, education, and experience requirement. (Deferred from June)

201 KAR 30:120. Temporary appraisal licenses and certificates. (Deferred from June)

201 KAR 30:140. Transitional licensed real property appraiser. (Deferred from June)

**Kentucky Board of Certification of Marriage and Family Therapists**

201 KAR 32:010E. Definitions.

201 KAR 32:020E. Equivalent course of study.

201 KAR 32:030E. Fees.

**TOURISM CABINET**

**Department of Fish and Wildlife Resources**

**Game**

301 KAR 2:111. Deer and turkey hunting on federal areas.

**Water Patrol**

301 KAR 6:001 (& E). Definitions for 301 KAR Chapter 6.

301 KAR 6:010 (& E). Vessel numbering and registration.

301 KAR 6:020 (& E). Boating safety equipment.

301 KAR 6:030 (& E). Waterway safety requirements.

301 KAR 6:040 (& E). Zoning or marking of waterways.

**ECONOMIC DEVELOPMENT CABINET**

**Department of Agriculture**

**Livestock Sanitation**

302 KAR 20:076E. Identification of "farm fresh" cattle.

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**

**Department for Environmental Protection**

**Water Quality**

401 KAR 5:030. Antidegradation policy implementation methodology. (Public Hearing in May)

**Kentucky Heritage Land Conservation Fund Board**

418 KAR 1:010. Definitions for 418 KAR Chapter 1, repeal of 301 KAR 10:010. (Written Comments Received)

418 KAR 1:020. Administrative procedures of the board. (Written Comments Received)

418 KAR 1:030. State agency projects. (Written Comments Received)

418 KAR 1:040. Competitive grants. (Written Comments Received)

418 KAR 1:050. Procedures for acquisition of land. (Written Comments Received)

418 KAR 1:060. Management. (Written Comments Received)

418 KAR 1:070. Remedies. (Written Comments Received)

## ADMINISTRATIVE REGISTER - 2

### JUSTICE CABINET

#### Charitable Gaming

- 500 KAR 11:001E. Definitions. (Deferred from May)
- 500 KAR 11:030E. Charity game ticket standards. (Deferred from May)
- 500 KAR 11:040E. Bingo standards. (Deferred from May)
- 500 KAR 11:050E. Raffle standards. (Deferred from May)
- 500 KAR 11:060E. Tipping prohibited. (Deferred from May)
- 500 KAR 11:070E. Exempt activities. (Deferred from May)
- 500 KAR 11:080E. Special charity fundraising event. (Deferred from May)
- 500 KAR 11:090E. Special limited charitable games. (Deferred from May)
- 500 KAR 11:100E. Division employees prohibited from playing charitable games. (Deferred from May)

#### Department of Corrections

#### Office of the Secretary

- 501 KAR 6:020. Corrections policies and procedures.
- 501 KAR 6:130. Western Kentucky Correctional Complex.

### TRANSPORTATION CABINET

#### Nonpublic School Transportation

- 600 KAR 5:010 & E. Transportation of nonpublic school students.

#### Department of Vehicle Regulation

#### Division of Motor Carriers

- 601 KAR 1:005. Safety regulations.

### EDUCATION, ARTS, AND HUMANITIES CABINET

#### Department of Education

#### School Administration and Finance

- 702 KAR 3:245. School council allocation formula; Kentucky uniform school financial accounting system. (Public Hearing in May)
- 702 KAR 3:246. School council allocation formula; KETS district administrative system chart of accounts. (Public Hearing in May)
- 702 KAR 3:280. School district Medicaid providers. (Public Hearing in May)

#### School Terms, Attendance and Operation

- 702 KAR 7:010. Terms and months. (Public Hearing in May)

#### Office of Learning Programs Development

#### Education Professional Standards Board

- 704 KAR 20:020. Fifth-year program for renewal of teaching certificates. (Repeals 704 KAR 20:010)
- 704 KAR 20:021. Planned fifth-year program.
- 704 KAR 20:305. Written examination prerequisites for teacher certification.

### LABOR CABINET

#### Department of Workers' Claims

- 803 KAR 25:190. Utilization review and audit.

### PUBLIC PROTECTION AND REGULATION CABINET

#### Department of Insurance

#### Agents, Consultants, Solicitors and Adjusters

- 806 KAR 9:230. Licensing requirements for administrators. (Written Comments Received)

#### Public Service Commission

#### Utilities

- 807 KAR 5:058. Integrated resource planning by electric utilities. (Public Hearing in May)

### CABINET FOR HUMAN RESOURCES

#### Department for Health Services

#### Emergency Medical Services and Ambulance Service Providers

- 902 KAR 14:060 & E. Nonemergency health transportation services.
- 902 KAR 14:070E. License procedures and fee schedule for ambulance service providers and tiered response emergency medical services. (Deferred from May)
- 902 KAR 14:080E. Ground ambulance service providers. (Repeals 902 KAR 20:117) (Deferred from May)
- 902 KAR 14:090E. Air ambulance service providers. (Repeals 902 KAR 20:155) (Deferred from May)

#### Controlled Substances

- 902 KAR 55:095. Prescription for Schedule II controlled substance facsimile transmission or partial filling. (Not Amended After Hearing) (Deferred from June)

#### Water Fluoridation

- 902 KAR 115:020. Enforcement of water fluoridation program.

#### Department for Employment Services

#### Unemployment Insurance

- 903 KAR 5:290E. Employer contribution rates. (Deferred from May)

#### Department for Social Insurance

#### Public Assistance

- 904 KAR 2:017 & E. Job opportunities and basic skills (JOBS) child care and supportive services. (Deferred from June)



## ADMINISTRATIVE REGISTER - 3

### Food Stamp Program

- 904 KAR 3:050E. Claims and additional administrative provisions. (Deferred from May)
- 904 KAR 3:060E. Administrative disqualification hearings and penalties. (Deferred from May)

#### Department for Social Services

### Children's Residential Services

- 905 KAR 7:250E. Kentucky educational collaborative for state agency children. (Deferred from May)

#### Department for Medicaid Services

### Medicaid Services

- 907 KAR 1:013E. Payments for hospital inpatient services.
- 907 KAR 1:025. Payments for nursing facility and intermediate care facility for the mentally retarded services.
- 907 KAR 1:560. Medicaid hearings and appeals for recipients. (Deferred from June)
- 907 KAR 1:585E. Estate recovery. (Deferred from June)
- 907 KAR 1:605. Medicaid procedures for determining initial and continuing eligibility. (Deferred from May)
- 907 KAR 1:610. Medicaid right to apply and reapply. (Deferred from May)
- 907 KAR 1:640. Income standards for Medicaid. (Deferred from June)
- 907 KAR 1:650. Trust and transferred resource requirements for Medicaid. (Deferred from June)
- 907 KAR 1:660. Relative responsibility requirements for Medicaid. (Deferred from June)
- 907 KAR 1:680 & E. Vaccines for Children Program.

## KENTUCKY HEALTH POLICY BOARD

### Administration

- 909 KAR 1:090E. Risk assessment and risk adjustment system.

## ADMINISTRATIVE REGULATION REVIEW PROCEDURE (Also see KRS Chapter 13A)

### Notice of Intent

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

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

### Filing and Publication

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

### Public Hearing

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

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

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

No transcript of the hearing need to be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

### Review Procedure

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

## ADMINISTRATIVE REGISTER - 4

### NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

#### KENTUCKY RETIREMENT SYSTEMS

Date: May 18, 1995

Kentucky Retirement Systems

- (1) Regulation Number and Title: **105 KAR 1:210**. Disability procedures.
- (2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.
- (3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 31, 1995, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 31, 1995, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124.
- (b) On request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems at the address listed above.
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the promulgation of an administrative regulation relating to procedures for obtaining disability benefits from KERS, CERS and SPRS is KRS 61.645(9)(f).
  - (b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:210 to comply with changes enacted by the 1994 General Assembly House Bill 334 (KRS Chapter 13B) regarding administrative hearing procedures.
  - (c) The necessity and function of the proposed administrative regulation is as follows: The 1994 General Assembly enacted changes to establish uniform administrative appeals procedures throughout state government. The proposed amendment to 105 KAR 1:210 includes required changes to agency procedures to include a prehearing conference.
  - (d) The benefits expected from the administrative regulation are: The administrative appeals process of Kentucky Retirement Systems will conform to the requirements set forth in KRS Chapter 13B.
  - (e) The administrative regulation will be implemented as follows: A prehearing conference may be held to dispose of controversies, narrow and define issues and facilitate settlement of the claim.

Date: May 18, 1995

Kentucky Retirement Systems

- (1) Regulation Number and Title: **105 KAR 1:215**. Administrative hearing.
- (2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.
- (3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for July 31, 1995, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 31, 1995, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124.
- (b) On request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems at the address listed above.
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the promulgation of an administrative regulation relating to procedures for obtaining disability benefits from KERS, CERS and SPRS is KRS 61.645(16).
  - (b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:215 to comply with changes enacted by the 1994 General Assembly House Bill 334 (KRS Chapter 13B) regarding administrative hearing procedures.
  - (c) The necessity and function of the proposed administrative regulation is as follows: The 1994 General Assembly enacted changes to establish uniform administrative appeals procedures throughout state government. The proposed amendment to 105 KAR 1:215 includes required changes to agency procedures to include a prehearing conference and deletes procedures set out in KRS Chapter 13B.
  - (d) The benefits expected from the administrative regulation are: The administrative appeals process of Kentucky Retirement Systems will conform to the requirements set forth in KRS Chapter 13B.

## ADMINISTRATIVE REGISTER - 5

(e) The administrative regulation will be implemented as follows: A prehearing conference may be held to dispose of controversies, narrow and define issues and facilitate settlement of the claim.

### DEPARTMENT OF MILITARY AFFAIRS Division of Disaster and Emergency Services

Date: June 14, 1995

Department of Military Affairs

Division of Disaster and Emergency Services

(1) The subject matter of the administrative regulation, **106 KAR 1:091**, is Kentucky Emergency Response Commission fee account grant requirements for local emergency planning committees.

(2) The Department of Military Affairs, Division of Disaster and Emergency Services, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 28, 1995, at 2 p.m. EST, in the Conference Room of the Kentucky Chamber of Commerce, 464 Chenault Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 28, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Emergency Response Commission, c/o Lucille Orlando, Kentucky Disaster and Emergency Services, Boone Center, EOC Building, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is KRS 39.817. This section creates a fee system and trust fund to assist in the administration of Kentucky Emergency Response Commission programs at both state and local levels. This section requires the commission to develop regulations to implement the purposes of this section, to be issued by the Division of Disaster and Emergency Services.

(b) The administrative regulation that the Department of Military Affairs, Division of Disaster and Emergency Services, intends to promulgate will amend 106 KAR 1:091. The amendment will clarify that the requirements for receiving a distribution from the Kentucky Emergency Response Commission Fee Account must be complied with during the calendar year (January 1 through December 31) preceding the request for funds.

(c) The necessity and function of the proposed administrative regulation is as follows: To clarify the time period during which certain actions must be taken in order to receive funds from the Kentucky Emergency Response Commission Fee Account.

(d) The benefits expected from the administrative regulation are: To avoid confusion, mistake and litigation concerning the proper time period during which certain actions must be taken in order to receive funds from the Kentucky Emergency Response Commission Fee Account.

(e) The administrative regulation will be implemented as follows: The Kentucky Emergency Response Commission will consider the amended regulation in determining the eligibility of certain entities to receive funds from the Kentucky Emergency Response Commission Fee Account.

Date: June 14, 1995

Department of Military Affairs

Division of Disaster and Emergency Services

(1) The subject matter of the administrative regulation, **106 KAR 1:131**, is Kentucky Emergency Response Commission civil penalty assessment and hearings procedure.

(2) The Department of Military Affairs, Division of Disaster and Emergency Services, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 28, 1995, at 2 p.m. EST, in the Conference Room of the Kentucky Chamber of Commerce, 464 Chenault Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 28, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Emergency Response Commission, c/o Lucille Orlando, Kentucky Disaster and Emergency Services, Boone Center, EOC Building, Frankfort, Kentucky 40601.

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

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

## ADMINISTRATIVE REGISTER - 6

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is KRS 39.990. This section establishes the authority of the Kentucky Emergency Response Commission to assess civil penalties for failure to pay the fees statutorily authorized to be collected by the commission.

(b) The administrative regulation that the Department of Military Affairs, Division of Disaster and Emergency Services, intends to promulgate will amend 106 KAR 1:131. The amendment will modify the civil penalty assessment and hearings procedure and bring the procedure into conformity with KRS Chapter 13B.

(c) The necessity and function of the proposed administrative regulation is as follows: To provide an orderly process for civil penalty assessment, assignment of hearing officers, and avoidance of conflicts of interest.

(d) The benefits expected from the administrative regulation are: To avoid confusion, mistake and litigation concerning the process for civil penalty assessment, assignment of hearing officers, and avoidance of conflicts of interest.

(e) The administrative regulation will be implemented as follows: The Kentucky Emergency Response Commission will utilize the amended regulation in determining the process for civil penalty assessment, assignment of hearing officers, and avoidance of conflicts of interest.

## FINANCE AND ADMINISTRATION CABINET

Date: June 13, 1995

Finance and Administration Cabinet

Office of the Secretary

(1) **200 KAR 22:040.** Comprehensive employment manual of the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, for use in the Pilot Personnel Program.

(2) The Finance and Administration Cabinet intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1995, at 9 a.m. in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Gail Prewitt, Office of the Secretary, Finance and Administration Cabinet, Room 383, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 18A.430(1)(a), (b), and (c).

(b) The proposed regulation will promulgate the comprehensive employment manual of the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, for Use in the Pilot Personnel Program as required by KRS 18A.430(1).

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 18A.430(1)(a) provides that each pilot agency participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop comprehensive employment manuals establishing conditions of employment for employees in the Pilot Personnel Program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. According to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. This regulation will promulgate the comprehensive employment manual of the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, for use in the Pilot Personnel Program.

(d) The benefit expected from this proposed administrative regulation is as follows: The comprehensive employment manual will specify the terms and conditions of employment for employees of the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, which are participating in the Pilot Personnel Program, as required by KRS 18A.430(1).

(e) This administrative regulation will be implemented by the Personnel Steering Committee by notifying the Natural Resources and Environmental Protection Cabinet's Division of Abandoned Lands, Program Development and Program Services Branches, when the regulation is made effective, with a recommendation that the comprehensive employment manual be made available to all employees participating in the Pilot Personnel Program.

Date: June 13, 1995

Finance and Administration Cabinet

## ADMINISTRATIVE REGISTER - 7

### Office of the Secretary

(1) **200 KAR 22:050.** Comprehensive employment manual of the Natural Resources and Environmental Protection Cabinet's Division of Waste Management, Solid Waste Branch, Permit Review Section 1 (East), for use in the Pilot Personnel Program.

(2) The Finance and Administration Cabinet intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1995, at 10 a.m. in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Gail Prewitt, Office of the Secretary, Finance and Administration Cabinet, Room 383, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 18A.430(1)(a), (b), and (c).

(b) The proposed regulation will promulgate the comprehensive employment manual of the Natural Resources and Environmental Protection Cabinet's Division of Waste Management, Solid Waste Branch, Permit Review Section 1 (East), for Use in the Pilot Personnel Program as required by KRS 18A.430(1).

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 18A.430(1)(a) provides that each pilot agency participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop comprehensive employment manuals establishing conditions of employment for employees in the Pilot Personnel Program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. According to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. This regulation will promulgate the comprehensive employment manual of the Natural Resources and Environmental Protection Cabinet's Division of Waste Management, Solid Waste Branch, Permit Review Section 1 (East), for use in the Pilot Personnel Program.

(d) The benefit expected from this proposed administrative regulation is as follows: The comprehensive employment manual will specify the terms and conditions of employment for employees of the Natural Resources and Environmental Protection Cabinet's Division of Waste Management, Solid Waste Branch, Permit Review Section 1 (East), which is participating in the Pilot Personnel Program, as required by KRS 18A.430(1).

(e) This administrative regulation will be implemented by the Personnel Steering Committee by notifying the Natural Resources and Environmental Protection Cabinet's Division of Waste Management, Solid Waste Branch, Permit Review Section 1 (East), when the regulation is made effective, with a recommendation that the comprehensive employment manual be made available to all employees participating in the Pilot Personnel Program.

Date: June 13, 1995

Finance and Administration Cabinet

Office of the Secretary

(1) **200 KAR 22:060.** Comprehensive employment manual of the Department of Personnel for use in the Pilot Personnel Program.

(2) The Finance and Administration Cabinet intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1995, at 11 a.m. in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Gail Prewitt, Office of the Secretary, Finance and Administration Cabinet, Room 383, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 18A.430(1)(a), (b), and (c).

(b) The proposed regulation will promulgate the comprehensive employment manual of the Department of Personnel for Use in the Pilot Personnel Program as required by KRS 18A.430(1).

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 18A.430(1)(a) provides that each pilot

## ADMINISTRATIVE REGISTER - 8

agency participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop comprehensive employment manuals establishing conditions of employment for employees in the Pilot Personnel Program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. According to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. This regulation will promulgate the comprehensive employment manual of the Department of Personnel for use in the Pilot Personnel Program.

(d) The benefit expected from this proposed administrative regulation is as follows: The comprehensive employment manual will specify the terms and conditions of employment for employees of the Department of Personnel, which is participating in the Pilot Personnel Program, as required by KRS 18A.430(1).

(e) This administrative regulation will be implemented by the Personnel Steering Committee by notifying the Department of Personnel when the regulation is made effective, with a recommendation that the comprehensive employment manual be made available to all employees participating in the Pilot Personnel Program.

Date: June 14, 1995

Finance and Administration Cabinet

Office of the Secretary

(1) **200 KAR 22:070**. Comprehensive employment manual of the Natural Resources and Environmental Protection Cabinet's Division of Water, Water Quality Branch, for use in the Pilot Personnel Program.

(2) The Finance and Administration Cabinet intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1995, at 1 p.m. in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Gail Prewitt, Office of the Secretary, Finance and Administration Cabinet, Room 383, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 18A.430(1)(a), (b), and (c).

(b) The proposed regulation will promulgate the comprehensive employment manual of the Natural Resources and Environmental Protection Cabinet's Division of Water, Water Quality Branch, for Use in the Pilot Personnel Program, as required by KRS 18A.430(1).

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 18A.430(1)(a) provides that each pilot agency participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop comprehensive employment manuals establishing conditions of employment for employees in the Pilot Personnel Program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. According to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. This regulation will promulgate the comprehensive employment manual of the Natural Resources and Environmental Protection Cabinet's Division of Water, Water Quality Branch, for use in the Pilot Personnel Program.

(d) The benefit expected from this proposed administrative regulation is as follows: The comprehensive employment manual will specify the terms and conditions of employment for employees of the Natural Resources and Environmental Protection Cabinet's Division of Water, Water Quality Branch, which is participating in the Pilot Personnel Program, as required by KRS 18A.430(1).

(e) This administrative regulation will be implemented by the Personnel Steering Committee by notifying the Natural Resources and Environmental Protection Cabinet's Division of Water, Water Quality Branch, when the regulation is made effective, with a recommendation that the comprehensive employment manual be made available to all employees participating in the Pilot Personnel Program.

## BOARD OF NURSING

Date: June 1, 1995

General Government Cabinet

Board of Nursing

(1) **201 KAR 20:162**. Procedures for disciplinary hearings pursuant to KRS 314.091.

(2) The Board of Nursing intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1995 at 9 a.m. (EDT) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

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

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

and

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received at least twenty (20) days prior to July

## ADMINISTRATIVE REGISTER - 9

31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.

(b) The administrative regulation that the Board of Nursing intends to promulgate will amend 201 KAR 20:162 to allow imposition of the cost of the hearing officer at an administrative hearing.

(c) The necessity and function of the proposed administrative regulation is as follows: To require the losing party to pay the costs of the hearing officer.

(d) The benefits expected from the administrative regulation are: Requiring the losing party to pay the costs of the hearing officer.

Date: June 1, 1995

General Government Cabinet

Board of Nursing

(1) **201 KAR 20:410.** Expungement of records.

(2) The Board of Nursing intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1995 at 9 a.m. (EDT) in the Boardroom, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

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

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

and

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received at least twenty (20) days prior to July 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the regulation of nursing is KRS 314.131.

(b) The administrative regulation that the Board of Nursing intends to promulgate is a new administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: To implement KRS 314.131(9).

(d) The benefits expected from the administrative regulation are: To allow the expungement of certain disciplinary action records.

## BOARD OF PHYSICAL THERAPY

Date: June 9, 1995

General Government Cabinet

Board of Physical Therapy

(1) **201 KAR 22:070.** Requirements for foreign-trained physical therapists.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1995 at 9 a.m., at the office of the Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

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

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to July 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Board of Physical Therapy, 9110 Leesgate Road, Suite 6, Louisville, Kentucky 40222.

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

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

## ADMINISTRATIVE REGISTER - 10

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to foreign trained physical therapists is KRS 327.040.

(b) The administrative regulation that the Board of Physical Therapy intends to promulgate will amend 201 KAR 22:070, as follows: Section 1(3) will be amended to change the minimum acceptable score on the Test of Spoken English (TSE) taken beginning July 1995 to 55.

(c) The necessity and function of the proposed administrative regulation is: The Educational Testing Service (ETS) has revised the Test of Spoken English (TSE) and established a new scoring system. A score of 55 for nonnative speakers of English reflects the minimum level of fluency in spoken English which the Board of Physical Therapy determined is acceptable to communicate adequately as a physical therapist.

(d) The benefits expected from this administrative regulation are that the board will continue to have assurances that foreign trained physical therapists examination candidates whose native language is not English will be able to communicate adequately when working as a physical therapist in Kentucky.

(e) The administrative regulation will be implemented by requiring the new passing score on the revised examination, and accepting a minimum score of 220 on score reports of tests taken no more than two years before being submitted to the board.

### DEPARTMENT OF CORRECTIONS Office of the Secretary

Date: June 14, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections: Special management inmates, inmate grievance procedure, meritorious good time, restoration of forfeited good time, assessment center operations, inmate conflicts, preparole progress reports, referral procedure for inmates adjudicated guilty but mentally ill, protective custody, inmate furloughs.

(2) The Justice Cabinet, Department of Corrections intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1995, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to July 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:020, as follows:

1. Special management inmates (10.2) shall be amended to reflect the procedure for placing inmates in temporary holding cells.

2. Inmate grievance procedure (14.6) shall be amended to reflect that the court may now hold in abeyance any litigation involving an issue an inmate could have pursued through the grievance system and did not. The revision shall affect the established time limits within which an inmate has to file a grievance.

3. Meritorious good time (15.3) shall be amended to clarify the procedure for recommendations for awards of meritorious good time.

4. Restoration of forfeited good time (15-05-01) shall be amended to provide that inmates returned to the institution as parole violators shall not be immediately eligible for restoration of forfeited good time.

5. Assessment center operations (17.2) shall be amended to reflect the current practice of reporting operational matters to the warden.

6. Inmate conflicts (18.3) shall be added to reflect the procedure for investigating and documenting conflicts between inmates.

7. Preparole progress reports (18.10) shall be amended to clarify the procedure for sending information to the Parole Board.

8. Referral procedure for inmates adjudicated guilty but mentally ill (18.12) shall be amended to reflect the procedure for referring inmates to the Kentucky Correctional Psychiatric Center for evaluation.

9. Protective custody (18.15) shall be amended to reflect current procedures for classification of inmates to protective custody.

10. Inmate furloughs (25.4) shall be amended to make this policy consistent with other policies.

(c) The necessity and function of the proposed administrative regulation is: to provide consistent policies among all Department of Corrections entities and compliance with state and federal statutes.

(d) The benefits expected from the administrative regulation are: to provide consistent policies among all Department of Corrections entities and to most efficiently use departmental resources.



## ADMINISTRATIVE REGISTER - 11

(e) The administrative regulation will be implemented as follows: by promulgating and enforcing the components of the various policies to provide consistent policy for the department.

Date: June 14, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:030**, Kentucky State Reformatory: public information and news media relations; entry authorization for all cameras and tape recorders brought into the institution; Kentucky Open Records Law and release of psychological/psychiatric information; and inmate correspondence and mailroom operations.

(2) The Justice Cabinet, Department of Corrections intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1995, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to July 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:030, as follows:

1. Public information and news media relations (01-00-09) shall be amended for word changes to conform with LRC requirements, to update reference section and change the location of media information center.

2. Entry authorization for all cameras and tape recorders brought into the institution (01-00-10) shall be amended for word changes to better clarify process, to update the reference section and a change in personnel authorized to approve admittance of camera and tape recorders into institution.

3. Kentucky Open Records Law and release of psychological/psychiatric information (06-00-03) shall be totally revised due to many changes in process and handling of open records requests.

4. Inmate correspondence and mailroom operations (16-00-02) shall be amended for minor word changes to conform with LRC requirements, to update the reference section, and clarification of mailroom supervisor, officer and clerk responsibilities, minor changes in indigent inmate mail, processing incoming packages and a change in mailroom time schedule.

(c) The necessity and function of the proposed administrative regulation is: To update operating procedures at Kentucky State Reformatory to comply with OSHA Standards, American Correctional Association Standards and Department of Corrections policies and procedures.

(d) The benefits expected from administrative regulation are: To comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

(e) The administrative regulation will be implemented as follows: It shall be implemented by having staff comply with operational procedures and standards noted in policy changes.

Date: June 14, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:040**, Kentucky State Penitentiary: medical records; psychiatric and psychological services; inmate work programs - safety inspections of inmate work locations; Correctional Industries.

(2) The Justice Cabinet, Department of Corrections intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1995, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to July 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

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

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

## ADMINISTRATIVE REGISTER - 12

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:040, as follows:

1. Medical records (13-02-08) shall be amended to comply with actual practice.

2. Psychiatric and psychological services (13-02-09) shall be amended to comply with actual practice.

3. Inmate work programs - safety inspections of inmate work locations (19-04-01) shall be amended to comply with actual practice. (Old policy number 090000-01).

4. Correctional Industries (19-05-01) shall be amended to comply with actual practice.

(c) The necessity and function of the proposed administrative regulation is: To update operating procedures at Kentucky State Penitentiary to comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

(d) The benefits expected from administrative regulation are: To comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

(e) The administrative regulation will be implemented as follows: It shall be implemented by having staff comply with operational procedures and standards noted in policy changes.

Date: June 14, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:080**, Department of Corrections: Classification Manual.

(2) The Justice Cabinet, Department of Corrections intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1995, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to July 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:080, as follows:

1. Classification Manual shall be amended to clarify scoring of detainees and administrative factors.

(c) The Necessity and Function of the proposed administrative regulation is: to provide consistent policies among all Department of Corrections entities and compliance with state and federal statutes.

(d) The benefits expected from the administrative regulation are: to provide consistent policies among all Department of Corrections entities and to most efficiently use departmental resources.

(e) The administrative regulation will be implemented as follows: by promulgating and enforcing the components of the various policies to provide consistent policy for the department.

Date: June 14, 1995

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:130**, Western Kentucky Correctional Complex: employee training & development; offender records and information access; drug abuse and alcohol testing; legal services program; inmate access to telephones; social services; inmate release process.

(2) The Justice Cabinet, Department of Corrections intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1995, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public

## ADMINISTRATIVE REGISTER - 13

hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 20 days prior to July 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:130, as follows:

1. Employee training & development (04-02-01) shall be amended for minor word corrections and the removal or probation and parole officers from our specialty group.

2. Offender records and information access (06-00-01) shall be amended to show exclusion of parole eligibility cards, minimum expiration cards and movement logs.

3. Drug abuse and alcohol testing (09-00-01) shall be amended to include the preliminary test of urine at WKCC before sending to outside labs, to remove unnecessary instruction regarding breathalyzer testing, and change the time limit for inmate to produce urine sample.

4. Legal services program (14-04-01) shall be amended to comply with the Department of Corrections operating procedures.

5. Inmate access to telephones (16-03-01) shall be amended to update our telephone policy to include the new phone system.

6. Social services (24-00-01) shall be amended to update our policy to exclude community hospital from referrals for routine counseling.

7. Inmate release process (25-02-01) shall be amended to update policy in its entirety to comply with American Correctional Association Standards.

(c) The necessity and function of the proposed administrative regulation is: To update operating procedures at Western Kentucky Correctional Complex to comply with OSHA Standards, American Correctional Association Standards and Department of Corrections policies and procedures.

(d) The benefits expected from administrative regulation are: To comply with OSHA Standards, American Correctional Association Standards and Department of Corrections Policies and Procedures.

(e) The administrative regulation will be implemented as follows: It shall be implemented by having staff comply with operational procedures and standards noted in policy changes.

## STATE BOARD FOR ELEMENTARY AND SECONDARY EDUCATION

Date: June 14, 1995

State Board for Elementary and Secondary Education

(1) **702 KAR 3:245**, School council allocation formula, proposed amendment. This administrative regulation is necessary to guide the way in which school district funds shall be allocated to each school council.

(2) The State Board for Elementary and Secondary Education intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 28, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 28, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Mr. Kevin Nolan, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed amendment to an administrative regulation:

(a) The statutory authority for the amendment of an administrative regulation relating to school council allocations is KRS 156.070 and 160.345.

(b) The administrative regulation that the State board for Elementary and Secondary Education intends to amend is an existing administrative regulation.

(c) The necessity and function of the existing administrative regulation is to guide the way in which school district funds shall be allocated to school councils.

(d) The benefits expected from the administrative regulation are to guide the way in which school district funds shall be allocated to school councils.

## ADMINISTRATIVE REGISTER - 14

Date: June 14, 1995

State Board for Elementary and Secondary Education

(1) **702 KAR 3:246**, School council allocation formula using KETS Accounting System. This administrative regulation is necessary to use the new KETS Accounting System.

(2) The State Board for Elementary and Secondary Education intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 28, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 28, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Mr. Kevin Nolan, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed amendment to an administrative regulation:

(a) The statutory authority for the amendment of an administrative regulation relating to school council allocations is KRS 156.070 and 160.345.

(b) The administrative regulation that the Department of Education intends to promulgate is a new administrative regulation.

(c) The necessity and function of the new administrative regulation is to guide the way to use the new KETS Accounting System.

(d) The benefits expected from the administrative regulation are to guide the way to use the new KETS Accounting System.

Date: June 14, 1995

State Board for Elementary and Secondary Education

(1) **702 KAR 3:280**, School district Medicaid providers, proposed administrative regulation. This proposed administrative regulation is necessary to implement KRS 605.115 which allows local school districts to become Medicaid providers.

(2) The State Board for Elementary and Secondary Education intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 28, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 28, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Mr. Kevin Nolan, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to school districts as Medicaid providers is KRS 156.160 and 156.070.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to promulgate is a new administrative regulation. It will provide an administrative regulation which is necessary to implement KRS 160.115 which allows local school districts to become Medicaid providers.

(c) The necessity and function of the proposed administrative regulation is to implement KRS 160.115 which allows local school districts to become Medicaid providers.

(d) The benefits expected from the administrative regulation are to provide additional health-related services to Medicaid eligible students and to provide for reimbursement to local school districts for these services.

Date: June 14, 1995

State Board for Elementary and Secondary Education

(1) **702 KAR 3:300**, Approval for school district lease agreements. This proposed administrative regulation outlines the approval process for local school districts entering into a lease where the lease price exceeds \$100,000. KRS 65.944 requires the KBE to promulgate administrative regulations for the implementation of KRS 65.940 to 65.956, the Governmental Leasing Act.

(2) The Kentucky Board of Education intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 28,

## ADMINISTRATIVE REGISTER - 15

1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 28, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Mr. Kevin Nolan, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to school district lease agreements is KRS 65.944.

(b) The administrative regulation that the Department of Education intends to promulgate is a new administrative regulation. It will outline the approval process for local school districts entering a lease where the lease price is in excess of \$100,000.

(c) The necessity and function of the proposed administrative regulation is to outline the approval process for local school districts entering a lease where the lease price is in excess of \$100,000. KRS 65.944 requires the KBE to promulgate administrative regulations for the implementation of KRS 65.940 to 54.956.

(d) The benefit expected from the administrative regulation is to provide local school districts guidance on the approval process for entering lease agreements where the lease price exceeds \$100,000.

Date: June 14, 1995

State Board for Elementary and Secondary Education

(1) **702 KAR 7:010**, Terms and months.

(2) The State Board for Elementary and Secondary Education intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 28, 1995, at 10 a.m. in the State Board Room, First Floor, Capital Plaza Tower, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 28, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Mr. Kevin Nolan, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the amended administrative regulation:

(a) The statutory authority for the amendment of an administrative regulation relating to pupil attendance is KRS 156.070, 156.160, 157.520, 158.060, 158.070, and 159.170.

(b) The administrative regulation that the State Board for Elementary and Secondary Education intends to amend is 702 KAR 7:010. They provide for the recording of pupil attendance at common schools in Kentucky.

(c) The necessity and function of the proposed amendment is to provide for the implementation of alternative school schedule provided for in KRS 158.060.

(d) The benefits expected from the amendment to the administrative regulation are to provide a method of recording attendance that will accommodate various schedules and eliminate redundant language.

## EDUCATION PROFESSIONAL STANDARDS BOARD

Date: May 22, 1995

Education Professional Standards Board

(1) **704 KAR 20:320**, Beginning Teacher Internship Program.

(2) The Education Professional Standards Board intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 28, 1995, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky, 40601.

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

## ADMINISTRATIVE REGISTER - 16

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to July 28, 1995, the public hearing will be cancelled.

(5) Persons wishing to request a public hearing should mail their written request to the following address: Education Professional Standards Board, 500 Mero Street, Frankfort, Kentucky 40601.

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

(b) Persons who wish to file this request may obtain a request form from the Education Professional Standards Board at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the beginning teacher internship program is KRS 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board will amend is 704 KAR 20:320, Beginning Teacher Internship Program. During 1994-95 the Education Professional Standards Board approved use of a pilot internship program based on the New Teacher Standards adopted by the board. It is proposed to amend the existing regulation to incorporate the revisions to the internship program, resulting from the pilot experience, and to specify incorporation of the New Teacher Standards as the framework for assistance to teacher interns and professional judgment by the intern committee about the performance of teacher interns.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.030 requires that all new teachers and out-of-state teachers with less than two (2) years of successful teaching experience who are seeking their initial certification in Kentucky shall serve a one (1) year internship. This regulation serves to implement the statutory provisions for the beginning teacher internship by establishing the uniform statewide procedures and processes necessary to carry out the intent of the legislation.

(e) The administrative regulation will be implemented as follows: Institutions of higher education and local school districts will be informed of the provisions of the regulation. Training will be conducted as required by regulation for members of teacher internship committees.

## SCHOOL FACILITIES CONSTRUCTION COMMISSION

Date: June 15, 1995

School Facilities Construction Commission

(1) **750 KAR 1:010.** Commission procedures.

(2) The School Facilities Construction Commission intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for July 31, 1995, at 2 p.m. in Room 386, Capitol Annex Building, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to July 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Dr. Robert Tarvin, Executive Director, School Facilities Construction Commission, Room 264, Capitol Annex, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed amendment:

(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 157.617 and 157.622.

(b) The above-cited regulation describes the procedures the School Facilities Construction Commission utilizes in determining eligibility, determining the level of participation of each local school district, making the offer of assistance to the local school district, determining allowable expenditures of funds and cumulating credit for those districts that maintain their eligibility, but do not have sufficient funds to complete their first priority project. This amendment will modify the regulation by deleting the subsection of the regulation which provides a fee schedule for architects and engineers since those fees are already regulated by the Department of Education. In addition, the regulation will be amended to incorporate the commission's policy and procedures concerning debt service schedules and the allocation of accrued interest.

(c) For the "Necessity and Function" of the proposed amendment, see (7)(b) above.

(d) The benefit expected from this proposed amendment is as follows: The commission's policies and procedures will be codified by administrative regulation.

(e) This amendment will be implemented by the School Facilities Construction Commission in its administration of the school construction funding program and the educational technology funding program.

## ADMINISTRATIVE REGISTER - 17

### DEPARTMENT OF HOUSING, BUILDINGS, AND CONSTRUCTION

Date: May 31, 1995

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

- (1) Regulation Number and Title: **815 KAR 8:040**; Heating, ventilation and air conditioning (HVAC) contractor application reviews.
- (2) The Board of Heating, Ventilation and Air Conditioning, Department of Housing, Buildings and Construction intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Thursday, July 27, 1995, at 10 a.m., local time, in the department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least five (5) persons or an administrative body or an association having at least five (5) members; and
  2. A minimum of five (5) persons or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least twenty (20) days prior to July 27, 1995, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of this administrative regulation is KRS 198B.654.
  - (b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. This administrative regulation will be new and it will establish a mechanism for the board to review and approve equivalent experience when an applicant seeks licensing under HVAC.
  - (c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is a supplement to 815 KAR 8:010 and 8:020, and establishes a mechanism for the board to review and approve equivalent experience when an applicant seeks to become licensed as an HVAC master contractor or journeyman mechanic by examination. This administrative regulation is necessary to treat qualified persons similarly and not to unfairly discriminate or deny equal protection with respect to residents and nonresidents, alike.
  - (d) The benefits expected from this administrative regulation are: That the public will be better protected by the licensing of qualified HVAC contractors.
  - (e) This administrative regulation will be implemented by the Department of Housing, Buildings and Construction.

Date: June 14, 1995

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

- (1) Regulation Number and Title: **815 KAR 35:030**; Kentucky certification of electrical contractors.
- (2) The Department of Housing, Buildings and Construction intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 10 a.m., local time, on Thursday, July 27, 1995, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least five (5) persons or an administrative body or an association having at least five (5) members; and
  2. A minimum of five (5) persons or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least twenty (20) days prior to July 27, 1995, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a persons shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of this administrative regulation is KRS 227.4901.
  - (b) The department intends to amend 815 KAR 35:030 to establish a reinstatement fee for those contractors who fail to renew in a timely fashion.

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(c) The necessity and function of the proposed administrative regulation is as follows: KRS 227.4901 requires that the Department of Housing, Buildings and Construction select and approve an examination designed to determine the competency of electrical contractors under the National Electrical Code, to certify those individuals passing the examination and to collect and compile reports on disciplinary actions taken against licensed electrical contractors by cities and counties. This administrative regulation is necessary in order to maintain flexibility in maintaining one's certification but fine for not being timely and to establish procedures of administration and reasonable fees to carry on the certification program.

(d) The benefits expected from this administrative regulation are: Timely submittal of renewal certification of electrical contractors.

(e) This administrative regulation will be implemented by the Division of Fire Prevention; Electrical Section.

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

Date: June 15, 1995

Cabinet for Human Resources

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:440**, Discount Option Program.

(2) Cabinet for Human Resources, Department for Social Insurance intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1995, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 20 days prior to July 31, 1995 the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: William K. Moore, Jr., Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Discount Option Program is KRS 205.6330.

(b) The Department for Social Insurance intends to amend 904 KAR 2:440 to correct deficiencies found by the Administrative Regulation Review Subcommittee on May 1, 1995.

(c) The necessity and function of the proposed administrative regulation is as follows: On May 1, 1995, the Administrative Regulation Review Subcommittee found the administrative regulation deficient because it failed to comply with the intent and authority of KRS 205.6330. The motion that was approved on May 1, 1995, found the administrative regulation deficient because of (1) Section 4 refers to resource considerations, and contains limitations on individual assets which is clearly authorized by statute (which merely has a limitation of 200% of the federal poverty level); and (2) it fails to conform to statutory intent because it allows persons who have private insurance coverage to participate in the DOP for any portion not otherwise covered by their insurance.

(d) The benefits expected from administrative regulation are: The proposed amendment to this administrative regulation will: (1) remove the limitations on individual assets; and (2) remove the allowance of private insurance coverage.

### KENTUCKY HEALTH POLICY BOARD

Date: June 8, 1995

Kentucky Health Policy Board

(1) **909 KAR 1:021**, State health plan. The subject matter of the proposed administrative regulation is the state health plan.

(2) The board intends to promulgate an administrative regulation that incorporates the state health plan by reference.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1995 at 1:30 p.m. EDT at the Kentucky Health Policy Board, 909 Leewood Drive, Frankfort, Kentucky in the first floor Hearing Room.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at



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least 20 days prior to July 31, 1995, 1:30 p.m. EDT, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: Jack B. Hall, Chairman, Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Health Policy Board at the above address.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding the Kentucky Health Policy Board's administrative regulations may call toll free 1-800-648-6056 (V/TDD for hearing impaired) or 1-800-648-6057.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the state health plan is found in KRS 216B.015(19).

(b) The necessity and function of the proposed administrative regulation is as follows: The Kentucky Health Policy Board is required to oversee development and annual updating of the state health plan. The state health plan is a critical element of the certificate of need process for which the board is given responsibility in KRS 216.2905(2)(h).

(d) The benefit expected from this administrative regulation is to enable the board to carry out its statutory mandate to implement the program.

(e) The proposed administrative regulation will be implemented by making the state health plan available upon request to interested persons.

Date: June 8, 1995

Kentucky Health Policy Board

(1) **909 KAR 1:055**, Certificate of need expenditure minimums. This regulation designates the U.S. Department of Commerce, Bureau of Census Implicit Price Deflator for Construction as the cost index and adjusts the capital expenditure and medical equipment expenditure minimums established in KRS Chapter 216B to reflect the changes in the preceding twelve (12) month period.

(2) The Kentucky Health Policy Board intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for July 31, 1995 at 1:30 p.m. in the conference room of the Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 20 days prior to July 31, 1995, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack B. Hall, Chairman, Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-4040.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky Health Policy Board at the above address.

(c) Note: Requests for notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding the Kentucky Health Policy Board's administrative regulations, may call toll free 1-800-787-5472.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the certificate of need expenditure minimums is specified in KRS 216B.040 and 216B.130.

(b) The administrative regulation that the board intends to promulgate will not amend an existing administrative regulation. It will adjust the capital expenditure and medical equipment expenditure minimums.

(c) The necessity and function of the proposed administrative regulation is as follows: The Kentucky Health Policy Board must by administrative regulation adjust any expenditure minimum provided in KRS Chapter 216B for each twelve (12) month period beginning twelve (12) months after July 15, 1994.

(d) The benefit expected from this administrative regulation is that the expenditures which determine when a project requires a certificate of need according to KRS Chapter 216B will be adjusted according to changes in construction costs.

(e) The proposed administrative regulation will be implemented through notification of changes to all prospective applicants for a certificate of need.

## ADMINISTRATIVE REGISTER - 20

### EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(NOTE: Emergency administrative regulations expire 170 days from publication or upon replacement, repeal, or withdrawal)

#### STATEMENT OF EMERGENCY 200 KAR 22:060E

200 KAR 22:060E should be enacted as an emergency administrative regulation to implement the provisions of KRS 18A.430(1) which require that each pilot agency participating in the Pilot Personnel Program shall develop and promulgate by administrative regulation a comprehensive employment manual establishing conditions of employment for employees in the Pilot Personnel Program. This administrative regulation promulgates the comprehensive employment manual of the Department of Personnel for use in the Pilot Personnel Program, as approved by the Personnel Steering Committee. Time is of the essence because under KRS 18A.430(2)(b) pilot programs are of limited duration and will expire no later than July 15, 1998. Moreover, the Personnel Steering Committee is required by KRS 18A.425(2) to submit a comprehensive report to the Governor at least 60 days prior to the 1996 General Assembly. Therefore, this administrative regulation should be approved on an emergency basis so that the Pilot Personnel Program of the Department of Personnel can be implemented without delay. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

BRERETON C. JONES, Governor  
CRIT LUAllen, Secretary

#### FINANCE AND ADMINISTRATION CABINET Office of the Secretary

#### 200 KAR 22:060E. Comprehensive employment manual of the Department of Personnel for use in the Pilot Personnel Program.

RELATES TO: KRS 18A.430(1)

STATUTORY AUTHORITY: KRS 18A.430(1)(a), (b), (c)

EFFECTIVE DATE: June 15, 1995

NECESSITY AND FUNCTION: KRS 18A.430(1)(a) provides that each pilot agency participating in the Pilot Personnel Program, authorized by KRS 18A.400 to 18A.450, shall develop a comprehensive employment manual establishing conditions of employment for employees in the Pilot Personnel Program. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. Pursuant to KRS 18A.430(1)(c), the head of the agency in which the pilot program is located shall be responsible for preparing the administrative regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. This administrative regulation establishes the comprehensive employment manual of the Department of Personnel for use in the Pilot Personnel Program.

Section 1. Comprehensive Employment Manual. The Department of Personnel has been approved to participate in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450. Therefore, pursuant to KRS 18A.430(1), the conditions of employment for employees in the Department of Personnel are set out in the "Employee Handbook and the Pilot Program Performance Review Handbook for the Department of Personnel for Use in the Pilot Personnel Program."

Section 2. Incorporation by Reference. (1) The "Employee Handbook and the Pilot Program Performance Review Handbook for the Department of Personnel for Use in the Pilot Personnel Program,"

dated January 1995, ("Employee Handbook") is incorporated by reference.

(2) The "Employee Handbook" may be inspected, copied, or obtained at the Department of Personnel, 200 Fair Oaks Lane, Suite 535, Frankfort, Kentucky 40601, c/o David Holtzworth, Project Coordinator, Monday through Friday, 8 a.m. to 4:30 p.m.

CRIT LUAllen, Secretary

APPROVED BY AGENCY: June 14, 1995

FILED WITH LRC: June 15, 1995 at 10 a.m.

CONTACT PERSON: Gail Prewitt, Executive Assistant, Office of the Secretary, Finance and Administration Cabinet, Room 383, Capitol Annex Building, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Gail Prewitt, Executive Assistant

(1) Type and number of entities affected: This administrative regulation will affect all employees in the Department of Personnel who are participating in the Pilot Personnel Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. Because this is an emergency administrative regulation, no public comments have yet been received and no public hearing has yet taken place regarding this proposed administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. Because this is an emergency administrative regulation, no public comments have yet been received and no public hearing has yet taken place regarding this proposed administrative regulation.

(c) Compliance, reporting and paperwork requirements of those affected, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Pursuant to KRS 18A.430(1)(a), pilot programs are already required to develop comprehensive employment manuals establishing conditions of employment for employees in each organizational unit. This administrative regulation merely promulgates the employment manual of the Department of Personnel and will result in no additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Under KRS 18A.430(1)(c), employment manuals developed by the pilot agencies are required to be promulgated as administrative regulations by the Secretary of the Finance and Administration Cabinet. Once the employment manuals are promulgated, the only cost to the Finance and Administration Cabinet or the pilot agencies will be for maintaining a file of the manuals.

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Under KRS

18A.430(1)(c), employment manuals developed by the pilot agencies are required to be promulgated as administrative regulations by the Secretary of the Finance and Administration Cabinet. Once the employment manuals are promulgated, the only cost to the Finance and Administration Cabinet or the pilot agencies will be for maintaining a file of the manuals.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Finance and Administration Cabinet and the pilot agencies will be required to absorb the costs of maintaining a file of employment manuals.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Because this is an emergency administrative regulation, no public comments have yet been received and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(b) Kentucky: Because this is an emergency administrative regulation, no public comments have yet been received and no public hearing has yet taken place regarding this proposed administrative regulation. However, no economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the administrative regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the administrative regulation was not implemented.

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of the Office of the Secretary, there are no statutes, rules, administrative regulations or government policies which are in conflict, overlap, or duplicate the proposed administrative regulation.

(a) Necessity of proposed administrative regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. This administrative regulation only applies to employees in the Department of Personnel who are participating in the Pilot Personnel Program.

#### STATEMENT OF EMERGENCY 815 KAR 8:040E

This administrative regulation establishes the procedures and standards for approving the experience credentials of applicants for both a master HVAC contractor and a journeyman HVAC mechanic, pursuant to the authority of KRS 198B.650-689. This is an emergency and an ordinary administrative regulation will not suffice because the deadline for licensing all persons presently engaged in the HVAC business is July 1, 1995, and it has come to the attention of the Board of Heating, Ventilation and Air Conditioning Contractors that the existing administrative regulations (815 KAR Chapter 8) need to be supplemented immediately to resolve two problem areas which

could result in the deprivation of individual property rights. Specifically, this administrative regulation allows the board to review applications for licensure on the basis of experience which is substantially equivalent to that expressed in the statutes and existing administrative regulations. This emergency administrative regulation will be replaced by an ordinary administrative regulation. Under this new administrative regulation, the HVAC Board can approve comparable experience using the criteria listed in Section 2, and this discretion will prevent discrimination against persons who are equally trained and knowledgeable. It creates more flexibility as to the type, time-frame and location aspects. The intention of the licensing law will be fulfilled by assuring technical expertise and understanding of the principles involved in HVAC systems through the experience and formal examination. This emergency administrative regulation does not apply to persons seeking application pursuant to the "grandfather" clause (KRS 198B.662).

BRERETON C. JONES, Governor  
CHARLES A. COTTON, Commissioner and Chairman  
EDWARD J. HOLMES, Secretary

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction

#### 815 KAR 8:040E. Heating, ventilation and air conditioning (HVAC) contractor application reviews.

RELATES TO: KRS 198B.658, 198B.666  
STATUTORY AUTHORITY: KRS 198B.658  
EFFECTIVE: June 6, 1995

NECESSITY AND FUNCTION: KRS 198B.64 requires the Board of Heating, Ventilation and Air Conditioning (HVAC) Contractors to promulgate administrative regulations to administer, coordinate and enforce the HVAC Contractor's Law. This administrative regulation is a supplement to 815 KAR 8:010 and 815 KAR 8:020, and establishes a mechanism for the board to review and approve equivalent experience when an applicant seeks to become licensed as an HVAC master contractor or journeyman mechanic by examination. This administrative regulation is necessary to treat qualified persons similarly and not to unfairly discriminate or deny equal protection with respect to residents and nonresidents, alike.

Section 1. Procedure for Board Review. For applicants seeking to be licensed on the basis of experience and examination:

(1) The board may authorize the Department of Housing, Buildings and Construction to review all applicants and issue licenses to all persons who meet the technical requirements of 815 KAR 8:010 and 815 KAR 8:020.

(2) Any application which is not approvable by the department, pursuant to subsection (1) of this section, shall be referred to and reviewed by the board, pursuant to this administrative regulation.

(3) The board shall review the credentials of the applicant and approve the application if it finds that the applicant's credentials are equivalent to the requirements provided in 815 KAR 8:010 and 815 KAR 8:020.

Section 2. Equivalency Standard. The board may consider the following in reviewing an applicant's credentials:

(1) Installation, maintenance, alteration, servicing, repair of HVAC systems;

(2) The skilled instruction of others in HVAC activities and knowledge;

(3) Any other related technical, mechanical or educational experiences relating to the skills, knowledge and techniques needed for type of license requested;

(4) The quality and duration of the experience, without regard to the time frame or the location in which the experience was completed;

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(5) Other information and documentation as the board may deem necessary or appropriate.

CHARLES A. COTTON, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: May 31, 1995

FILED WITH LRC: June 6, 1995 at 8 a.m.

### REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Scope of administrative regulation is very limited. Impact indeterminate and estimated to be less than 20 potential HVAC contractors and 40 journeymen mechanics each year.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: Additional cost of living or employment for 40 HVAC journeyman mechanics will be \$2,000 (40 x \$50).

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Additional cost of doing business for 20 HVAC contractors will be \$2,000 (20 x \$100).

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None beyond companion regulations, 815 KAR 8:010 and 815 KAR 8:020.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Negligible cost due to limited scope.

2. Continuing costs or savings: Negligible cost due to limited scope.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None, administrative and records maintenance procedures already in place.

(4) Assessment of anticipated effect on state and local revenues: \$4,000 in additional state revenue the current fiscal year. No local revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Business fees of \$100 for 20 HVAC contractors and \$50 for 40 journeyman mechanics.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Statewide

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: This is a new program and this administrative regulation is necessary to treat qualified persons similarly and not to unfairly discriminate or deny equal protection with respect to residents and nonresidents alike.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will slightly increase pool of persons licensed to perform HVAC work throughout the state.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Although limited, the detrimental impact would be limited to the number of persons that would not otherwise be licensed.

(c) If detrimental effect would result, explain detrimental effect: Fewer persons licensed to perform HVAC work sharply reduces consumer protection.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or 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:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was applied in original administrative regulations referenced in (2)(c) above when the type of license (master, journeyman and apprentice) was established and the level of responsibility and fees were graduated accordingly.

### STATEMENT OF EMERGENCY

909 KAR 1:021E

This emergency regulation is necessary to implement the provisions of KRS 216B.015 and 216B.140 which give the Health Policy Board the duty of overseeing preparation and updating of the state health plan and mandate that all certificates of need comply with the plan. The updates to the 1992-1995 state health plan addresses selected sections critical to the assumption of certificate of need regulatory duties by the Health Policy Board on July 1, 1995.

BRERETON C. JONES, Governor

JACK B. HALL, Chairman

### KENTUCKY HEALTH POLICY BOARD

909 KAR 1:021E. Updated 1992-1995 state health plan.

RELATES TO: KRS 216B.010 to 216B.130

STATUTORY AUTHORITY: KRS 216B.015(19), 216.2905(2)(h)

EFFECTIVE: June 14, 1995

NECESSITY AND FUNCTION: KRS 216B.015(19) requires the Kentucky Health Policy Board to oversee development and annual updating of the state health plan. The state health plan is a critical element of the certificate of need process for which the board is given responsibility in 216.2905(2)(h).

Section 1. Incorporation by Reference. (1) The updated 1992-1995 Kentucky State Health Plan is hereby incorporated by reference.

(2) This document may be inspected, copied or obtained at the Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. Monday through Friday.

JACK B. HALL, Chairman

APPROVED BY AGENCY: June 13, 1995

FILED WITH LRC: June 14, 1995 at 11 a.m.

### REGULATORY IMPACT ANALYSIS

Contact Person: Jack B. Hall

(1) Type and number of entities affected: Health care facilities and services throughout the Commonwealth.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: The regulation is intended to improve the health status of Kentuckians by identifying areas of greatest need and most effective interventions, and to contain health care costs by avoiding unnecessary duplication of costly medical services and equipment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: New health care facilities

## ADMINISTRATIVE REGISTER - 23

and services as defined by KRS 216B.015 and regulations pursuant thereto that apply for certificates of need are required by KRS 216B.040(2)(a)(2)(a) to be consistent with criteria for those facilities and services in the state health plan. Specific, objective criteria will facilitate compliance with this requirement and further the goal of reducing unnecessary health care expenditures.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Specific, objective criteria for the administration of the certificate of need program will save the administrative body costs associated with administering ambiguous criteria.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: KRS 216B.015(19) mandates annual updates of the state health plan.

(4) Assessment of anticipated effect on state and local revenue: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees paid by applicants for certificates of need; appropriations for Health Policy Board.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: None; uniform implementation across Kentucky.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Express statutory mandate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: See above.

(9) 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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because this regulation applies equally to all entities statewide.

### STATEMENT OF EMERGENCY 909 KAR 1:055E

This emergency administrative regulation is necessary to implement the provisions of KRS 216B.130 which require adjustment of expenditure minimums for capital expenditures and major medical equipment for the period beginning July 15, 1995 and ending July 14, 1996. Timely implementation of the Certificate of Need Program under the auspices of the Kentucky Health Policy Board on July 1, 1995 requires immediate adoption of the mandatory updated expenditure minimums.

BRERETON C. JONES, Governor  
JACK B. HALL, Chairman

### KENTUCKY HEALTH POLICY BOARD

**909 KAR 1:055E. Certificate of need expenditure minimums.**

RELATES TO: KRS 216B.010 to 216B.130, 216B.455, 216B.990(2)

STATUTORY AUTHORITY: KRS 216B.040, 216B.130

NECESSITY AND FUNCTION: KRS 216B.040 authorizes the Kentucky Health Policy Board to promulgate administrative regulations. KRS 216B.130 requires the board to annually adjust expenditure minimums provided in KRS Chapter 216B. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment for the period beginning July 15, 1995 and ending July 14, 1996.

Section 1. (1) Expenditure minimums or limits provided in KRS Chapter 216B and administrative regulations promulgated pursuant thereto shall be adjusted for the twelve (12) month period beginning July 15, 1995 and ending July 14, 1996 to reflect the changes in the preceding year.

(2) The U.S. Department of Commerce, Bureau of Census Implicit Price Deflator for Construction shall be used in making these adjustments. The change in the deflator for the twelve (12) month period ending January, 1995 represents a four and one-half (4.5) percent increase.

Section 2. The expenditure minimums provided in KRS Chapter 216B shall be increased for the twelve (12) month period from July 15, 1995 to July 14, 1996 as follows:

(1) The expenditure minimum of \$1,500,000 for capital expenditure shall be increased to \$1,567,500.

(2) The expenditure minimum of \$1,500,000 for major medical equipment shall be increased to \$1,567,500.

Section 3. 902 KAR 20:136 is hereby repealed.

JACK B. HALL, Chairman

APPROVED BY AGENCY: June 13, 1995

FILED WITH LRC: June 14, 1995 at 11 a.m.

### REGULATORY IMPACT ANALYSIS

Contact Person: Jack B. Hall

(1) Type and number of entities affected: New health care facilities and services throughout the commonwealth.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: The regulation is intended to contain health care costs by avoiding unnecessary duplication of costly medical services and equipment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(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: As in the past, the certificate of need authority will review applications to determine whether they exceed minimum expenditure thresholds.

(4) Assessment of anticipated effect on state and local revenue: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees paid by applicants for certificates of need.

(6) To the extent available from the public comments received,

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the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: None; uniform implementation across Kentucky.

(b) Kentucky: No public comments received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Annual adjustment of expenditure threshold is required by statute. Because the majority of expenses falling under certificate of need regulation are construction expenses, the Bureau of the Census Implicit Price Deflator for Construction was the most appropriate and widely used measure of cost increase.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: See above.

(9) 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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because this regulation applies equally to all entities statewide.

ADMINISTRATIVE REGULATIONS AS AMENDED BY THE  
PROMULGATING AGENCY AND THE REVIEWING SUBCOMMITTEE

COMPILER'S NOTE: The following administrative regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on June 5, 1995, unless otherwise noted.

EXECUTIVE BRANCH ETHICS COMMISSION  
(As Amended)

9 KAR 1:015. Preadjudicatory proceedings.

RELATES TO: KRS 11A.080(1), (2), (3) [(4)]

STATUTORY AUTHORITY: KRS 11A.110(3),(4) 11A.080(4)]

NECESSITY AND FUNCTION: KRS 11A.080 requires the commission to investigate violations of KRS Chapter 11A, upon complaint or its own motion, and establishes a number of procedures for the filing of complaints and commission investigations. In order to implement the investigation of complaints mandated by KRS 11A.080, this administrative regulation establishes procedures relating to investigations that are not established by KRS 11A.080. [KRS 11A.080(4)(b) permits the commission to initiate an adjudicatory proceeding to determine whether there has been a violation.]

Section 1. Complaint. (1) A complaint shall state the:

(a) Full name and address of the:

1. Complainant;

2. Complainant's attorney, if an attorney has been retained;

(b) Name of each person alleged to have violated KRS Chapter 11A;

(c) Employment of each alleged violator, if known;

(d) Alleged facts that are the basis of the complaint; and

(e) Statute alleged to have been violated, if known.

(2) The statement that the complaint is signed under penalty of perjury shall appear above the signature.

Section 2. Answer to Complaint. (1) The copy of the complaint and the general statement of applicable law shall be mailed to the person against whom a complaint is filed, by certified mail, return receipt requested.

(2) Within twenty (20) days of receiving a copy of the complaint, a person against whom a complaint is filed shall:

(a) File with the commission a written, signed response to the complaint; and

(b) Mail a copy of the response to the complainant.

Section 3. Commission-initiated Inquiry. (1) When the commission initiates a preliminary inquiry on its own motion, within sixty (60) days of initiation of the preliminary inquiry, it shall notify the person being investigated that he is the subject of a commission inquiry.

(2) The notice shall be mailed to the person being investigated by certified mail, return receipt requested.

Section 4. Meeting During Preliminary Investigation. (1) The person being investigated may request a meeting with the commission's attorney and the complainant, if any, at any time during the course of the commission's preliminary inquiry. He may have an attorney represent him at this meeting.

(2) The commission's attorney shall use reasonable efforts to schedule a meeting if one has been requested.

(3) Nothing in this section shall be construed to prohibit the

commission's attorney or any investigator acting on behalf of the commission from initiating contact with the person being investigated, or the person's attorney if he has retained counsel.

Section 5. Initiation of Adjudicatory Proceeding. If the commission determines to initiate an adjudicatory proceeding, it shall issue an initiating order. [Initiating Order. Once the commission has determined there is probable cause to believe there has been one (1) or more violations of KRS Chapter 11A, it may confidentially reprimand the alleged violator or initiate an adjudicatory proceeding against the alleged violator. To initiate an adjudicatory proceeding, the commission shall issue an initiating order to the alleged violator, who is referred to as the respondent during the course of the adjudicatory proceeding. The initiating order shall:

(1) State the name of the respondent;

(2) State the alleged facts upon which the initiating order is issued;

(3) State each violation which the commission found probable cause to believe occurred, or is occurring, referencing specific statutes and administrative regulations which relate to the violation(s) involved;

(4) State that all material submitted to the commission by the respondent or his attorney shall be addressed to the Executive Branch Ethics Commission;

(5) Establish the procedural schedule for the proceeding or state that it will be set by subsequent order;

(6) Order the respondent to appear at a hearing scheduled by the commission at a time and place specified in the initiating order or to be set at a future date by subsequent order. Any order specifying a hearing date shall include the following information:

(a) The date, time, place, and nature of the hearing;

(b) The name, official title, and mailing address of the hearing officer (if no hearing officer has been appointed, the name, official title, and mailing address of the chairman of the commission); and

(c) The names, official titles, mailing addresses, and, if available, telephone numbers of all parties to the hearing, including the counsel or representative of the commission;

(7) State the respondent's right to legal counsel;

(8) State the respondent's right to examine, prior to the hearing, any evidence which will be used at the hearing and any exculpatory information in the commission's possession;

(9) State the respondent's right to subpoena witnesses on his own behalf.

(10) State that if the respondent fails to attend or participate as required at any stage of the administrative hearing process without good cause shown, he may be held in default; and

(11) State the respondent's right to appeal a final commission order to the Franklin Circuit Court within thirty (30) days of service.

Section 2. Service. An order is considered issued the date it is signed by a majority of the commission and will be served upon the respondent pursuant to the Kentucky Rules of Civil Procedure.

Section 3. Answer. A respondent shall file his written answer to the initiating order with the commission within twenty (20) days of service. The answer shall be verified by the respondent.

Section 4. Counsel. If a respondent has retained counsel, the attorney shall file an entry of appearance with the commission. Notices, correspondence, and orders relating to the adjudicatory proceeding shall thereafter be transmitted to the attorney instead of the respondent.



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~~Section 5. Discovery. All commission adjudicatory proceedings are subject to the Kentucky Rules of Civil Procedure. The presiding officer (defined in 9 KAR 1:030) shall issue subpoenas on written request of the respondent, his attorney, the commission or the commission's attorney. If the presiding officer is not the chairman, he shall forward any subpoena requests to the chairman for his signature. The respondent shall bear the cost of serving the subpoenas, paying any witness fees and expenses for subpoenas issued at his or his attorney's request.~~

~~Section 6. Prehearing Disclosure of Evidence. (1) By the commission. The respondent shall have the right to inspect any evidence to be used at the hearing and any exculpatory information in the commission's possession. Nothing in this section shall be construed as giving the respondent, or anyone else, the right to examine or copy the personal notes, observations, conclusions, or work product of the commission's legal counsel. An appointment for the inspection shall be made upon reasonable notice, during regular office hours, and at a time acceptable to the staff members involved in the investigation. The respondent may request copies of any evidence to be used at the hearing and any exculpatory evidence. The commission shall not charge the respondent any amount for providing such copies.~~

~~(2) By the respondent. At least thirty (30) days prior to the scheduled adjudicatory hearing, or as specified in the procedural schedule established by the initiating order or by the presiding officer, the respondent shall furnish to the commission's legal counsel:~~

~~(a) Copies of any documents which the respondent intends to introduce at the hearing;~~

~~(b) A list of the names, addressees, and home and work telephone numbers of any witnesses to be presented by the respondent at the hearing;~~

~~(c) Copies of any documents or other items of tangible evidence within the respondent's possession or control which he intends to introduce at the hearing; and~~

~~(d) Any other information as the presiding officer deems appropriate. The respondent shall not charge the commission any amount for any copies of material provided.~~

~~(3) Continuing duty to disclose. After disclosure has been completed, each party shall remain under an obligation to disclose any newly discovered items of evidence which may come to his attention. Such additional disclosure shall take place as soon as practicable. The presiding officer may refuse to allow a party to introduce evidence which was not properly and timely disclosed to the other party.~~

~~Section 7. Motions. Except for motions made during the course of an adjudicatory hearing, all motions shall be in writing, signed by the movant or his attorney, and filed with the commission.~~

~~Section 8. Prehearing Conferences. The respondent may request a prehearing conference with the presiding officer and the commission's attorney if the request is made at least five (5) days prior to the date scheduled for the hearing, or as designated in a commission order. The presiding officer shall conduct the prehearing conference unless the chairman designates another person to conduct the conference. The conference may be held to discuss jurisdictional matters, to prepare stipulations of facts or issues, to clarify issues, to rule on motions, to take evidence, to issue subpoenas and orders and other matters which promote the orderly and prompt conduct of the proceeding. At the conclusion of the prehearing conference, the presiding officer shall issue a prehearing order incorporating all matters determined at the prehearing conference. If a prehearing conference is not held, the presiding officer may issue a prehearing order to regulate the conduct of the hearing.~~

~~Section 9. Settlement Conferences. The respondent may request~~

~~a settlement conference with the commission's attorney if the request is made at least five (5) days prior to the date scheduled for the hearing. If the commission's attorney recommends a settlement offer be approved, he shall sign the offer and forward it to the chairman. If a majority of the commission agrees to accept the settlement offer, each approving member shall sign the offer and the chairman shall notify the presiding officer and the commission's attorney that the offer has been approved. Within ten (10) days of the approval of the offer, the commission shall issue an order which indicates the case is concluded by settlement. The commission shall not approve any settlement which provides for the confidentiality of the existence of the settlement, or which provides for the confidentiality of any of the terms of the settlement.~~

~~Section 10. Official Record. For each adjudicatory proceeding, the commission shall keep an official record of the proceedings which shall consist of:~~

- ~~(1) All notices, pleadings, motions, and intermediate rulings;~~
- ~~(2) Any prehearing orders;~~
- ~~(3) Evidence received and considered;~~
- ~~(4) A statement of matters officially noticed;~~
- ~~(5) Proffers of proof and objections and rulings thereon;~~
- ~~(6) Proposed findings, requested orders, and exemptions;~~
- ~~(7) A copy of the recommended order, exceptions filed to the recommended order, and a copy of the final order;~~
- ~~(8) All requests by the presiding officer for an extension of time, and the response of the commission;~~
- ~~(9) Ex parte communications placed upon the record by the presiding officer; and~~
- ~~(10) The transcript of the hearing.~~

~~Section 11. Unless otherwise prohibited by law, the commission may waive any part of this administrative regulation upon good cause shown.]~~

LIVINGSTON TAYLOR, Chairman

APPROVED BY AGENCY: February 9, 1995

FILED WITH LRC: March 14, 1995 at 9 a.m.

### EXECUTIVE BRANCH ETHICS COMMISSION (As Amended)

#### 9 KAR 1:030. Adjudicatory proceedings [hearings].

RELATES TO: KRS 11A.100

STATUTORY AUTHORITY: KRS [44A.080,] 11A.080(4)(b), 11A.110(3) [44A.100]

NECESSITY AND FUNCTION: KRS 11A.080(4)(b) gives the commission the authority to initiate an adjudicatory hearing to determine whether there has been a violation. This administrative regulation establishes the procedures governing adjudicatory proceedings.

Section 1. Initiating Order. To initiate an adjudicatory proceeding, the commission shall issue an initiating order to the alleged violator, who shall be referred to as the respondent during the course of the adjudicatory proceeding. The initiating order shall:

- (1) State the name of the respondent;
- (2) State the alleged facts upon which the initiating order is issued;
- (3) State each violation which the commission found probable cause to believe occurred, or is occurring, referencing specific statutes and administrative regulations which relate to the violation involved;
- (4) State that all material submitted to the commission by the



respondent or his attorney shall be addressed to the Executive Branch Ethics Commission;

(5) Establish the procedural schedule for the proceeding or state that it will be set by subsequent order;

(6) Order the respondent to appear at a hearing scheduled or state that it will be sent by subsequent order. Any order specifying a hearing date shall include the:

(a) Date, time, place, and nature of the hearing;

(b) Name, official title, and mailing address of the hearing officer, if a hearing officer has been appointed;

(c) Name, official title, and mailing address of the chairman of the commission, if a hearing officer has not been appointed; and

(d) Names, official titles, mailing addresses, and, if available, telephone numbers of all parties to the hearing, including the counsel or representative of the commission;

(7) State the respondent's right to legal counsel;

(8) State the respondent's right to examine, prior to the hearing, any evidence which will be used at the hearing and any exculpatory information in the commission's possession;

(9) State the respondent's right to subpoena witnesses on his own behalf;

(10) State that if the respondent fails to attend or participate as required at any stage of the administrative hearing process without good cause shown, he may be held in default; and

(11) State the respondent's right to appeal a final commission order to the Franklin Circuit Court within thirty (30) days of service.

Section 2. Service. An order shall be considered issued the date it is signed by a majority of the commission and shall be served upon the respondent pursuant to the Kentucky Rules of Civil Procedure.

Section 3. Answer. (1) A written answer to the initiating order shall be filed with the commission within twenty (20) days of service, by the:

(a) Respondent, if he has not retained counsel; or

(b) Respondent's attorney, if he has retained counsel.

(2) The answer shall be verified by the respondent.

Section 4. Counsel. (1) If a respondent has retained counsel, the attorney shall file an entry of appearance with the commission.

(2) If a respondent has retained counsel, notices, correspondence, and orders relating to the adjudicatory proceeding shall thereafter be transmitted to the attorney instead of the respondent.

Section 5. Discovery. (1) The presiding officer shall issue subpoenas on written request of the respondent, his attorney, the commission or the commission's attorney.

(2) If the presiding officer is not the chairman, he shall forward any subpoena requests to the chairman for his signature.

(3) The respondent shall bear the cost of serving the subpoenas, paying any witness fees and expenses for subpoenas issued at his or his attorney's request.

Section 6. Prehearing Disclosure of Evidence. (1) By the commission.

(a) The respondent may inspect any evidence to be used at the hearing and exculpatory information in the commission's possession.

(b) No person shall have the right to examine or copy the personal notes, observations, conclusions, or work product of the commission's legal counsel.

(c) An appointment for the inspection of evidence shall be made upon reasonable notice, during regular office hours, and at a time acceptable to the staff members involved in the investigation.

(d) The respondent may request copies of any evidence to be used at the hearing and exculpatory evidence.

(e) The commission shall not charge the respondent for providing such copies.

(2) By the respondent. At least thirty (30) days prior to the scheduled adjudicatory hearing, or as specified in the procedural schedule established by the initiating order or by the presiding officer, the respondent shall furnish to the commission's legal counsel:

(a) Copies of any documents which the respondent intends to introduce at the hearing;

(b) Copies of any documents or other items of tangible evidence within the respondent's possession or control which he intends to introduce at the hearing;

(c) A list of the names, addresses, and home and work telephone numbers of any witnesses to be presented by the respondent at the hearing; and

(d) Any other information as the presiding officer deems appropriate.

(e) The respondent shall not charge the commission for copies of material provided.

(3) Continuing duty to disclose.

(a) After disclosure has been completed, each party shall remain under an obligation to disclose items of evidence that may come to his attention, as soon as practicable.

(b) The presiding officer may refuse to allow a party to introduce evidence that was not properly and timely disclosed to the other party.

Section 7. Motions. Except for motions made during the course of an adjudicatory hearing, all motions shall be in writing, signed by the movant or his attorney, and filed with the commission.

Section 8. Prehearing Conferences. (1) The respondent may request a prehearing conference with the presiding officer and the commission's attorney if the request is made:

(a) At least five (5) days prior to the date scheduled for the hearing; or

(b) As designated in a commission order.

(2) The presiding officer shall conduct the prehearing conference unless the chairman designates another person to conduct it.

(3) The conference may be held to:

(a) Discuss jurisdictional matters;

(b) Prepare stipulations of facts or issues;

(c) Clarify issues;

(d) Rule on motions;

(e) Take evidence;

(f) Issue subpoenas and orders; and

(g) Consider other matters that promote the orderly and prompt conduct of the proceeding.

(4) At the conclusion of the prehearing conference, the presiding officer shall issue a prehearing order incorporating all matters determined at the prehearing conference.

(5) If a prehearing conference is not held, the presiding officer may issue a prehearing order to regulate the conduct of the hearing.

Section 9. Settlement Conferences. (1) The respondent may request a settlement conference with the commission's attorney, if the request is made at least five (5) days prior to the date scheduled for the hearing.

(2) If the commission's attorney recommends a settlement offer be approved, he shall sign the offer and forward it to the chairman.

(3) If a majority of the commission agrees to accept the settlement offer, each approving member shall sign the offer and the chairman shall notify the presiding officer and the commission's attorney that the offer has been approved.

(4) Within ten (10) days of the approval of the offer, the commission shall issue an order which states that the case is concluded by settlement.

(5) The commission shall not approve a settlement that provides for the confidentiality of:

- (a) The existence of the settlement; or
- (b) Any of the terms of the settlement.

Section 10. ~~[4.]~~ A party may represent himself or be represented by counsel.

Section 11. ~~[2.]~~ Presiding Officer. (1) The presiding officer shall be:

(a) ~~[(4)]~~ The chairman of the commission; or

(b) ~~[(2)]~~ A person designated by the chairman to serve as the presiding officer. This person can be another member of the commission or a hearing officer appointed by the commission to preside over the proceeding ~~[hearing, conduct all prehearing activities, prepare findings of fact and conclusions of law at the direction of the commission, and provide legal advice to the commission].~~

(c) A presiding officer shall:

1. Conduct prehearing activities; and

2. Submit recommended findings of fact and conclusions of law to the commission.

(d) ~~[(3) Adjudicatory]~~ Hearings may be heard by one or more members of the commission, the commission's designated hearing officer, or both. ~~[In any event,]~~ One (1) person shall be designated the presiding officer for each hearing.

(2) If a person has served as an investigator with regard to the subject matter of a hearing, he shall not serve as a presiding officer of a hearing, or assist or advise a presiding officer in a hearing.

(3) Except as provided by subsection (2) of this section, a person shall not be disqualified from serving as the presiding officer of a hearing if he has participated in the decision of the commission to initiate the adjudicatory proceeding.

Section 12. ~~[3.]~~ Disqualification of a Presiding Officer. (1) A presiding officer shall be disqualified, and shall not serve as a presiding officer if he:

(a) ~~[(f) he]~~ Served as an investigator or prosecutor in the proceeding or in the preadjudicatory stages of the proceeding;

(b) ~~[(f) he]~~ Participated in an ex parte communication which would prejudice the proceeding;

(c) ~~[(f) he]~~ Has a pecuniary interest in the outcome of the proceeding; or

(d) ~~[(f) he]~~ Has a personal bias toward any party to a proceeding which would cause a prejudgment of the proceeding.

(2)(a) A party may file a written motion to disqualify a presiding officer within twenty (20) days of the latter of the:

1. Receipt of notice of the identity of the presiding officer; or

2. Discovery of facts establishing grounds for disqualification of the presiding officer.

(b) The motion shall state the facts or reasons supporting it.

(c) The commission shall state in writing the facts or reasons for its decision on the motion to disqualify.

Section 13. ~~[4.]~~ The hearing shall be governed by this administrative regulation and by the rules of evidence for civil proceedings in the Commonwealth of Kentucky. All testimony shall be made under oath

or affirmation.

Section 5. ~~[Ex Parte Communications. Once an adjudicatory proceeding has commenced, the commission, its executive director, commission counsel, a presiding officer, employees of the presiding officer, the respondent, respondent counsel or other person acting on behalf of the respondent shall not initiate, participate in, or consider ex parte communications concerning the subject matter of a hearing or an issue of fact or law related thereto, except upon notice and opportunity for all parties to participate. [The commission shall not, once a hearing has commenced, consult with any person or party in connection with any issue of fact or law, except upon notice and opportunity for all parties to participate; provided, however, that any commission member may consult with other members of the commission, with the hearing officer, if any, and with commission staff.]~~

Section 6. ~~[Separation of Functions. A person shall not serve as a presiding officer of a hearing, or assist or advise a presiding officer in a hearing, if he has served as an investigator with regard to the subject matter of the hearing. This section shall not be construed to prohibit a person from serving as a presiding officer of a hearing if he participated in the decision of the commission to initiate the adjudicatory proceeding based on probable cause of one (1) or more violations.]~~

Section 14. ~~[7.]~~ Order of Proceeding. (1)(a) The presiding officer shall call the hearing to order, ~~[and shall]~~ identify the parties to the action, and ~~[shall]~~ read the initiating order.

(b) The presiding officer shall then ask the parties to state any objections or motions, and shall rule upon any objections or motions.

(c) Opening statements shall then be made, with the attorney for the commission proceeding first.

(d) Either party may waive opening statement.

(2)(a) The taking of proof shall commence with the calling of witnesses on behalf of the commission.

(b) ~~[Such]~~ Witnesses shall be examined first by the attorney for the commission, then by the respondent or that person's attorney, and finally by the presiding officer and any member of the commission hearing the case.

(c) Rebuttal examination of witnesses shall proceed in the same order.

(d) Documents or other items may be introduced into evidence as appropriate.

(3)(a) Upon conclusion of the case for the commission, the respondent shall call his witnesses.

(b) ~~[Such]~~ Witnesses shall be examined first by the respondent or that person's attorney, then by the attorney for the commission, and finally by the presiding officer and any member of the commission who is hearing the case.

(c) Rebuttal examination of those witnesses shall proceed in the same order.

(d) Documents or other items may be introduced as appropriate.

(4) Objections to evidentiary offers may be made by any party and shall be noted in the record.

(5)(a) At the conclusion of the proof, the parties shall be afforded the opportunity to make a closing statement, with the attorney for the commission always proceeding last.

(b) The presiding officer may impose reasonable time limitations upon the time allowed for opening and closing statements.

(c) Either party may waive his right to give a closing statement.

~~[(6) If, at any time during the adjudicatory proceeding, a person's name is mentioned and that person so notifies the presiding officer or any member of the commission or its staff that he would like to make a verbal or written statement in opposition to such mention, the presiding officer shall determine whether that person may be adversely affected by the mention of his name. If the presiding officer~~

determines the person may be adversely affected by the mention of his name during the adjudicatory proceeding, the presiding officer shall allow that person to appear personally before the commission on his own behalf, with or without an attorney, and give a statement in opposition to such adverse mention or file a written statement of such opposition for incorporation into the record of the proceeding.]

(6)(a) During a proceeding, if a person's name is mentioned, he shall be permitted to make a verbal or written statement in opposition to the mention of his name if:

1. He notifies the presiding officer, a member of the commission, or commission staff of his opposition; and

2. The presiding officer determines that he may be affected adversely by the mention of his name.

(b) A person governed by the provisions of this section may be represented by counsel.

(c) If a written statement of opposition is accepted, it shall be incorporated into the record.

Section 15. [8.] Record to be Maintained. (1) The hearing shall be transcribed by a court stenographer.

(2)(a) A transcript of the testimony taken during the hearing shall be kept by the commission.

(b) Upon request and payment of the appropriate fee, a copy of the transcript shall be available to the respondent from the:

1. Court stenographer; or
2. Commission, if the stenographer is unable to furnish a copy. [A copy of that transcript shall be available to the respondent from the court stenographer, or, if the stenographer is unable to furnish a copy, from the commission upon request and payment of the appropriate fee.]

(c) A copy of the transcript of the hearing shall be available to all commission members.

(d) Any documents or exhibits introduced into evidence shall be kept with the transcript or as ordered by the presiding officer.

[Section 9. Continuances; Proceedings in Absentia. A request by the respondent for a continuance of the hearing may be considered by the presiding officer if the request was communicated to the presiding officer or to the commission's counsel reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the presiding officer. Failure to appear at the scheduled hearing for which a continuance has not been granted in advance may constitute a waiver of the respondent's right to appear and the hearing may be held as scheduled, in the discretion of the presiding officer.]

Section 10. Unless otherwise prohibited by law, the commission may waive any part of this administrative regulation upon good cause shown.]

Section 16. Official Record. For each adjudicatory proceeding, the commission shall keep an official record of the proceedings which shall consist of:

- (1) All notices, pleadings, motions, and intermediate rulings;
- (2) Any prehearing orders;
- (3) Evidence received and considered;
- (4) A statement of matters officially noticed;
- (5) Proffers of proof and objections and rulings thereon;
- (6) Proposed findings, requested orders, and exemptions;
- (7) A copy of the recommended order, exceptions filed to the recommended order, and a copy of the final order;
- (8) All requests by the presiding officer for an extension of time, and the response of the commission;
- (9) Ex parte communications placed upon the record by the presiding officer; and
- (10) The transcript of the hearing.

Section 17. Continuances. Proceedings in Absentia. (1) A request by the respondent for a continuance of the hearing shall be considered by the presiding officer if it is made:

(a) Three (3) days prior to the scheduled hearing date, and based upon good cause; or

(b) Later than three (3) days prior to the scheduled hearing, because of substantiated medical or other emergency.

(2) The decision whether to grant a continuance shall be made by the presiding officer.

(3) Unless the respondent establishes that his failure to appear at a scheduled hearing for which a continuance has not been granted in advance was due to an unforeseen medical or other emergency:

(a) The hearing may be held as scheduled; and

(b) The failure to appear shall constitute a waiver of the respondent's right to appear;

[Section 1. Pleadings and Other Documents. (1) Material submitted to the commission shall be addressed to the Executive Branch Ethics Commission, Room 136, State Capitol, Frankfort, Kentucky 40601.

(2) A document that does not on its face comply with the provisions of this administrative regulation may be rejected for filing.

(3) Pleadings and other documents related to an adjudicatory hearing shall be printed or typewritten:

- (a) On one (1) side of a page; and
- (b) Double spaced.

(4) If a party is represented by an attorney:

- (a) Party's attorney shall:
  1. File a notice of appearance with the commission; and
  2. Sign pleadings and other documents filed by that party;
- (b) Service of pleadings and other documents upon party's attorney shall be deemed proper service upon the party.

(5) Unless a statute specifically provides otherwise, a pleading or other document shall not be required to be verified or accompanied by affidavit.

(6)(a) In order to be considered, a brief shall be filed within the time specified by the person conducting a hearing.

(b) A party may submit a written request for an extension of time in which to file a brief.

(7)(a) Briefs, motions and other pleadings, and petitions for rehearing shall be served upon all parties or their attorneys.

(b) Six (6) copies of a brief, motion, other pleading, or petition for rehearing shall be filed with the commission.

(8) For good cause shown, the commission may permit a party to amend a pleading or other document.

Section 2. Prehearing Conference. (1) Prior to a hearing, a party may request a prehearing conference.

(2) The chairman shall designate the person who will conduct the prehearing conference.

(3)(a) At the prehearing conference, parties may stipulate facts, issues, or other matters.

(b) The designated commission staff member shall prepare a prehearing order that incorporates matters stipulated at the prehearing conference.

(c) The prehearing order shall be submitted to the commission for consideration.

(d) If approved by the commission:

1. The parties shall be bound by the prehearing order; and
2. A copy of the prehearing order shall be mailed to the parties.

Section 3. Conduct of Hearing. (1) A hearing shall be conducted by:

- (a) One (1) or more members of the commission; or
  - (b) A person designated by the commission.
- (2) The person or persons conducting the hearing shall prepare

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and submit to the commission:

- (a) Findings of fact and conclusions of law; and
- (b) A recommended order.

(3) The commission may:

- (a) Adopt the findings of fact, conclusions of law, and recommended order in whole or in part;
  - (b) Issue its own findings of fact, conclusions of law, and order;
  - (c) Remand the matter for additional hearings; or
  - (d) Take other action it deems necessary in order to reach a decision.
- (4) A decision by the commission shall:
- (a) Be in writing; and
  - (b) Contain a statement of its:
    - 1. Findings of fact;
    - 2. Conclusions of law; and
    - 3. Order; and
    - 4. Be mailed to all parties.

Section 4. Transcript of Hearing. A party may obtain a copy of the record of a hearing upon payment of the appropriate fees.]

LIVINGSTON TAYLOR, Chairman

APPROVED BY AGENCY: February 9, 1995

FILED WITH LRC: March 14, 1995 at 9 a.m.

### EXECUTIVE BRANCH ETHICS COMMISSION (As Amended)

#### 9 KAR 1:035. Posthearing procedure.

RELATES TO: KRS 11A.100(4),(5)

STATUTORY AUTHORITY: KRS 11A.110(3),(4) [11A.100]

NECESSITY AND FUNCTION: KRS 11A.110(3) grants the commission authority to promulgate administrative regulations to implement the provisions of KRS Chapter 11A. KRS 11A.100(5) grants the commission the authority to impose civil penalties on violators. This administrative regulation establishes procedures following an adjudicatory proceeding.

Section 1. Posthearing Procedure [When the Presiding Officer is a Member of the Commission.] (1) The commission shall meet in executive session within thirty (30) days of the conclusion of the hearing to review the evidence before it. The deliberations of the commission may be continued or adjourned for a period not to exceed ninety (90) days after the conclusion of the hearing.

(2) The commission shall issue a final order no later than ninety (90) days after the conclusion of the hearing. The commission may remand the matter for additional hearings or take other action it deems necessary in order to reach a decision.

(3) The commission shall issue a recommended order no later than thirty (30) days prior to the last day the commission is permitted to issue a final order. The commission shall send a copy of the recommended order to the respondent and to the commission's attorney by hand or by regular mail.

(4) The respondent and the commission's attorney shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the order with the commission.

(5) In its final order, the commission may find no violation, may impose any penalty or other remedy authorized by statute, or may remand the matter for additional hearings.

(6) The respondent shall have thirty (30) days from the date of service to file an appeal of a final commission order to the Franklin County Circuit Court.

Section 2. Posthearing Procedure When the Presiding Officer is Not a Member of the Commission. (1) The commission shall meet in

executive session within thirty (30) days after the conclusion of the hearing to review the evidence before it. The proceedings may be continued or adjourned for a period not to exceed ninety (90) days after the presiding officer submits his recommended order.

(2) The presiding officer shall submit to the commission his recommended order within thirty (30) days of receiving a copy of the official record of the proceeding. The recommended order shall contain the presiding officer's findings of fact, conclusions of law, and recommended disposition of the hearing, including recommended penalties, if any. The presiding officer may ask for an extension of time to submit his recommended order. The extension shall be for no more than thirty (30) days, and shall be submitted to the commission in writing and based on good cause.

(3) At the same time the presiding officer submits his recommendation to the commission, he shall send, by regular mail, a copy of the recommended order to the commission's attorney and to the respondent. The commission's attorney and the respondent shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommended order with the commission.

(4) The commission may adopt the presiding officer's recommended order, or it may reject or modify the recommended order in whole or in part. The commission may issue its own findings of fact and conclusions of law or it may remand the matter for additional hearings.

(5) The commission shall issue its final order no later than ninety (90) days after it receives the presiding officer's recommended order.

(6) The respondent shall have ten (10) days to file with the commission a motion for reconsideration of a final order. The commission shall rule on the motion within ten (10) days of its receipt.

~~[(7) The respondent shall have thirty (30) days from the date of service to file an appeal of a final commission order to the Franklin Circuit Court.]~~

~~(8) Unless otherwise prohibited by law, the commission may waive any part of this administrative regulation upon good cause shown.]~~

LIVINGSTON TAYLOR, Chairman

APPROVED BY AGENCY: February 9, 1995

FILED WITH LRC: March 14, 1995 at 9 a.m.

### HIGHER EDUCATION ASSISTANCE AUTHORITY (As Amended)

#### 11 KAR 12:060. Cancellation and payment of refund.

RELATES TO: KRS 164A.325(5), 164A.345

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY AND FUNCTION: KRS 164A.345(1) provides, in pertinent part, that any participant may cancel a participation agreement at will and specifies the amount of refund the participant is entitled to at various stages. That statute authorizes an administrative fee to be charged by the trust. This administrative regulation is necessary to establish the procedures for cancellation and refund and to specify the administrative fee. This amendment is necessary to conform the language to the definition in 11 KAR 12:010, Section 1(5).

Section 1. [Definitions. "Hardship" or "emergency" shall mean these circumstances and conditions of a sudden nature, including catastrophic illness, which deprive the participant or his dependent from the basic necessities or comforts of life or proper health care.

~~Section 2.] Cancellation.~~ (1) A participant may at any time cancel a participation agreement, without cause, by submitting to the program administrator a notice to terminate the participation agree-

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ment.

(2) Except as provided in KRS 164A.345(2) or subsection (3) of this section, an administrative ~~[refund]~~ fee shall be deducted from the ~~amount [account balance]~~ refunded to the participant. ~~[The administrative fee shall be the lesser amount of two (2) percent of the total balance in the participant's account or twenty-five (25) dollars.]~~ The amount to be refunded pursuant to KRS 164A.345, less the administrative fee, shall be mailed or otherwise sent to the participant within sixty (60) days after receipt by the program administrator of notice to terminate the participation agreement.

(3) Hardship or emergency. If a participant terminates or cancels the participation agreement under conditions of hardship or emergency, then the program administrator shall immediately refund money from the account in accordance with KRS 164A.345(1), without deduction of an administrative refund fee. The participant shall submit verifiable evidence of the hardship to the program administrator simultaneous with submission of the notice to terminate the participation agreement.

MARY JO YOUNG, Chairperson

APPROVED BY AGENCY: March 17, 1995

FILED WITH LRC: March 23, 1995 at 3 p.m.

### HIGHER EDUCATION ASSISTANCE AUTHORITY (As Amended)

**11 KAR 12:070. Benefits payable from the Kentucky educational savings plan trust program fund.**

RELATES TO: KRS 164A.310(8), 164A.330(5), 164A.335(1)

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY AND FUNCTION: KRS 164A.310(8), 164A.335(5) and 164A.335(1) establish the statutory framework for payment of benefits to an institution from the program fund. This administrative regulation is necessary to establish the maximum benefits payable in any academic period, the duration of the payments, the payment of benefits for a beneficiary residing off campus and the notice provisions in the event of a refund of the payments for nonuse or unused benefits from the program fund. This amendment is necessary to clarify aspects of the disbursement process.

~~Section 1. [Definitions. (1) "Academic year" shall mean the period beginning July 1 and ending June 30 of the following year.~~

~~(2) "Higher education costs" (as defined in KRS 164A.305(7)).~~

~~(3) "Investment income" shall mean the earnings from the investments in the program fund.~~

~~Section 2.] Distribution of Benefits. (1) Upon submission of a notice to use trust benefits, the participant shall specify the level of benefits to be paid. The participant may elect distribution of an allotment of the account balance, calculated by dividing the account balance by the number of academic periods in the beneficiary's program of study, or a higher amount, which shall not exceed the beneficiary's higher education costs for each academic period. The participant may adjust the level of benefits paid in any academic period by notifying the program administrator in writing.~~

~~(2) Distribution of benefits shall begin after receipt by the program administrator of a notice to use trust benefits and shall continue throughout the beneficiary's period of enrollment at an institution of higher education, or until the account balance has been exhausted, whichever occurs first.~~

~~(3) In the event a participant transfers ownership rights pursuant to KRS Chapter 385, Uniform Transfers to Minors Act, notwithstanding KRS 385.202(1), which mandates the transfer of custodial property to the minor upon attainment of age eighteen (18), the property shall be distributed for postsecondary educational purposes~~

in accordance with the terms of the participation agreement during each academic period of the beneficiary's educational program.

~~(4) Except as provided in Section 3 of this administrative regulation, each distribution of benefits shall be paid directly to the beneficiary's institution of higher education.~~

~~Section 2. [3.] Beneficiary Residing Off Campus. If a beneficiary resides off campus, then, upon written request of the participant the program administrator may pay to the beneficiary, in addition to the amounts paid to the institution, an amount equal to the cost of room and board for an academic period as established by the [said] institution for on-campus students. However, the amounts paid to the institution and the beneficiary shall not exceed the amount payable in any academic period from the program fund or exceed the higher education costs for that institution.~~

~~Section 3. [4.] Nonenrollment. If the trust does not receive a completed notice to use trust benefits or a notice to delay trust benefits [If a beneficiary does not enroll in an institution of higher education] by the first academic period of the academic year, **beginning July 1 and ending June 30 of the following year,** that begins after the beneficiary attains the age of eighteen (18), or if the beneficiary interrupts enrollment (other than normal intersemester vacation periods), and the trust does not receive a notice to delay benefits, then the program administrator shall refund the balance of payments and **the earnings from the investments in the program fund [investment income]** remaining in the account in accordance with KRS 164A.350. A participant may delay distribution of benefits **no more than a total of eight (8) academic periods. After delay of distribution of benefits for eight (8) academic periods, distributions shall be made each academic period until the beneficiary graduates from an institution of higher education or the account balance has been exhausted, whichever occurs first, or the balance shall be refunded to the participant pursuant to KRS 164A.350. [unless the participant submits either a notice to delay benefits under the participation agreement or a notice to use trust benefits.]**~~

~~Section 4. [5.] Unused Benefits. (1) During academic period. If a beneficiary's higher education costs are less than the benefits due for any academic period, then that portion of the unused benefits shall accumulate to the beneficiary's account. The unused benefits plus the beneficiary's entitlement in the program fund in any academic period not exceeding the higher education costs may be paid to the institution for the beneficiary in the next succeeding academic period.~~

~~(2) After graduation. If the beneficiary graduates from an institution of higher education, and a balance in the beneficiary's account [remains], then the program administrator shall pay the balance of the payments and the **earnings from the investments in the program fund remaining in the account [investment income]** to the participant. The program administrator shall make the payment from the program fund within sixty (60) days from the date of the beneficiary's graduation. The refund shall be made unless the beneficiary plans to continue at a higher education institution and the participant submits a completed notice to delay benefits or notice to use trust benefits.~~

MARY JO YOUNG, Chairperson

APPROVED BY AGENCY: March 17, 1995

FILED WITH LRC: March 23, 1995 at 3 p.m.

FINANCE AND ADMINISTRATION CABINET  
(As Amended)

200 KAR 20:010. Health insurance coverage for nonstate employees.

RELATES TO: KRS 18A.2251 [1994 Ky. Acts ch. 512, §93]

STATUTORY AUTHORITY: KRS 18A.2251 [1994 Ky. Acts ch. 512, §93]

NECESSITY AND FUNCTION: The provisions of KRS 18A.2251 [the 1994 Ky. Acts ch. 512, §93,] require the Secretary of the Finance and Administration Cabinet and the Secretary of the Cabinet for Human Resources to provide a system to enroll any citizen who elects to purchase health insurance coverage pursuant to provisions of the Act. This legislation also requires that the Finance and Administration Cabinet promulgate an administrative regulation which establishes the manner in which the premiums for health insurance coverage shall be paid.

Section 1. Enrollment for Health Insurance Coverage. (1) The provisions of KRS 18A.2251 [the 1994 Ky. Acts ch. 512, §93,] provide that any citizen of the United States, who has been a Kentucky resident for the previous one (1) year period, may elect to purchase health insurance coverage as provided to state employees pursuant to KRS 18A.225 and 18A.2281. In order to purchase this health insurance coverage, an individual shall obtain a "Request for Application for Health Insurance Coverage Form" from a county field office of the Cabinet for Human Resources located in the county of the citizen's residence, or at other locations designated by the Cabinet for Human Resources, and deliver it directly to the Kentucky Department of Personnel.

(2) Upon receipt of the "Request for Application for ~~of~~ Health Insurance Coverage Form," the Department of Personnel shall mail to the applicant a "CommonHealth [Commonwealth] of Ky. Application." This application shall be filled out completely by the individual desiring to purchase health insurance coverage, and delivered to the Kentucky Department of Personnel, along with the applicant's annual or first quarterly premium for the health insurance coverage as established by the Kentucky Department of Personnel. The applicant's premium shall be paid in the manner established in Section 2 of this administrative regulation.

Section 2. Payment of Premiums. (1) An applicant for health insurance coverage provided for under the provisions of KRS 18A.2251 [the 1994 Ky. Acts ch. 512, §93,] shall pay, in advance on an annual or quarterly basis, the premium charged for this coverage as established by the Kentucky Department of Personnel.

(2)(a) If an applicant elects to pay the premium for health insurance coverage on a quarterly basis, then the applicant's advance quarterly premium shall be paid either in its entirety at the time of filing of the Department of Personnel's "CommonHealth [Commonwealth] of Ky. Application" or in monthly installments as provided for in paragraph (b) of this subsection.

(b) The applicant's quarterly premium may be paid in monthly installments, with the first two (2) monthly installments of the quarterly premium to be paid when the applicant's "CommonHealth [Commonwealth] of Ky. Application" is filed with the Kentucky Department of Personnel. ~~[Depending on whether the applicant has elected to purchase the health insurance coverage provided by KRS 18A.2281 or 18A.225,]~~ The applicant's last monthly installment of the quarterly premium shall be postmarked or received either by the Department of Personnel, for insurance purchased under KRS 18A.2281 or the commercial health insurance carrier, for insurance purchased under KRS 18A.225 by the tenth day of the month preceding the month the health insurance coverage is to take effect.

(c) Subsequent quarterly payments shall be paid in monthly installments and postmarked or received either by the Department of

Personnel or the commercial health insurance carrier by the tenth day of each month starting with the first month the health insurance is effective.

~~[(d) The last monthly installment for any quarter shall be postmarked or received either by the Department of Personnel for insurance purchased under KRS 18A.2281 or the commercial health insurance carrier, for insurance purchased under KRS 18A.2281 by the tenth day of the month preceding the first month of any quarter of health insurance coverage.]~~

(3) The applicant's payment of premiums for health insurance provided by KRS 18A.2281, shall be made by cashier's or certified check, or by money order made payable to the Kentucky State Treasurer and delivered to the Kentucky Department of Personnel, who shall deposit these funds into the Kentucky Kare Insurance Trust Fund authorized by KRS 18A.2281. Personal checks may be accepted when, in the Commissioner of Personnel's judgment, the payor is financially solvent.

(4) The applicant's initial payment of insurance premium or installments for commercial health insurance provided for under KRS 18A.225, shall be made by cashier's or certified check, or by money order made payable to the commercial health insurance company chosen by the applicant and delivered to the Kentucky Department of Personnel, who shall forward said payment to the health insurance company with a copy of the "CommonHealth [Commonwealth] of Ky. Application." Personal checks may be accepted when, in the Commissioner of Personnel determines that the drawer bank will make final payment on the check. [In judgment, the payor is financially solvent.] Subsequent quarterly payments or premium installments shall be paid directly from the applicant to the commercial health insurance company.

(5) If an applicant fails to comply with the provisions of this section, then the applicant's coverage shall not go into effect, or if already in effect, the applicant's insurance coverage shall be cancelled, at which time the installments previously paid by the applicant shall be reimbursed to the applicant within thirty (30) working days.

(6)(a) Except as provided in paragraph (b) of this subsection, the initial health insurance coverage provided by KRS 18A.2251 [the 1994 Ky. Acts ch. 512, §93,] shall not be effective until the first day of the second calendar month following the Kentucky Department of Personnel's receipt of the applicant's payment of the entire annual or quarterly premium.

(b) If the applicant elects to pay the quarterly premium on an installment basis, then the applicant's health insurance coverage shall be effective the first day of the second calendar month following the Department of Personnel's or the commercial health insurance carrier's receipt of payment of the first two (2) months installment of the quarterly premium, provided the final installment of the quarterly premium is received within the time established under subsection (2)(b) of this section ~~[Section 2(2)(d) of this administrative regulation].~~

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

(a) Kentucky Department of Personnel "Request for Application for Health Insurance" (1994);

(b) Kentucky Department of Personnel "CommonHealth [Commonwealth] of Ky. Application" (1994).

(2) This material may be inspected, obtained, or copied at the Kentucky Department of Personnel, 200 Fair Oaks Lane, Suite 511, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., EDT, Monday through Friday.

CRIT LUAllen, Secretary

APPROVED BY AGENCY: April 13, 1995

FILED WITH LRC: April 14, 1995 at 10 a.m.



FINANCE AND ADMINISTRATION CABINET  
Office of the Secretary  
(As Amended)

200 KAR 22:020. Guideline for comprehensive employment manuals required by pilot agencies under KRS 18A.430.

RELATES TO: KRS 18A.430

STATUTORY AUTHORITY: KRS ~~18A.100(1)~~ 18A.430(1)(a), (b),

(c)

NECESSITY AND FUNCTION: KRS 18A.430(1)(a) provides that pilot agencies participating in the Pilot Personnel Program authorized by KRS 18A.400 to 18A.450 shall develop comprehensive employment manuals establishing conditions of employment for employees in each organizational unit of the pilot agencies. KRS 18A.430(1)(b) requires that the employment manuals be promulgated by administrative regulation. ~~According to~~ KRS 18A.430(1)(c) provides that the head of the agency in which the pilot program is located shall be responsible for preparing the administrative regulation and submitting it to the Secretary of the Finance and Administration Cabinet for promulgation. This administrative regulation establishes a guideline to be used by the pilot agencies in the development of the employment manual prescribed by KRS 18A.430(1).

Section 1. Definition. (1) "Guideline" means the "Guideline for Comprehensive Employment Manual Required by Pilot Agencies Under KRS 18A.430".

Section 2. Guideline for Development of Employment Manual.

(1)(a) In developing the comprehensive employment manual prescribed by KRS 18A.430(1), a pilot agency participating in the Pilot Personnel Program shall use the "Guideline for Comprehensive Employment Manual Required by Pilot Agencies under KRS 18A.430" [~~("guideline") as prepared by the Finance and Administration Cabinet and the Department of Personnel.~~]

(b) The "guideline" shall be used as a model and may be modified as required by the:

1. Organizational structure of the agency participating in the Pilot Personnel Program; or

2. ~~[the]~~ Particular program for which the comprehensive employment manual is being developed.

(2) If an agency in which a pilot program is located submits a proposed administrative regulation to the Finance and Administration Cabinet for promulgation under KRS 18A.430(1)(c), the proposed administrative regulation shall include the following statement which shall be signed by the head of the agency:

"This draft has been prepared by (insert name of administrative body) in accordance with the applicable provisions of KRS Chapters 13A and 18A and is submitted for review and approval to the Secretary of the Finance and Administration Cabinet pursuant to the provisions of KRS 18A.430(1)(c)."

Section 3. ~~[2-]~~ Incorporation by Reference. (1) The "Guideline for Comprehensive Employment Manuals Required by Pilot Agencies under KRS 18A.430" (revised January 1995) is incorporated by reference.

(2) This document ~~[The "guideline"]~~ may be inspected, copied, or obtained at the Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374, Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

CRIT LUAllen, Secretary

APPROVED BY AGENCY: April 7, 1995

FILED WITH LRC: April 13, 1995 at 3 p.m.

DEPARTMENT OF AGRICULTURE  
Division of Shows and Fairs  
(As Amended)

302 KAR 15:010. Administration; state aid to local fairs.

RELATES TO: KRS 247.220

STATUTORY AUTHORITY: KRS 247.220

NECESSITY AND FUNCTION: Provides rules and administrative regulations by which the state aid to local fairs program ~~shall~~ ~~[must]~~ be administered. It explains to the Department of Agriculture, Division of Shows and Fairs, and to the local fairs their responsibilities in the program.

Section 1. General Administration. (1) The Director of the Division of Shows and Fairs in the Department of Agriculture shall only make premium allocations to the authorized agent of an incorporated local fair board that conducts a qualified local agricultural fair in compliance with KRS 247.220.

(2) Local fair boards applying for state funds shall see that a reasonable effort is made by local fair officials to develop a program that will supplement agricultural educational and promotional activities that coincide with the objectives of agencies officially charged with these responsibilities.

(3) Local fair boards seeking state assistance shall plan and conduct a qualified local agricultural fair with educational exhibits running for at least three (3) consecutive days (thirty-six (36) hours of exhibition). All fair events ~~shall~~ ~~[must]~~ be held on consecutive days with the following exceptions:

(a) Fairs may be closed on Sundays, if the local board desires; and

(b) Fairs may conduct certain events, such as harness horse racing, on separate dates providing the local board files a request to conduct the event ~~[do so]~~ with the Division of Shows and Fairs and that request is approved by the Kentucky Fair Council at the next regular meeting and thereafter transmitted to the Commissioner of Agriculture with a recommendation by the Kentucky Fair Council that the Commissioner of Agriculture approve or reject the local board's request.

(4) Local boards shall establish premiums related to the economic importance of the commodity in the area, the relative value of the exhibit and the difficulty in preparing for and showing the entry. Local boards shall establish classes based upon the Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Shows and Fairs, Uniform Classes List. ~~[The "Uniform Classes" booklet since no divisions other than those set up by this booklet will qualify for aid, but within each division, deviation will be accepted provided the additional classes are based on the participation in that area.]~~

(5) State funds shall be limited to crops, foods, domestic livestock, poultry, 4-H, FFA and FHA projects, harness horse racing and other horse events, if ~~[provided]~~ they have a good potential for profitable expansion or the improvement of the agriculture economy of the area.

(6) Ribbon colors at each local fair shall be as follows:

(a) Blue for first place;

(b) Red for second;

(c) White for third;

(d) Pink for fourth;

(e) Yellow for fifth;

(f) Green for sixth;

(g) Light green for seventh;

(h) Brown for eighth;

(i) Gray for ninth; and

(j) Light blue for tenth. ~~[Ribbon colors used at each local fair shall coincide with those adopted by the International Association of Fairs.]~~

(7) Fair boards seeking state funds shall provide adequate health facilities for exhibitors tending exhibits and for fair attendants.

(8) Fair events held at a location other than the fairgrounds may qualify for aid if such an event is held during corresponding consecutive dates with the fair and publicized in the fair's catalog as being a fair event.

Section 2. Records. (1) Requests for state assistance shall be made annually on an Initial Request for State Aid to Local Agricultural Fairs Form [appropriate forms] and mailed to the Division of Shows and Fairs by March 1. The Commissioner of Agriculture may [shall have the authority to] allow a fair to enter the program after the application deadline has passed for good cause shown.

(2) Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Shows and Fairs, Open Class and Beef Show Information Form (1995) [An appropriate information form] concerning the fair's beef and dairy, and sheep shows shall be mailed to the Division of Shows and Fairs by May 1.

(3) Fairs shall submit a draft [rough] copy of their catalog to the Division of Shows and Fairs at least forty-five (45) days before their fair. This shall include the same information required in the printed catalog, excluding advertisements. A printed copy of the fair's catalog shall be submitted no later than thirty (30) days before the start of the fair. No payment shall [can] be made before the printed catalog is received by the Division of Shows and Fairs.

(4) A complete financial statement for events previously requesting state funds shall be submitted to the Department of Agriculture prior to the second fair payment. This payment shall include [including] the second agricultural premium payment, the second harness racing payment, and the payment for horse events. This annual financial statement shall cover all crops, foods, domestic livestock, poultry, harness horse racing, other horse events, and other agricultural classes that may qualify for aid. It shall be complete and prepared in detail showing receipts and disbursements as well as the number of exhibitors and premiums awarded by fair departments. This certified, notarized statement shall be presented to the Director of the Division of Shows and Fairs within forty-five (45) days following the event and no statement shall [will] be accepted for payment after December 1.

Section 3. Entries. (1) Fairs qualifying for state funds shall provide for adult and youth divisions. Youth exhibits shall include 4-H, FFA, FHA, and may include other official groups recognized by the extension service or the Office of Secondary Vocational Education. All projects approved by these official groups may be approved for state funds. Fair boards may restrict youth participation to a particular district, county, or trade area.

(2) All exhibitors, adult and youth, shall have equal opportunity to enter open classes.

(3) Local fair boards receiving state money shall see that exhibits eligible in more than one (1) class [and] for section are exhibited only in the class [and] for section for which it best qualifies. Under no circumstances may an exhibitor show the same kind of animal or the same entry in both FFA and 4-H classes or in classes for other organized junior organizations.

(4) No more than two (2) exhibits shall be made from a household in any one (1) class except [with the exception of] official 4-H or FFA projects and where purebred animals are registered to other members of the household.

(5) All crop, domestic livestock and horse entries receiving state premium money shall conform to official show classifications adopted by the state's Fair Council, and comply with the State Board of Agriculture and the Department of Agriculture regulations. The age classification of all domestic livestock shall be listed in the official fair catalog and all classes shall conform to the standards recommended

by the various breed associations. Dairy cattle classes shall conform to the standards recommended by the Kentucky Purebred Dairy Cattle Association. English horse classes shall comply with regulations recommended by the American Horse Show Association. A western bred show shall comply with the regulations set by that specific breed and open western horse classes shall comply with the regulations set by the American Quarter Horse Show Association. Classes with less than three (3) entries each may be combined for show purposes.

(6) All domestic livestock, poultry, and horse entries shall meet the specifications of the health administrative regulations of the State Board of Agriculture as set forth in 302 KAR 20:065 relating to the exhibition of livestock in Kentucky.

Section 4. Catalog. (1) All qualified fairs shall have an official fair catalog. A rough copy of the catalog including premium lists and classes, excluding advertisements, shall be submitted to be approved by the Division of Shows and Fairs at least forty-five (45) days prior to the opening of the fair. The finished catalog shall be submitted to the Director of the Department of Agriculture's Division of Shows and Fairs no later than thirty (30) days before the fair is held.

(2) Classes advertised in the catalog shall be reviewed annually by the local fair board to make certain that competitive events are being held and that premiums offered are not out of balance with entries.

(3) The official fair catalog shall contain the following information:  
(a) The fair is "planned and conducted according to the Department of Agriculture regulations for the use of state funds."

(b) A list of fair officials and their assigned responsibilities with the following organizations being represented on the agriculture advisory board:

1. Vocational Agriculture.
2. Extension Service.
3. Farm Bureau.
4. Local Livestock Association (if one exists).
5. Local Horsemen's Association (if one exists).

(c) A schedule of events planned as a part of the fair.

(d) Local fair rules and administrative regulations including a statement to the effect that "open classes are open to all exhibitors unless otherwise specified."

(e) General information [and administrative regulations] by fair departments showing classes and premium lists.

(f) Health administrative regulations by types of livestock to be exhibited.

(g) A rule to the effect that "entries made in 4-H, FFA and FHA classes shall [must] have been produced in conjunction with an approved project sponsored by these organizations."

(4) Catalogs shall be mailed and distributed by the local fair board no later than thirty (30) days prior to the opening of the fair.

Section 5. Judges. (1) To assist with the educational objectives of each event, judges shall be encouraged to present reasons for their evaluations and decisions.

(2) No person shall be an exhibitor or act as an agent in any division or department for which he serves as a judge.

Section 6. State Allocation. (1) The Department of Agriculture's agricultural premium money shall be allocated to all approved local fairs on the basis of total money offered for approved classes in the catalog and total money spent in approved classes taken from the fair's financial statement available as indicated by fair records including catalogs. In no instance shall the total agricultural premium payment for one (1) or more fairs held annually in a single county exceed \$4,000. In addition, state money for each class shall not exceed fifty (50) percent of the total premiums awarded. The first agricultural premium payment to each fair shall [will] be made after the printed catalog is received and may [will] be up to one-fourth (1/4)



of the amount of money offered in approved classes by the local fair up to a maximum of \$2,125 [2,000]. The second agricultural premium payment shall [will] be made after the fair's financial statement is received provided all remaining requirements have been met and the necessary records submitted, and shall [will] be based on the amount of money paid for premiums and awards in approved agricultural classes up to a maximum of \$4,250 [4,000] less the amount of the first agricultural premium payment. The combination of county fairs or community fairs of a number of counties shall not be approved to justify a larger state premium payment.

(2) An additional \$1,750 [4,500] grant may be made to a qualified local agricultural fair to be used for horse events' premiums and awards. This grant is on an equal matching fund basis and is based completely on the amount of money paid in premiums and awards for horse events' classes. The payment of this grant shall [will] come after the financial statement of the fair is received by the Department of Agriculture and shall [will] be included in the fair's second fair payment. The qualified fair shall [must] submit with its financial statement, records of premiums paid, number of exhibitors, and number of entries for these horse events.

(3) The Department of Agriculture shall make available to a qualified agriculture fair, up to \$7,000 [an additional \$5,000] on an equal matching basis for harness horse racing, with a maximum of \$750 per race being matched by the department. To qualify, a fair shall [must] meet the regulations and specifications set for by 811 KAR Chapter 1 [up by the United States Trotters Association, Kentucky Harness Racing Association and the Department of Agriculture]. Harness racing payments shall [will] also be disbursed in two (2) payments, the first being one-fourth (1/4) the amount of purses offered in the printed catalog, up to a maximum of \$3,500 [2,500]. This payment shall be combined with the fair's first agricultural payment. The second harness racing payment shall [will] be based on the amount of money spent in harness racing purses, up to a maximum of \$7,000 [5,000] less the first harness racing payment, and shall [will] be included in the second fair payment, providing the fair has included sufficient information on their financial statement in regard to the harness racing results.

(4) [When the Department of Agriculture provides the total cost of premiums for a carcass class, a class for performance tested beef animals, or a dairy production class, all classes, rules, and facilities for the respective contest must be approved by the department. Carcass evaluations for meat animals shall be conducted in accordance with standards recommended by the Reciprocal Meats Conference and approved by the Meats Section of the University of Kentucky. Carcass contests financed by state funds shall be conducted in adequate facilities and they should permit spectators to view the carcasses and receive the full educational opportunity. Contest rules for local fairs shall specify that purebred animals and grades will show together. Carcass contests or production or performance classes that will make the greatest contribution to the agriculture of an area and that have the necessary facilities available for their effective operation shall be chosen by fair officials.]

(5) The director of the department's show and fair program shall provide from the appropriation for county fairs an attractive trophy that will be rotated and engraved and presented annually to the local fair that has [had] made the most progress in twelve (12) months. In addition, appropriate engraved plaques shall be presented to the first, second, and third placed fairs making the most progress in the twelve (12) months period and also for the most outstanding new fair in the program for that year. The presentation shall be made by the Department of Agriculture's Fair Council based on records submitted to the department and substantiated by other evidence.

Section 7. Building Program. (1) A qualified local agricultural fair may [can] make application for an additional \$3,000 grant of state funds to be used for the establishment of new buildings and facilities or for improvement to existing facilities. Applications for the building

program are due in the Division of Shows and Fairs' office no later than June 1 of the year that the work is to be completed, and it shall [must] be preceded by a request for state aid application. [Such] Grants shall be on an equal matching basis with the local fair board matching the amount of the state grant. The application form Request for State Aid for the Building Program is incorporated by reference. The form is effective October 12, 1990, and may be obtained at the Division of Shows and Fairs, A-3 Suburban Park, Frankfort, Kentucky 40601, during regular working hours (from 8 a.m. to 4:30 p.m.). [In no event shall the] Payments for facilities shall not result in a decrease in the approved agricultural classes or premiums being offered in the fair catalog.

(2) The buildings and facilities shall [must] be used primarily in conjunction with the qualified local agricultural fair and shall [must] either be constructed on land owned by the local fair board or on land that the fair group holds a renewable lease.

(a) Some suggested items that may qualify are:

1. The purchase of land for a fairground or the purchase of land adjoining the original grounds;
2. The construction of new buildings;
3. Repair of any existing facilities on the fairgrounds;
4. Grandstands or bleachers used to seat people during the fair;
5. Grading and improvement work done to an existing track or show ring; and
6. Loading chutes, wash racks or tie-outs for livestock.

(b) Other items not listed in paragraph (a) of this subsection [above] may qualify for state assistance provided the local fair provides evidence to the Department of Agriculture that the item meets the minimum requirements and is justifiable.

(3) [Applying for state assistance.] Application for state assistance shall [must] be made in writing by the qualified local agricultural fair to the Division of Shows and Fairs, Department of Agriculture, by June 1 of the year that the work is to be completed. The application shall [should] include a description of the proposed buildings or improvements to be made, use to be made of these improvements, itemized list of approximate cost, and the date to be completed. Applications shall [must] be available from the Department of Agriculture, Division of Shows and Fairs, and shall [will] be distributed after fair program applications are received or upon request.

(4) [Financial report of building program.] Upon acceptance of a qualified local fair's request for assistance by the Department of Agriculture, the local fair shall [will] be supplied a financial report form. The financial report shall [should] contain a description of the buildings or improvements and an itemized cost [of the same]. This notarized report shall be presented to the Division of Shows and Fairs within forty-five (45) days following the completion of the building or repair work. No report shall [will] be accepted for payment after December 1.

(5) [When building program payments will be made.] Building program payments shall [will] be disbursed in two (2) payments, with the first payment representing one-fourth (1/4) of the total amount submitted on the fair's building report up to a maximum of \$1,500. The second building program payments shall [will] be made after all financial statements and building reports have been received in the office of the Division of Shows and Fairs and the total amount required for all grants is known. [At this point,] The second building payment amount shall be adjusted on an equal basis to bring the total grants in line with the funds available in the Aid to Fairs Program budget.

Section 8. Effect of Overspending of Fair Program Budget. If [In the event that] the local agricultural fair program payments exceed the amount of money budgeted for the total fair program, reductions shall [will] be made in payments as recommended by the fair council and as determined by the Commissioner of Agriculture.

Section 9. (1) The following documents are incorporated by

reference:

(a) Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Shows and Fairs, Uniform Classes List;

(b) Initial Request for State Aid to Local Agricultural Fairs Form (1995);

(c) Kentucky State Aid to Local Agricultural Fairs Program, Kentucky Department of Agriculture, Division of Shows and Fairs, Open class and Beef Show Information Form; and

(d) 1993 Charter Bylaws, Rules and regulations of the U.S. Trotting Association.

(2) The documents referred to in subsection (1) of this section may be inspected, copied or obtained at the Office of the Department of Agriculture, Commissioner's Office, Capital Plaza Tower, Frankfort, Kentucky 40601, from 8 a.m. to 4:30 p.m., Monday through Friday.

ED LOGSDON, Chairman

APPROVED BY AGENCY: March 28, 1995

FILED WITH LRC: March 29, 1995 at 9 a.m.

**GENERAL GOVERNMENT CABINET  
Department of Agriculture  
Division of Pesticides  
(As Amended)**

**302 KAR 31:015. Certification.**

RELATES TO: KRS Chapter 217B, **7 USCA 135**

STATUTORY AUTHORITY: KRS 217B.050

NECESSITY AND FUNCTION: KRS 217B.050 authorizes the Department of Agriculture to adopt rules and administrative regulations relating to the use and application of pesticides. This administrative regulation establishes a system of certification for persons who purchase, use, or apply restricted-use pesticides pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act of 1972, **7 USCA 135**, as amended.

Section 1. Applicability. No person may purchase, use or apply restricted-use pesticides unless that person is certified in a category consistent with such purchase, use, or application, as provided in this administrative regulation or is acting under the direct supervision of a person so certified.

Section 2. Certification. Certification under this administrative regulation may be obtained from the department as a private applicator pursuant to 302 KAR 31:005, Section 9, or in the following categories of restricted-use pesticide use or application:

(1) Agricultural pest control. This category includes:

(a) Plant. This category includes persons using or supervising the use of restricted-use pesticides in production of agricultural crops including but not limited to tobacco, peanuts, cotton, feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, as well as on grasslands and noncrop agricultural lands.

(b) Animal. This category includes persons using or supervising the use of restricted-use pesticides on animals, including but not limited to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places on or in which animals are confined. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.

(2) Forest pest control. This category includes persons using or supervising the use of restricted-use pesticides in forests, forest nurseries, and forest seed-producing areas.

(3) Ornamental and turf pest control. This category includes

persons using or supervising the use of restricted-use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.

(4) Seed treatment. This category includes persons using or supervising the use of restricted-use pesticides on seeds.

(5) Aquatic pest control. This category includes persons using or supervising the use of any restricted-use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in subsection (8) of this section.

(6) Right-of-way pest control. This category includes persons using or supervising the use of restricted-use pesticides in the maintenance of public roads, electric powerlines, pipelines, railway rights-of-way or other similar areas.

(7) Industrial, institutional, structural, and health-related pest control. This category covers all applicators using or supervising the use of restricted-use pesticides in, on, or around food handling establishments, human dwellings, institutions such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products. Industrial, institutional, structural and health-related pest control is divided into the following subcategories:

(a) Structural pest control certification covers the use of restricted-use pesticides in the control of general pests and wood-destroying organisms by all means other than fumigation, and covers all elements of "wood-destroying organism certification" in paragraph (c) of this subsection.

(b) Structural fumigation certification covers the use of restricted-use pesticides in the form of poisonous gases.

(c) Wood-destroying organism certification covers the use of restricted-use pesticides to control wood-destroying organisms only.

(d) General pest certification covers the use of restricted-use pesticides to control general pests only.

(8) Public health pest control. This category includes state, federal or other governmental employees using or supervising the use of restricted-use pesticides in public health programs for the management and control of pests having medical and public health importance.

(9) Regulatory pest control. This category includes state, federal or other governmental employees who use or supervise the use of restricted-use pesticides in the control of regulated pests.

(10) Demonstration and research pest control. This category includes:

(a) Individuals who demonstrate to the public the proper use and techniques of application of restricted-use pesticides or supervise such demonstration. Included in this group are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs; and

(b) Persons conducting field research with pesticides, who in so doing, use or supervise the use of restricted-use pesticides. This group includes state, federal, commercial, and other persons conducting field research on or utilizing restricted-use pesticides.

Section 3. General Requirements. To obtain certification, a person shall pay an application fee of twenty-five (25) dollars, submit a completed application form specifying the category or categories in which certification is requested, and satisfactorily demonstrate competence in the use and handling of pesticides in those categories. Competency in the use and handling of pesticides shall be determined on the basis of an [written] examination[e], and, as appropriate, performance testing, based upon standards set forth below. Such examination and testing shall include the general standards applicable to all categories and the additional standards specifically identified for each category or subcategory in which a person desires to be certified.

Section 4. General Standards of Competency. All persons shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides, including standards for the supervision of noncertified persons as established by administrative regulation. Testing shall be based on examples of problems and situations appropriate to the particular category or subcategory of the person's requested certification and the following areas of competency:

- (1) Label and labeling comprehension:
  - (a) The understanding in instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labeling;
  - (b) Classification of the product, general or restricted;
  - (c) Necessity for use consistent with the labeling.
- (2) Safety factors, including:
  - (a) Pesticides' toxicity, hazard to man and common exposure routes;
  - (b) Common types and causes of pesticide accidents;
  - (c) Precautions necessary to guard against injury to applicator and other individuals in or near treated areas;
  - (d) Need for and use of protective clothing and equipment;
  - (e) Symptoms of pesticide poisoning;
  - (f) First aid and other procedures to be followed in case of a pesticide accident;
  - (g) Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticide containers.
- (3) The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:
  - (a) Weather and other climatic conditions;
  - (b) Types of terrain, soil, or other substrata;
  - (c) Presence of fish, wildlife, and other nontarget organisms;
  - (d) Drainage patterns.
- (4) Pest identification, including consideration of the following factors:
  - (a) Common features of pest organisms and characteristics of damage necessary to facilitate pest recognition;
  - (b) Pest maturation and development as it may be related to the problem of identification and control.
- (5) Pesticides, including consideration of the following factors:
  - (a) Types of pesticides;
  - (b) Types of pesticide formulations;
  - (c) Compatibility, synergism, persistence and animal and plant toxicity of the formulation;
  - (d) Hazards and residues associated with use;
  - (e) Factors which influence effectiveness or lead to such problems as resistance to pesticides;
  - (f) Dilution procedures.
- (6) Equipment, including consideration of the following factors:
  - (a) Types of pesticide application equipment and advantages and limitations of each;
  - (b) Uses, maintenance and calibration of equipment.
- (7) Application techniques; factors including:
  - (a) Methods used to apply various formulations of pesticides, solutions, and gases together with a knowledge of which technique or application to use in a given situation;
  - (b) Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse;
  - (c) Prevention of drift and pesticide loss into the environment.
- (8) Laws and regulations. Knowledge of pertinent aspects of the Federal Environmental Pesticides Control Act, 7 USCA 147a, KRS Chapter 217, KRS 217B.010 to 217B.260, and where applicable, KRS 217B.500 to 217B.585, plus administrative regulations promulgated pursuant to those chapters.

Section 5. Specific Standards of Competency. In addition to meeting the requirements of Sections 3 and 4 of this administrative

regulation, persons requesting certification for a specific category must demonstrate competence related to that category as follows:

(1) Agricultural. This category is subdivided as follows:

(a) Plant. Persons requesting agricultural plant certification must demonstrate practical knowledge of crops and specific pests of those crops on which they may be using pesticides. Practical knowledge is required concerning soil and water problems, preharvest intervals, reentry intervals, phytotoxicity, and potential for environmental contamination, nontarget injury and community problems resulting from the use of pesticides in agricultural areas.

(b) Animal. Persons requesting agricultural animal certification must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicities and residue potentials, since host animals will frequently be used for food. Further, the person must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.

(2) Forestry. Persons requesting forest certification shall demonstrate practical knowledge of types of forests, forest nurseries, and seed production in the Commonwealth and the pests involved therein. They should possess practical knowledge of the cyclic occurrence of certain pests and their specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitation and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintentional effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

(3) Ornamental and turf. Persons requesting ornamental and turf certification shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pets, and other domestic animals.

(4) Seed treatment. Persons requesting seed certification shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting, and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels as well as proper disposal of unused treated seeds.

(5) Aquatic. Persons requesting aquatic certification shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. They shall also demonstrate practical knowledge of the principles of limited-area application.

(6) Right-of-way. Persons requesting right-of-way certification shall demonstrate practical knowledge of a wide variety of environments, since rights-of-way can traverse may different terrains, including waterways. They shall demonstrate practical knowledge of problems of run-off, drift, and excessive foliage destruction and the ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for

containment of these pesticides within the right-of-way area, and the impact of their application activities upon the adjacent areas and communities.

(7) Industrial, institutional, structural and health-related pest control. This category is subdivided as follows:

(a) Structural pest control certification. Persons requesting certification in this subcategory shall demonstrate practical knowledge of a wide variety of pests including general pests and wood-destroying organisms. This practical knowledge shall include their life cycles, types of formulations appropriate for their control, minimum standards of application and methods of application that avoid contamination of habitat and exposure of people and pets. Since human exposure, including babies, pregnant women, and elderly people, is frequently a potential problem, applicants must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure to the various situations encountered in this category. Because health-related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions, particularly related to this activity.

(b) Structural fumigation certification. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of those pests for which treatment by fumigation is an appropriate control technique. This practical knowledge shall include their life cycles, fumigants appropriate for their control and alternative control techniques. Because of the potential dangers inherent in the use of fumigant gases, the applicant shall demonstrate knowledge of the dangers involved and the safety precautions established by these administrative regulations and by good operating practice.

(c) Wood-destroying organism pest control. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of wood-destroying organisms, formulations appropriate for their control, minimum standards of application established by administrative regulations, potential dangers and effective methods of application which minimize risks to persons and to the environment.

(d) General pest control. Persons requesting certification in this subcategory shall demonstrate a practical knowledge of a wide variety of pests including but not limited to anthropoids, mollusks, annelid worms, rodents or other pestiferous vermin, vertebrate animals, and fungi. This practical knowledge shall include their life cycles, types of formulations appropriate for their control, minimum standards of application and methods of application that avoid contamination of habitat and exposure of people and pets. Since human exposure, including babies, pregnant women, and elderly people, is frequently a potential problem, applicants must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure to the various situations encountered in this category. Because health-related pest control may involve outdoor applications, applicators must also demonstrate practical knowledge of environmental conditions, particularly related to this activity.

(8) Public health. Persons requesting public health certification shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized and appropriate life cycles and habitats be understood as a basis for control strategy. These applicants shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such nonchemical control methods as sanitation, waste disposal and drainage.

(9) Regulatory. Persons applying for certification in this category shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of

relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

(10) Demonstration and research:

(a) Persons demonstrating the safe and effective use of pesticides to other persons and the public shall meet comprehensive standards reflecting a broad spectrum of pesticide use. Many different pest related problem situations will be encountered in the course of activities associated with demonstration. Practical knowledge of problems, pests, and population levels occurring in each demonstration situation is also required. Further, such persons should demonstrate an understanding of pesticide-organism interactions and the importance of integrating pesticide use with other control methods. In general, persons conducting demonstration pest control work shall possess a practical knowledge of all of the standards detailed in this administrative regulation. In addition, they shall meet the specific standards required under subsections (1) through (10) as may be applicable to their particular activities.

(b) Persons conducting field research or method improvement work with pesticides shall be required to demonstrate knowledge of general and specific standards applicable to their particular activities, or alternatively, to meet the more inclusive requirements listed under this subsection.

Section 6. Aerial Certification. Persons desiring to apply restricted-use pesticides using aircraft shall obtain aerial certification in addition to certification in the appropriate category of pesticide use. Additional standards shall include the possession by aerial applicators of special knowledge of aerial application equipment and of particular expertise with regard to calibration of that equipment. Their knowledge shall extend to such areas as spray efficiency testing, field flight patterns, swath marking, turning procedures and subsequent considerations, awareness of obstacles and obstructions, and personal safety of pilot, flagman, and ground crew. Knowledge should also include information that is commonly on preflight checklists of spray personnel.

Section 7. License Examination. (1) General. The examination administered by the department for licenses to do business as pesticide applicators, pesticide operators, and public operators shall incorporate the certification requirements for the requested categories. A person obtaining a pesticide applicator, pesticide operator, or public operator license after the effective date of this administrative regulation, shall be certified to purchase, use, or apply restricted-use pesticides in the categories for which the person was tested.

(2) Structural. The examinations administered by the department pursuant to KRS 217B.530 and 302 KAR 31:025 for licenses to do business as structural pest control applicators, structural pest control managers, structural fumigation applicators, and structural fumigation managers shall contain all the requirements for certification to apply restricted-use pesticides under this section. Should a person obtain a license to do business in one or more of the above categories, then that person shall be certified to purchase, use or apply restricted-use pesticides in the appropriate subcategory of industrial, institutional, structural, and health-related pest control.

Section 8. Certification Maintenance. To maintain certification, each person certified to purchase, use or apply restricted-use pesticides, other than a private applicator, shall in any five (5) year period, attend at least two (2) training programs approved by the department in the use and application of pesticides, with the exception of seed treatment applicators who shall attend one (1) training course. Training received before the promulgation of these rules and administrative regulations will be eligible for retroactive credit toward certification maintenance.

Section 9. Credentials. (1) When a person meets all the requirements to obtain a license to do business under KRS 217B.010 to 217B.260 or under KRS 217B.500 to 217B.585, the department shall issue that person a document signifying that the person is licensed to do business in the category for which a person qualifies.

(2) When a person meets all the requirements to obtain certification to purchase, use or apply restricted-use pesticides, then the department shall issue that person a document signifying that the person is certified to purchase, use or apply restricted-use pesticides in the categories for which the person qualifies.

(3) When a person qualifies for certification incident to qualification for a license to do business, then the department shall issue that person two (2) documents. One (1) document shall be the license to do business. The other document shall be the certification to purchase, use or apply restricted-use pesticides.

(4) A certification to purchase, use or apply restricted-use pesticides issued under this administrative regulation is separate and distinct from any licenses to do business issued under KRS 217B.010 to 217B.260 or under KRS 217B.500 to 217B.585. A certification may be granted or denied, or modified, suspended, or revoked independent of the grant or denial, modification, suspension, or revocation of any license to do business. In a like manner, any license to do business may be modified, suspended, or revoked independent of the grant or denial, modification, suspension, or revocation of any certification.

ED LOGSDON, Commissioner

APPROVED BY AGENCY: February 15, 1995

FILED WITH LRC: February 15, 1995 at 10 a.m.

**ECONOMIC DEVELOPMENT CABINET**  
**Kentucky Economic Development**  
**Finance Authority**  
**(As Amended)**

**307 KAR 2:010. Kentucky Jobs Development Act Program**  
**[General operations].**

RELATES TO: KRS 154.24-010 through 154.24-150 ~~[460]~~

STATUTORY AUTHORITY: KRS 154.24-040(7)

NECESSITY AND FUNCTION: This administrative regulation is necessary to set out the application process, hearing procedure and project selection criteria for the Kentucky Jobs Development Act ~~[Authority Tax Credit Incentive]~~ Program established pursuant to KRS 154.24-010 through 154.24-150 ~~[460]~~.

Section 1. Definitions. (1) "Act" means KRS 154.24-010 through KRS 154.24-150 ~~[460]~~.

(2) "Approved company" is defined in KRS 154.24-010.

(3) "Assessment" is defined in KRS 154.24-010.

(4) "Authority" is defined in KRS 154.24-010

(5) "Commonwealth" is defined in KRS 154.24-010.

(6) "Economic development project" is defined in KRS 154.24-010.

(7) "Eligible company" means a company defined in KRS 154.24-010 which meets the requirements of this administrative regulation.

(8) "Full-time job" means a job for which an employee works, and is paid for, a minimum of thirty (30) hours per calendar week.

(9) "Inducements" is defined in KRS 154.24-010.

(10) "KRS" means the Kentucky Revised Statutes, as they may be amended from time to time.

(11) "Rent" is defined in KRS 154.24-010.

(12) "Service or technology" is defined in KRS 154.24-010.

(13) "Start-up costs" is defined in KRS 154.24-010.

Section 2. Service or Technology; Excluded Classifications. (1) "Service or technology" defined in KRS 154.24-010 shall not include

the following classifications listed by division in the index of the "Standard Industrial Classification Manual" published by the United States Office of Management and Budget and incorporated by reference in Section 6 ~~[7]~~ of this administrative regulation:

(a) Division A. Agriculture, forestry, and fishing;

(b) Division B. Mining;

(c) Division C. Construction; and

(d) Division D. Manufacturing.

(2) Notwithstanding classifications excluded by subsection (1) of this section, those service and technology activities of a company engaged in an ineligible activity may be approved for the Kentucky Jobs Development Act ~~[Authority Tax Credit Incentive]~~ Program if the company's service and technology activity:

(a) Complies with the requirements of this administrative regulation;

(b) Is operated by the company in ~~[Operates as]~~ a separate division; and

(c) Is approved by the authority.

Section 3. Kentucky Jobs Development Act ~~[Authority Tax Credit Incentive]~~ Program. (1) Companies wishing to participate in the Kentucky Jobs Development Act ~~[Authority Tax Credit Incentive]~~ Program shall file an application with the authority which shall contain:

(a) Documentation and certification required pursuant to KRS 154.24-090(1). Documentation of services provided for persons located outside the Commonwealth ~~[This documentation]~~ shall include the annual gross revenues directly generated from the economic development project. In the case of those economic development projects which for purposes of the approved company and in accordance with generally accepted accounting principles do not generate revenues, such documentation shall include the annual gross revenues generated by the entity for which the services from the economic development project are provided;

(b) Information required pursuant to KRS 154.24-090(2), (3) and (4);

(c) A list of the competitors of the applicant in the Commonwealth;

(d) Notice that a \$500 nonrefundable application fee payable to the authority shall be submitted with the application;

(e) A brief history of the business and description of the project, including description of service or technology activities;

(f) A letter of support from the appropriate local elected officials, including an acknowledgment that the local community is supportive of the job assessment incentive;

(g) Notice that an administrative fee of one-tenth (.1) of one (1) percent of the estimated approved costs for the entire period, with a minimum administrative fee of \$1,000 in addition to the \$500 application fee, is payable upon execution of the service and technology agreement. If the approved costs, as finally determined, are adjusted upward, the administrative fee shall be increased to include the increase;

(h) Notice of the one (1) time \$2,500 fee required by KRS 154.35-042(1); [Notice that for companies applying on or before December 31, 1995, a one (1) time fee of \$2,500 is due upon execution of the service and technology agreement for the benefit of the Kentucky Research and Development Infrastructure Fund;]

(i) Notice of the additional five (5) percent fee required by KRS 154.35-042(2); [Notice that for companies applying on or after January 1, 1996, an annual fee shall be paid to the State Treasurer in an amount equal to five (5) percent of the total amount of the tax credits and wage assessments taken by the companies for their previous fiscal years under the service and technology agreements entered into pursuant to KRS 154.24-120;]

(j)1. Notice that a completed Economic Development Incentive Disclosure Statement and Benefit Analysis Data Form shall be submitted as a part of the application;

2. The Disclosure Statement and Data Form are incorporated by reference in Section 6 of this administrative regulation; [Notice

~~that a completed Economic Development Incentive Disclosure Statement and Benefit Analysis Data Form shall be submitted with the application;~~

(k) ~~((h))~~ Projected costs and a breakdown of those costs, including:

1. Annual rent of the building or the fair rental value if the building is being purchased;

2. Start-up costs as of project completion, including:

a. Cost of furnishing and equipping the building for ordinary business functions, including:

(i) ~~((b))~~ Computers;

(ii) ~~((c))~~ Nonrecurring costs of fixed telecommunication equipment;

(iii) ~~((d))~~ Furnishing; and

(iv) ~~((e))~~ Office equipment; and

b. ~~((f))~~ Relocation costs;

(l) ~~((i))~~ For the ten (10) year period of the financial assistance:

1. The annual estimated wages to be paid;

2. The annual wage assessment; and

3. The annual income tax credit;

(m) ~~((j))~~ The current number of jobs at the project location, both full time and part time;

(n) ~~((k))~~ The ~~increase in the~~ number of new full-time and part-time jobs to be created at the project location within one (1) year after the date of the final resolution authorizing the economic development project ~~after an eighteen (18) month period~~;

(o) ~~((l))~~ The total projected number of full-time and part-time jobs that will exist at the project within one (1) year after the date of the final resolution authorizing the economic development project ~~projected two (2) years after project completion~~;

(p) ~~((m))~~ The number of skilled, semiskilled, managerial and technical jobs created by the projects.

(2) Pursuant to KRS 154.24-100 the authority may preliminarily approve eligible companies after consideration of the application for the Kentucky Jobs Development Act ~~Authority Tax Credit Incentive~~ Program if it determines the company meets all the requirements of the Act and this administrative regulation.

Section 4. Hearing Procedure. (1) The authority shall appoint a hearing agent and hold at least one (1) public hearing to solicit public comments and at the hearing the company shall address the criteria in KRS 154.24-090.

(2) The hearing shall be held in Frankfort and notice of the hearing shall include the date, time and precise location, including street address, where the hearing shall be held.

(3) The public shall be afforded the opportunity to present evidence and comment on the application at the public hearing.

(4) Public hearings shall be conducted informally to allow reasonable commentary on the application.

(5) Public hearings shall be tape recorded by the authority and copies made available to the public at a cost which shall not exceed the expense of making the copy.

(6) The hearing agent shall summarize the comments offered at the public hearing and shall submit the summary to the authority for its consideration of whether to designate the eligible company as an approved company.

(a) The hearing agent shall not express an opinion about whether the eligible company should be designated by the authority as an approved company.

(b) Two (2) copies of the report of the hearing agency shall be completed and provided to the authority at least ten (10) days prior to its meeting set to consider designating the eligible company as an approved company.

~~[Section 5. Consent of Authority under KRS 154.24-150. Before any service and technology agreement shall become effective, the requirements of KRS 154.24-150 shall be met. Prior consent of the authority shall be required for any service benefit or in-kind contribu-~~

~~tion proposed to be offered by the legislative body of the local jurisdiction pursuant to KRS 154.24-150(2).]~~

Section 5 ~~[6-]~~ Service and Technology Agreement Contents. The authority may require the following additional information as a part of the negotiated terms of a service and technology agreement pursuant to KRS 154.24-120:

(1) Annual, quarterly or monthly progress reports to the authority;

(2) Annual, quarterly or monthly certifications to assure compliance with KRS 154.24-090(1), 154.24-120(2)(b) and 154.24-140(4);

(3) Annual certifications of rental payments referred to in KRS 154.24-130(2);

(4) Annual, quarterly or monthly financial reports to the authority; and

(5) Access to the approved company's records.

Section 6 ~~[7-]~~ Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) The "Application for Kentucky Jobs Development Act Program" which also includes the "Economic Development Incentive Disclosure Statement" and "Benefit Analysis Data Form" (March 1995); and

(b) The "Standard Industrial Classification Manual" (1987 ed) from the United States Office of Management and Budget. [The "Application for [the] Kentucky Jobs Development Act [Authority Tax Credit Incentive] Program" (March 1995 [1993]) and the "Standard Industrial Classification Manual" (1987 ed.) from the United States Office of Management and Budget are incorporated by reference.]

(2) Copies of the "Manual" and the form of "Application" referred to in subsection (1) of this section may be inspected, copied or obtained at the offices of the Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

HAROLD G. DORAN, JR., Chairman

APPROVED BY AGENCY: April 13, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

## ECONOMIC DEVELOPMENT CABINET (As Amended)

### 307 KAR 3:010. Kentucky Industrial Revitalization Act Tax Credit Program ~~[General operations].~~

RELATES TO: KRS 154.26-010 through 154.26-100

STATUTORY AUTHORITY: KRS 154.26-030(5)

NECESSITY AND FUNCTION: This administrative regulation is necessary to set out the application process, hearing procedure and project selection criteria for the Kentucky Industrial Revitalization Act ~~Authority~~ Tax Credit ~~Incentive~~ Program established pursuant to KRS 154.26-010 through 154.26-100.

Section 1. Definitions. (1) "Act" means KRS 154.26-010 through 154.26-100.

(2) "Agreement" is defined in KRS 154.26-010.

(3) "Approved company" is defined in KRS 154.26-010.

(4) ~~((3))~~ "Authority" is defined in KRS 154.26-010.

(5) ~~((4))~~ "Commonwealth" is defined in KRS 154.26-010.

(6) ~~((5))~~ "Economic revitalization project" is defined in KRS 154.26-010.

(7) ~~((6))~~ "Eligible company" is defined in KRS 154.26-010.

(8) ~~((7))~~ "Inducements" is defined in KRS 154.26-010.

(9) ~~((8))~~ "Manufacturing" is defined in KRS 154.26-010.

Section 2. Eligibility Standards. (1) The authority shall approve eligible companies based upon the:



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(a) Information supplied to the authority in the application, pursuant to Section 3(2)(a) through (i) of this administrative regulation; and

(b) Comments received at the public hearing pursuant to Section 4(1) of this administrative regulation.

(2) In determining whether to approve an eligible company for the Kentucky Industrial Revitalization Act ~~[Authority]~~ Tax Credit ~~[Incentive]~~ Program the authority shall give greatest weight to the:

(a) Information supplied in the application pursuant to Section 3(2)(a) through (c) of this administrative regulation; and

(b) Comments received at the public hearing pursuant to Section 4(1) of this administrative regulation.

Section 3. Kentucky Industrial Revitalization Act ~~[Authority]~~ Tax Credit ~~[Incentive]~~ Program. (1) Companies that wish to participate in the Kentucky Industrial Revitalization Act ~~[Authority]~~ Tax Credit ~~[Incentive]~~ Program shall file an application with the authority.

(2) The application shall contain the following information:

(a) The eligible company's need for the economic revitalization project, and the reasons for the intent of the eligible company to close its manufacturing facility. As a part of this needs analysis the eligible company shall provide to the authority ~~the company's~~:

1. The company's financial history;

2. Written evidence of support in the community, including a letter of ~~the~~ support from ~~of~~ the local elected officials, including an acknowledgment that the local community is supportive of the job assessment inducement ~~[developmental authority or chamber of commerce]~~; and

3. Written evidence of the projected cost of the project, including:

- a. Building improvements;
- b. Equipment purchase or upgrade;
- c. Machinery purchase or upgrade;
- d. Additional inventory required; and
- e. Additional personnel required;

(b) The specific projected amount and timing of capital investment by the eligible company that will result in financial stability for the manufacturing facility of the eligible company. The authority shall, as a part of its analysis of projected amount and timing of capital investment review the information and documentation provided in the application pursuant to paragraph (a)3 of this subsection;

(c) The projected number of employees to be retained and to be hired in the future at the manufacturing facility of the eligible company over a five (5) year period from the commencement date of the ~~[revitalization]~~ agreement and as a result of the receipt of the inducements. As a part of its analysis pursuant to this paragraph the authority shall consider the following information:

1. The current number of jobs at the project location, both full time and part time;
2. The increase in the number of full-time and part-time jobs at the project location after an eighteen (18) month period;
3. The total number of full-time and part-time jobs projected two (2) years after project completion;
4. The number of skilled, semiskilled, unskilled, managerial and technical jobs created by the project; and
5. The number of full-time and part-time jobs retained by the project;

(d) Evidence, based upon the financial information provided pursuant to this section, that except for a substantial investment in the economic revitalization project, assisted by the inducements authorized by the act, the eligible company will close its manufacturing facility, permanently lay off its employees and cease operations;

(e) A detailed description of the company's productivity, efficiency and financial stability as required by KRS 154.26-080(4);

(f) A list of alternatives to closing the manufacturing facility available to the eligible company pursuant to KRS 154.26-080(4);

(g) Copies of the eligible company's financial statements for the most current fiscal year end;

(h) The lending source for the project; ~~and]~~

(i) Notice that a \$500 nonrefundable application fee payable to the authority shall be submitted with the application;

(j) Notice that an administrative fee of one-tenth (.1) of one (1) percent of fifty (50) percent of the estimated approved costs for the entire period, with a minimum administrative fee of \$1,000 in addition to the \$500 application fee, is payable upon execution of the agreement;

(k) Notice of the one (1) time \$2,500 fee required by KRS 154.35-042(1); [Notice that for companies applying on or before December 31, 1995, a one (1) time fee of \$2,500 is due upon execution of the agreement for the benefit of the Kentucky Research and Development Infrastructure Fund; and]

(l) Notice of the additional five (5) percent fee required by KRS 154.35-042(2); [Notice that for companies applying on or after January 1, 1996, an annual fee shall be paid to the State Treasurer in an amount equal to five (5) percent of the total amount of the tax credits and wage assessments taken by the companies for their previous fiscal years under the revitalization agreements entered into pursuant to KRS 154.26-090;]

(m)1. Notice that a completed Economic Development Incentive Disclosure Statement and Benefit Analysis Data Form shall be submitted as a part of the application;

2. The Disclosure Statement and Data Form are incorporated by reference in Section 6 of this administrative regulation; [Notice that a completed Economic Development Incentive Disclosure Statement and Benefit Analysis Data Form shall be submitted with the application.]

Section 4. Hearing Procedure. (1) The authority shall appoint a hearing agent and hold at least one (1) public hearing to solicit public comments and at the hearing the consultant referred to in KRS 154.26-080 shall address the standards in KRS 154.26-080.

(2) The hearing shall be held in Frankfort and notice of the hearing shall:

(a) Be given pursuant to KRS 424.130; and

(b) Include the date, time and precise location, including street address, where the hearing shall be held.

(3) The public shall be afforded the opportunity to present evidence and comment on the application at the public hearing.

(4) Public hearings shall be conducted informally to allow reasonable commentary on the application.

(5) Public hearings shall be tape recorded by the authority and copies made available to the public at a cost which shall not exceed the expense of providing the copy.

(6) The hearing agent shall summarize the comments offered at the public hearing and shall submit the summary to the authority for its consideration of whether to designate the eligible company as an approved company.

(a) The hearing agent shall not express an opinion about whether the eligible company should be designated by the authority as an approved company.

(b) Two (2) copies of the report of the hearing agent shall be completed and provided to the authority at least ten (10) days prior to its meeting set to consider designating the eligible company as an approved company.

Section 5. ~~[Revitalization]~~ Agreement Contents. The authority may require the following additional information as a part of the negotiated terms of an ~~[revitalization]~~ agreement pursuant to KRS 154.26-090:

(1) Annual, quarterly or monthly progress reports to the authority;

(2) Annual, quarterly or monthly financial reports to the authority;

and

(3) Access to the approved company's records.

Section 6. Incorporation by Reference. (1) The "Application for Kentucky Industrial Revitalization Act Program" which also

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includes the "Economic Development Incentive Disclosure Statement" and "Benefit Analysis Data Form" March 1995) is incorporated by reference. [The "Application for the Kentucky Industrial Revitalization Act (Authority) Tax Credit (Incentive) Program" (March 1995 (1993)) is incorporated by reference.]

(2) Copies of the form of application may be inspected, copied or obtained at the offices of the Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

HAROLD G. DORAN, JR., Chairman

APPROVED BY AGENCY: April 13, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

## DEPARTMENT OF CORRECTIONS (As Amended)

### 501 KAR 6:120. Blackburn Correctional Complex.

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 commissioner to promulgate [adopt, amend or rescind] administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association. [These administrative regulations are in conformity with these provisions.]

Section 1. (1)(a) "Blackburn Correctional Complex Policies and Procedures", (April 13, 1995), is incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Blackburn Correctional Complex Policies and Procedures: [Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised April 13, 1995 (December 14, 1994), are incorporated by reference and shall be referred to as Blackburn Correctional Complex and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601 or may be reviewed at the Office of General Counsel week-days 8 a.m. to 4:30 p.m.]

BCC 01-05-01 Duty Officer and Acting Warden  
BCC 01-07-01 Extraordinary Occurrence Reports  
BCC 01-09-01 Legal Assistance for Staff  
BCC 01-11-01 Roles of Consultants, Contract Employees, Volunteers and Employees of Other Agencies  
BCC 01-13-01 Relationships with Public, Media, and Other Agencies  
BCC 01-15-01 Internal Affairs Office  
BCC 01-16-01 Tours of Blackburn Correctional Complex  
BCC 01-19-01 Inmate Access to BCC Staff  
BCC 02-01-01 Inmate Canteen [(Amended 12/14/94)]  
BCC 02-02-01 Fiscal Responsibility  
BCC 02-02-02 Fiscal Management: Accounting Procedures [(Amended 12/14/94)]  
BCC 02-02-03 Fiscal Management: Checks  
BCC 02-02-04 Fiscal Management: Budget  
BCC 02-02-05 Fiscal Management: Insurance  
BCC 02-02-06 Fiscal Management: Audits  
BCC 02-04-01 Billing Method for Health Services Staff Paid by

Personal Service Contract  
BCC 02-05-01 Property Inventory  
BCC 02-06-01 Purchasing  
BCC 02-07-01 Inmate Personal Accounts  
BCC 04-02-01 Firearms Training  
BCC 04-03-01 Educational Assistance Program  
BCC 05-01-01 Inmate Participation in Authorized Research  
BCC 06-01-01 Storage of Expunged Records  
BCC 06-02-01 Records - Release of Information  
BCC 06-02-02 Offender Records  
BCC 06-03-01 Reporting Inmate Misconduct Following Favorable Recommendation by the Parole Board  
BCC 08-02-01 Natural Disaster Plan (Tornado) (Amended 4/13/95)  
BCC 08-03-01 Emergency Preparedness Plan Manual (Amended 4/13/95)  
BCC 08-04-01 Fire Safety Plan, Drills and Related Staff Duties (Amended 4/13/95)  
BCC 08-04-02 Immediate Release of Inmates from Locked Areas  
BCC 08-05-01 Duties of Fire Safety Officer (Amended 4/13/95)  
BCC 08-06-01 Storage Control and Accountability of Flammable, Toxic, Caustic and Other Hazardous Materials  
BCC 08-07-01 Facility Furnishings: Exit and Emergency Lights and Noncombustible Containers  
BCC 09-01-01 Inclement Weather/Emergency Condition Operation  
BCC 09-02-01 Restricted Areas  
BCC 09-02-02 Inmate Pass System to Restricted Areas  
BCC 09-02-03 Regulation of Inmate Movement  
BCC 09-02-04 Radio Escorted Yard Movement During Daylight Savings Time (November 1 - April 30)  
BCC 09-03-01 Inmate Identification  
BCC 09-04-02 Complex Entry & Exit  
BCC 09-05-01 Key Control  
BCC 09-06-02 Transportation to Courts  
BCC 09-07-01 Drug Abuse and Intoxicants Testing  
BCC 09-08-02 Use of Restraints  
BCC 09-09-01 Population Counts and Count Documentation  
BCC 09-10-03 Development of Institutional Post Orders  
BCC 09-10-04 Governmental Services, Study Release Officer Post Orders  
BCC 09-10-05 Unit A-1 Post Orders  
BCC 09-10-06 Recreation Post Orders: Observation  
BCC 09-10-07 Entrance Gate Post Orders  
BCC 09-10-08 Visiting Area Post Orders  
BCC 09-10-09 Security Staff General Orders  
BCC 09-10-10 Dining Room Officer Post Orders  
BCC 09-12-01 Use of Physical Force; Prohibition of Personal Abuse and Corporal Punishment  
BCC 09-13-01 Perimeter Patrol  
BCC 09-14-01 Prohibiting Inmate Authority Over Other Inmates  
BCC 09-15-01 Search Policy/Disposition of Contraband  
BCC 09-16-01 Security Activity Logs  
BCC 09-17-01 Institutional Supervisor Inspections  
BCC 09-18-01 Use of State Vehicles and Staff Owned Vehicles  
BCC 09-19-01 Duties and Responsibilities of the Institutional Captain  
BCC 09-19-02 Duties and Responsibilities of the Shift Supervisor  
BCC 09-20-01 Inmate Death  
BCC 09-21-01 Tool Control  
BCC 09-22-01 Emergency Communication System  
BCC 10-01-01 Special Management Inmates  
BCC 10-01-02 Short-Term Administrative Segregation Holding Area  
BCC 11-01-01 Menu and Special Diets (Amended 4/13/95)  
BCC 11-02-01 Food Service: Inspection, Health Protection and Sanitation (Amended 4/13/95)  
BCC 11-03-01 Food Service: Meals  
BCC 11-04-01 Dining Room Guidelines (Amended 4/13/95)



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BCC 11-05-01	Food Service Security: Knife & Other Sharp Instrument and [4] Utensil Control (Amended 4/13/95)	BCC 20-05-01	Educational Program Planning
BCC 11-06-01	Purchasing, Storage and Farm Products (Amended 4/13/95)	BCC 20-06-01	Academic and Vocational Curriculum
BCC 11-07-01	Food Service Operations Manual	BCC 21-01-01	Library Services
BCC 12-02-01	Personal Hygiene Items	BCC 22-01-01	Arts and Crafts/Production and Sale of Items [(Amended 12/14/94)]
BCC 12-02-02	Personal Hygiene for Inmates: Clothing, Linens and Shower Facilities	BCC 22-02-01	Privileged Trips [(Amended 12/14/94)]
BCC 12-05-01	Barber Shop Services	BCC 22-03-01	Recreational Employees [(Amended 12/14/94)]
BCC 12-06-01	BCC Housekeeping Plan	BCC 22-04-01	Recreation and Inmate Activities [(Amended 12/14/94)]
BCC 13-01-01	Sick Call and Pill Call	BCC 22-04-02	Inmate Clubs and Organizations [(Amended 12/14/94)]
BCC 13-02-01	Administration and Authority for Health Services	BCC 22-04-03	Conducting Inmate Organizational Meetings and Programs [(Amended 12/14/94)]
BCC 13-03-01	Provisions of Health Care Delivery	BCC 22-04-04	Recreation Program Availability [(Amended 12/14/94)]
BCC 13-04-01	Licensure and Training Standards	BCC 22-04-05	Supervision of Leisure-time Craft Club Activities and Materials [(Amended 12/14/94)]
BCC 13-05-01	Medical Alert System	BCC 22-06-01	Music Club [(Amended 12/14/94)]
BCC 13-06-01	Health Care Practices	BCC 22-08-01	Unit Recreation Program [(Amended 12/14/94)]
BCC 13-07-01	Emergency Medical Care Plan	BCC 22-09-01	Use of Inmates in Recreation Programs [(Amended 12/14/94)]
BCC 13-07-02	Emergency and Specialized Health Services	BCC 23-01-01	Religious Services
BCC 13-07-03	Immediate Medical Treatment for Person's Injured by Weapon or Chemical Agent	BCC 24-01-01	Duties and Responsibilities of Classification and Treatment Officers
BCC 13-08-01	Inmate Health Screening and Evaluation	BCC 24-02-01	Duties and Responsibilities of the Unit Director and Assistant to the Unit Director
BCC 13-09-01	Prohibition on Medical Experimentation	BCC 24-03-01	Social Services
BCC 13-10-01	Dental Services	BCC 25-01-01	Inmate Check Out Procedure
BCC 13-11-01	Suicide Prevention and Intervention Program	BCC 25-02-02	Temporary Release and Community Center Release
BCC 13-12-01	Use of Pharmaceutical Products	BCC 25-05-01	Supplemental Parole Progress Reports
BCC 13-12-02	Parenteral Administration of Medications and Use of Psychotropic Drugs	BCC 26-01-01	Citizen Involvement and Volunteer Service Program
BCC 13-13-01	Inmate Health Education		
BCC 13-14-01	Management of Serious and Infectious Diseases		
BCC 13-15-01	Informed Consent		
BCC 13-16-01	Health Records		
BCC 13-17-01	Notification of Inmate Family in the Event of Serious Illness, Injury or Surgery		
BCC 13-19-01	Physicians Referrals/Continuity of Care		
BCC 13-20-01	Chronic and Convalescent Care		
BCC 13-22-01	Psychiatric and Psychological Services, Handling of Mentally Retarded Inmates and Transfers		
BCC 13-23-01	First Aid Kits		
BCC 14-01-01	Office of Public Advocacy Attorney Visits (Amended 4/13/95)		
BCC 14-02-01	Law Library		
BCC 14-04-01	Inmate Rights and Responsibilities		
<del>BCC 14-05-01</del>	<del>Inmate Claims (Deleted 4/13/95)</del>		
BCC 14-06-01	Legal and Support Services for [Indigent] Inmates (Amended 4/13/95)		
BCC 15-02-02	Room Assignment		
BCC 15-03-01	Rules and Regulations for Dormitories		
<del>BCC 15-04-01</del>	<del>Restoration of Forfeited Good Time (Deleted 4/13/95)</del>		
BCC 15-05-01	Extra Duty Assignments		
BCC 16-01-01	Inmate Furloughs [(Amended 12/14/94)]		
BCC 16-02-01	Inmate Visiting (Amended 4/13/95)		
BCC 16-03-02	Outgoing Inmate Packages		
BCC 16-03-03	Inmate Correspondence		
BCC 17-02-01	Authorized Inmate Personal Property (Amended 5/12/94)		
BCC 17-03-01	Processing of New Inmates From Local Jails		
BCC 18-01-01	Classification: Institutional Classification and Reclassification		
BCC 18-02-01	Racial Balance in Living Areas		
BCC 19-01-01	Inmate Work Programs		
BCC 19-02-01	Classification of Inmates to Governmental Service Program		
BCC 19-03-01	Correctional Industries		
BCC 20-01-01	Academic and Vocational School		
BCC 20-02-01	College Programs		
BCC 20-04-01	Educational Program Evaluation		

JACK C. LEWIS, Commissioner  
APPROVED BY AGENCY: April 13, 1995  
FILED WITH LRC: April 13, 1995 at 3 p.m.

## DEPARTMENT OF CORRECTIONS (As Amended)

### 501 KAR 6:140. Bell County Forestry Camp.

RELATES TO: KRS Chapters 196, 197, 439  
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640  
NECESSITY AND FUNCTION: KRS 196.035, 197.020, 439.470, 439.590 and 439.640 authorizes the commissioner to **promulgate** [adopt, amend or rescind] administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. [This administrative regulation is in conformity with these provisions.]

Section 1. (1)(a) "Bell County Forestry Camp Policies and Procedures", (April 13, 1995), is incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Bell County Forestry Camp Policies and Procedures: [Pursuant to the authority vested in the Department of Corrections the following policies and procedures, revised April 13, 1995 [January 12, 1995] are incorporated by reference and shall be referred to as Bell County Forestry Camp Policies and Procedures. Copies of the procedures may be obtained from the Office of the General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky

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40601 or may be reviewed at the Office of General Counsel weekdays from 8 a.m. to 4:30 p.m.]

BCFC 01-02-01 Organization and Assignment of Responsibility  
 BCFC 01-05-01 Monitoring of Operations, Policies and Procedures  
 BCFC 01-08-01 Public Information and News Media Access  
 BCFC 01-11-01 Institutional Duty Officer  
 BCFC 01-13-01 Annual Planning Document  
~~BCFC 02-01-02 Fiscal Management: Accounting Procedures (Deleted 4/13/95)~~  
~~BCFC 02-01-03 Fiscal Management: Agency Funds (Deleted 4/13/95)~~  
~~BCFC 02-01-04 Fiscal Management: Insurance (Deleted 4/13/95)~~  
~~BCFC 02-01-05 Fiscal Management: Budget (Deleted 4/13/95)~~  
~~BCFC 02-01-06 Fiscal Management: Audit (Deleted 4/13/95)~~  
 BCFC 02-02-01 Inmate Accounts (Amended 4/13/95)  
~~BCFC 02-02-02 Inmate Control of Personal Funds (Deleted 4/13/95)~~  
~~BCFC 02-02-03 Storage and Disposition of Inmate Monies Received on Weekends, Holidays, and Between 4 p.m. and 8 a.m. Weekdays (Deleted 4/13/95)~~  
 BCFC 02-03-01 Purchase Orders (Amended 4/13/95)  
 BCFC 02-04-01 Processing of Invoices (Amended 4/13/95)  
 BCFC 02-05-01 BCFC Materials Receiving Procedure (Amended 4/13/95)  
 BCFC 02-06-01 Property Inventory (Amended 4/13/95)  
 BCFC 02-06-02 Materials Receiving and Control (Added 4/13/95)  
 BCFC 02-07-01 Imprest Cash Fund (Added 4/13/95)  
 BCFC 02-08-01 Prisoners Fund (Added 4/13/95)  
 BCFC 04-01-01 Employee Training and Development  
 BCFC 05-01-01 Information System  
 BCFC 06-01-01 Offender Records  
 BCFC 06-02-01 Storage of Expunged Records  
 BCFC 06-03-01 Court Trips  
 BCFC 06-03-02 Receipt of Order of Appearance  
 BCFC 07-04-01 Smoking Control  
 BCFC 07-05-01 Permit Required Confined Space  
 BCFC 07-06-01 Control of Hazardous Energy (Lockout or Tagout)  
 BCFC 08-02-01 Fire Prevention (Amended 4/13/95)  
 BCFC 08-03-01 Fire Procedures (Amended 4/13/95)  
 BCFC 08-03-02 Fire Extinguishers and Their Use (Amended 4/13/95)  
 BCFC 08-09-01 Guidelines for the Control and Use of Flammable, Toxic, and Caustic Substances (Amended 4/13/95)  
 BCFC 08-09-02 OSHA Hazard Communication Program (Amended 4/13/95)  
 BCFC 08-10-01 Bell County Forestry Camp Emergency Response Team  
 BCFC 09-06-01 Search Policy, [4] Disposition of Contraband (Amended 4/13/95)  
 BCFC 09-14-01 Bell County Forestry Camp - Restricted Area (Amended 4/13/95)  
 BCFC 10-01-01 Special Management Inmates (Amended 4/13/95)  
 BCFC 11-01-01 Food Services: General Guidelines  
 BCFC 11-02-01 Food Service Security  
 BCFC 11-03-01 Dining Room Guidelines  
 BCFC 11-04-01 Food Service: Meals  
 BCFC 11-04-02 Food Service: Menu, Nutrition and Special Diets  
 BCFC 11-05-02 Health Requirements of Food Handlers  
 BCFC 11-06-01 Food Service: Inspection and Sanitation  
 BCFC 11-07-01 Food Service: Purchasing, Storage and Farm Products  
 BCFC 12-01-01 Sanitation, Living Conditions Standards, and Clothing Issues (Amended 4/13/95)  
 BCFC 12-01-02 Bed Areas and Bed [7] Assignments (Amended 4/13/95) [Conditions Standards]

BCFC 12-02-01 Issuance of Clean Laundry and Receiving of Dirty Laundry (Amended 4/13/95)  
 BCFC 12-03-01 Personal Hygiene Items: Issuance and Placement Schedule (Amended 4/13/95)  
 BCFC 12-03-02 Barbershop Services and Equipment Control (Amended 4/13/95)  
 BCFC 12-04-01 Institutional Inspections (Amended 4/13/95)  
 BCFC 12-05-01 Fire Safety and Use of Noncombustible Receptacles (Amended 4/13/95)  
 BCFC 12-06-01 Insect and Vermin ~~[Post]~~ Control (Amended 4/13/95)  
 BCFC 13-01-01 Organization of Health Services ~~[(Amended 1/12/95)]~~  
 BCFC 13-02-01 Sick Call and Physician's Weekly Clinic ~~[(Amended 1/12/95)]~~  
 BCFC 13-03-01 Routine and Emergency Dental Appointments ~~[(Amended 1/12/95)]~~  
 BCFC 13-04-01 Inmate Medical Screenings and Health Evaluations ~~[(Amended 1/12/95)]~~  
 BCFC 13-05-01 Medical Emergencies and Medical or Psychiatric Transfers ~~[(Amended 1/12/95)]~~  
 BCFC 13-06-01 Physician's Referrals ~~[(Amended 1/12/95)]~~  
 BCFC 13-07-01 Health Records ~~[(Amended 1/12/95)]~~  
 BCFC 13-08-01 Routine and Emergency Eye Examinations ~~[(Amended 1/12/95)]~~  
 BCFC 13-09-01 Family Notification: Serious Illness, Injury, Major Surgery or Death ~~[(Amended 1/12/95)]~~  
 BCFC 13-10-01 Health Education: Special Health Care Needs ~~[(Amended 1/12/95)]~~  
 BCFC 13-11-01 Informed Consent ~~[(Amended 1/12/95)]~~  
 BCFC 13-12-01 Psychiatric and Psychological Services ~~[(Amended 1/12/95)]~~  
 BCFC 13-13-01 Chronic and Convalescent Care ~~[(Amended 1/12/95)]~~  
 BCFC 13-14-01 Use of Pharmaceutical Products ~~[(Amended 1/12/95)]~~  
 BCFC 13-15-01 Parenteral Administration of Medications and Use of Psychotropic Drugs ~~[(Amended 1/12/95)]~~  
 BCFC 13-16-01 Elective Services ~~[(Amended 1/12/95)]~~  
 BCFC 13-18-01 Management of Serious and Infectious Diseases ~~[(Amended 1/12/95)]~~  
 BCFC 13-19-01 Bloodborne Pathogens Exposure Control Plan ~~[(Amended 1/12/95)]~~  
 BCFC 14-01-01 Inmate Rights and Responsibilities  
 BCFC 14-02-01 Legal Services Program  
 BCFC 14-03-01 Inmate Grievance Procedure  
 BCFC 15-01-01 Due Process/Disciplinary Procedures  
 BCFC 16-01-01 Inmate Visiting  
 BCFC 16-02-01 Telephone Communications  
 BCFC 16-03-01 Mail Regulations  
 BCFC 16-03-02 Inmate Packages  
 BCFC 17-01-01 BCFC Inmate Receiving and Orientation Process  
 BCFC 17-03-01 Inmate Personal Property  
 BCFC 17-04-01 BCFC Inmate Property Control  
 BCFC 17-05-01 Inmate Canteen  
 BCFC 18-01-01 Institutional Classification Committee  
 BCFC 19-01-01 Work Assignments ~~[(Amended 1/12/95)]~~  
 BCFC 19-02-01 Government Service Detail ~~[(Amended 1/12/95)]~~  
 BCFC 20-01-01 Academic School  
 BCFC 20-02-01 Educational Program Planning  
 BCFC 20-03-01 Academic Curriculum  
 BCFC 21-01-01 Library Services  
 BCFC 22-01-01 Recreation and Inmate Activities  
 BCFC 22-02-01 Inmate Clubs and Organizations  
 BCFC 22-03-01 Privilege Trips  
 BCFC 23-01-01 Religious Service  
 BCFC 24-01-01 Social Services and Counseling Program

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BCFC 24-01-02 Casework Services  
BCFC 25-01-01 Prerelease Program  
BCFC 25-02-01 Community Center Program  
BCFC 25-02-02 Inmate Furloughs  
BCFC 25-04-01 Inmate Discharge Procedure  
BCFC 26-01-01 Citizen Involvement and Volunteer Services Program

JACK C. LEWIS, Commissioner

APPROVED BY AGENCY: April 13, 1995

FILED WITH LRC: April 13, 1995 at 3 p.m.

### EDUCATION, ARTS, AND HUMANITIES CABINET

Department of Education  
Office of the Commissioner  
(As Amended)

#### 702 KAR 1:140. Student records; hearing procedures.

RELATES TO: KRS 160.730

STATUTORY AUTHORITY: KRS 156.070, 160.730

NECESSITY AND FUNCTION: KRS 160.730 provides for parents or eligible students to challenge the content of a student record to ensure that the record or report is not inaccurate, misleading, or otherwise in violation of privacy or other rights of the student. KRS 160.370 also mandates that the Department of Education establish by administrative regulation hearing procedures that may be utilized to challenge the content of a student record when no agreement can be reached. This administrative regulation establishes those hearing procedures.

Section 1. If a school decides not to comply with a request of a student's parent(s) or legal guardian to amend the education record of the student, the school shall notify the student's parent(s) or guardian of the decision and advise them of their right to a hearing to challenge the information believed to be inaccurate, misleading, inappropriate, or in violation of the student's rights.

Section 2. Hearing Procedures. (1) Upon request, the school district shall arrange for a hearing to be held within thirty (30) days after the request for hearing and notify the student's parent(s) or guardian, reasonably in advance, of the date, place, and time of the hearing.

(2) The hearing shall be conducted by a hearing officer who is a disinterested party and is a certified official of the district appointed by the superintendent.

(3) The hearing shall be private. Persons other than the student, parent(s), witnesses, and counsel shall not be admitted into the hearing.

(4) The hearing officer shall hear evidence from the school staff and the student's parent(s) or guardian to determine any points of disagreement regarding the records.

(5) The student's parent(s) or guardian shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend the student's education records. The parent(s) or guardian may be assisted by one (1) or more individuals, including an attorney.

(6) The hearing officer shall make a determination after hearing the evidence ~~[and make a recommendation]~~ in writing within ten (10) working days following the close of the hearing. The hearing officer shall make a determination based solely on the evidence presented at the hearing, and shall include a summary of the evidence and the reason for the decision. The parties to the hearing shall be provided a copy of the hearing officer's decision.

Section 3. Posthearing Procedures. (1) If the hearing officer

decides after the hearing the challenged information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the hearing officer shall inform the student's parent(s) or guardian of the right to place a statement in the record commenting on the contested information or stating why he disagrees with the decision of the hearing officer. The statement shall be maintained as a part of the student's education records as long as the contested portion is maintained. If the school district discloses the contested portions of the record, it shall also disclose the statement.

(2) If, as a result of the hearing, the hearing officer decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the school district shall amend the record accordingly and inform in writing the student's parent(s) or guardian of the amendment.

Section 4. Alternative Hearing Procedures. If a school district has a records hearing policy and procedure that provides a substantially equivalent level of due process protection as provided in this administrative regulation, the school district may elect to submit its policy on records hearing procedure to the Department of Education, Office of Legal Services, for its review and approval as to compliance with this administrative regulation.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education as required by KRS 156.070(4).

Thomas C. Boysen  
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 13, 1995 at noon

### EDUCATION, ARTS, AND HUMANITIES CABINET

Department of Education  
Division of Finance  
(As Amended)

#### 702 KAR 7:050. Attendance; resident, nonresident.

RELATES TO: KRS 157.320, 157.360, 158.030, 158.240, 159.035, 159.170, 161.200

STATUTORY AUTHORITY: KRS 156.070, 157.320, 158.070

NECESSITY AND FUNCTION: KRS 157.320 defines average daily attendance of pupils for funding purposes under the Support Educational Excellence in Kentucky Program; KRS 157.360 bases state funding upon average daily attendance; KRS 158.030 defines the minimum age for school attendance; KRS 158.240 and 159.035 define attendance credit for moral instruction and 4-H activities; and KRS 161.200 requires attendance records to be kept by teachers. This administrative regulation[e] is [are] necessary to assure uniformity in recording attendance of all pupils in the schools of Kentucky.

Section 1. (1) The daily attendance of pupils in elementary schools shall be determined by checking their attendance a minimum of one (1) time per day and maintaining a student entry and exit log at each school. The daily attendance of pupils in middle and high schools shall be determined by checking their attendance by class period and maintaining a student entry and exit log at each school.

(2) Pupils shall not be counted in attendance unless they are physically present in the school except under the following conditions: [The word "pupil" as the basis for average daily attendance as provided for in Kentucky Revised Statutes and for all other uses in the public school system shall mean all persons who are in attendance at school between the ages of five (5) and twenty-one (21)]

years. Any pupil who meets requirements of KRS 158.030 for entering school shall be considered five (5) years of age for attendance purposes.

~~Section 2. (1) Daily attendance: average daily attendance for educational funding. The daily attendance of pupils shall be determined by checking their attendance at least twice per day. Schools, grades, or homerooms may designate the most appropriate time to check attendance, but recording shall be such that half day or all day attendance is recorded as defined in Section 3 of this administrative regulation. A pupil may be counted in attendance, while not physically present in the classroom if:~~

(a) The pupil is absent as a participant in a school activity which has been authorized by the local board of education and which is a definite part of the instructional program of the school; or

(b) The pupil is absent as a participant in an activity as provided in either KRS 158.240 or KRS 159.035. Pupils shall not be counted in attendance for determining average daily attendance when they are spectators at school activities.

~~(2) Daily attendance: recognition purposes. Individual schools, grades, or homerooms shall be permitted to grant attendance awards, based upon a pupil's attendance in school for less than full days. A pupil who is in attendance for at least one (1) instructional period may be deemed present for the day for attendance award and recognition purposes.~~

(3) Students shall be counted absent although the absence is due to factors beyond their control such as inclement weather or failure of the transportation system to operate.

~~Section 2. (1) [Section 3. (1) Pupils shall not be counted in attendance unless they are physically present in the school. They shall be counted absent although such absence is due to factors beyond their control such as inclement weather or failure of the transportation system to operate.~~

~~(2) Occasional absences shall be reported in increments of one-half (1/2) day. Notwithstanding the provisions of Section 2 of this administrative regulation, a pupil who is absent thirty-five (35) to eighty-four (84) percent of instructional time [for at least two (2) consecutive instructional periods] in any regularly scheduled day shall be considered, and recorded, absent for one-half (1/2) day. A pupil who is absent for at least eighty-five (85) percent of instructional time [for at least five (5) consecutive instructional periods] in a regularly scheduled day shall be considered, and recorded, absent for the full day. [This section does not apply to students enrolled in an entry level program.] [In the event a school regularly schedules more than seven (7) periods per day, one half (1/2) or all day absence shall be recorded based upon three (3) and six (6) consecutive instructional periods absence, respectively.]~~

~~(2) [(3)] Absences on a regular basis for one (1) or more periods for the majority of the days in a school month shall be reported on a period basis. Districts shall not vary the schedule of students during the school month in order to circumvent the intent of this subsection.~~

Section 3. [4.] (1) Pupils enrolled in both a public common school and a nonpublic school under a dual enrollment plan shall be counted in attendance for average daily attendance purposes for the time they are in attendance at the public school under straight shared-time.

(2) A local district may permit straight shared time ["Straight shared time" is defined] as an arrangement whereby a child [regularly or] concurrently attends a public common school part-time and a nonpublic school part-time pursuing part of his education under the direction and control of the public common school and the remaining under the direction of the nonpublic school.

Section 4. [5.] Pupils enrolled in a public common school who attend the public common school fifty (50) percent of the school [one-half (1/2)] day and who attend the remainder of the school day in a

state vocational technical school or an area vocational education center shall be counted in full-time attendance at the public common school.

Section 5. [6.] If a local district under the provisions of KRS 157.360(6), enrolls [handicapped] children with disabilities in a private school or agency approved by the Kentucky Board of Education [State Board for Elementary and Secondary Education] upon the recommendation of the Office of Education for Exceptional Children, the private school or agency shall certify the attendance of these children to the local school district [Department of Education] at the close of the second school month and at the close of the school year. This attendance shall be counted in a public school designated by the local district.

Section 6. A [7. No] pupil shall not be allowed to make up absences for the purpose of counting the [each] make-up activities in computing average daily attendance.

Section 7. [8.] (1) A copy of the written agreement local boards of education execute for average daily attendance of nonresident pupils as provided by KRS 157.350(4) shall be submitted to the [State] Department of Education prior to November 1 of each year. Names of nonresident pupils, whose attendance is covered by the agreement, shall be listed on the back of the agreement and kept on file in the office of the local board of education [and also on the back of the copy of the agreement filed with the State Department of Education].

(2) An attendance report (Growth Factor Report) for the first two (2) school months of the current school year as required by KRS 157.360(8) shall be submitted to the [State] Department of Education prior to November 1 of each year. The Growth Factor Report shall contain number of days taught, transportation data for months one (1) and two (2) [separately], and the aggregate attendance and aggregate membership for the first two (2) school months entry level [and the aggregate membership for the two (2) months Kindergarten] data shall be reported for full-time equivalent days. Attendance and Growth Factor Report data shall be reported by school and by grade level. [Until such time as the primary school program, as required by KRS 156.160(1a) and KRS 158.030, is fully implemented, all attendance and Growth Factor Report data shall be reported by school and by grade.] The Growth Factor Report file layout, dated July 1993, is incorporated herein by reference and may be obtained, copied and inspected at the Division of Finance, Pupil Attendance Branch, 15th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) Changes may be made in the original nonresident pupil agreement, up to the close of the school year, to include only the nonresident pupils enrolling after the close of the second school month. A copy of the amended agreement shall be on file in the office of the local board of education and a copy of the amendment shall be submitted to the [State] Department of Education along with the local superintendent's annual [statistical] report, no later than July 15 [June 30] of the current school year.

(4) In the event local boards of education fail to enter into a written agreement for nonresident pupils as outlined in subsections (1) and (3) [(2)] of this section, the local board of education educating the nonresident pupils shall not receive attendance credit for these nonresident pupils.

(5) Directors of pupil personnel in each local district shall certify student membership of each school at the end of the first school month, [as reported] to the Department of Education on the school data form, [of each school as of the end of the first month of school. They shall also certify, on a supplement to the school data form, reported average daily attendance for the first school month]. The school data form, as revised August 1994 [April 1992], is incorporated

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herein by reference. This [Such] document may be obtained, inspected and copied at the Division of [Technology] Integration Services, Department of Education, 15 Fountain Place, Frankfort, Kentucky 40601 [16th Floor, Capital Plaza Tower, 8 a.m. to 4:30 p.m.], Monday through Friday 8 a.m. to 4:30. [The supplement to the school data form shall report average daily attendance by school and by grade.]

Section 8. [9-] The teacher's register of daily attendance or reasonable facsimile [recommended by the chief state school officer and approved by the State Board for Elementary and Secondary Education] shall be the original source of attendance data for all pupils enrolled in the public elementary and secondary schools of the Commonwealth of Kentucky and shall be maintained in accordance with the instructions which are prepared and distributed by the [State] Department of Education.

Section 9. The request for records and other information involving the transfer of pupils as required by KRS 159.170 shall be processed by the local superintendent or his designee. The Notice of Transfer Form may be used to comply with this administrative regulation. The Notice of Transfer Form, dated April, 1995, is incorporated herein by reference. This document may be obtained, inspected and copied at the Division of Finance, Pupil Attendance Branch, 15th Floor Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Local boards of education may adopt an alternative form or process to comply with KRS 159.170.

Section 10. (1) The following entry, reentry and withdrawal codes shall be used to indicate the enrollment status of pupils:

(2) E1 - A pupil enrolled for the first time during the current year in either a public or nonpublic school in the United States;

(3) E2 - A pupil previously enrolled during the current school year in either a public or nonpublic school in another state who has not previously enrolled in Kentucky during the current school year;

(4) E3 - A pupil enrolling for the first time during the current school year in either a public or nonpublic school, who was withdrawn as a W6, W7, W10, W13, W14, W16 or W18 during the previous school year;

(5) R1 - A pupil received from another homeroom in the same school;

(6) R2 - A pupil received from another public school in the same public school district;

(7) R3 - A pupil received from a nonpublic school in the same public school district;

(8) R4 - A pupil received from a public school in Kentucky outside this public school district;

(9) R5 - A pupil received from a nonpublic school in Kentucky outside this public school district;

(10) R6 - A pupil reentering the school after withdrawal, discharge or expulsion from a school district in Kentucky during the current school year, who has not entered any other school during the intervening period;

(11) R7 - A pupil received from a school in another state after having been previously enrolled during the current school year in Kentucky as an E1, E2 or E3;

(12) W1 - A pupil transferred to another homeroom in the same school. The reentry code to use with W1 shall be R1;

(13) W2 - A pupil transferred to another public school in the same public school district. The reentry code to use with W2 shall be R2;

(14) W3 - A pupil transferred to a nonpublic school in this public school district. The reentry code to use with W3 shall R3;

(15) W4 - A pupil transferred, without change of residence, to a school outside this public school district. The reentry code to use with W4 shall be R4, R5 or R7;

(16) W5 - A pupil who has moved out of this public school district

and for whom a request for student records has been received or enrollment has been substantiated. The reentry code to use with W5 shall be R4, R5 or R7;

(17) W6 - A pupil who is sixteen (16), but not yet eighteen (18) years of age, has completed the required sixty (60) day waiting period and has withdrawn. The reentry code to use with W6 shall be R6;

(18) W7 - A pupil withdrawn due to:

(a) Those communicable medical conditions that pose a threat in school environments (as specified in KRS 211.080, 158.160 and 902 KAR 2:170) accompanied by a doctor's statement certifying the condition; or

(b) Other health related condition for which the student will not be able to participate in regular school attendance or local homebound instructional services, accompanied by a doctor's statement certifying the condition. The reentry code to use with W7 shall be R6;

(19) W8 - A pupil withdrawn due to death;

(20) W9 - A pupil graduated prior to the end of the school term or year;

(21) W10 - A pupil discharged for the balance of the school term or year. The reentry code to use with W10 shall be R6 if withdrawn for the balance of the school term;

(22) W12 - A pupil under the jurisdiction of the court. The reentry code to use with W12 shall be R6. For end of year adjustments, for accountability purposes a W12 shall be recorded as a W16 if the district cannot substantiate enrollment in the proper educational setting as designated by the court;

(23) W13 - A pupil withdrawn for a second or subsequent time who initially withdrew as a W6, W7, W10, W12, W14 or W18, and has previously been reported as a drop out for accountability purposes. The reentry code to use with W13 shall be R6;

(24) W14 - A pupil withdrawn after having given birth to, and in the process of, parenting a child. The reentry code to use with W14 shall be R6;

(25) W16 - A pupil who has moved out of this public school district for which enrollment elsewhere has not been substantiated. For end of year adjustments for accountability purposes, the W16 code shall be applicable to pupils enrolled at the end of the previous school year who failed to enroll in this or any other school district at the beginning of the current school year;

(26) W17 - An entry level student in the primary program, withdrawn during the first two (2) school months due to immaturity or mutual agreement by the parent, guardian or other custodian, and the school;

(27) W18 - A pupil eighteen (18) years of age who has withdrawn. The reentry code to use with W18 shall be R6;

[Section 10. If a local board of education elects to follow the provisions of KRS 161.200(2) for keeping and reporting pupil attendance, the board shall submit a written plan to the chief state school officer for approval. A copy of the approved plan shall be on file in each public school.]

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4)

Thomas C. Boysen  
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 13 1995 at noon

KENTUCKY COMMISSION ON THE  
DEAF AND HARD OF HEARING  
(As Amended)

735 KAR 1:010. Eligibility requirements, application and certification procedures to receive telecommunications devices for the deaf.

RELATES TO: KRS 12.290, 163.510

STATUTORY AUTHORITY: KRS 163.525(5)

NECESSITY AND FUNCTION: This administrative regulation is necessary to implement the provision of KRS 163.525(5) which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute specialized telecommunications devices to any deaf, hard of hearing, or speech-impaired persons qualified to receive the equipment at no additional cost beyond a single party residence line. The function of this administrative regulation is to establish the criteria for awarding assistance and the procedures for application and certification.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(2) "Application" means the KCDHH TDD Distribution Program application which is entitled "Application and Certification to Receive Specialized Telecommunications Equipment".

(3) "Audiologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of audiology.

(4) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(5) "Completion date" means the date that all supporting documentation for the application is received by the KCDHH, as determined by the TDD Distribution Program Coordinator.

(6) "Deaf and hard of hearing" is defined by KRS 163.500.

(7) "Deaf-blind" means any individual whose primary disability is deafness and secondary disability is vision impairment.

(8) "Fiscal constraint" means when seventy-five (75) percent of program funds have been disbursed or encumbered.

(9) "KCDHH" is defined by KRS 163.506 and 163.510.

(10) "Loaner" means any specialized telecommunications equipment that the KCDHH loans to recipients while their STE is being repaired.

(11) "Physician" means a person who has a medical degree and a license to practice medicine in any one (1) of the United States.

(12) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(13) "Specialized telecommunications equipment (STE)" means equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications, such as TDDs, amplifiers, ring signal devices (visual, audible, or tactile), amplified ring signal devices, large visual display TDDs, artificial larynx and electronic speech aids.

(14) "Speech-language pathologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of speech-language pathology.

(15) "Telecommunications device for the deaf (TDD)" is defined by KRS 163.525(1)(a).

(16) "TDD Distribution Program" is defined by KRS 163.525(1)(b).

(17) "Voucher" is a form which authorizes the recipient to purchase specialized telecommunications equipment through the KCDHH TDD Distribution Program.

[(1) "Telecommunications device for the deaf (TDD)" is defined by KRS 163.525(1)(a).]

(2) "TDD Distribution Program" is defined by KRS 163.525(1)(b).

(3) "KCDHH" is defined by KRS 163.506 and 163.510.

(4) "Specialized telecommunications equipment (STE)" means equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications, such as TDDs, amplifiers, ring signal devices (visual, audible, or tactile), amplified ring signal devices, large visual display TDDs, artificial larynx and electronic speech aids.

(5) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(6) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(7) "Voucher" is a form which authorizes the recipient to purchase specialized telecommunications equipment through the KCDHH TDD Distribution Program.

(8) "Audiologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of audiology.

(9) "Physician" means a person who has a medical degree and a license to practice medicine in any one (1) of the United States.

(10) "Speech language pathologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of speech language pathology.

(11) "Application" means the KCDHH TDD Distribution Program application which is entitled "Application and Certification to Receive Specialized Telecommunications Equipment".

(12) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(13) "Fiscal constraint" means when seventy-five (75) percent of program funds have been disbursed or encumbered.

(14) "Completion date" means the date that all supporting documentation for the application is received by the KCDHH, as determined by the TDD Distribution Program Coordinator.

(15) "Loaner" means any specialized telecommunications equipment that the KCDHH loans to recipients while their STE is being repaired.

(16) "Deaf and hard of hearing" is defined by KRS 163.500.

(17) "Deaf blind" means any individual whose primary disability is deafness and secondary disability is vision impairment.]

Section 2. General Applicant Criteria. (1) An applicant shall be:

(a) A legal resident of the state of Kentucky;

(b) At least five (5) years of age and if the applicant is between five (5) and eighteen (18) years of age, parents or guardians shall apply on behalf of applicants and assume full responsibility for the equipment; and

(c) Deaf, hard of hearing or speech impaired such that the applicant cannot use the telephone for communication without adaptive equipment.

(2) Initial and replacement applications shall be:

(a) Made on forms provided by the KCDHH;

(b) Signed and submitted in person or via mail;

(c) Accompanied by documented proof of eligibility as required by the KCDHH.

(3) The KCDHH shall require that applicants provide professional verification of the extent and permanence of their disability. The certification shall be included as part of the application form.

(a) Verification shall be at the applicant's expense.

(b) Certification shall be done by:

1. A licensed physician;

2. An audiologist;

3. A speech-language pathologist; or

4. Public or private agencies working with deaf, hard of hearing,



or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

(4) Except for individuals who receive assistance from programs designed to provide telephone services to those who would not normally be able to afford it, applicants shall subscribe to or have currently applied for telephone service, which shall include:

(a) Installation of a telephone line in their home at their own expense; and

(b) Payment of monthly telephone bills.

(5) Eligible applicants shall be awarded program participation on a first-come, first-served basis, in accordance with the completion date, as determined by the dated signature of the TDD distribution coordinator.

(6) KCDHH shall distribute the STE through the voucher system established in 735 KAR 1:020.

(7) One (1) TDD and adaptive equipment shall be distributed to a deaf, hard of hearing or speech-impaired individual for one (1) residential access line only.

### Section 3. Application and Certification Procedures for Eligibility.

(1)(a) "Application and Certification to Receive Specialized Telecommunications Equipment," (July 1995), is incorporated by reference.

(b) It may be inspected, copied or obtained at the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road [134 Brighton Park Boulevard], Frankfort, Kentucky, 40601, Monday through Friday 8 a.m. to 4:30 p.m. The KCDHH telephone number is 1-800-372-2907 V/TDD or 502-573-2604 V/TDD; the KCDHH fax number is (502) 573-3594.

(2) As KCDHH recognizes that the demand for the specialized telecommunications equipment may exceed available funds, so the following statement shall be included on all application forms, which the applicant shall be required to sign: "The KCDHH has a limited amount of funds for the program. There is the possibility that recipients may be placed on a waiting list to receive the specialized telecommunications equipment, due to a large number of applications and the exhaustion of these limited funds on an annual basis. The specialized telecommunications equipment shall be distributed on a nondiscriminatory, first-come, first-served basis."

Section 4. Application Process. (1) The KCDHH staff may provide assistance in completing forms when requested by an applicant.

(2) The TDD distribution program coordinator shall review all applications in the order the KCDHH office receives them to determine:

(a) The application is complete;

(b) All required attachments are included; and

(c) All eligibility requirements are met.

(3) An application, whether initial or replacement, found to be complete shall be dated and signed by the TDD distribution program coordinator. The completion date shall determine the first-come, first-serve roster.

(4) Applicants shall be notified in writing whether their initial or replacement application, has been accepted or rejected within sixty (60) calendar days of the completion date, unless a letter as described in subsection (5) of this section has been forwarded indicating otherwise.

(5) During the first two (2) years of program implementation when there is an expected flood of applications, applicants shall be advised within sixty (60) days in writing that their applications may take longer than sixty (60) days to process.

(6) At the end of the second year, the application process shall be reevaluated, and, if feasible, a sixty (60) day response time shall be instated.

(7) If the KCDHH finds that an applicant is ineligible to participate in the program, the applicant shall be given written justification for the determination within sixty (60) days unless a letter as specified in subsection (5) of this section is sent. Any applicant who has been

denied participation may reapply if, due to a change in conditions, he meets eligibility requirements as delineated in Section 2 of this administrative regulation.

(8) When a party wishes to appeal an agency decision, the KCDHH shall comply with the provisions of KRS Chapter 13B.

Section 5. Initial and replacement applications shall be denied when:

(1) The applicant has already been issued a voucher pursuant to 735 KAR 1:020, Section 3, which is still valid toward the purchase of specialized telecommunications equipment under this program;

(2) The applicant has received STE from the TDD Distribution Program within the preceding four (4) years;

(3) The applicant is an active client of the Department of Vocational Rehabilitation and receives STE as part of an IWRP (individual written rehabilitation plan);

(4) The applicant has negligently or willfully damaged STE previously received from the KCDHH's TDD Distribution Program, or violated other provisions of the administrative regulations governing the TDD Distribution Program;

(5) The applicant fails to provide a police report of a stolen device or refuses to cooperate with the police investigation in the prosecution of the suspect, including the refusal to testify in court when subpoenaed to do so;

(6) The applicant is found negligent in a police report of a stolen device, such as doors to the house or car left unlocked or unattended;

(7) The applicant has lost or sold the STE; or

(8) In the case of replacement equipment after four (4) years have passed, if the original STE is found to be technologically up to date and functional by the KCDHH.

Section 6. Replacement Equipment. (1) A recipient may apply for replacement equipment if:

(a) The specialized telecommunications equipment is damaged through natural disasters, such as lightning, electrical storms, floods or other acts of God;

(b) There is a change in status, such as deteriorating vision or hearing;

(c) A new device has become available through the TDD Distribution Program and is deemed more appropriate to the recipient's disability than a device previously purchased by the recipient through a voucher issued by the KCDHH; or

(d) It has been four (4) years since the applicant last received specialized telecommunications equipment.

(2) Replacement equipment shall be issued to applicants:

(a) Who can demonstrate eligibility; and

(b) Who comply with the provisions of the administrative regulations governing the TDD Distribution Program: 735 KAR 1:010 and 735 KAR 1:020.

(3) Priority shall be given in the distribution of replacement equipment to first-time recipients during times of fiscal constraint.

(4) If the replacement equipment is requested because the specialized telecommunications equipment is damaged through natural disasters, such as lightning, electrical storms, or floods, then:

(a) The recipient shall first send the damaged equipment to the vendor.

(b) If the vendor certifies to the KCDHH that the equipment provided to the recipient is unrepairable due to natural disaster, a replacement unit shall be issued to the recipient, upon reapplication, subject to:

1. Equipment availability;

2. Compliance with eligibility criteria established in this administrative regulation; and

3. The first-come, first-served provision.

(5) If the recipient obtains certification from a physician, audiologist, or speech-language pathologist stating that the recipient would

benefit from another device available through the KCDHH TDD Distribution Program due to a change in disability status or a new device becoming available, then replacement equipment shall be issued to the applicant. As an alternative, public or private agencies working with deaf, hard of hearing, or speech-impaired individuals may provide certification, subject to approval by the KCDHH.

(6) If the replacement equipment is requested due to the STE being stolen, then the recipient shall:

- (a) Notify local police; and
- (b) Forward a copy of the police report to the KCDHH within five (5) working days of the date the theft was reported; and
- (c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.

(7) If the replacement equipment is requested because four (4) years have passed, then the recipient shall either bring in person or mail their original STE to the KCDHH.

(a) The KCDHH shall then determine whether or not the original STE is technologically obsolete or nonfunctional.

(b) If the original STE is:

1. Technologically obsolete or nonfunctional, then the recipient shall follow the replacement application process as delineated in 735 KAR 1:010 and 735 KAR 1:020; or

2. Not determined to be technologically obsolete or nonfunctional then the application for replacement STE shall be denied.

Section 7. Loan Equipment. (1) When recipients' STE is under repair or maintenance, the KCDHH shall provide, at no cost, "loaner" STE upon receiving a completed Loan Agreement Form from the recipient.

(2)(a) "Loan Agreement Form" (July 1995) is herein incorporated by reference.

(b) It may be inspected, copied, or obtained from the KCDHH, 632 Versailles Road [134 Brighton Park Boulevard], Frankfort, Kentucky 40601, Monday through Friday 8 a.m. - 4:30 p.m. The KCDHH phone number is (502) 573-2604 V/TDD or 800-372-2907 V/TDD; the KCDHH fax number is (502) 573-3594.

Section 8. Fraud. If a recipient obtained specialized telecommunications equipment under false premises or through misrepresentation of facts on the KCDHH application, the KCDHH may demand return of the equipment immediately. Upon demand, the recipient shall return the STE and shall be ineligible to participate in the KCDHH TDD Distribution Program.

Section 9. All applicant and recipient information shall be kept confidential in compliance with the Open Records Law in KRS 61.878. [Confidentiality. (1) Applications and other client materials submitted to the TDD Distribution Program shall be kept confidential by KCDHH personnel and other persons authorized by the KCDHH to view the materials.

(2) The applicant's eligibility and participation in the program shall also be confidential and shall not be released without the applicant's written consent and authorization.]

THERESA KIDWELL, Chair

APPROVED BY AGENCY: March 28, 1995

FILED WITH LRC: April 4, 1995 at 9 a.m.

KENTUCKY COMMISSION ON THE  
DEAF AND HARD OF HEARING  
(As Amended)

735 KAR 1:020. Processing system including vendor participation, security, and maintenance and repair for specialized telecommunications equipment.

RELATES TO: KRS 12.290, 163.510

STATUTORY AUTHORITY: KRS 163.525(5)

NECESSITY AND FUNCTION: This administrative regulation is necessary to implement the provision of KRS 163.525(5) which mandates that the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) establish a program to distribute specialized telecommunications devices to any deaf, hard of hearing, or speech-impaired person qualified to receive the equipment at no additional cost beyond a single party residence line. The function of this administrative regulation is to establish the processing system for vendors, security, and the maintenance and repair of the STE.

Section 1. Definitions. (1) "Applicant" means a person who applies to receive specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(2) "Application" means the KCDHH TDD Distribution Program application which is entitled "Application and Certification to Receive Specialized Telecommunications Equipment".

(3) "Audiologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of audiology.

(4) "Certification" means professional verification of the extent and permanence of the applicant's disability.

(5) "Completion date" means the date that all supporting documentation for the application is received by the KCDHH, as determined by the TDD Distribution Program Coordinator.

(6) "Deaf and hard of hearing" is defined by KRS 163.500.

(7) "Deaf-blind" means any individual whose primary disability is deafness and secondary disability is vision impairment.

(8) "Fiscal constraint" means when seventy-five (75) percent of program funds have been disbursed or encumbered.

(9) "KCDHH" is defined by KRS 163.506 and 163.510.

(10) "Loaner" means any specialized telecommunications equipment that the KCDHH loans to recipients while their STE is being repaired.

(11) "Physician" means a person who has a medical degree and a license to practice medicine in any one (1) of the United States.

(12) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.

(13) "Specialized telecommunications equipment (STE)" means equipment that enables deaf, hard of hearing, or speech-impaired individuals to access telecommunications, such as TDDs, amplifiers, ring signal devices (visual, audible, or tactile), amplified ring signal devices, large visual display TDDs, artificial larynx and electronic speech aids.

(14) "Speech-language pathologist" means a person who is licensed by the Kentucky Board of Licensure for Speech-Language to engage in the practice of speech-language pathology.

(15) "Telecommunications device for the deaf (TDD)" is defined by KRS 163.525(1)(a).

(16) "TDD Distribution Program" is defined by KRS 163.525(1)(b).

(17) "Voucher" is a form which authorizes the recipient to purchase specialized telecommunications equipment through the KCDHH TDD Distribution Program.



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~~[(1) "Telecommunications device for the deaf (TDD)" is defined by KRS 163.525(1)(a).~~

~~(2) "TDD Distribution Program" is defined by KRS 163.525(1)(b).~~

~~(3) "KCDHH" is defined by KRS 163.506 and 163.510.~~

~~(4) "Specialized telecommunications equipment (STE)" means equipment that enables deaf, hard of hearing, or speech impaired individuals to access telecommunications, such as TDDs, amplifiers, ring signal devices (visual, audible, or tactile), amplified ring signal devices, large visual display TDDs, artificial larynx and electronic speech aids.~~

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~~(6) "Recipient" means a person who receives specialized telecommunications equipment under the auspices of the KCDHH TDD Distribution Program.~~

~~(7) "Voucher" is a form which authorizes the recipient to purchase specialized telecommunications equipment through the KCDHH TDD Distribution Program.~~

~~(8) "Audiologist" means a person who is licensed by the Kentucky Board of Licensure for Speech Language to engage in the practice of audiology.~~

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~~(10) "Speech language pathologist" means a person who is licensed by the Kentucky Board of Licensure for Speech Language to engage in the practice of speech language pathology.~~

~~(11) "Application" means the KCDHH TDD Distribution Program application which is entitled "Application and Certification to Receive Specialized Telecommunications Equipment".~~

~~(12) "Certification" means professional verification of the extent and permanence of the applicant's disability.~~

~~(13) "Fiscal constraint" means when seventy five (75) percent of program funds have been disbursed or encumbered.~~

~~(14) "Completion date" means the date that all supporting documentation for the application is received by the KCDHH, as determined by the TDD Distribution Program Coordinator.~~

~~(15) "Loaner" means any specialized telecommunications equipment that the KCDHH loans to recipients while their STE is being repaired.~~

~~(16) "Deaf and hard of hearing" is defined by KRS 163.500.~~

~~(17) "Deaf blind" means any individual whose primary disability is deafness and secondary disability is vision impairment.]~~

Section 2. Processing System Including Vendor Participation. (1) The KCDHH shall use accounting procedures consistent with Commonwealth accounting practices in compliance with KRS Chapter 45.

(2) Contracting, purchasing, bidding, invoicing, and payment practices shall be conducted in accordance with the provisions of the Model Procurement Code (KRS Chapter 45A) and shall be applied uniformly to applicants and vendors.

(3) The KCDHH TDD Distribution Program accounts shall be audited on a regular basis by the Auditor of Public Accounts.

Section 3. Voucher System. (1) The KCDHH shall issue vouchers to recipients who shall be responsible for using the voucher to purchase the STE directly from the vendor.

(2)(a) The voucher (July 1995) is herein incorporated by reference.

(b) It may be inspected, copied, and obtained at the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road [134 Brighton Park Boulevard], Frankfort Kentucky 40601, Monday through Friday, 8 a.m. - 4:30 p.m.

(3) The recipient shall:

(a) Order the specialized telecommunications equipment from a contracted vendor within sixty (60) days of the voucher date of

issuance; and

(b) Send a copy of the receipt for the device to the KCDHH when the specialized telecommunications equipment has been received.

(4) The vendor shall be responsible for complying with the terms of the voucher, as established in the contract between the vendor and the KCDHH, and shall send the:

(a) STE directly to the recipients' Kentucky residence; and

(b) KCDHH:

1. An itemized invoice; and

2. A copy of the voucher in order to receive payment for the STE.

(5) The recipient shall be responsible for any costs involved in having features not specified in the vendor contract added to their STE. This includes the responsibility for the maintenance and repair of those features not specified in the vendor contract.

(6) The vendors, in exchange for the vouchers and an itemized invoice, shall be paid by the KCDHH or a bank, pursuant to the Memorandum of Agreement established between the Public Service Commission and the KCDHH.

(7) Ownership rights and responsibilities for the TDD shall belong to the recipient, as evidenced by the recipient's copy of the voucher.

(a) A recipient shall not be responsible for the actual maintenance and repair of the equipment. However, the recipient shall contact the KCDHH and comply with the repair and maintenance procedures established in Section 5 of this administrative regulation in order to have repairs made to the STE and to receive loaner STE.

(b) Recipients shall assume all responsibilities for:

1. Paying their monthly phone bills;

2. Purchasing or leasing a telephone;

3. Purchasing batteries and paper for the printer; and

4. Paying other general costs and supplies associated with the functions and use of the STE.

(c) Recipients shall be responsible for the loss of STE received or borrowed under the auspices of the KCDHH TDD Distribution Program.

Section 4. Security. (1) Equipment obtained under this program shall not be sold, loaned, or otherwise transferred out of the possession of the originally authorized recipient.

(2) The recipient shall notify the KCDHH within five (5) working days if the equipment is lost, stolen, or damaged. If stolen, the recipient shall:

(a) Notify local police;

(b) Forward a copy of the police report to the KCDHH within five (5) working days of the date the theft was reported; and

(c) Aid in the prosecution of the perpetrator of the theft, if and when the accused perpetrator is identified.

Section 5. Equipment Loan Program/Maintenance and Repair Procedures. (1) The KCDHH shall maintain a stock of at least twenty (20) "loaner" units to be used by recipients when their STE has been sent to the manufacturer for repair or maintenance.

(2) The loan program shall only be available to recipients of the TDD Distribution Program. The loan period shall extend until the recipient's STE is returned in working condition.

(3) To participate in the loan program, the recipient shall:

(a) Sign the "Loan Agreement Form," as incorporated in 735 KAR 1:010;

(b) Submit the Loan Agreement Form and the malfunctioning STE to the KCDHH offices.

(4) The KCDHH shall issue loaner STE to the recipient.

(5) The KCDHH shall assume responsibility for shipping the STE to the contracted repair agent.

(6) When the repaired STE is received by the KCDHH, the KCDHH shall:

(a) Notify the recipient that their STE is repaired; and

(b) Request the return of the loaner STE.

(7) The recipient shall return the loaner STE to the KCDHH, either

by insured, certified mail (with return receipt requested) or in person. When the recipient has returned the STE in good working condition, then the KCDHH shall send the repaired STE to the recipient.

(8) If the recipient does not return the loaner equipment then the KCDHH shall retain the original, repaired STE in exchange.

(9) The KCDHH reserves the right to repossess the loan equipment at any time if:

(a) There is a change in the recipient's eligibility status;

(b) Repeated negligent or willful damage is done to the equipment; or

(c) There are other violations of the administrative regulations governing the TDD Distribution Program.

(10) Loaner equipment shall be marked with nonremovable identification by the company supplying the equipment.

(11) In the event equipment is lost or stolen, the recipient shall immediately notify the KCDHH, who shall notify manufacturers, distributors and repairmen of the serial numbers of the missing equipment so that it can be identified and returned to the KCDHH. Any person who attempts to sell or knowingly purchase stolen equipment shall be prosecuted to the full extent of the law.

(12) The recipient shall be responsible for the replacement or repair of the loaner STE should the STE be damaged, lost, or stolen while in their possession, in accordance with the provisions of 735 KAR 1:010, unless the police report or vendor certifies that the theft or damage was not due to negligence or willful damage done on the part of the recipient.

(13) If the recipient moves:

(a) To a different address within the Commonwealth of Kentucky, the KCDHH shall be notified immediately of the address change; or

(b) Out of state, the equipment shall be returned to KCDHH.

THERESA KIDWELL, Chair

APPROVED BY AGENCY: March 28, 1995

FILED WITH LRC: April 4, 1995 at 9 a.m.

**LABOR CABINET**  
**Department of Workers' Claims**  
**(As Amended)**

**803 KAR 25:021. Individual self-insurers.**

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY KRS 342.260, 342.340, 342.345

NECESSITY AND FUNCTION: KRS 342.260 provides that ~~[requires]~~ the Commissioner of the Department of Workers' Claims shall promulgate ~~[to prepare]~~ administrative regulations ~~[considered]~~ necessary to carry on the work of the Department of Workers' Claims and to carry out the provisions of KRS Chapter 342. This administrative regulation establishes minimum requirements for individual employers who self-insure their workers' compensation liability. This administrative regulation covers the subject matter of 803 KAR 2:020, which is repealed.

Section 1. Definitions. (1) "Cessation liability security" means the security covering liability associated with anticipated claims occurring upon cessation of all operations of an individual self-insurer in the state.

(2) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(3) "Employer" means any employer subject to the Kentucky Workers' Compensation Act.

(4) "Guarantor" means a parent company whose financial statement is used by the applicant to obtain self-insurance status.

(5) "Service organization" means a person or entity which provides services which may include but is not limited to, claims adjustment, safety engineering, computation of statistics,

preparation of loss or tax reports, purchase of excess insurance, and preparation of any other self-insurance reports as may be required by law.

(6) "Specific excess insurance" means an insurance policy which insures the amount of any claim from any one (1) occurrence involving one (1) or more employees or employers in the same occurrence or incident of exposure in excess of a specified dollar amount.

Section 2. Certification. No person, party, or employer shall act as or hold itself out as an approved individual self-insurer unless the employer has been approved by the commissioner. All certifications issued by the commissioner shall remain in effect on an annual basis, unless otherwise revoked or suspended pursuant to Section 11 of this administrative regulation.

Section 3. Application. (1) Every initial application for individual self-insurance shall be submitted to the commissioner on form SI-02 and shall include:

(a) The employer's name, location of its principal office, date of organization, identification of its immediate parent organization, if any, and its ultimate parent, the percentage shareholder ownership of its immediate parent organization, identification of its [a] fiscal year and federal identification number. Any subsidiaries or contractors which are to be covered under the application, or who are already self-insured are to be identified and their relationship to the applicant described fully;

(b) A statement of the principal business activities engaged in Kentucky by the applicant including a list of site locations and number of employees at each site;

(c) The proposed specimen specific excess insurance policy, identifying the insurance company, attachment points and limits of liability. A copy of the policy or certificate of insurance ~~[binder]~~ must be received five (5) days prior to certification of self-insurance;

(d) Copies of the proposed surety deposit or letter of credit instruments required by Section 5 of this administrative regulation. The surety must be received by the commissioner prior to certification to self-insure;

(e) A schedule of projected workers' compensation claim liabilities and annual payment requirements for the three (3) years preceding the application;

(f) An estimate of annual payroll and a statement of loss runs on form SI-08;

(g) A certified audit report of the applicant's financial status for three (3) calendar years immediately preceding the application, prepared and executed by a certified public accountant;

(h) If the applicant is a corporation, a resolution by the board of directors, authorizing and directing the corporation to undertake to self-insure;

(i) If the applicant is a subsidiary corporation, a guarantee from the subsidiary's parent corporation on form SI-01;

(j) Any individual or service organization which will be responsible for administration and adjustment of workers' compensation claims must provide satisfactory evidence to the commissioner as to their qualifications to administer and adjust workers' compensation claims. [Copies of Kentucky adjusting licenses of the applicant's employees who are to be responsible for administration and adjustment of Kentucky workers' compensation claims, and a statement setting forth the qualifications of any service organization;]

(2) An applicant may perform, if qualified, any and all of the functions of a service organization or may contract with a service organization to perform these functions. An applicant's or service organization's employees and agents must be duly licensed to perform those functions for which a license is required by Kentucky law.

(3) The application shall be filed no later than thirty (30) days prior to the proposed inception date of self-insurance. Upon receipt

of a complete ~~an~~ application and all required documents, the commissioner shall approve or reject status as a self-insurer within thirty (30) days.

Section 4. Approval. (1) In determining whether an applicant is eligible for self-insurance and in establishing the amount of surety required, the commissioner shall consider all relevant factors including ~~but is not limited to~~ the following ~~factor~~s:

- (a) The financial strength of the applicant or guarantor;
- (b) The excess insurance policy and ~~self insured~~ retention level;
- (c) The experience of the service organization;
- (d) The ratio of current assets to current liabilities, the ratio of long-term debt to net worth, and shareholder equity;
- (e) Profit and loss history;
- (f) Workers' compensation loss history of the applicant;
- (g) The prospect of increased losses by the employer's cessation of operations in Kentucky;
- (h) The number of employees and degree of hazard to which employees are exposed;
- (i) Safety programs; and
- (j) Use of an approved managed care plan for treatment of injured workers.

(2) In order to be certified as an individual self-insurer, the applicant or guarantor must have assets in excess of all liabilities [a net worth] of at least \$3,000,000. Variance from this requirement may be granted to those currently certified individual self-insurers who have demonstrated excellent claims paying capability and over-all financial stability. [5,000,000.]

(3) Approval shall be granted only if the commissioner finds the applicant has complied with all sections of this administrative regulation and is satisfied that the persons responsible for the operations of the applicant are financially stable, competent, and experienced in the administration of workers' compensation self-insurance.

#### Section 5. Specific Excess Insurance and Surety Requirements.

(1) Specific excess insurance shall be purchased with a coverage limit of at least \$10,000,000 per occurrence.

(2) To be eligible to write specific excess insurance for individual self-insurers in Kentucky, a casualty insurance company on its latest financial statement shall reflect a minimum policyholder surplus of not less than \$25,000,000 [15,000,000]. The casualty insurance company shall have demonstrated excellent overall performance and a strong ability to meet its ~~their~~ obligations to policyholders over an extended period of time.

(3) Each employer who qualifies for a self-insurance certificate shall, prior to the certificate being issued, provide primary security in the form of a continuous surety bond on Form SI-03 or by irrevocable letter of credit on form SI-04, in an amount specified by the commissioner, but not less than \$500,000. In fixing the amount of security the commissioner shall consider all relevant factors including liability associated with anticipated claims occurring upon the cessation of all operations by the individual self-insurer in the state of Kentucky. The commissioner may direct that separate cessation liability security be deposited pursuant to Section 8 of this administrative regulation. The amount shall be reviewed and recalculated at the same times as the primary security.

(4) In lieu of a bond with security or letter of credit, the employer may deposit cash or securities through submission of SI-05 in an amount specified by the commissioner, but not less than \$500,000. To be acceptable any securities which are deposited shall ~~must~~ be eligible under the laws of Kentucky for investment by insurance companies.

Section 6. Coverage of Subsidiary or Related Corporations. A corporation having wholly owned subsidiaries may submit one (1) joint application to the commissioner, provided the parent corporation has

sufficient assets to qualify for a self-insurance certificate for both itself and its subsidiaries. A joint application shall be accompanied by a certificate of the secretary of each corporation indicating that their respective boards of directors have by resolution authorized joint and several liability for all the workers' compensation claims asserted against them. These certificates shall be effective until revoked by the corporations following thirty (30) written notice to the commissioner.

Section 7. Examination and Review of Filings. A certified public accountant or other ~~duly~~ qualified individual ~~and licensed under the laws of Kentucky~~ may be employed by the Department of Workers' Claims for the purpose of reviewing and analyzing the annual filings of individual self-insurers, and applicants for self-insurance, and for making recommendations based on that review. ~~required under this administrative regulation. The duties of the certified public accountant shall include:~~

(1) ~~Analysis of each application for certification as an individual self-insurer, including financial statements and workers' compensation claims experience. The certified public accountant shall provide the commissioner with a written summary of the analysis together with a recommendation that the application be granted, denied, or resubmitted, as appropriate;~~

(2) ~~Periodic examination of the workers' compensation claims, reports of accidents, and related information provided by each individual self-insurer. If the certified public accountant concludes that the workers' compensation liability of the individual self-insurance is not adequately secured, appropriate remedial action or revocation of the certificate shall be recommended; and~~

(3) ~~Review of the filings of each employer holding a self-insurance certificate to determine whether the filings are complete and timely. If any deficiency is found it shall be reported in writing to the commissioner.~~

Section 8. Cessation Liability Security. (1) Cessation liability security is distinct from the primary security required in Section 5 of this administrative regulation.

(2) Upon cessation of all operations of an individual self-insurer in the state of Kentucky, cessation liability security will be called for payment of claims only after all other security posted by the individual self-insurer has been exhausted.

(3) Cessation liability security may be issued in one (1) or more of the following forms:

(a) A surety bond or insurance policy issued by a casualty insurance company qualified pursuant to Section 5 of this administrative regulation;

(b) An escrow account; or

(c) An irrevocable letter of credit.

(4) In the event that an individual self-insurer secures its workers' compensation obligation by obtaining standard workers' compensation insurance or by joining an approved self-insurance group, the commissioner may release the cessation liability security, effective as of the date of the employers acquiring other coverage.

Section 9. Annual filings. (1) Sixty (60) days prior to the end of each self-insurance year, the following information and reports shall be filed with the commissioner:

(a) A certified audited financial statement of the individual self-insured and any guarantor;

(b) Total payroll for the prior calendar year, the projected payroll for the next year by quarter, and other reasonable information ~~reasonably~~ requested by the commissioner, including relevant claim data.

(2) At least ten (10) days prior to the end of each self-insurance year, the individual self-insurer shall file proof of specific excess insurance for the following year with the commissioner;

(3) If the annual required filings are not timely made, the self-insurance certificate shall not be renewed.

Section 10. Change in Ownership; Subsidiaries; Mergers and Acquisitions. (1) In the event of a change in majority ownership of a parent company, the individual self-insurer shall notify the commissioner within thirty (30) days of that change. A new application to self-insure shall be filed upon such a change in ownership.

(2) If any employer is added, merged, acquired, or otherwise brought within the self-insurance coverage, or if contractors or subcontractors are brought within the coverage, the individual self-insurer shall notify the commissioner within thirty (30) days and the adequacy of the surety bond will be reviewed and may be increased accordingly.

(3) If the payroll of the individual self-insurer during any quarter exceeds 125 percent of the projection previously filed, the individual self-insurer shall immediately report that change to the commissioner and the surety bond requirements may be reviewed and the bond shall ~~may~~ be increased accordingly.

Section 11. Revocation or Modification of Certification. (1) Should the commissioner receive information furnishing reasonable grounds to believe that the individual self-insurer is not meeting, or may not be able to timely meet, all of its obligations arising under KRS Chapter 342 [the Workers' Compensation Act] or this administrative regulation, a show cause order shall be issued to the individual self-insurer detailing the purported deficiency and setting a time and place for hearing.

(2) The commissioner may revoke the self-insurance certification upon a finding that any of the following conditions exist:

(a) The individual self-insurer is operating in contravention of ~~from~~ its submitted application or is in material violation of this administrative regulation;

(b) The individual self-insurer or parental guarantor is no longer of such financial stability as to assure its ability to meet its obligations for the payment of workers' compensation benefits;

(3) ~~[(e)]~~ In the event the commissioner suspends or revokes any individual self-insurer's certification, the commissioner may appoint one (1) or more individuals or professional corporation as a receiver to conduct the ongoing workers' compensation affairs of the individual self-insured.

~~[(3) Any person aggrieved by a failure of the individual self-insured employer to observe those requirements of subsection (2) of this section may request a hearing by filing a written request with the commissioner setting forth the basis of the purported failure. Upon receipt of a request the commissioner shall issue a notice of hearing to be held no sooner than ten (10) days and no later than thirty days (30) after such notice.]~~

(4) Self-insurance certification may be revoked by the commissioner after a hearing in compliance with the following procedures:

(a) The commissioner may issue a show cause order setting forth the grounds of revocation and setting a hearing in not less than ten (10) days.

(b) The commissioner, during the pendency of any appeal or request for hearing, may utilize the surety deposit provided by the individual self-insurer to make any payments of workers' compensation benefits which are currently due for which payments are not being made by the individual self-insurer or its service organization. The application for hearing shall briefly state the grounds on which the individual self-insurer is relying and the basis for relief to be sought at the hearing. The hearing shall be held within thirty (30) days after the filing of the application for hearing, unless postponed by mutual consent. The commissioner shall give written notice of the hearing not less than ten (10) days in advance, setting the date, time and place for the hearing, and specify the matters to be considered.

(c) Any party to the hearing shall have the right to appear in person or by counsel; ~~and~~ to be present during the giving of all evidence; ~~and~~ to have a reasonable opportunity to inspect all documentary and other evidence; ~~and~~ to examine and cross-examine witnesses; to present evidence in support of his interest and

to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence on his behalf. Testimony may be taken orally or by deposition, and the parties shall have right of inducing evidence by interrogatories or by deposition. Formal rules of pleading or evidence need not be reserved in any hearing as long as procedural due process is afforded all parties. The commissioner shall cause a full stenographic record of the proceedings to be made.

(d) No later than thirty (30) days after the termination of the hearing, the commissioner shall issue a written order addressing all matters involved at the hearing and serve a copy of the order upon each party. The order shall contain a concise findings of fact and conclusions of law. The commissioner's final order may revoke or modify a self-insurance certification or allow an employer to continue to self-insure subject to certain terms and conditions.

Section 12. Aggrieved Parties. Any person aggrieved by a failure of the individual self-insured employer to meet those requirements of Section 11(2) of this administrative regulation may request a hearing by filing a written request with the commissioner setting forth the basis of the purported failure. Upon receipt of a request the commissioner shall issue a notice of hearing to be held no sooner than ten (10) days and no later than thirty (30) days after such notice.

Section 13. [42.] Forms. (1) Forms, SI-01, SI-02, SI-03, SI-04, SI-05 and SI-08, ~~(all revised 3/15/95)~~, are hereby adopted and incorporated by reference.

(2) ~~One (1) copy of Forms SI-01, SI-02, SI-03, SI-04, SI-05, and SI-08, (revised 3/15/95), is filed herewith, and incorporated by reference.~~

~~(3)~~ Obtaining forms.

(a) Forms are available to the public at main and branch offices of the Department of Workers' Claims.

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - 410 West Chestnut Street, Louisville, Kentucky 40202;

3. Paducah - 220B North 8th Street, Paducah, Kentucky 42001; and

4. Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., Monday through Friday, inclusive for this purpose.

Section 14. [43.] KAR 25:020, Self-Insurers, is hereby repealed.

WALTER W. TURNER, Commissioner  
APPROVED BY AGENCY: May 9, 1995  
FILED WITH LRC: May 9, 1995 at noon

**LABOR CABINET  
Department of Workers' Claims  
(As Amended)**

**803 KAR 25:026. Group self-insurers.**

RELATES TO: KRS Chapter 342  
STATUTORY AUTHORITY: KRS 342.260, 342.340, 342.345, 342.350

NECESSITY AND FUNCTION: KRS 342.260 provides that ~~requires~~ the Commissioner of the Department of Workers' Claims shall ~~to~~ promulgate ~~such rules and~~ administrative regulations ~~as~~ ~~are~~ necessary to carry on the work of the Department of Workers' Claims and to implement the provisions of KRS Chapter 342. The function of this administrative regulation is to establish the procedure and minimum requirements through which groups of employers may join together to self-insure their workers' compensation liability. This administrative regulation covers the subject matter of 803 KAR

25:025, which is repealed.

Section 1. Definitions. (1) "Administrator" means an individual or legal entity engaged by a group self-insurance fund board of trustees to carry out the policies established by the group self-insurance fund's board of trustees and provide day-to-day management of the self-insurance fund.

(2) "Aggregate excess insurance" means an insurance policy written on a claims incurred basis which insures ~~[statutory]~~ claims to a stated limit in excess of a specified percentage of the earned premium or in excess of the group retention amount.

(3) "Bona fide trade association" means an association of employers created for a noninsurance trade purpose and which has been operating in the state of Kentucky for at least two (2) years prior to its sponsorship of a group self-insurance fund.

(4) "Commissioner" means the Commissioner of the Department of Workers' Claims.

(5) "Common interests" means that employers are engaged in similar activities, share common standard industrial classification codes and common risk factors.

(6) "Dividends" mean disbursements to group members from surplus funds.

(7) "Earned premium" means the pro rated portion of the full, actual premium charged to the group members that is applicable to the group's accounting period or fiscal year.

(8) "Fiscal agent" means a person, or legal entity, other than a service organization or employees or agents of a service organization, designated by the trustees to receive, invest and disburse the self-insurance group's funds.

(9) "Group members" means employers who have joined a group self-insurance fund.

(10) "Group self-insurance fund" means the total contractual arrangement whereby eleven (11) or more employers associate to jointly self-insure their workers' compensation liability. [less fund together with all other expenses of the group related to the self-insurance program.]

(11) "Insolvent" or "insolvency" means the inability of a group self-insurance fund to pay its outstanding lawful obligations as they mature in the regular course of business, or which holds insufficient assets to prospectively pay all incurred workers' compensation benefits when due.

(12) "Loss fund" means the total amount of the group self-insurance fund's retained liability for claims against the group members.

(13) "Premium" means the amount of money charged each member to fund the obligations and expenses of the group self-insurance fund.

(14) "Qualified actuary" means a member of the American Academy of Actuaries or a member of the Casualty Actuarial Society.

(15) "Service organization" means a person or entity which provides services which may include [including] but is not limited to, claims adjustment, safety engineering, statistical compilation, preparation of premium charges, loss and tax reports, and other required self-insurance reports, administration of the fund, marketing services, placement of excess insurance, development of member payroll audits, administration of investments, and legal assistance.

(16) "Specific excess insurance" means an insurance policy which insures the amount of any claim from any one (1) occurrence involving one (1) or more employees or employers in the same occurrence or incident of exposure in excess of a specified dollar amount.

(17) "Surplus funds" means monies in the self-insurance fund in excess of all losses, reserves and other costs.

(18) "Trustees" means persons elected by the group members or appointed by the board of directors of the sponsoring trade association to oversee the administration of the group self-insurance fund.

Section 2. Certification. Except for activities arising in the creation of a group self-insurance fund, no person or entity shall issue binders or certificates of insurance for workers' compensation coverage unless the [act as, or hold itself out as, a workers' compensation] group self-insurance fund [unless the group] has been certified to do so by the commissioner. All certifications issued by the commissioner shall remain in effect until revoked or suspended by the commissioner pursuant to Section 12 of this administrative regulation.

Section 3. Initial Application. (1) An application for certification as a workers' compensation group self-insurance fund may be filed on form SI-06 with the commissioner by a group of eleven (11) or more employers having common interests or membership in a bona fide trade association. Any group members having more than fifty (50) percent common ownership shall constitute one (1) group member. Each initial application shall set forth or be accompanied by:

(a) The fund's name, location of principal office, date of organization, name and address of each member, and the dates of the fiscal year for accounting purposes;

(b) A description of the group members' common interest or a description of the bona fide trade association including date of organization, articles of incorporation, and a history of the association's activities;

(c) A copy of the articles of association, articles of incorporation, trust agreement or bylaws of the proposed group self-insured fund. The group self-insurance fund's enabling documents shall describe the time and methodology by which premiums shall be determined, assessed and collected during regular operations and in the event of insolvency of the group self-insurance fund;

(d) The managed care and utilization review plans, if any, for the group self-insurance fund;

(e) Copies of any instruments by which the applicant or its agents have made any commitments to pay for any past or purchase any future goods or services;

(f) An executed copy of the indemnity agreement by which group members jointly and severally bind themselves to pay their workers' compensation liability;

(g) Identification by name, address, and term of the initial board of trustees, administrator, and service organization;

(h) The name of the custodian and the address where the group self-insurance fund's books and records will be kept;

(i) Specimen [Copies] of the proposed policy and certificate of insurance [or binders] for the specific and aggregate excess coverage [insurance];

(j) Copies of surety deposits and fidelity bonds as required by Section 11 of this administrative regulation;

(k) A proposed schedule of premium rates and any plan by which rates will be modified. If employment classifications are to vary from those utilized by the National Council of Workers' Compensation Insurers, a description of each classification shall be presented;

(l) A schedule of projected annual premiums and expenses; and

(m) Financial statements for initial group members prepared by a certified public accountant and signed by an owner or officer of each member demonstrating a combined net worth of no less than \$5,000,000 for the group and the financial stability of each member.

(2) The premium of one (1) group member shall not exceed forty (40) percent of the estimated total premium for the group self-insurance fund.

(3) The first year's premium for the initial membership of the group self-insurance fund shall be no less than \$750,000. Verification must be presented that twenty-five (25) percent of the initial estimated premium has been paid and deposited with the group's fiscal agent.

(4) The initial application must be filed no later than sixty (60) days prior to the proposed inception date of the group self-insurance fund.

(5) Certification as a group self-insurance fund shall be granted if the commissioner finds that the applicant has complied with all

requirements of this administrative regulation; that the persons responsible for the affairs of the group self-insurance fund are financially stable, competent and experienced in the administration of workers' compensation self-insurance; and that the proposed group self-insurance fund has demonstrated the ability to meet all of its obligations. The commissioner shall consider the adequacy of the funding mechanisms, the presence of excess insurance, the financial strength of the participating members, the stability of the membership and the risks of the industry.

Section 4. Annual Filing. The following information and reports shall be filed by the group self-insurance fund with the commissioner on an annual basis:

(1) Within thirty (30) days prior to the expiration of each self-insurance year, the group self-insurance fund shall file:

(a) ~~Proof of excess insurance coverage for the ensuing self-insurance year;~~

~~(b)~~ Copies of all fidelity and surety bonds or surety deposits;

~~(b)~~ ~~(c)~~ A current listing of the group members of the fund;

~~(c)~~ ~~(d)~~ A schedule of proposed premiums by employment classifications; and

~~(d)~~ ~~(e)~~ Any material changes in administration or the service organization.

~~(e)~~ A plan by which premium shall be determined, assessed, and collected in the event of insolvency or liquidation of the group self-insurance fund, unless such a plan has been previously submitted.

(2) Within ten (10) days prior to the expiration of each self-insurance year, the group self-insurance fund shall file proof of excess insurance coverage for the ensuing year.

~~(3)~~ ~~(2)~~ Within 150 days after the close of a self-insurance year, the group self-insurance fund shall file:

(a) The actuarial information required by Section 5 of this administrative regulation;

(b) A certified audit report in conformity with generally accepted accounting principles; and

(c) Any other relevant financial information requested by the commissioner.

~~(4)~~ ~~(3)~~ In the event the certified audit report reveals a fund deficit or inadequate reserves, ~~within thirty (30) days of the certified audit report~~ the trustees shall prepare and file ~~a~~ a plan of remedial action within thirty (30) days of the receipt of the certified audit report.

~~(5)~~ ~~(4)~~ Within 150 days after ~~of~~ the end of each self-insurance year, the trustees shall furnish to the group members a statement setting forth all premiums, losses, expenses and distributions for the group self-insurance fund.

Section 5. Actuarial Reports. (1) On an annual basis, the group self-insurance fund shall file with the commissioner an actuarial opinion by a qualified actuary addressing the adequacy of current premium levels and setting forth the actuarial assumptions on which the opinion is based. The opinion shall ~~(should)~~ advise if the premium levels are adequate to provide financial resources to reasonably meet all of the fund's estimated liability for the end of each self-insurance year previously [which were] incurred and projected for the ensuing year [during each fund year], including a reasonable allowance for incurred but not reported claims plus all administrative, marketing and reinsurance costs of the program.

(2) If in the opinion of the qualified actuary, the group self-insurance fund's current premium levels are not adequate to provide for the payment of all incurred and projected losses and ~~other~~ related expenses, the fund's trustees shall adjust the rates and the plan by which premiums will be collected to the level estimated by the qualified actuary to be sufficient to cover all incurred and projected liabilities [liability] and other expenses.

Section 6. Withdrawals and Terminations. (1) A member may withdraw from a group self-insurance fund upon sixty (60) days notice

to the commissioner and the trustees.

(2) If a group self-insurance fund determines to terminate its self-insurance program, the trustees shall give thirty (30) days advance written notice by certified mail to the commissioner and each group member and shall pay no dividends without the written approval of the commissioner for five (5) ~~three (3)~~ years following the close of the last year in which it operated. The trustees ~~[group]~~ shall demonstrate to the commissioner that ~~[it has made]~~ have been made satisfactory arrangements for the continued payment and servicing of all outstanding claims.

Section 7. Trustees; Duties. (1) The Board of Trustees of the group self-insurance fund shall consist of no less than three (3) nor more than seven (7) persons, none of whom are to be officers, employees or agents of a service organization.

(2) The trustees on behalf of the group members shall be responsible for the administration of the group self-insurance fund, for the assessment and collection of premium, for disbursements from the group self-insurance fund, and investment of the fund's monies.

(3) The trustees may contract with a service organization, an administrator, or a fiscal agent to carry out the administration of the group self-insurance fund.

(a) A service organization, its employees and agents must be duly licensed to perform those functions for which a license is required under Kentucky law.

(b) Any contract with a service organization that includes the adjustment and settlement of claims shall include a requirement that the service 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) A revolving fund of not more than twenty (20) percent of estimated premiums may be established for use by a servicing organization for the payment of claims.

Section 8. Excess Insurance. (1) With the exception of group self-insurance funds qualifying under subsection (2) of this section, the trustees shall purchase aggregate excess insurance. The retained liability and other fixed costs of the fund shall not exceed 100 percent of the annual assessment of the group members, unless such amount over 100 percent is secured by unencumbered surplus funds. In the computation of the retained liabilities of the group self-insurance fund, reserves for claims or projected reserves for claims may be discounted for their present value, provided such discounting is based upon the computation of a qualified actuary. [monies.] The limit of liability of the aggregate excess insurance coverage shall be no less than \$2,000,000 or fifty (50) percent of the earned premium, whichever is greater.

(2) A group self-insurance fund meeting all of the following conditions is not required to purchase aggregate excess insurance:

(a) The fund has been in continuous operation for at least five (5) years;

(b) The fund's annual premium has exceeded \$5,000,000 in each of the three (3) preceding years; and

(c) Reserves and premium structure have been established so as to secure adequately all predictable losses.

(3) The trustees shall purchase specific excess insurance coverage with a limit of at least \$25,000,000 per occurrence.

(4) To be eligible to write excess liability coverage for group self-insurance funds, a casualty insurance company shall at all times maintain on file with the Kentucky Insurance Commissioner financial statements demonstrating assets, including surplus to policyholders, at least equal to the Insurance Department requirements of a carrier to do business in the state. The latest financial statement shall reflect a minimum policyholder surplus of not less than \$25,000,000 [45,000,000] and the carrier shall have demonstrated excellent overall performance and a strong ability to meet its ~~their~~ obligations to policyholders over a long period of time.



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Section 9. Fund Balances. (1) Prior to inception of each group member's self-insurance year, the trustees shall collect from that member twenty-five (25) percent of the estimated premium for the ensuing year. The balance of the estimated premium shall be collected in either quarterly or monthly installments. Each group member's payroll shall be audited and an adjustment to premium shall be made accordingly.

(2) Disbursements from the fund shall be only for those purposes related to the group self-insurance fund. Dividends shall not be paid until at least twenty-four (24) months after the expiration of the self-insurance year and shall be paid only from surplus funds not required for payment of claims or other liabilities.

(3) The formula to be used for collection of premiums and for the distribution of dividends shall be determined by the trustees. ~~[Between group members the distribution may be based upon a formula which does not reflect an individual group member's claim experience.]~~

(4) No trustees, fiscal agent or service organization shall utilize any assets ~~[monies]~~ of the group self-insurance fund for any purpose unrelated to workers' compensation. ~~[Borrowing any monies from the fund shall be prohibited.]~~ The trustees may, at their discretion, invest any surplus funds ~~[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.

(5) Variation from the requirements of this section for good cause shown may be sought by application to the commissioner.

Section 10. Group Members. (1) 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 premium, unless such employer pays its full estimated annual premium 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.

(2) At the discretion of the trustees, the group self-insurance fund may include the Kentucky employees of foreign (out-of-state) employers.

(3) The trustees may suspend or expel any member from the group due to adverse claims experience or lack of cooperation with safety and loss prevention policies by giving the member and the commissioner thirty (30) days advance written notice. ~~[The trustees may suspend or expel any members from the group for nonpayment of premium, by giving the member and the commissioner ten (10) days advance written notice.]~~

(4) The trustees shall report to the commissioner any attempt by any person as defined in KRS 342.0011 who knowingly, as defined in KRS 501.020, makes any false representation, including misrepresentation of hazards, classifications, payrolls, or other facts of an employer or its agent that are designed to cause a reduction in the employer's premium. The trustees shall secure from each member an agreement to report payroll in accordance with the rules and rating plan of the fund. Willful failure to properly report in accordance with the rules and rating plan is ground for expulsion pursuant to subsection 3 of this section.

(5) At least thirty (30) days prior to due date, the trustees shall notify each group member of all premium due, including adjustments. Failure by any member to pay the premium due prior to the due date ~~[within thirty (30) days of the notice]~~ may ~~[result in immediate suspension or expulsion from the group by the trustees. Ten (10) days advance written notice shall be given to the member and the commissioner.]~~

(6) The group self-insurance fund shall be considered as an

individual employer for all purposes of taxation and the individual members of the group shall not be exposed to tax liability other than liability existing as a result of the indemnity agreement with the other group members and the group self-insurance fund.

Section 11. Bonds. (1) The trustees and fund administrators shall provide a fidelity bond to the commissioner in the amount of not less than \$300,000, which may be subject to a deductible not exceeding \$10,000 for each trustee, each fund administrator and the administrator's employees.

(2) The fiscal agent shall provide a fidelity bond to the trustees of not less than fifty (50) percent or \$1,000,000, whichever is lower, of the funds to be handled by the fiscal agent. This requirement shall be waived if the fiscal agent is a national bank.

(3) The service organization shall provide a fidelity bond to the trustees of not less than two (2) times the amount of the revolving fund.

(4) In lieu of the bonds required under subsections (1), (2) and (3) of this section, 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, whichever is lower. The fidelity blanket bond shall include the trustees, the administrator, the service organization, personnel of the service organization and the fiscal agent, unless the fiscal agent is a national bank.

(5) The fund shall provide surety to the commissioner on form SI-03 in an amount no less than \$250,000 or ten (10) percent of the annual premium as established in the most recent certified audit on file with the commissioner, whichever is greater.

(6) Any corporate surety, to be eligible for writing group self-insurance fund bonds in the state of Kentucky, shall be authorized by the Kentucky Insurance Commissioner to transact such 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. On its latest financial statement, the corporate surety shall reflect a minimum policyholder surplus of not less than \$25,000,000 ~~[15,000,000]~~. The corporate surety shall have demonstrated excellent overall performance and a strong ability to meet its ~~[their]~~ obligations to policyholders over a long period of time. No surety shall expose itself to any loss on any one (1) risk in an amount exceeding its current U.S. Treasury limit.

(7) The trustees may file a cash or cash equivalent security deposit on form SI-05 or bank letter of credit on form SI-04 in satisfaction of the surety requirement.

Section 12. Suspension, Revocation or Modification of Certification. (1) The commissioner may suspend, revoke or direct remedial actions regarding any group's certification as a group self-insurance fund if he finds any of the following conditions exist:

(a) The group self-insurance fund is operating significantly in contravention of the basic organizing documents of the group self-insurance fund or is in material violation of this administrative regulation or KRS Chapter 342;

(b) The group self-insurance fund is no longer financially responsible and may reasonably be expected to be unable to meet its current obligation to participants or employees of participants for the payment of workers' compensation medical and indemnity benefits; or

(c) There has been a significant and adverse change in the administration of the group self-insurance fund.

(2) In the event the commissioner suspends or revokes any group self-insurance fund's certification, the commissioner may appoint one (1) or more individuals or professional corporations as a receiver to conduct the ongoing workers' compensation affairs of the group self-insurance fund. In the event the commissioner appoints a receiver to assume certain administrative responsibilities over the activities of the

group self-insurance fund, the trustees, service organization [company] and administrator shall cooperate with the commissioner or receiver and are required to reply promptly in writing to any inquiry from the commissioner or his representative, to make available and to deliver to the commissioner or his representative any books, accounts, documents, or other records or information in their custody and control. The receiver may take any action necessary and reasonable to preserve all of the group self-insurance fund's assets and to insure timely payment of all workers' compensation benefits. The receiver may consult with and obtain advice or professional services from appropriate experts or other third-party professionals.

(3) A group self-insurance fund's certification [as a group self-insurance fund] may be suspended or revoked after compliance with the following procedures:

(a) The commissioner shall conduct a hearing upon a written application by any person or group aggrieved by an order of the commissioner. Written request for a hearing shall be filed within thirty (30) days after an order by the commissioner. The application for hearing shall briefly state the grounds on which the aggrieved party is relying and a basis for the relief sought. The hearing shall be held within thirty (30) days after the filing of the application for hearing, unless postponed by mutual consent. The commissioner shall give written notice of the hearing not less than ten (10) days in advance, stating the date, time and place for the hearing, and specify the matters to be considered.

(b) The commissioner, during the pendency of any appeal or request for hearing, may utilize the surety deposit provided by the group self-insurance fund to make any payment of workers' compensation benefits which is currently due.

(c) Any party to the hearing shall have the right to appear in person or by counsel and to be present during the giving of all evidence and to have a reasonable opportunity to inspect all documentary and other evidence, and to examine and cross-examine witnesses, to present evidence in support of his interest and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence on his behalf. Testimony may be taken orally or by deposition, and the parties shall have such right of introducing evidence by interrogatories or by deposition as may be obtained in circuit court. Formal rules of pleadings or evidence need not be reserved in any hearing as long as procedural due process is afforded all parties. The commissioner shall cause a full stenographic record of the proceedings to be made.

(d) Within thirty (30) days after the conclusion of the hearing, the commissioner shall make his order covering all matters involved at the hearing and serve a copy of the order upon each party [which has appeared]. The order shall contain concise findings of fact and conclusions of law. The final order may suspend, revoke or modify a group self-insurance fund's certification.

Section 13. Forms. (1) Forms SI-03, SI-04, SI-05 and SI-06, (all revised 3/15/95), are hereby adopted and incorporated by reference.

(2) [One (1) copy of Forms SI-03, SI-04, SI-05, SI-06 (revised 3/15/95), is filed herewith, and incorporated by reference.

(3) Obtaining forms.

(a) Forms are available to the public at main and branch offices of the Department of Workers' Claims.

1. Frankfort - Perimeter Park West - Building C, 1270 Louisville Road, Frankfort, Kentucky 40601;

2. Louisville - 410 West Chestnut Street, Louisville, Kentucky 40202;

3. Paducah - 220B North 8th Street, Paducah, Kentucky 42001; and

4. Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

(b) Office hours of each office are 9 a.m. to 4 p.m., local time, Monday through Friday, inclusive, for this purpose.

Section 14. 803 KAR 25:025, Joint self-insurers, is hereby

repealed.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: May 9, 1995

FILED WITH LRC: May 9, 1995 at noon

## PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

(As Amended)

### 806 KAR 9:220. Agent continuing education.

RELATES TO: KRS 304.9-295

STATUTORY AUTHORITY: KRS 304.2-110, 304.9295

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.9-295 provides that the Commissioner of Insurance may, by administrative regulation, limit the number of excess continuing education credit hours accumulated during any continuing education biennium. This administrative regulation establishes procedures for approval of agent continuing education programs and obtaining credit for attending continuing education programs.

Section 1. Definitions. [For the purposes of this regulation:]

(1) "Commissioner" means the Commissioner of the Kentucky Department of Insurance; and

(2) "Provider" means the sponsor of a continuing education program.

Section 2. Continuing Education Program Requirements. (1)(a) A continuing education program shall not qualify for use as continuing education credit unless it is filed with and approved by the commissioner. If the continuing education program is or will be advertised as having been approved by the commissioner, it shall be filed with the commissioner at least sixty (60) days in advance of advertising unless the commissioner, in his sole discretion, waives the sixty (60) day period.

(b) Any material change in a continuing education program previously filed with and approved by the commissioner shall not be implemented until filed with and approved by the commissioner.

(c) All applications for approval of a continuing education program shall be in the form prescribed by the commissioner and shall be accompanied by an initial fee of ten (10) dollars which is deemed earned when paid and is not refundable. After review and assignment of the number of credit hours, the commissioner shall notify the provider of the additional fee of five (5) dollars per credit hour due pursuant to 806 KAR 4:010. A continuing education program is not deemed approved until all fees are paid.

(d) In order to receive approval of the commissioner for continuing education credit pursuant to KRS 304.9-295, a continuing education program shall meet the requirements of this administrative regulation.

(2) Continuing education programs which qualify for approval for continuing education credit are those specified in KRS 304.9-295(4)(a).

(3) In order to obtain approval under subparagraphs 7, 8, and 9 of KRS 304.9-295(4)(a), a continuing education program shall meet the following requirements:

(a) The continuing education program shall contribute directly, at a professional level, to the competence of the agent or solicitor, by dealing with the following subjects:

1. Insurance, annuities and risk management;
2. Insurance laws and administrative regulations;
3. Mathematics, statistics, and probability;
4. Economics;



5. Business law;  
6. Finance;  
7. Taxes;  
8. Business environment, management, or organization; or  
9. Areas other than those listed above if the agent or solicitor can demonstrate that they contribute to professional competence and otherwise meet the standards set forth in this administrative regulation whether a particular subject qualifies under this paragraph rests within the sole discretion of the commissioner.

(b) However, continuing education programs on the following subjects shall not qualify for continuing education credit:

1. Any course used to prepare for taking an insurance agent or solicitor license examination;  
2. Committee service of professional organizations;  
3. Computer science courses;  
4. Motivational or sales training courses; and  
5. Any program not in accordance with this administrative regulation.

(c) Program development and presentation:

1. The continuing education program shall have substantial intellectual or practical content to enhance and improve the knowledge and professional competence of participants;  
2. The program shall be developed by persons who are qualified in the subject matter and instructional design;  
3. The program content shall be current;  
4. Each program shall have a written outline and study materials or texts;  
5. Instructors shall meet the requirements of subsection (6) of this section;

6. The number of participants and physical facilities shall be consistent with the teaching method specified; and

7. All programs shall include some means of evaluating quality.

(d) Continuing education programs filed for approval under this subsection shall include information showing that the instructors are qualified, through training or experience, to instruct the continuing education program competently. The commissioner may disapprove or withdraw approval of a continuing education program if an instructor does not meet the qualifications of this paragraph or has committed any of the acts prohibited by KRS 304.9-440.

(5) Correspondence courses shall be subject to the following:

(a) A correspondence course shall require successful completion of a written examination;

(b) A specific correspondence course shall be used for continuing education credit only once every continuing education biennium;

(c) Agents and solicitors shall be [are] limited to a maximum of twelve (12) credit hours for correspondence courses per continuing education biennium; and

(d) A correspondence course shall not be approved for continuing education credit of more than twelve (12) hours.

(6) The commissioner may withdraw approval of a continuing education program for any of the following reasons:

(a) The continuing education program teaching methods or program content no longer meet the requirements of KRS 304.9-295 or this administrative regulation or have been materially changed without filing with or approval by the commissioner;

(b) The continuing education program provider has certified to the commissioner that an agent or solicitor has satisfactorily completed the program when, in fact, the agent or solicitor has not done so;

(c) The continuing education program provider fails to certify to the commissioner that an agent or solicitor has satisfactorily completed the program when, in fact, the agent or solicitor has done so; or

(d) There is other good and just cause to withdraw approval of a continuing education program.

(7) Providers shall renew approval of continuing education programs at the end of each continuing education biennium. At least sixty (60) days prior to the end of each continuing education biennium, the commissioner shall mail or deliver to each provider renewal

information. Providers shall file renewal information with and pay the renewal fee specified in 806 KAR 4:010 to the commissioner no later than the end of the continuing education biennium.

Section 3. Measurement of Credit. Continuing education programs shall be credited for continuing education purposes in full hours, as the commissioner deems appropriate. In order to have assigned to it one hour of continuing education credit, each hourly period of a continuing education program shall [must] include at least fifty (50) minutes of continuous instruction or participation. For the purposes of this section, a one day continuing education program shall be granted eight (8) hours credit if the total elapsed time is approximately eight (8) hours and the program includes at least 400 minutes of classroom instruction or participation.

Section 4. Proof of Completion. (1) Upon completion of a continuing education program, the provider shall certify to the commissioner the names of all agents or solicitors who satisfactorily completed the continuing education program. The certification of completion required by this section shall be in the form prescribed by the commissioner.

(2) The certificate of completion [attendance] shall be completed in triplicate for each agent or solicitor attending. The original shall be mailed by the provider to the department within thirty (30) days after the continuing education course is completed. The department shall accept only originals. The provider of the continuing education program shall furnish to the agent or solicitor attending the program a copy of the certificate and the agent or solicitor shall retain a copy of the certificate for at least three (3) years. The provider of the continuing education program shall retain a copy of the certificate for at least three (3) years. Providers of continuing education programs, agents, and solicitors, shall make available to the commissioner or his designee copies of certificates upon the request of the commissioner.

(3) Pursuant to KRS 304.9-295(8), every agent shall be [is] responsible for insuring that his continuing education certificates of completion are timely filed with the department.

Section 5. Carry Forward of Excess Credit Hours. Agents or solicitors may carry forward credit hours in excess of twenty-four (24) hours from a previous continuing education biennium. The number of excess credit hours carried forward pursuant to this section shall be limited to twelve (12).

Section 6. Lists of Approved Continuing Education Programs. The commissioner shall provide, upon written request accompanied by a fee of five (5) dollars pursuant to 806 KAR 4:010, a list of all continuing education programs which the commissioner has approved and the providers of those programs.

Section 7. Cancellation and Reinstatement of Licenses. (1) If the department does not receive proof of the fulfillment of an agent's continuing education requirements on or before July 30 [31] in even numbered years, the commissioner shall cancel the agent's license. The commissioner shall notify a licensee and the licensee's sponsoring agent or insurer of cancellation of license for failure to comply with continuing education requirements. The notice shall be in writing and mailed to the resident address of the licensee on file with the commissioner and if that notice is returned as undeliverable the notice shall be sent to the business address of the licensee on file with the commissioner. Notices to sponsoring agents and insurers shall be mailed to their mailing addresses on file with the commissioner.

(2) Reinstatement of prior license or issuance of a new license shall be granted only after the licensee has satisfied the continuing education requirement for which the licensee is delinquent, caused to be filed the appropriate certificate of completion, filed the required application or appointment for a license, and has paid the required licensing fees.

## ADMINISTRATIVE REGISTER - 60

DON W. STEPHENS, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: March 14, 1995

FILED WITH LRC: March 21, 1995 at 4 p.m.

### CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management and Development (As Amended)

#### 904 KAR 2:400. Establishment, review, and modification of child support and medical support orders.

RELATES TO: KRS 205.710 to 205.800, 403.210 - 403.240, 405.520, 45 CFR 302.50, 302.56, 303.4, 303.6, 303.8, 303.31

STATUTORY AUTHORITY: KRS 194.050, 205.710 - 205.800, 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with the provisions of KRS 205.710 to 205.800. This administrative regulation specifies the requirements for the establishment and modification of child support and medical support orders. ~~[The content of this administrative regulation includes information regarding the establishment of a child support obligation and the appeal procedure which was previously located in 904 KAR 2:022. 904 KAR 2:420, the repeal of 904 KAR 2:022, is being filed concurrently with this administrative regulation. It also includes material which was previously incorporated by reference in 904 KAR 2:170. 904 KAR 2:171, the repeal of 904 KAR 2:170, is being filed concurrently with the filing of this administrative regulation.]~~

Section 1. Support Obligation Shall be Established. (1) A child support and medical support obligation shall be established:

- (a) By a court of competent jurisdiction; or
- (b) An administrative order.

(2) The amount of the obligation shall be:

(a) The amount specified in Section 2(4)(a) of this administrative regulation; or

(b) The amount determined by the child support guideline contained in KRS 403.212, as computed on Form CS-71, Commonwealth of Kentucky Worksheet, for a child support obligation administratively established by child support agency staff.

(3) The amount determined shall be for collection purposes. Any support payment collected shall reduce the amount of the obligation dollar for dollar.

(4) For all public assistance cases referred to the child support agency, or for those nonpublic assistance cases for which child support services are being provided, the agency shall use state statute and legal process in establishing a child support and medical support obligation, including KRS 454.200.

(5) In addition to the deductions as specified in KRS 403.212(2), an administratively or judicially imputed child support obligation shall be determined by:

(a) 100 percent of the income of the parent with whom the child resides, when:

1. There is no support order; or

2. There is a support order but there is no support obligation worksheet; or

3. A worksheet cannot be obtained; or

(b) That parent's portion of the total support obligation as indicated on the worksheet, when:

1. There is a support order; and

2. A copy of the child support obligation worksheet can be obtained.

(6) Within ninety (90) calendar days of locating an absent parent or of establishing paternity, the child support agency shall establish

an order for support or document unsuccessful attempts to serve process.

(7) ~~(6)~~ If a court or administrative authority dismisses a petition for support without prejudice, the agency shall, at that time, determine when to appropriately seek an order in the future.

Section 2. Administrative Establishment. (1) The cabinet may administratively establish a child support and medical support obligation when:

- (a) Paternity is not in question;
- (b) There is no existing order of support for the child;
- (c) The parent resides or is employed in Kentucky; and
- (d) The absent parent's address is known.

(2) The cabinet shall determine the monthly support obligation in accordance with the Kentucky child support guideline as contained in KRS 403.212.

(3) To gather necessary information for administrative establishment, the cabinet shall:

(a) Send to the parental client:

1. A financial questionnaire;
2. A child care expense questionnaire; and
3. A medical support verification request ~~[and~~ 4. An administrative subpoena].

(b) Send to the nonparental client:

1. A nonparental client information request (child care expense questionnaire); and

2. A medical support verification request, if appropriate.

[3. An administrative subpoena if a medical support information request is sent.]

(c) Send to the absent parent:

1. An appointment letter;
2. A financial questionnaire;
3. A child care expense questionnaire; ~~[and]~~ and
4. A medical support verification request ~~[and~~ 5. An administrative subpoena].

(d) Send to the employer of the parental client or the absent parent, or both if both are employed, a wage information request.

(4) In a default case, the cabinet shall set the obligation based on the AFDC standard of need for the child or children as specified in 904 KAR 2:016, Section 7(2).

(5) The child support obligation may be retroactively modified upward, without a showing of change in circumstance, if, within two (2) years of the establishment of the order, evidence of gross income is presented which would have established a higher amount of child support pursuant to the child support guideline.

(6) After the monthly support obligation has been determined, the cabinet shall serve the notice of monthly support obligation upon the absent parent in accordance with KRS 405.440.

(7) In accordance with KRS 405.430(2), the cabinet may modify the monthly support obligation established by the cabinet.

(8) The cabinet shall not administratively modify any obligation which was established by a court of competent jurisdiction.

Section 3. Review and Adjustment of Child Support and Medical Support Orders. (1) The child support agency shall have a written and publicly available review and adjustment plan for child support orders.

(2) The child support agency shall review all public assistance cases which are thirty six (36) months old or older. Subsequent reviews shall occur at thirty six (36) month intervals based on the date:

(a) The order was adjudicated;

(b) It was determined the order should not be adjusted; or

(c) Upon which the post review challenge period ended.

(3) All public assistance and nonpublic assistance cases shall be reviewed at the request of either parent or any other person or entity that may have standing to request a modification subject to the child support order.

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(4) The child support agency shall notify each parent subject to an order of the right to request a review.

(5) Within fifteen (15) calendar days of receipt of a review request, the child support agency must determine if a review shall be conducted.

(6) The child support agency shall notify each parent subject to a child support or medical support order of the review thirty (30) days prior to the review commencement.

(7) Within 180 days of determining that a review should be conducted, or of locating the nonrequesting parent, the child support agency shall:

- (a) Send a notice to each parent that a review will be conducted;
- (b) Conduct the review;
- (c) Send a notice of the result; and
- (d) Modify the order or determine that there will be no change.

Section 4. Appeal Procedures. (1) A parent, or any other person or entity that has standing or his authorized representative may request a dispute hearing in accordance with KRS 405.440 and 405.450.

(2) A request shall be made to the child support agency: [~~area child support office~~]

- (a) In writing;
- (b) In person; or
- (c) Orally, later reduced to writing within the time frames as specified in subsection (3) of this section.

(3) The written request for a dispute hearing shall be considered timely if:

- (a) Made within twenty (20) days of receipt of an initial notice of monthly support obligation;
- (b) Made within twenty (20) days after the parent is notified that the initial support obligation will be upheld; or
- (c) Made after thirty (30) days but before fifty (50) days have passed since the parent requested a dispute hearing, but the cabinet has not acted upon the request.

(4) If the request is not made within the time period specified in subsection (3) of this section, the parent shall show good cause for the late request. Good cause reasons shall include:

- (a) A parent being away from home during the entire filing period;
- (b) The parent's inability to read the notice of monthly support obligation; or
- (c) The parent's incapacity due to a serious illness during the entire filing period.

(5) The parent or any other person or entity having standing to request modification or his authorized representative may review case material pertinent to the reason for the dispute and may present witnesses at the hearing.

(6) If the objection is being filed on an initial notice of monthly support obligation, the obligation shall be stayed as specified in KRS 405.450(2).

(7) If the objection is being filed on a proposed modification of an existing obligation, or a decision that the existing obligation should not be changed, the amount on the prior notice is enforceable and that amount shall be paid while the hearing is pending.

(a) If the parent or any other person or entity having standing to request a modification, or his authorized representative prevails, the cabinet shall promptly return to the obligor any overpayments made since the hearing was requested.

(b) If the cabinet prevails, the obligation amount will be retroactive to the effective date on the notice of monthly support obligation.

(8) The parent or any other person or entity having standing to request a modification, or his authorized representative may withdraw the hearing request by writing to the area child support office or the Hearing Branch in the Department for Social Insurance's Division of Administrative Review.

(9) If the parent or any other person or entity having standing to request modification, or his authorized representative fails to appear

at the hearing, the Hearing Branch may allow the parent to reschedule the hearing.

(a) The parent or any other person or entity having standing to request modification or his authorized representative shall be notified by mail that he has ten (10) days to show good cause for failing to appear or the action shall be dismissed.

(b) If the parent or any other person or entity having standing to request modification or his authorized representative does not reschedule or show good cause, the hearing officer shall dismiss the action.

Section 5. Material Incorporated by Reference. (1) Forms necessary for the establishment, review, and modification of child support orders, medical support orders, or both, provided through the Division of Child Support Enforcement are incorporated effective March 15, 1995 [~~December 1, 1993~~]. These forms are:

- (a) CS-66, revised 7/94 [~~8/92~~]; and
- (b) CS-71, revised 7/94; and
- (c) CS-72, revised 6/89; and
- (d) CS-28, issued 2/94.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN CLAYTON, Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: March 7, 1995

FILED WITH LRC: March 13, 1995 at 3 p.m.

### CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management and Development (As Amended)

#### 904 KAR 2:410. Child support collection and distribution.

RELATES TO: KRS 205.710-205.800, 403.215, 405.450, 405.465, 405.467, 405.490, 405.520, 45 CFR 302.32, 302.37, 302.38, 302.51-302.54, 302.60, 303.6, 303.100-303.102, 15 USC 1673(b)

STATUTORY AUTHORITY: KRS 186.570, 194.050, 205.710 to 205.800, 405.520

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer the Child Support Enforcement Program (CSEP) in accordance with KRS 205.710 to 205.800. KRS 205.712 provides for the child support agency to receive and process all child support payments. This administrative regulation sets forth the procedures for collection and distribution of child support payments. [~~This administrative regulation includes content regarding wage withholding and other enforcement remedies which was previously included in 904 KAR 2:022. 904 KAR 2:420, the repeal of 904 KAR 2:022, is being filed concurrently with the filing of this administrative regulation. It also includes material which was previously incorporated by reference in 904 KAR 2:170. 904 KAR 2:171, the repeal of 904 KAR 2:170, is being filed concurrently with the filing of this administrative regulation.~~]

Section 1. Collection of Maintenance [~~Spousal Support~~]. Agency efforts shall include collecting maintenance if it meets the definition of "duty of support" in KRS 205.710(5). [~~support for a spouse or former spouse who is living with a child if:~~

- (1) ~~A support obligation has been established for that spouse; and~~
- (2) ~~The child support obligation is being enforced by the state child support agency.]~~

Section 2. Methods of Collection. (1) Wage withholding.

(a) As specified in KRS 403.215, 405.465 and 405.467, the cabinet shall use this method;

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1. As the primary tool for child support collection; and
2. As necessary to facilitate enrollment of a child through an employer in available health insurance.

(b) For all cases, the child support agency shall provide for wage withholding without necessity of an amendment or court action to the child support order.

~~[(b) The total amount withheld shall not exceed the maximum amount permitted by 15 USC 1673(b).]~~

(c) If an absent parent has more than one (1) child support wage assignment against him, the child support agency shall allocate amounts available for withholding, giving priority to the current child support obligation amount due each family.

(d) No amount of an employee paid share of the cost of health insurance shall be deducted if, after child support and maintenance are deducted:

1. The total monthly amount of health care coverage exceeds the Federal Consumer Credit Protection Act limits; or
2. Only a portion of the monthly amount needed to purchase health insurance is available.

(e) ~~[(d)]~~ If amounts are improperly withheld, the cabinet shall promptly refund those amounts.

(f) [(e)] To comply with the advance notice requirements of KRS 405.467(4) ~~[(3)]~~, the agency shall notify the absent parent within fifteen (15) calendar days of the request for wage withholding in writing that:

1. He has ten (10) days to contest the withholding;
2. Failure to contest the withholding within the specified time shall result in the child support agency notifying the employer within five (5) working days to begin withholding; and
3. Withholding shall apply to the current and any subsequent employer.

(g) [(f)] In addition to the requirements of KRS 405.467(5) ~~[(1)]~~ ~~[(8)]~~, the employer shall be notified, within fifteen (15) days of the request for wage withholding, of the following:

1. The employer shall forward collected child support amounts to the child support agency and collected medical insurance premiums to the health insurance carrier within ten (10) working days of the date the amount is withheld from the absent parent's wages;

2. The employer shall include on the transmittal to the child support agency the name and Social Security number of the absent parent, the child support agency assigned case number and the date the money was withheld;

3. The employer may combine amounts due the child support agency into one (1) payment if the employer identifies by the name, Social Security number, and the child support agency assigned case number the amount attributable to each absent parent;

4. The employer shall implement withholding no later than the first pay period that occurs after fourteen (14) work days following the date the notice was mailed; and

5. The employer shall notify the child support agency promptly when the absent parent terminates employment and provide the following information:

- a. The absent parent's last known address; and
- b. The name and address of the new employer, if known.

(h) [(g)] The absent parent shall keep the child support agency informed of his current employer, ~~[and]~~ if he has access to health insurance coverage at a reasonable cost and the ~~[-]~~ health insurance policy information.

(i) [(h)] The child support agency shall extend the withholding system to include withholding from wages derived in this state although the support order was issued by another state.

1. Within twenty (20) days of determining that withholding is appropriate for an interstate case, the initiating state shall notify the child support agency of the state where the absent parent is employed to implement interstate withholding.

2. The notice shall contain:

- a. The amount requested to be withheld;

b. The arrearage amount; and

c. A copy of the child support and medical support order.

3. The state where the support order was entered shall provide the information necessary for withholding within thirty (30) days of the receipt of the request.

4. The state of the absent parent's employer shall:

a. Send notice to the absent parent within fifteen (15) calendar days of locating the absent parent or his employer;

b. Provide the absent parent with the opportunity to contest the withholding; and

c. Send notice to his employer and to the absent parent.

5. The child support agency shall notify the state in which the custodial parent resides when the absent parent is no longer employed in the state and provide the state with both the absent parent's and new employer's name and address, if known.

6. Except for when the withholding shall be implemented in the state where the support order is filed, the laws and procedures of the state where the absent parent is employed shall apply.

(j) [(i)] The child support agency shall terminate wage withholding procedures when there is no longer a current order of support and all arrearages have been satisfied.

(2) Withholding of unemployment compensation.

(a) The child support agency, through an agreement with the state employment security agency, shall provide withholding of a child support obligation from an absent parent receiving unemployment compensation under the following conditions:

1. An absent parent who is delinquent and owes child support may voluntarily sign an agreement to withhold child support from unemployment compensation benefits.

2. The employment security agency shall commence withholding if:

a. An agreement is signed by the absent parent; or

b. A notice of claim of intent to withhold is completed by the child support enforcement agency when the absent parent fails to sign an agreement to withhold within fifteen (15) calendar days; and

c. No mistake in fact or law is proven which causes the absent parent to be found not owing.

(b) Withholding of unemployment shall not exceed fifty (50) percent of the benefit amount unless:

1. Ordered by a court of competent jurisdiction; or

2. Requested by the absent parent.

(3) Federal tax refund (offset).

(a) Past-due child support [AFDC], medical support payments (if a specified dollar amount is included in the order) maintenance, and foster care related support shall qualify for offset if:

1. There is a court ordered or administratively established support obligation;

2. There has been an assignment of support to the child support agency;

3. The arrearage equals at least \$150 ~~[as of January 1 of a year]~~ and shall have been delinquent at least three (3) months;

4. The arrearage shall be owed for a child or for a child and the parent with whom the child is presently living;

5. The child support agency shall determine the amount of the arrearage and have a copy of the payment record. If there is no payment record, the child support agency shall have an affidavit signed by the custodial parent attesting to the amount of support paid.

6. The child support agency shall verify the accuracy of the absent parent's name and social security number.

(b) Past due child support, medical support or maintenance in a nonpublic assistance case ~~[child support arrearage]~~ shall qualify for offset if:

1. There is a court ordered or administratively established support obligation and the child support agency is enforcing the order;

2. The arrearage shall be equal to no less than \$500 dollars and may not include fees, court costs, or any other non child support debt owed to the state or to the family;

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~~3. The arrearage may include medical support payments if a specific dollar amount has been ordered by the court;~~

~~4. The arrearage may include spousal support if:~~

~~a. Established by court order; and~~

~~b. The child support and spousal support are included in the same order.]~~

3. [5.] The child support agency shall have verified the accuracy of the arrearage and have a copy of the support order, including modifications and a copy of the payment record. If there is no payment record, the child support agency shall have an affidavit signed by the custodial parent attesting to the amount of support paid;

4. [6.] The arrearage shall be owed on behalf of a child who lives with the client and who is a minor as of December 31 of the year in which the case is submitted for offset;

5. [7.] The child support agency shall calculate an assigned arrearage ~~[as this arrearage shall be paid prior to a non-AFDC arrearage];~~

6. [8.] The child support agency shall verify the accuracy of the absent parent's name and social security number.

(4) State income tax refund (offset).

(a) An AFDC, foster care, or medical support arrearage which is owed by any person who is required to provide medical support for a child who is eligible for medical assistance (if a specified dollar amount is included in the order) related child support arrearage shall qualify for offset if:

1. There is an arrearage on a legally established child and medical support obligation;

2. The absent parent's name and social security number are known;

3. The arrearage is at least twenty-five (25) dollars; and

4. The arrearage has been verified as accurate.

(b) ~~[Spousal support shall not be included for offset and the arrearage amount shall be adjusted accordingly;~~

~~(c)]~~ A nonpublic assistance support arrearage shall qualify for offset if criteria specified in Section 2(3)(b) of this administrative regulation is met and arrearages are not less than \$150.

Section 3. Aid to Families with Dependent Children (AFDC) Accounts Distribution. (1) A child support payment collected on behalf of a recipient of AFDC shall:

(a) Be made payable to the child support agency; and

(b) Be reported to the AFDC agency within ten (10) working days of the end of the month in which the support is received.

(2) A child support payment that makes the AFDC family ineligible for AFDC shall be reported to the child support agency by the AFDC agency.

(a) If the family is ineligible for an AFDC payment, the child support agency shall:

1. Distribute the amount of child support collected; and

2. Notify the family of continuation of child support services as specified in 904 KAR 2:380, Section 4(2).

(b) If the household remains eligible for an AFDC payment or if a hearing is requested:

1. The AFDC agency shall notify the child support agency; and

2. The child support agency shall distribute the collection as specified in Section 3(7) of this administrative regulation.

(3) A current payment that includes payment on a prior month obligation shall be distributed by the child support agency.

(4) A payment received in the month after ineligibility for AFDC is determined but prior to the last assistance payment being issued shall be used:

(a) To reimburse the state for any assistance paid; and

(b) To pay any excess to the family.

(5) If a hearing is requested and it is determined that the family is ineligible for an assistance payment, the child support agency shall:

(a) Determine the collected amount the family would have received; and ~~[if it is determined that the family is ineligible for an~~

~~assistance payment.]~~

(b) Forward any amount in excess of the assistance payment to the family.

(6) If a hearing is requested and the family is determined to be eligible for an assistance payment, distribution of that month's child support collection shall be made.

(7) ~~[The first fifty (50) dollars of]~~ The amount collected in a month on behalf of the AFDC family up to the first fifty (50) dollars shall be distributed to the AFDC family within fifteen (15) days of the date of initial receipt by the agency.

(a) If the collected amount is less than fifty (50) dollars, the collected amount shall be sent to the family within fifteen (15) days of the end of the month in which it is collected.

(b) If the collected amount exceeds fifty (50) dollars, only fifty (50) dollars shall be paid to an AFDC family receiving support.

(c) If the collected amount represents payments from two (2) or more absent parents, only the first fifty (50) dollars shall be paid to the AFDC family.

(d) If the amount collected represents a payment for a prior month and is received by the child support agency in the month it is due, up to the first fifty (50) dollars shall be paid to the family.

(e) If the amount collected represents a payment for a prior month and is received by the child support agency in the month in which it is due, but the collection is less than fifty (50) dollars, the collected amount shall be sent to the family within fifteen (15) days of the end of the month in which it is collected.

Section 4. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Made payable to the child support agency; and

(2) Upon receipt by the child support agency, shall be disbursed to the foster care agency for distribution.

Section 5. Tax Refund Intercept. (1) Public assistance accounts.

(a) Amounts collected in public assistance cases shall be applied to assigned arrearages.

(b) If no assigned arrearages remain, the collections shall be forwarded to the AFDC family ~~[if unassigned arrearages are owed]~~ or foster care agency within thirty (30) calendar days of the date of initial receipt by the agency.

(c) If a timely appeal is filed by an absent parent and the appeal is resolved, payment shall be made to the family or refunded to the absent parent within fifteen (15) calendar days of the resolution date.

(d) If a joint return has been filed, tax refund intercept collection shall be held by the child support agency for six (6) months prior to being distributed.

(2) Nonpublic assistance accounts. For a nonpublic assistance account, if no assigned arrearage remains, an amount collected which represents an ~~[unassigned]~~ arrearage amount shall be sent to the family within thirty (30) calendar days of the initial receipt date.

(3) If the absent parent contests the accuracy of a past due amount, he may request an administrative review in accordance with specifications in 904 KAR 2:400, Section 4.

Section 6. Treatment of Excess Payments. (1) Collection of child support payments shall be applied to the required obligation amount for the month in which the support was collected.

(2) After the current obligation amount is satisfied, any excess amount shall be treated as payment on previous unpaid arrearage.

Section 7. Wage Withholding Distribution. (1) A child support or medical support payment made through wage or other withholding shall use the date the income is withheld for the date of collection for distribution to meet the support obligation.

(2) Distribution of wage withholding collections shall be made according to specification in Sections 3, 4, 6 or 8 of this administrative regulation.

Section 8. Interstate Case Payment Distribution. Child support payments that are collected by a responding state on behalf of an initiating state shall be forwarded to the initiating state within fifteen (15) calendar days of initial receipt by the responding state.

(1) If the collected amount is less than fifty (50) dollars, the responding state shall send the amount collected to the location specified by the child support agency in the initiating state within fifteen (15) calendar days of the date of initial receipt in the responding state.

(2) The initiating state upon receipt of collection made by the responding state shall retain the collections to reimburse the assistance payment for the month it was received or the next month if the amount collected exceeds the required support obligation for the month and is in excess of the AFDC assistance payment.

(3) Collection of child support in the month after the month the family receives its last AFDC assistance payment shall be distributed and sent to the family within fifteen (15) calendar days of the date of initial receipt in the state.

Section 9. Additional Administrative Enforcement Remedies. (1) When the cabinet determines that the obligor owes an arrearage, the cabinet may implement administrative enforcement remedies listed below to collect the delinquent support amounts:

(a) Filing of liens on personal or real property when an arrearage is equal to or greater than one month's obligation; [and]

(b) Report to credit bureaus; and

(c) Notifying the Transportation Cabinet to deny or revoke motor vehicle driver's license. [reporting.]

(2) Within the context of the provisions of KRS 205.768, the Cabinet for Human Resources:

(a) Shall inform the credit reporting agency of a child support arrearage in each case referred for federal tax refund intercept; and

(b) May inform the credit reporting agency of a child support arrearage in any case which did not meet criteria for federal tax refund intercept because the parent's social security number is unknown.

(3) Advance notice of the release of the information required by KRS 205.768(2) shall be given to the absent parent in the preoffset letter of information concerning the federal tax refund intercept.

(4) An absent parent whose case shall not be certified for federal tax refund intercept but may be reported to a consumer reporting agency shall receive prior notice of the past due amount of child support and of the right to request an administrative review within thirty (30) days of the receipt of the notice.

(a) If the preoffset letter is returned and location services are unsuccessful, that individual shall be deleted from the list sent by the child support agency.

(b) If location services are successful, his name may be added to an updated list.

(c) An identifying list of absent parents is forwarded to the credit reporting agency the January following the certification year.

(5) Denial or suspension of driver's license.

(a) As a remedy of last resort when all other civil remedies either do not apply or have been tried and have failed, including judicial remedies, the cabinet shall:

1. Identify a case with a verified arrearage equal to one (1) year's obligation amount which accrued beginning January 1, 1994 or thereafter; and

2. Send by first class mail to an absent parent who holds a valid Kentucky driver's license and who has the ability to pay support:

a. A notice of intent to request denial or suspension of a driver's license; and

b. An absent parent answer to notice of intent.

3. Notify the absent parent that the only basis for resolution of the dispute shall be:

a. The arrearage is incorrect and does not equal or exceed the amount of support owed for one (1) year; [or]

b. The wrong individual has been identified; [or]

c. A bond is posted for the total arrearage which has accrued since January 1, 1994; [or]

d. A payment agreement is entered into by the absent parent to pay current support, plus a specified amount on the total arrearage which has accrued since January 1, 1994; or

e. The absent parent pays the total arrearage which has accrued since January 1, 1994.

(b) To assure delivery of the notice of intent, the cabinet shall refer the case for parent locator service if the notice is returned and the forwarding address is unknown;

(c) If the absent parent requests a dispute hearing by contesting the arrearage based upon a mistake of fact and returns the absent parent answer to notice of intent form within twenty (20) calendar days of the notification date, the cabinet shall:

1. Within ten (10) working days of the absent parent's response, schedule and hold an interview with the absent parent; [and]

2. Attempt to resolve the dispute at the time of the interview; and

3. Forward the absent parent's written request for a hearing to the agency responsible for conducting the dispute hearing.

(d) The child support agency shall inform the agency responsible for conducting the hearing that:

1. A resolution has been reached as a result of the interview and a written request from the absent parent to withdrawn the hearing request shall be sent; or

2. A resolution to the dispute has not been reached and the hearing request remains in effect. [; and]

2. A written request from the absent parent to withdraw the hearing request shall be sent; or

3. A resolution to the dispute has not been reached; and

4. The hearing request remains in effect.]

(e) Upon the decision made by the agency conducting the hearing, and within twenty (20) calendar days of the hearing officer's decision, the child support agency shall notify the Transportation Cabinet of the request for the denial or suspension of the driver's license, unless:

1. The absent parent makes full payment of the total arrearage that may have accrued since January 1, 1994; [or]

2. The absent parent enters into a payment agreement to pay current support, plus a specified amount on the total arrearage which accrued since January 1, 1994; or

3. The absent parent posts a bond for the total arrearage which has accrued since January 1, 1994.

(f) If the case does not qualify for submittal to the Transportation Cabinet, a notice to deny or suspend the driver's license shall not be [is not] sent.

(g) If the absent parent does not contest the arrearage or after the interview and hearing process, the case qualifies for submittal to the Transportation Cabinet, the Cabinet for Human Resources shall refer the name of the absent parent to the Transportation Cabinet for the denial or suspension of the driver's license, unless:

1. The absent parent makes full payment of the arrearage within twenty (20) calendar days of the interview by the Cabinet for Human Resources; [or]

2. The absent parent posts a bond within twenty (20) calendar days of the interview for the total arrearage which accrued since January 1, 1994; or

3. The absent parent enters into a payment agreement to pay current support, plus a specified amount on the total arrearage which has accrued since January 1, 1994.

(i) The Cabinet for Human Resources shall notify the Transportation Cabinet to reinstate or reissue a previously suspended or revoked driver's license if [when]:

1. The absent parent makes full payment of the arrearage; [or]

2. The absent parent posts a bond for the total arrearage amount;

3. The absent parent enters into a payment agreement to pay

or



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current support, plus a specified amount on the total arrearage which has accrued since January 1, 1994, and makes a good faith payment which equals three (3) months' current support.

Section 10. Appeal Procedure. An obligor may request a dispute hearing in accordance with KRS 405.490 or 405.440 as described in 904 KAR 2:400, Section 4.

Section 11. Material Incorporated by Reference. (1) Forms necessary for the collection and distribution of child support and medical support are incorporated effective February 15, 1995 ~~November 1, 1993~~. These forms include:

- (a) CS-111, revised 5/89;
- (b) CS-63, issued 2/95;
- (c) CS-78, revised 5/89;
- (d) CS 44, issued 2/95;
- (e) ~~CS 111, revised 5/89;~~
- (b) CS-148, revised 10/93;
- (f) ~~(e)~~ CS-149, revised 10/93;
- (g) ~~(d)~~ CS-122, revised 7/94 ~~[9/93]~~;
- (h) ~~(e)~~ CS-123, revised 7/94 ~~[9/93]~~.

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN CLAYTON, Commissioner  
MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: March 7, 1995  
FILED WITH LRC: March 13, 1995 at 3 p.m.

### CABINET FOR HUMAN RESOURCES Department for Social Services (As Amended)

#### 905 KAR 2:140. Child day care programs.

RELATES TO: KRS 199.892 - 896, 45 CFR 98, 256, 257, PL 99-457 Part H, PL 94-142.2

STATUTORY AUTHORITY: KRS 194.050, 199.892, 199.899

NECESSITY AND FUNCTION: KRS 194.050 provides that the Secretary for the Cabinet for Human Resources shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Human Resources. This administrative regulation is necessary to enable the Cabinet for Human Resources to qualify to receive federal funds under the Social Services Block Grant, Child Care and Development Block Grant and the Transitional and At-Risk Child Care Programs. The function of this administrative regulation is to establish procedures for the implementation of child day care programs.

Section 1. Definitions. (1) "At-risk child care, (ARCC)" means child care assistance provided to non-AFDC families who need care in order to work and who may otherwise be at risk of becoming dependent upon AFDC.

(2) "Attending a job training or educational program" means regular and scheduled participation in a program offering appropriate skills training or education, if post secondary, consistent with employment goals.

(3) "Center-based child care" means a Type I day care facility.

(4) "Certificate" means a payment mechanism provided by DSS and used by a family to secure day care from the provider of choice.

(5) [(4)] "Certified family child care home" means a home as governed by KRS 199.8982(1)(c) and 905 KAR 2:100.

(6) [(5)] "Child care and development block grant, (CCDBG)" means child care assistance provided to families through the state to improve the affordability, quality and availability of child care services

for a low income family to work or attend training or educational programs.

(7) [(6)] "Child protective cases" means cases registered for services in which the case file contains case documentation that substantiates or reflects some indication of child abuse, neglect, dependency or exploitation. This category may include services to prevent abuse, neglect, dependency or exploitation, including multiproblem families.

(8) [(7)] "Corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.

(9) [(8)] "Day care" means the provision of essential child care for a portion of a day on a regular basis and is designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision.

(10) [(9)] "Dedicated child care workers, (DCW)" means the Department for Social Services staff who work strictly with the day care program. The dedicated child care worker provides services to families through the following federally funded programs: Social Services Block Grant, (SSBG), Child Care and Development Block Grant, (CCDBG), At-Risk Child Care, (ARCC), and Transitional Child Care, (TCC).

(11) [(10)] "Dependent care disregard" means a method of providing child care for AFDC and medical assistance recipients with earned income and food stamp recipients with earned income or in training or educational programs which are preparatory to employment by deducting child care expenses from the gross income, thus allowing the AFDC recipient to retain more income to pay child care expenses. In cases where recipients are receiving assistance under more than one program, the highest disregard shall be used.

(12) [(11)] "Eligibility requirements" means that for a family to qualify for child day care funds, except in those instances where day care is provided under SSBG for child protective cases, a family shall meet both need and income status criteria.

(13) [(12)] "Employment" means public or private, full or part time, permanent or temporary work, including self-employment.

(14) [(13)] "Family" means one or more adults and children related by blood or law, including stepparents, residing in the same residence.

(15) "Family child care" means:

(a) Certified family child care homes as governed by 905 KAR 2:100; or

(b) Unregulated care provided for no more than three (3) unrelated children.

(16) "Group home child care" means a Type II day care facility.

(17) [(14)] "Licensed child day care facility" means a facility as governed by KRS 199.894.

(18) [(15)] "Physical or mental incapacity" means a child under the age of 18 who has multiple or severe problems diagnosed by a physician or qualified professional, that prevent the child from caring for himself or herself for a part of the day.

(19) [(16)] "Priorities" mean that the client groups identified for receipt of day care are ranked in chronological order by priority.

(20) [(17)] "Provider" means owner, operator or employee, including a volunteer, who works in a Type I or Type II licensed day care facility, certified Family Child Care Home, Unregulated Home or Registered Home.

(21) [(18)] "Purchase of care" means the purchase of child day care services from licensed facilities, certified registered homes or other eligible provider for authorized children to the extent funds are available.

(22) [(19)] "Registered provider" means a provider that is registered with the Department for Social Services as a provider of child care services through the Child Care and Development Block Grant, (CCDBG) or At-Risk Program, (ARCC).

(23) [(21)] "Relative" means for registration purposes:

(a) Grandparents, aunts and uncles who are required to register

with the Department for Social Services before being eligible to receive payment for child care under CCDBG; and

(b) Relatives of the child by blood or marriage, eighteen years or older, including grandfather, grandmother, brother, sister, uncle, aunt, nephew, niece or first cousin, including half-blood and preceding generations, who are not required to register with the Department for Social Services to be eligible to receive payment for child care under ARCC.

(24) [(24)] "Social services block grant, (SSBG)" means child care assistance provided by licensed or certified providers for families receiving protective and preventive services, including multiproblem families, and low income working parents.

(25) [(22)] "Special needs child" means a child who has multiple or severe problems, and the severity of the disability requires ongoing specialized care as defined under PL 99-457 Part H or PL 94-142.2.

(26) [(23)] "Transitional child care, (TCC)" means child care assistance provided to families whose eligibility for AFDC has ceased due to earnings from employment, or as a result of the loss of income disregards due to the expiration of the time limit according to the federal regulation on AFDC. The purpose of TCC is to help prevent welfare dependency or potential welfare dependency.

(27) [(24)] "Type I day care facility" means a facility:

(a) Other than a dwelling unit which regularly receives four (4) or more children for day care; or

(b) A facility, including a dwelling unit, which regularly provides day care for thirteen (13) or more children.

(c) If preschool children of any day care staff receive care in the facility, they shall be included in the number for which the facility is licensed.

(28) [(25)] "Type II day care facility" means a home or dwelling unit which regularly provides care apart from parents for seven (7), but not more than twelve (12) children. The provider's own pre-school children shall be included in the number for which the home is licensed.

(29) [(26)] "Unregulated provider" means a child care provider who is not subject to be licensed, certified or registered by the state or federal government. Families receiving day care funds through the SSBG may not use unregulated care, however, unregulated care may be used by families receiving TCC or ARCC funds. Relative care as provided through the ARCC program, which is not required to be registered, shall be deemed unregulated.

(30) [(27)] "Waiting list" means a list that may be maintained by district DSS staff once funds are obligated in a district. The list is based on the availability of district day care funds. TCC families shall not be placed on a waiting list due to the uncapped funding source.

(31) [(28)] "Without regard to income" means that SSBG child day care services for child protective cases shall be provided or purchased without regard to family income. In situations where the court is involved, parents may be ordered to pay for part or all of the cost of day care for their child. Voluntary payments by parents may be accepted.

Section 2. Technical Eligibility for CCDBG. A child shall be eligible for services as verified on the DSS-1A, Application for Services, herein incorporated by reference, if he:

(1) Is under the age of thirteen (13) or is under the age of eighteen (18) and:

(a) Is physically or mentally incapable of caring for himself as verified by the written determination of:

1. A physician;
2. A licensed or certified psychologist;
3. A qualified mental health professional; or
4. As accepted by a collateral agency (schools, comprehensive care center); or

(b) Is under court supervision;

(2) Resides with a family whose income does not exceed:

(a) Sixty (60) percent of the states median income for a family of

the same size at time of application; or

(b) Seventy-five (75) percent of the states median income for a family of the same size at the time of reauthorization; and

(c) To the extent necessary the eligibility levels of state median income specified in paragraphs (a) and (b) of this subsection may be revised based on the availability of state and federal funds.

(3) Resides with parents who are working or attending a job training or educational program;

(4) Fee requirement.

(a) A family receiving CCDBG funds shall be required to contribute toward the payment based on the family's income as described in Section 7(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

(5) Other eligibility conditions or priority requirements including childhood development and before and after school care services, may be established in addition to Sections 3(1) through (5) and 5(4) as long as they shall not:

(a) Discriminate against children on the basis of:

1. Race;
2. National origin;
3. Ethnic background;
4. Sex;
5. Religious affiliation; or
6. Disability.

(b) Limit parental rights as governed by Section 4 of this administrative regulation; or

(c) Violate provisions of Section 5(4) of this administrative regulation.

Section 3. Technical eligibility for SSBG. (1) The child shall have met the requirements specified in Section 2(1) of this administrative regulation.

(2) The case records shall:

(a) Substantiate or reflect some indication of child abuse, neglect, dependency or exploitation; or

(b) Provide documentation that a family has a need for child care services and with the use of child care the need for protective services may be prevented.

(3) Working parents may be eligible if:

- (a) Child care needs exist in order to allow the parent to work;
- (b) The family is income eligible as specified in Section 2(2)(a) and (b) of this administrative regulation; and
- (c) ARCC and CCDBG funds are obligated.

Section 4. Technical Eligibility and Limitations for TCC. A family shall be notified of its potential eligibility for TCC when its AFDC benefits are terminated.

(1) The following requirements shall be met during any month for which TCC is paid:

(a) The child shall have met the requirements specified in Section 2(1) of this administrative regulation or would be a dependent child except for the receipt of benefits under Supplemental Security Income (SSI) under 42 USC 1382 or foster care under 42 USC 672.

(b) Child care shall be necessary in order to permit a member of an AFDC family to accept or retain employment;

(c) Payments shall not be made for care provided by:

1. Parents;
2. Legal guardians;
3. Members of the assistance group; and
4. Providers not meeting applicable standards of state and local law.

(d) The family shall have ceased to be eligible for AFDC as a result of:

1. Increased hours of, or increased income from, employment; or



2. The loss of income disregards due to the time limitations at Section 4(3)(b) of 904 KAR 2:016;

(e) The family shall have received AFDC:

1. In at least three (3) of the six (6) months preceding the first month of ineligibility; and

2. At least one (1) of the three (3) months was received in the state of Kentucky.

(f) The family:

1. Requests TCC benefits;

2. Provides the information necessary for determining eligibility and fees; and

3. Meets application requirements.

(2) Time limitations.

(a) Eligibility for TCC:

1. Begins with the first month that the family is ineligible for AFDC; and

2. Continues for a period of twelve (12) consecutive months.

(b) A family may begin to receive child care in any month during the twelve (12) month eligibility period.

(3) Sanctions. The family is not eligible for TCC for any remaining portion of the twelve (12) month period if the caretaker relative:

(a) Terminates employment, unless good cause exists as follows:

1. The individual:

a. Is personally providing care for a child under age six (6); and

b. Employment will require the individual to work more than twenty (20) hours per week.

2. Child care:

a. Is necessary for the individual to participate in the program or accept employment; and

b. Is not available; or

c. The available child care does not meet the special needs of the child, e.g., a child who has physical or mental disabilities (physically or mentally disabled child).

3. The individual is unable to engage in employment or training for mental or physical disabilities ~~[reasons]~~, including participation in a drug or alcohol rehabilitation program.

4. Transportation is unavailable and there is no readily accessible alternative means of transportation available.

5. Travel time to work site exceeds two (2) hours daily.

6. Illness of another household member requiring the presence of the participant at home.

7. Temporary incarceration.

8. Discrimination by an employer based on age, race, sex color, disability, religious beliefs, national origin or political beliefs.

9. Work demand or conditions that render continued employment unreasonable. Examples are:

a. Consistently not being paid on schedule; or

b. The work presents a risk to the individual's health or safety.

10. Wage rates are decreased subsequent to acceptance of employment.

11. Acceptance of a better job which, because of circumstances beyond the control of the recipient, does not materialize.

12. Employment would result in a net loss of cash income.

13. The client experiences a household emergency, including but not limited to: death of a member of the immediate family, entry into a spouse abuse center, or a natural disaster.

(b) Fails to cooperate with the State IV-A agency in establishing payment and enforcing child support obligations, per 904 KAR 2:006, Section 16.

(4) Fee requirements.

(a) A family receiving TCC shall be required to contribute toward the payment based on the family's income as described in Section 5(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

Section 5. Technical Eligibility and Limitations for ARCC. (1) The following requirements shall be met during any month for which ARCC is paid:

(a) The child shall have met the requirements specified in Section 2(1) and (2)(a), (b) of this administrative regulation.

(b) The family:

1. Is at risk of becoming eligible for AFDC;

2. Is not receiving AFDC; and

3. Needs child care in order to accept employment and remain employed.

(2) Child care limitations:

(a) Child care payments shall be provided:

1. Directly to the provider;

2. In an amount equal to the actual cost up to the payment maximum based on market rates described in Section 7(2) of this administrative regulation; or

3. In an amount equal to the difference between subparagraph b of this paragraph and the amount allowed as a deduction for child care costs to recipients of statutory benefits; and

4. If child care arrangements would otherwise be lost:

a. For up to two (2) weeks prior to the start of employment; or

b. For up to one (1) month during a break in employment if subsequent employment is scheduled to begin within that period.

(b) Payments shall not be made to a provider if the provider is:

1. The parent;

2. The legal guardian;

3. Not meeting applicable standards of state and local law;

4. Not registered by the department as required in Section 5 of this administrative regulation; or

5. Not allowing parental access.

(3) Fee requirements

(a) A family receiving ARCC shall be required to contribute toward the payment based on the family's income as described in Section 7(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying required fees may, subject to notices and hearing requirements, lose eligibility for the period of time back fees are owed, unless satisfactory arrangements are made to make full payment.

Section 6. Parental Rights and Responsibilities. (1) Parents of an eligible child who receive or are offered child care services subject to the availability of state and federal funds shall be offered a choice:

(a) To enroll the child with an eligible child care provider that has a grant or contract, selected by the parent to the maximum extent practicable; or

(b) To receive a child care certificate, the DSS-76, Day Care Services Agreement and Child Care Certificate, herein incorporated by reference, which shall:

1. Be issued to the parent;

2. Be of value commensurate with the value of child care services provided in Section 6(1)(a) of this administrative regulation;

3. If chosen by the parent, may be used for child care services provided by a sectarian organization or agency;

4. Not be considered a contract or grant to the provider but assistance to the parent;

5. Allow parents to choose from a variety of child care categories in compliance with federal regulations governing child day care programs including:

a. Licensed child care facilities;

b. Certified family child care facilities (CFCCH);

c. Unregulated child care facilities; or

d. Registered child care facilities; and

6. Inform parents and providers that the agreement may be terminated upon notice that the Department for Social Services has determined that conditions or circumstances at the child day care premises place children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

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(2) Providers of child care services shall afford parents unlimited access to their children and to the provider during normal hours of operation and whenever the child is in the care of the provider.

(3) The cabinet shall:

(a) Maintain a record of substantiated parental complaints; and

(b) Make information regarding parental complaints available to the public upon request.

(4) The cabinet shall make available to the parents and general public, consumer education about parental options relating to child care services including:

(a) Licensing and regulatory requirements; and

(b) Complaint procedures.

Section 7. State and Provider Requirements. (1) The cabinet shall assure that providers of child care services:

(a) Shall comply with licensing and regulatory requirements as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100;

(b) That are not required to be licensed or certified as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100 shall be registered with the Cabinet prior to payment under the block grant using the DSS-77, Day Care Billing Statement, herein incorporated by reference except under TCC and relative provided care under ARCC; and

(c) Under CCDBG, nonrelative providers registered with the Cabinet shall become certified as governed by 905 KAR 2:100.

(d) Nonrelative providers providing care in the child's home shall be certified by meeting the requirements as follows:

1. The provider shall be at least eighteen (18) years of age;

2. The provider shall be physically capable of providing care to children, as stated by a qualified physician;

3. The provider shall be free of tuberculosis, as stated by a qualified physician or health care specialist;

4. The provider shall not have been convicted of crimes against children, as shown by a criminal records check conducted within the past year by the Kentucky State Police; and

5. The provider shall sign an agreement not to use any form of corporal physical discipline on the children entrusted into their care.

(2) The cabinet has established maximum child day care payments as follows:

These charts represent the local maximum payment rate on a per day/weekly basis. If care exceeds five (5) days, the rate shall be the weekly maximum payment plus the additional designated daily amount reflecting the applicable rate. Chart abbreviations are as follows: FT - full time; PT - part time; WM - weekly maximum.

## KENTUCKY CHILD CARE MAXIMUM PAYMENT LEVELS

### WESTERN REGION

Purchase ADD #1

County: McCracken

Urban X	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$13	16	65	12	12	60	11	16	55
Toddler	\$12	16	60	11	11	55	11	16	55
Preschool	\$12	14	60	11	10	55	11	16	55
School Age	\$12	9	60	11	10	55	11	16	55
Special Needs									
Child	\$12	16	60	13	13	65	10	16	50

Purchase ADD #1

Counties: Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Marshall

Urban [X]	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$13	16	65	13	13	65	11	16	55
Toddler	\$13	16	65	13	13	65	11	16	55
Preschool	\$13	14	65	13	13	65	13	16	65
School Age	\$12	9	60	13	13	65	12	16	60
Special Needs									
Child	\$12	16	60	13	13	65	15	16	75

Pennyrile ADD #2

County: Christian

Urban X	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$13	16	65	12	12	60	11	16	55
Toddler	\$12	16	60	11	11	55	11	16	55
Preschool	\$12	14	60	10	10	50	11	16	55
School Age	\$11	8	55	10	10	50	11	16	55
Special Needs									
Child	\$12	16	60	13	13	65	10	16	50

Pennyrile ADD #2

Counties: Caldwell, Crittenden, Hopkins, Livingston, Lyon, Muhlenberg, Todd, Trigg

Urban [X]	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$13	16	65	13	13	65	11	16	55
Toddler	\$13	16	65	11	13	65	11	16	55
Preschool	\$13	14	65	13	13	65	13	16	65
School Age	\$12	8	60	13	13	65	12	16	60
Special Needs									
Child	\$12	16	60	13	13	65	15	16	75

Green River ADD #3

Counties: Daviess, Henderson

Urban X	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$13	16	65	12	12	60	11	16	55
Toddler	\$13	16	65	12	11	60	11	16	55
Preschool	\$13	14	65	12	10	60	11	16	55
School Age	\$13	10	65	12	10	60	11	16	55
Special Needs									
Child	\$13	16	65	13	13	65	11	16	55

Green River ADD #3

Counties: Hancock, McLean, Ohio, Union, Webster

Urban [X]	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$13	16	65	13	13	65	11	16	55
Toddler	\$13	16	65	13	13	65	11	16	55
Preschool	\$13	14	65	13	13	65	13	16	65
School Age	\$13	10	65	13	13	65	12	16	60
Special Needs									
Child	\$13	16	65	13	13	65	15	16	75

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## Barren River ADD #4

Counties: Allen, Barren, Butler, Edmonson, Hart, Logan, Metcalfe, Monroe, Simpson, Warren

Urban [X]	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$13	16	65	13	13	65	11	16	55
Toddler	\$13	16	65	13	13	65	11	16	55
Preschool	\$13	14	65	13	13	65	13	16	65
School Age	\$12	8	60	13	13	55	12	16	60
Special Needs									
Child	\$13	16	65	13	13	65	15	16	75

## Lincoln Trail ADD #5

Counties: Breckinridge, Grayson, Hardin, Larue, Marion, Meade, Nelson, Washington

Urban [X]	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$13	16	65	13	13	65	11	16	55
Toddler	\$13	16	65	13	13	65	11	16	55
Preschool	\$13	14	65	13	13	65	13	16	65
School Age	\$12	8	60	13	13	65	12	16	60
Special Needs									
Child	\$12	16	60	13	13	65	15	16	75

## Kipda ADD #6

Counties: Bullitt, Jefferson, Oldham, Shelby

Urban X	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural									
Infant	\$15	12	75	14	11	70	13	12	65
Toddler	\$15	14	75	14	11	70	13	12	65
Preschool	\$14	15	70	13	10	65	12	12	60
School Age	\$12	16	60	11	8	55	10	12	50
Special Needs									
Child	\$15	15	75	14	14	70	15	13	75

## Kipda ADD #6

Counties: Henry, Spencer, Trimble

Urban [X]	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$16	12	80	15	15	75	15	12	75
Toddler	\$16	14	80	15	15	75	15	12	75
Preschool	\$15	15	75	15	10	75	15	12	75
School Age	\$14	16	70	13	8	65	15	12	75
Special Needs									
Child	\$15	15	75	14	14	70	15	13	75

## Northern Ky. ADD #7

Counties: Boone, Campbell, Kenton

Urban X	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural									
Infant	\$16	13	80	15	12	75	14	12	70
Toddler	\$14	14	70	13	11	65	12	12	50
Preschool	\$14	15	70	13	10	65	12	12	60
School Age	\$13	16	65	12	9	60	11	12	55
Special Needs									
Child	\$16	16	80	15	15	75	15	14	70

## Northern Ky. ADD #7

Counties: Carroll, Gallatin, Grant, Owen, Pendleton

Urban [X]	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$16	13	80	15	15	75	15	12	75
Toddler	\$16	14	80	15	15	75	15	12	75
Preschool	\$15	15	75	15	10	75	15	12	75
School Age	\$14	16	70	13	9	65	15	12	75
Special Needs									
Child	\$16	16	80	15	15	75	15	14	75

## Buffalo Trace ADD #8

Counties: Bracken, Fleming, Lewis, Mason, Robertson

Urban [X]	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$13	12	65	12	12	60	11	9	55
Toddler	\$13	12	65	12	10	60	11	6	55
Preschool	\$13	12	65	12	10	60	15	10	75
School Age	\$13	14	65	12	10	60	12	10	60
Special Needs									
Child	\$13	16	65	12	11	60	10	10	50

## Gateway ADD #9

Counties: Bath, Menifee, Montgomery, Morgan, Rowan

Urban [X]	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$13	12	65	12	12	60	11	9	55
Toddler	\$13	12	65	12	10	60	11	6	55
Preschool	\$13	12	65	12	10	60	15	10	75
School Age	\$13	14	65	12	10	60	12	10	60
Special Needs									
Child	\$13	16	65	12	10	60	10	9	50

## Fivco ADD #10

Counties: Boyd, Carter, Greenup

Urban X	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural									
Infant	\$14	12	70	13	12	65	12	9	60
Toddler	\$13	12	65	12	10	60	11	8	55
Preschool	\$13	12	65	12	10	60	11	10	55
School Age	\$13	14	65	12	10	60	11	10	55
Special Needs									
Child	\$14	16	70	13	13	65	12	12	60

## Fivco ADD #10

Counties: Elliott, Lawrence

Urban [X]	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$14	12	70	13	12	65	12	9	60
Toddler	\$13	12	65	12	10	60	11	8	55
Preschool	\$13	12	65	12	10	60	15	10	75
School Age	\$13	14	65	12	10	60	12	10	60
Special Needs									
Child	\$14	16	70	13	13	65	12	12	60

## Big Sandy ADD #11

Counties: Floyd, Johnson, Magoffin, Martin, Pike

Urban [X]	Center			Group Home			Family/In Home		
	FT	PT	WM	FT	PT	WM	FT	PT	WM
Rural X									
Infant	\$13	12	65	12	12	60	11	9	55
Toddler	\$13	12	65	12	10	60	11	7	55

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Preschool	\$13	12	65	12	10	60	15	10	75
School Age	\$13	14	65	12	10	60	12	10	60
Special Needs									
Child	\$13	16	65	12	11	60	10	10	50

## Kentucky River ADD #12

Counties: Breathitt, Knott, Lee, Leslie, Letcher, Owsley, Perry, Wolfe

Urban [X]	Center			Group Home			Family/In Home		
Rural X	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	\$13	12	65	12	12	60	11	9	55
Toddler	\$13	12	65	12	10	60	11	8	55
Preschool	\$13	12	65	12	10	60	15	10	75
School Age	\$13	14	65	12	10	60	12	10	60
Special Needs									
Child	\$13	16	65	12	12	60	11	11	55

## Cumberland Valley ADD #13

Counties: Bell, Clay, Harlan, Jackson, Knox, Laurel, Rockcastle, Whitley

Urban [X]	Center			Group Home			Family/In Home		
Rural X	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	\$13	12	65	12	12	60	11	9	55
Toddler	\$13	12	65	12	10	60	11	6	55
Preschool	\$13	12	65	12	10	60	15	10	75
School Age	\$13	14	65	12	10	60	12	10	60
Special Needs									
Child	\$13	16	65	12	10	60	10	9	50

## Lake Cumberland ADD #14

Counties: Adair, Casey, Clinton, Cumberland, Green, McCreary, Pulaski, Russell, Taylor, Wayne

Urban [X]	Center			Group Home			Family/In Home		
Rural X	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	\$16	8	80	15	15	75	15	12	75
Toddler	\$16	14	80	15	15	75	15	12	75
Preschool	\$15	13	75	15	8	75	15	12	75
School Age	\$14	16	70	13	8	65	15	12	75
Special Needs									
Child	\$14	11	70	14	14	70	15	12	75

## Bluegrass ADD #15

Counties: Bourbon, Clark, Fayette, Franklin, Jessamine, Madison, Scott, Woodford

Urban X	Center			Group Home			Family/In Home		
Rural	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	\$14	11	70	13	11	65	13	12	65
Toddler	\$13	14	65	12	11	60	11	12	55
Preschool	\$13	14	65	12	9	60	11	12	55
School Age	\$13	16	65	12	9	60	11	12	55
Special Needs									
Child	\$14	14	70	14	14	70	15	12	75

## Bluegrass ADD #15

Counties: Anderson, Boyle, Estill, Garrard, Harrison, Lincoln, Mercer, Nicholas, Powell

Urban [X]	Center			Group Home			Family/In Home		
Rural X	FT	PT	WM	FT	PT	WM	FT	PT	WM
Infant	\$16	11	80	15	15	75	15	12	75
Toddler	\$16	14	80	15	15	75	12	12	60
Preschool	\$15	14	75	15	9	75	15	12	75
School Age	\$14	16	70	13	9	65	15	12	75
Special Needs									

Child	\$14	14	70	14	14	70	15	12	75
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(3) The cabinet shall assess a fee which the family shall pay to the provider for the cost of child day care based on the following sliding scale:

## [PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	\$12	12	12	9	12	9	12	9	12	9
Group Home	\$11	11	11	8	11	8	11	8	11	8
Family/In Home	\$10	10	10	7	10	7	10	7	10	7

## PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	\$11	11	11	8	10	7	10	7	10	7
Group Home	\$10	10	10	7	9	6	9	6	9	6
Family/In Home	\$9	9	9	6	8	5	8	5	8	5

## GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	\$13	13	13	10	13	10	13	10	13	10
Group Home	\$12	12	12	9	12	9	12	9	12	9
Family/In Home	\$11	11	11	8	11	8	11	8	11	8

## BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	\$13	13	13	10	11	8	11	8	11	8
Group Home	\$12	12	12	9	10	7	10	7	10	7
Family/In Home	\$11	11	11	8	9	6	9	6	9	6

## LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	\$11	11	11	8	10	7	10	7	10	7
Group Home	\$10	10	10	7	9	6	9	6	9	6
Family/In Home	\$9	9	9	6	8	5	8	5	8	5

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## DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	\$15	15	15	12	15	12	14	11	12	9
Group										
Home	\$14	14	14	11	14	11	13	10	11	8
Family/In Home	\$13	13	13	10	13	10	12	9	10	7

## NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	\$16	16	16	13	14	11	14	11	13	10
Group										
Home	\$15	15	15	12	13	10	13	10	12	9
Family/In Home	\$14	14	14	11	12	9	12	9	11	8

## BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	\$12	12	12	9	11	8	9	6	9	6
Group										
Home	\$11	11	11	8	10	7	8	5	8	5
Family/In Home	\$10	10	10	7	9	6	7	4	7	4

## GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	\$11	11	9	6	9	6	9	6	9	6
Group										
Home	\$10	10	8	5	8	5	8	5	8	5
Family/In Home	\$9	9	7	4	7	4	7	4	7	4

## FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	\$14	14	14	11	13	10	13	10	13	10
Group										
Home	\$13	13	13	10	12	9	12	9	12	9
Family/In Home	\$12	12	12	9	11	8	11	8	11	8

## BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT

	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	\$12	12	12	9	12	9	12	9	12	9
Group										
Home	\$11	11	11	8	11	8	11	8	11	8
Family/In home	\$10	10	10	7	10	7	10	7	10	7

## KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	\$13	13	13	10	13	10	11	8	11	8
Group										
Home	\$12	12	12	9	12	9	10	7	10	7
Family/In Home	\$11	11	11	8	11	8	9	6	9	6

## CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	\$11	11	11	8	11	8	11	8	11	8
Group										
Home	\$10	10	10	7	10	7	10	7	10	7
Family/In Home	\$9	9	9	6	9	6	9	6	9	6

## LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	\$11	11	10	7	10	7	10	7	10	7
Group										
Home	\$10	10	9	6	9	6	9	6	9	6
Family/In Home	\$9	9	8	5	8	5	8	5	8	5

## BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs		Infants		Toddlers		Pre-School		School Age	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
Center-based	\$14	14	14	11	13	10	13	10	13	10
Group										
Home	\$13	13	13	10	12	9	12	9	12	9
Family/In Home	\$12	12	12	9	11	8	11	8	11	8

[(3) The cabinet shall assess a fee which the family shall pay to the provider for the cost of child day care based on the following sliding scale:]

## CHILD CARE FEE SCHEDULE

Income Range FAMILY SIZE - Fee per agreement per family (Monthly)

		2	3	4	5	6	7	8*
0	399	1.00	1.00	1.00	1.00	1.00	1.00	1.00

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400	499	1.00	1.00	1.00	1.00	1.00	1.00	1.00
500	599	1.00	1.00	1.00	1.00	1.00	1.00	1.00
600	699	1.00	1.00	1.00	1.00	1.00	1.00	1.00
700	799	1.00	1.00	1.00	1.00	1.00	1.00	1.00
800	899	2.00	1.00	1.00	1.00	1.00	1.00	1.00
900	999	3.25	1.15	1.00	1.00	1.00	1.00	1.00
1000	1099	4.50	2.25	1.00	1.00	1.00	1.00	1.00
1100	1199	6.00	3.50	1.60	1.00	1.00	1.00	1.00
1200	1299	7.50	5.00	3.10	1.00	1.00	1.00	1.00
1300	1399	8.00	6.00	4.60	1.60	1.00	1.00	1.00
1400	1499	8.60	7.00	6.10	2.65	2.00	1.00	1.00
1500	1599	9.25	7.75	7.00	4.05	3.05	1.25	1.00
1600	1699	9.75	8.25	7.85	5.50	4.50	2.30	1.00
1700	1799	10.25	9.75	8.35	7.10	6.25	3.50	1.50
1800	1899	10.75	10.30	9.30	8.35	7.50	5.20	2.50
1900	1999	11.25	10.60	9.30	9.30	8.80	7.00	3.80
2000	2099	11.75	11.25	9.75	9.75	9.75	8.50	5.30
2100	2199	12.25	11.75	10.25	10.25	10.25	10.00	7.10
2200	2299	12.75	12.25	10.70	10.70	10.70	10.70	8.90
2300	2399	13.25	12.75	11.25	11.25	11.25	11.25	10.80
2400	2499	13.75	13.25	11.75	11.75	11.75	11.75	11.75
2500	2599	14.25	13.75	12.25	12.25	12.25	12.25	12.25
2600	2699	14.75	14.25	12.75	12.75	12.75	12.75	12.75
2700	2799	15.25	14.75	13.25	13.25	13.25	13.25	13.25

\*For family size above eight (8), the parent fee shall not increase.

(a) Except fees shall not be assessed in:

1. A child protective case under SSBG; or
2. An AFDC, medical assistance or food stamp case where clients are receiving dependent care disregard.

(b) The DCW shall determine the maximum daily reimbursement rate and parent fee, not to exceed rates as specified in Section 7(2) of this administrative regulation and monitor the payment to the child care provider. If the parent fails to pay the fee the DCW shall develop a plan with the parent to pay the fee.

(c) The DCW shall advise the client to report family and financial changes that may affect authorization of payments. Reauthorizations shall be determined:

1. Every six (6) months; and
2. Upon receipt of reported changes.

(4) The Cabinet for Human Resources may, except for TCC and protective service cases, establish priorities for child care services as follows:

- (a) Children with special needs;
- (b) Job Opportunity and Basic Skills Program or TCC participants who have children ineligible for child care payments under the programs;

(c) Families who lose eligibility in another child care program; and

(d) Other low income working parents or parents attending training or educational programs.

(5) The Department for Social Services shall exchange TCC client specific information to the Department for Social Insurance within ten (10) days of discovery.

(a) The DCW shall report the following case terminations to the local DSI, Division of Field Services Office:

1. When a TCC client quits a job without good cause;
2. Based on a TCC client's failure to pay a parent fee;
3. Based on a TCC client's refusal to cooperate with the Division of Child Support Enforcement; and
4. Client makes suitable arrangements to pay parent fee.

(b) The DCW shall report the following changes in client information to the Division for Child Support Enforcement:

1. TCC case approval for payments;
2. A child left the home;
3. Payments cease for a child;
4. Client's address changes;
5. An absent parent returns to the home;

6. A TCC case is terminated; or

7. A child is added to the case.

(6) Recoupment. The following provisions apply to overpayment in SSBG, CCDBG, TCC and ARCC;

(a) Necessary action shall be taken promptly to correct and recoup an overpayment in a case:

1. Of fraud;
2. Involving a current recipient; and
3. In which the overpayment would equal or exceed the cost of recovery.

(b) An overpayment shall be recovered from the child care provider.

(c) An overpayment shall be recovered through a reduction in the amount payable to the provider.

(d) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.

(e) For TCC cases an overpayment, including assistance paid pending a hearing decision, shall be recovered from:

1. The responsible party;
2. The family unit which was overpaid;
3. The provider who was responsible for the overpayment;
4. Individuals who were members of the family when overpaid;

or

5. A family that includes a member of a previously overpaid family.

(7) The DCW shall terminate day care services when due to need or income criteria, clients lose eligibility.

(a) If due to program policy changes the DCW shall:

1. Reassess the families so clients may be given ten (10) days notice of their eligibility, if they do not meet the new criteria after their authorization period expires;

2. Send written notices explaining new eligibility criteria with a notice of intended action.

(b) TCC clients may lose eligibility during the entitlement period without causing permanent termination of benefits if:

1. The client fails to cooperate in paying the parent fee, but later makes suitable arrangements;
2. The client moves out of state and returns to Kentucky within the entitlement period; and
3. The child requiring paid care leaves the home and returns.

(c) AFDC Unemployed Parent cases continue to be eligible for TCC without a deprivation.

(8) The child care worker shall notify the client of their rights to notice of adverse actions, hearings and appeals as governed by 905 KAR 1:320, Fair Hearing.

Section 8. Material Incorporated by Reference. (1) The DSS-76, Day Care Services Agreement and Child Care Certificate revised March 1995, the DSS-77, Day Care Billing Statement revised March, 1995 and the DSS-1A procedural instructions revised March, 1995 shall be incorporated by reference. [Forms necessary for the implementation of child day care services are herein incorporated by reference.]

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

PEGGY WALLACE, Commissioner

MASTEN CHILDERS II, Secretary

APPROVED BY AGENCY: April 12, 1995

FILED WITH LRC: April 14, 1995 at 11 a.m.

## ADMINISTRATIVE REGISTER - 73

### CABINET FOR HUMAN RESOURCES Department for Medicaid Services (As Amended)

**907 KAR 1:671. Conditions of Medicaid provider participation; enrollment, documentation of services, disclosure, claims processing, withholding overpayments, appeals process, and sanctions.**

RELATES TO: KRS 194.515, 205.510 to 205.990, 42 CFR 431.107, Part 455, Part 1002, 1003, 42 USC 1320a-3, 1320a-3a, 1320a-5, 1320a-7, 1395cc, 1395vv, 1396b, 1396d, 1396m, 1396n

STATUTORY AUTHORITY: KRS 194.050, 205.520, 205.560, 205.6318, 42 USC 1396a

**NECESSITY AND FUNCTION:** The Cabinet for Human Resources shall administer the Medicaid Program. KRS 205.8451 through 205.990, 205.624 and 194.515 provide that the Cabinet for Human Resources and the Department for Medicaid Services shall be responsible for the control of Medicaid provider fraud and abuse. KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to Medicaid provider participation.

Section 1. Definitions. (1) "Abuse" is defined by KRS 205.8451.

(2) "Administrative process" means meeting, review, investigation, hearing, appeal, deliberation or exchange of documents or information between the provider and the department.

(3) "Affiliate" means an individual agency or organization controlled by the provider or associated with the provider under common ownership or control.

(4) "Applicant" means a person or entity who submits an application to become a Medicaid provider.

(5) "Application" means completion and submission of a Medicaid provider agreement, and any required addendum specific to a provider type, which is the contract between the provider and the cabinet for the provision of Medicaid services.

(6) "Billing agent" means a contractor that prepares and submits claims on behalf of the provider.

(7) "Bribes and kickbacks" means soliciting or receiving any payment, or offering or making any payment whether in cash or goods or services, in return for:

(a) Referring a recipient to a provider for any medical care, services or supplies; or

(b) Purchasing, leasing, ordering or recommending any medical care, services or supplies, for which payment is claimed under the Medicaid Program.

(8) "Cabinet" means the Cabinet for Human Resources.

(9) "Claim" means any request for payment under the Medicaid Program, and relates to each individual billing submitted by a provider to the department which details services rendered to an individual recipient on a given date or dates of service. The claim may be either a line item of service or all services for one (1) recipient within a bill.

(10) "Conversion" means converting a Medicaid payment, or any part of a payment, to a use or benefit other than for the use and benefit intended by the Medicaid Program.

(11) "Convicted" shall have the same meaning as that shown in KRS 205.8475, regardless of whether an appeal from that judgment is pending.

(12) "Department" means the Department for Medicaid Services (including any contract agents).

(13) "Disclosing entity" means a Medicaid provider or the fiscal agent for the department.

(14) "Disclosure" means the provision of information in accordance with the requirements shown in 42 CFR 455, Subpart B.

(15) "Exclusion" means the termination of the participation of a

provider or the denial of the enrollment of a provider; and no reimbursement shall be made to the provider under Medicaid for items or services furnished by the provider during any period of exclusion.

(16) "Factor" shall have the same meaning as shown in 42 CFR 447.10.

(17) "False claim" means a claim for:

(a) Unfurnished medical care, services, or supplies; or

(b) Medical care, services, or supplies provided:

1. In excess of accepted standards of practice for the medical service that was provided;

2. In an amount in excess of established ~~amounts or~~ limits which were communicated by prior written notice to providers; or

3. Where there is documentation that the provider has knowledge of third-party coverage of the recipient, but the provider knowingly chooses not to bill the third-party payor.

(18) "Fiscal agent" means a contractor that processes or pays provider claims on behalf of the department.

(19) "Full investigation" means the activities of the Medicaid Fraud and Abuse Control Unit of the Office of the Attorney General (MFACU) or any other law enforcement or investigative agency to resolve a complaint of Medicaid fraud or abuse (if the abuse involves substantial allegations or other indications of fraud).

(20) "Furnish" means to provide medical care, services, or supplies that are:

(a) Provided directly by the provider;

(b) Provided under the supervision of the provider; or

(c) Prescribed by the provider.

(21) "Managing employee" means the general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who conducts the day-to-day operation of, an institution, organization, or agency.

(22) "Medicaid Fraud and Abuse Control Unit" (MFACU) means the unit of staff in the Office of the Attorney General of Kentucky, certified under the provisions of 42 USC 1396b(q), which conducts a statewide program for the investigation and prosecution of violations of all state laws regarding fraud and abuse in connection with the provision of Medicaid services and the activities of Medicaid providers.

(23) "Preliminary investigation" means the activities of the Office of Inspector General (OIG), MFACU, or the department to determine whether a complaint of Medicaid fraud or abuse has sufficient basis to warrant a full investigation.

(24) "Provider" is defined by KRS 205.8451.

(25) "Recipient" is defined by KRS 205.8451.

(26) "Reliable evidence" means:

(a) Preliminary determinations based on a preponderance of evidence as verified by the department by audit or utilization review staff of unacceptable practices or significant overpayments;

(b) Information of an ongoing investigation of a provider based on a preponderance of evidence, as verified by the cabinet, involving fraud or criminal conduct pertaining to the Medicaid Program.

(c) Information based on a preponderance of evidence, as verified by the cabinet, from a state professional medical licensing or certifying agency of ongoing investigation of a Medicaid provider involving fraud, abuse, professional misconduct, unprofessional conduct, or utilization; or

(d) Information from department staff or other sources based on a preponderance of evidence, as verified by the cabinet, regarding unacceptable practices or program abuse.

(27) "Sanction" means any administrative action taken by the department which limits a person's or a provider's participation in the Medicaid Program or imposes a fiscal penalty against the provider including the imposition of civil penalties and interest and the withholding of payments. Sanctions which may be imposed are described in KRS 205.8467 and Section 9 of this administrative regulation.



(28) "Services" means medical care, services, or supplies provided to recipients under Medicaid.

(29) "Subcontractor" means an individual, agency, or organization to which a disclosing entity has:

(a) Contracted or delegated some of its management functions or responsibilities of providing medical care or services to its patients; or

(b) Has entered into a contract, agreement, purchase order or lease including real property, to obtain space, supplies, equipment or nonmedical services provided under Medicaid.

(30) "Supplier" means an individual, agency, or organization from which a provider purchases goods or services used in carrying out its responsibilities under Medicaid.

(31) "Terminated" means the provider's participation in the Medicaid Program has been ended, and that a contractual relationship no longer exists between the provider and the department for the provision of Medicaid covered services to Medicaid eligible recipients by that individual, entity, or organization.

(32) "Unacceptable practice" means conduct by a provider which constitutes "fraud" or "provider abuse", as defined in KRS 205.8451(2) or (8), or willful misrepresentation, and includes the following practices:

(a) Knowingly submitting, or causing the submission of false claims, or inducing, or seeking to induce, any person to submit false claims;

(b) Knowingly making, or causing to be made, or inducing, or seeking to induce, any false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a Medicaid payment, or for use in determining the right to payment;

(c) Having knowledge of any event affecting the right to payment of any provider and concealing or failing to disclose the event with the intention that a payment be made when not authorized or in a greater amount than due;

(d) Conversion;

(e) Soliciting or accepting bribes and kickbacks;

(f) Failing to maintain or to make available, for purposes of audit or investigation, administrative and medical records necessary to fully disclose the medical necessity for the nature and extent of the medical care, services and supplies furnished, or to comply with other requirements as contained in Section 4 of this administrative regulation;

(g) Knowingly submitting a claim or accepting payment for medical care, services, or supplies furnished by a sanctioned provider;

(h) Seeking or accepting additional payments such as gifts, money, donations, or other consideration in addition to the amount paid or payable under the Medicaid Program for any covered medical care, services, or supplies for which a claim is made;

(i) Charging or agreeing to charge or collect any fee from a recipient for covered services which is in addition to amounts paid by the Medicaid Program except for any required copayments, or recipient liability (if any) as required by the Medicaid Program;

(j) Engaging in conspiracy, complicity, or criminal syndication;

(k) Furnishing medical care, services, or supplies that fail to meet professionally recognized standards, or which are found to be noncompliant with licensure standards promulgated under KRS Chapter 216B and failing to correct the deficiencies or violation as reported to the department by the Office of Inspector General, Division of Licensure and Regulation, for health care or which are beyond the scope of the provider's professional qualifications or licensure;

(l) Illegally discriminating in the furnishing of medical care, services, or supplies based on a recipient's race, color, national origin, religion, sex, age, disabling condition, or marital status;

(m) Having payments made to or through a factor, either directly or by power of attorney, as prohibited by 42 CFR 447.10;

(n) Offering or providing any premium or inducement to a recipient in return for the recipient's patronage of the provider or other

provider to receive medical care, services or supplies under the Medicaid Program;

(o) Knowingly failing to meet disclosure requirements;

(p) Unbundling; and

(q) An act committed by a nonprovider on behalf of a provider which, if committed by a provider, would result in the termination of the provider's enrollment in the program.

(33) "Unbundling" means submitting multiple claims for constituent parts of services provided which results in enhanced reimbursement to a provider for a covered service where the claims do not conform with professionally recognized coding standards;

(34) "Withholding" means not paying a provider for claims which have been processed, pending the results of an investigation of a report of fraud or willful misrepresentation based upon receipt of reliable evidence. Withholding may also occur as a result of provider bankruptcy, failure to submit timely cost reports, or closure (termination) of a business.

Section 2. Enrollment Process for Provider Participation in Medicaid. (1) Scope.

(a) The department shall contract with only those providers or entities who can demonstrate that they are qualified as determined by the cabinet to participate as a provider. The department reserves the right to contract or not contract with any potential provider.

(b) All providers or entities who wish to participate in the Medicaid Program shall be enrolled as participating providers prior to being eligible to receive reimbursement.

(2) New enrollments. Any provider or entity interested in participating as a Medicaid provider on or after the effective date of this administrative regulation shall be required to submit an application for enrollment in accordance with this section.

(3) Enrolled providers. All providers or entities enrolled as participating providers in Medicaid prior to the effective date of this administrative regulation shall continue to be participating providers on the effective date of this administrative regulation. Upon receiving notice from the department, existing providers shall be required to submit a new or revised application for enrollment to continue their Medicaid participation.

(a) Providers shall have thirty-five (35) days from the date of the notice to submit a completed and signed application to the department.

(b) The notice shall inform the provider that failure to return the completed and signed application within thirty-five (35) days shall result in termination of participation.

(c) Submission of the application within thirty-five (35) days shall permit the continuation of the existing provider participation which shall remain in effect until a determination with respect to the application for enrollment has been made and notice of approval or denial of enrollment sent to the provider.

(d) The department may revise enrollment requirements by regulatory revision made in accordance with the requirements of KRS Chapter 13A and re-enroll providers if necessary for effective management of the Medicaid Program.

(4) Application for enrollment as a participating provider shall be processed in the following manner:

(a) All applicants for participation shall complete a provider agreement, disclosure of ownership and control interest statement, certification with regard to lobbying activity (pursuant to 31 USC 1352), provide proof of a currently valid professional license, registration, or certificate which allows the applicant to provide the services for which the applicant contracts, and provide any additional clarifying information requested for processing of the application for participation.

(b) The department may require any additional clarifying information from the applicant with regard to qualifications for participation. If the applicant does not respond within the time period specified in the request, the application for participation may be denied unless an

extension of time is requested and granted.

(c) The department may require that an on-site inspection be performed to ascertain compliance with applicable licensure standards as promulgated under KRS Chapter 216B, and certification standards, prior to an enrollment determination.

(d) The department shall complete its application review and determine whether or not to enroll the applicant within ninety (90) days after receipt of the completed application and any additional clarifying information requested by the department. The department may take additional time for the decision when necessary for resolution of issues or disputes.

(5) Approval of an application.

(a) Upon approval of an application, the provider shall be issued an identifying number to be used exclusively by the provider for billing and identification purposes.

(b) A provider's participation shall begin on the date specified in the notification of approval of program participation and continue for the period specified in the notification, unless the provider participation is otherwise terminated in accordance with this administrative regulation or other applicable state or federal laws.

(6) By enrolling, the provider, its officers, directors, agents and employees (and all subcontractors pursuant to written agreement made a part of the contract) agrees to:

(a) Maintain the documentation for claims as required by Section 4 of this administrative regulation;

(b) Furnish all information regarding the nature and extent of services and claims for payment submitted by, or on behalf of, the provider to representatives of the cabinet, the Kentucky Health Policy Board, the Attorney General, the Auditor of Public Accounts, the Secretary of the United States Department of Health and Human Services, and the Office of the United States Attorney upon request;

(c) Comply with the disclosure requirements of Section 3 of this administrative regulation;

(d) Comply with the applicable advance directives requirements of 42 USC 1396a(w) with regard to the right to accept or reject lifesaving medical procedures as described in KRS 311.621, et seq;

(e) Accept payment from Medicaid as payment in full for all care, services, and supplies billed under Medicaid, except with regard to copayments and recipient liability (if any);

(f) Submit claims for payment only for care, services, and supplies actually furnished to eligible recipients and medically necessary or otherwise authorized by law;

(g) Provide true, accurate, and complete information in relation to any claim for payment;

(h) Permit review or audit by representatives of the cabinet, the Kentucky Health Policy Board, the Attorney General, the Auditor of Public Accounts, the Secretary of the United States Department of Health and Human Services, and the Office of the United States Attorney or any other body with investigative authority over Medicaid, of all books or records or, in the discretion of the auditing agency, a sample thereof, relating to services furnished and payments received under Medicaid, including recipient histories, case files, and recipient specific data. Failure to allow access to records may result in the provider's liability for costs incurred by the cabinet associated with the review of records, including food, lodging and mileage.

(i) Not engage in any activity which would constitute unacceptable practice;

(j) Comply with all terms and provisions contained in the provider agreement; and

(k) Comply with all applicable federal and state statutes and regulations relating to their provider type and provision of services under the Medicaid Program.

(7) Denial of an application for participation.

(a) ~~[The following factors shall be]~~ Reasons for denial of application for participation may include the following factors:

1. Any false representation, omission, or failure to disclose of any material fact in making an application;

2. Any suspension, exclusion, or involuntary withdrawal from participation currently in effect in any governmental medical insurance program as a result of fraud or abuse of that program;

3. Any false representation or omission relating to the application for any license, permit, certificate, or registration related to a health care profession or business;

4. Any previous failure to comply with applicable standards in the operation of a health care business or enterprise after having received written notice of noncompliance from the department or a state or federal licensing, certifying, or auditing agency;

5. A current investigation, indictment or conviction for fraud and abuse or unacceptable practice in Medicaid of this or any other state, Medicare, or any other publicly funded health care program;

6. Failure to comply with any Medicaid policy as specified in Kentucky statutes or administrative regulations of the department; or

~~7. [Provider participation in the medical service area is sufficient so that care and services of that type of provider are available under the Medicaid Program to the extent that they are available to the general population in that geographic area; or~~

~~8.] Failure to pay any outstanding debt owed to the department.~~

(b) If an application is denied, the applicant may resubmit only upon correction of the factors leading to its denial, and after the expiration of any period of exclusion imposed under Sections 9 and 10 of this administrative regulation.

(c) Notice of denial of enrollment. A written notice of the denial mailed to the applicant's last known address shall be given which contains:

1. The reason for the denial; and

2. The date the applicant may make a new submission for enrollment.

(d) The denial shall be effective upon the date of the written notice.

(8) A provider of medical services or supplies may enroll for a time limited period of thirty (30) days in an exceptional situation for emergency services provided to an eligible recipient upon request by the provider and approval by the department.

Section 3. Required Provider Disclosure. (1) Providers and the fiscal agent shall comply with the disclosure of information requirements contained in 42 CFR 455 Subpart B and KRS 205.8477.

(2) Time and manner of disclosure.

(a) The required provider information specified in 42 CFR 455, Subpart B shall be provided:

1. Upon application for enrollment;

2. Annually thereafter; and

3. Within thirty-five (35) days of the request by the department or the Secretary, United States Department of Health and Human Services.

(b) The disclosure requirement may coincide with the certification or recertification period except when the provider is certified other than on an annual basis.

~~[(c) The provider shall file an amended, signed ownership and disclosure form with the department within fifteen (15) days if there is a change:~~

~~1. In ownership or control;~~

~~2. Of a managing employee or management company;~~

~~3. In a provider's federal tax identification number; or~~

~~4. Which could be considered to constitute a new entity.]~~

(3) If the provider or fiscal agent fails to disclose required information within the time period specified, the provider shall be terminated from participation in the Medicaid Program on the day following the last day for submittal of the required information in accordance with Section 10(3) of this administrative regulation.

(4) The provider shall file an amended, signed ownership and disclosure form with the department within thirty-five (35) days if there is a change:

(a) In ownership or control;

- (b) Of a managing employee or management company;
- (c) In a provider's federal tax identification number.
- (5) Failure to comply with the requirements may result in termination from the Medicaid Program.

Section 4. Required Provider Documentation. (1) Each provider shall maintain documentation of:

- (a) Care, services, or supplies provided to an eligible recipient;
  - (b) The recipient's medical record (or other provider file, as appropriate) which shall demonstrate that the care, services, or supplies billed for, were actually performed or delivered;
  - (c) The diagnostic condition necessitating the service performed or supplies provided; and
  - (d) Medical necessity as substantiated by appropriate documentation (need for procedure as indicated by appropriate medical order).
- (2) A cost based provider shall maintain all fiscal and statistical records and reports which are used for the purpose of establishing rates of payment made in accordance with Medicaid policy, and all underlying books, records, documentation and reports which formed the basis for the fiscal and statistical records and reports.
- (3) All documentation required by this section shall be maintained by the provider for a minimum of five (5) years from the latter of:
- (a) The date of final payment for services;
  - (b) The date of final cost settlement for cost reports; or
  - (c) The date of final resolution of disputes (if any).
- (4) If any litigation, claim, negotiation, audit, investigation, or other action involving the records has been started before the expiration of the five (5) year period, the records shall be retained until the latter of:
- (a) The completion of the action and resolution of all issues which arise from it; or
  - (b) The end of the regular five (5) year period.

Section 5. Claims Processing. (1) Claim submittal.

- (a) A provider shall submit a claim, using forms and procedures specified by the department, for covered services or supplies rendered to an eligible recipient within twelve (12) months of the provision of service.
  - (b) A claim may be submitted on:
    - 1. A paper form;
    - 2. An electronic billing process; or
    - 3. Any form approved by the department.
  - (c) A provider shall submit additional clarifying documentation for claims processing when required by the department.
  - (d) By submitting a claim a provider shall be:
    - 1. Liable for the accuracy of all claims submitted by the provider, on the provider's behalf or by employees of the provider; and
    - 2. Responsible for reviewing the statement of payment or remittance statement to assure that paid claims shown are true and correct, and for informing the department of any discrepancy.
  - (e) If a provider submits a claim electronically, the provider's acceptance of payment shall be considered to be the provider's certification that a paid claim is true and correct; and
  - (f) Any submittal of a false claim, statement, or document shall be considered an unacceptable practice.
- (2) Claim payment.
- (a) Payment shall be made by the department if:
    - 1. The information required to pay the claim is complete;
    - 2. The claim is not under review for medical necessity;
    - 3. The provider has submitted all reports and information required by the department; and
  - 4. The department is not withholding the provider's payments in accordance with Section 8 of this administrative regulation.
  - (b) The department may audit paid claims to determine if any unacceptable practices have occurred which may result in sanctions.

Section 6. Methods for Recoupment of Overpayments. (1)

Medicaid overpayments. If a determination is made by the department that a provider was overpaid, a demand letter shall be sent to the provider which shall set forth the amount of the overpayment, the period of time involved, and the basis for determining the overpayment exists.

(a) In response to the demand letter, the provider shall ~~within sixty (60) [thirty (30)]~~ days from the date of the letter:

- 1. Pay the amount in full; or
- 2. Submit a written request for a payment plan.

(b) If payment amounts due a provider are recalculated within the Medicaid Management Information System due to rate revisions, the department shall apply the rate adjustment against the next payment cycle for the provider prior to notifying the provider of the amount of the overpayment. A provider shall be notified at least sixty (60) days in advance of any payment recalculation resulting from a reimbursement rate revision.

(2) A payment plan may be approved by the department if a provider documents that payment in full would create an undue hardship. A declaration in writing to the department of undue hardship shall include the following:

(a) Copies of financial statements which indicate payment in full within sixty (60) [thirty (30)] days would create an undue hardship; and

(b) Copies of notarized letters from at least two (2) financial institutions indicating the provider's loan request was denied for the overpayment amount.

(3) Payment plans shall not extend beyond a six (6) month period except as provided for in subsection (4) of this section.

(4) The department may approve a payment plan in excess of six (6) months but not to exceed twenty-one (21) months if the monthly repayment exceeds twenty-five (25) percent of the provider's average monthly Medicaid payment. The average monthly Medicaid payment is based on the previous twelve (12) month's payments.

(5) All payment plans shall include provisions for payments of both principal and interest as provided in KRS Chapter 360.

(6) If a provider fails to make a payment as specified in the payment plan or takes no action toward repayment, the department shall recoup the amount due from future payments. If a provider has insufficient funds available for recoupment through the payment system in the first payment cycle following the due date, payments shall continue to be recouped [be withheld] and the account referred to the cabinet's Office of the Counsel for collection.

(7) If a provider disputes the amount of overpayment due the department, the provider may submit additional information, request a resolution in accordance with Section 12 of this administrative regulation, and request an administrative hearing in accordance with Section 13 of this administrative regulation. Disputing the amount of overpayment shall not relieve the provider of his obligation to submit full payment in sixty (60) days, or to request a payment plan, within sixty (60) [thirty (30)] days of the demand letter.

(a) If the department determines that no adjustments are required as a result of the resolution process, the initial determination shall stand.

(b) If it is determined that the amount requested should be reduced, any refund plus applicable interest as provided for in KRS Chapter 360 due to the provider shall be refunded to the provider within thirty (30) days from the date of the final determination letter sent to the provider.

(c) If it is determined that the amount requested should be increased, the additional amount due shall be subject to subsection (1) of this section.

(8) Withholding Medicare payments to recover Medicaid overpayments.

(a) The cabinet may request that the Health Care Financing Administration (HCFA) withhold Medicare payments to a provider in order to recover Medicaid overpayments to the provider. The requests for withholding shall be accomplished in accordance with the terms

and conditions specified in 42 USC 1395vv.

(b) Amounts withheld by HCFA and returned to the cabinet by HCFA (as provided in 42 USC 1395vv) which are ultimately determined by the cabinet to be in excess of overpayments shall be returned to the provider.

(9) Statutory recovery. The cabinet shall not issue payments otherwise due a provider if withholding is ordered by a state or federal government agency or by a court for recovery of money. The payments shall be withheld in accordance with the provisions of the order issued by the state or federal government agency or the court.

(10) Medicare overpayments. If ordered to do so by HCFA, the department shall recoup the federal share of Medicaid payments otherwise due Medicaid providers as a means to recover Medicare overpayments. The federal share of Medicaid payments is that portion of the payment funded with federal funds.

(11) Any contract for the sale or change of ownership of a provider participating in the Medicaid Program shall specify whether the buyer or seller is responsible for any amounts owed the department by the provider, regardless of whether the amounts have been identified at the time of the sale.

Section 7. Administrative Process for Detection of Unacceptable Practice. (1) A preliminary investigation of alleged unacceptable practice shall be conducted by the department or its agent if:

(a) A complaint is received by the department or other cabinet staff or upon referral from the Office of Attorney General to the cabinet; or

(b) Questionable ~~Potentially~~ unacceptable practices are identified by the department or its contractors.

(2) If the findings of a preliminary investigation indicate that an incident of fraud or abuse involving substantial allegations or other indication of fraud may have occurred under the Medicaid Program, a referral for a full investigation shall be made to the MFACU or the Office of the United States Attorney, if appropriate.

(3) In order to facilitate a full investigation, the department shall, at the request of the MFACU or the Office of the United States Attorney, provide access to, and free copies of, any records, data, or information kept by the department, its contractors, or providers if authorized as specified in Section 4 of this administrative regulation.

(4) A full investigation shall continue until:

(a) Appropriate legal action is initiated;

(b) The investigation is discontinued because of insufficient evidence to support the allegation of unacceptable practice; or

(c) The case is returned to the department for administrative action.

(5) At any time during a preliminary or full investigation, the department may make an administrative determination that a provider has committed an act of unacceptable practice based on receipt of reliable evidence. The Commissioner of the Department for Medicaid Services shall issue a written notice of a determination of unacceptable practice to the provider upon which an exclusion or sanctions are intended to be imposed, as specified in Section 9 of this administrative regulation. The notice shall be mailed to the provider's designated payment or correspondence address or last known address and shall clearly state:

(a) The determination made;

(b) The basis and specific reasons for the determination;

(c) The effect of any action to be taken;

(d) The amount of any overpayment or penalty, if any;

(e) The effective date of the action; and

(f) The hearing rights of the provider as outlined in Section 13 of this administrative regulation.

(6) At any time during a preliminary or full investigation, the cabinet may refer the case to the United States Attorney's Office for all action deemed appropriate.

(7) The Medicaid Program may use random or other statistical sampling methodologies and extrapolate the Medicaid Program's

findings based on the sample.

Section 8. Withholding of Payments During Investigation of Fraud or Willful Misrepresentation. (1) The department may withhold Medicaid payments as provided for in 42 CFR 455.23 upon receipt of reliable evidence that the circumstances giving rise to the need for a withholding of payments involve fraud or willful misrepresentation under the Medicaid Program.

(2) The department may withhold payments without first notifying the provider of its intention to withhold payments.

(3) The department shall mail written notice to the provider at the provider's last known address of its withholding of program payments within five (5) days of the date upon which withholding began.

(a) The notice shall set forth the general allegations of the nature of the withholding action including the types of payments and payment code sections to which fraud or willful misrepresentation is alleged to have occurred, but need ~~shall~~ not disclose any specific information concerning its ongoing investigation.

(b) The notice shall advise the provider:

1. That payments are being withheld in accordance with this administrative regulation;

2. The statutory and regulatory basis for withholding and the facts upon which the action is taken;

3. The date upon which withholding began;

4. That withholding shall be for a temporary period;

5. Of the circumstances under which withholding shall be discontinued;

6. Of the type of Medicaid claim, as appropriate, to which withholding shall apply;

7. Of the provider's right to submit written evidence for consideration by the agency; and

8. Of the provider's hearing rights in accordance with Section 13 of this administrative regulation.

9. For cost-based providers, payments withheld pursuant to this section shall be in proportion to the type of claim set forth under this administrative regulation to which withholding shall apply.

(4) Any withholding of payment action under this section shall be temporary and shall not continue after:

(a) The investigation has been discontinued due to insufficient evidence of fraud or willful misrepresentation by the provider;

(b) Legal proceedings related to the provider's alleged unacceptable practice are completed and all related issues have been resolved; or

(c) The matter is resolved between the department and the provider through an administrative determination of unacceptable practice, as specified in Section 7 of this administrative regulation.

(5) Upon completion of the process described in subsection (4)(a) and (b) of this section all monies due on verified claims shall be promptly disbursed to the provider.

Section 9. Sanctions. (1) The cabinet shall comply with the requirements of 42 CFR 1002.

(2) The cabinet shall impose sanctions as provided in KRS 205.8467, as provided in this section and in Sections 7, 8, and 10 of this administrative regulation ~~[when legal proceedings against a provider have established that the provider has engaged in fraud or abuse or when an administrative determination as provided in Section 7 of this administrative regulation establishes that the provider has engaged in an unacceptable practice].~~

(3) The department may hold a provider responsible for the conduct of its affiliates in the administrative determination of unacceptable practice. However, conduct may only be imputed to another if the conduct was accomplished within the course of the duties of the provider to be sanctioned; and

(a) The provider knew or reasonably should have known of the conduct; or

(b) The conduct was effected with the knowledge and consent of the provider.

(4) If the department sanctions a provider, it may also sanction any affiliate of the provider. However, the determination to sanction the affiliate shall be made during the process leading to the administrative determination of unacceptable practice, on a case-by-case basis, after full review and consideration of all relevant facts and circumstances leading to the sanction of the primary provider. The affiliate shall have the same notification and due process rights as any sanctioned provider.

(5) The sanction process may include the termination of the provider from the Medicaid Program; if a termination is made the termination notice shall specify a period of exclusion. In determining the sanction, or the duration of exclusion, the department shall consider as appropriate:

- (a) The number and nature of the unacceptable practice incidents;
- (b) The nature and extent of any adverse impact the violations had on recipients;
- (c) The amount of damages to the program;
- (d) Other facts related to the nature and seriousness of the unacceptable practice; and
- (e) The previous record of violations by the provider under Medicare, Medicaid and any program administered by the cabinet.

(6) The sanction process shall include liability for civil payments, restitution of overpayments and agency costs as specified in KRS 205.8467.

(7) The cabinet shall use a lien, as specified in KRS 205.8471 to assure payment of restitution and monetary penalties imposed under the administrative determination of fraud.

(8) A provider excluded from the Medicare Program shall be excluded from the Medicaid Program for the same period of time.

(9) The provider shall be notified in writing by the department of any sanctions that are imposed.

Section 10. Provider Participation Termination. (1) Except as provided in subsection (6) of this section, a provider's participation may be terminated by either the provider or the department upon thirty (30) days written notice to the other without cause or as otherwise specified in the provider agreement.

(2) Except as provided in subsection (6) of this section, a provider's participation may be terminated and a period of exclusion imposed if an administrative determination is made, as set forth in Section 7 of this administrative regulation, that the provider engaged in an unacceptable practice.

(3) ~~[A provider shall provide up-to-date information in accordance with Section 3 of this administrative regulation.]~~ Except as provided for in subsection (6) of this section, failure to maintain up-to-date information, or to submit the information within thirty-five (35) days of a request by the department (except as provided for in Section 2 of this administrative regulation) shall result in termination of the provider's participation.

(4) Except as provided in subsection (6) of this section, a provider's participation shall be terminated immediately if it is found that the information provided at the time of application was incorrect, inaccurate or incomplete and where provision of correct, accurate and complete information would have resulted in the denial of the application based upon one (1) or more of the factors set forth in Section 2 of this administrative regulation.

(5) Except as provided in subsection (6) of this section, a provider's participation shall be terminated if the provider fails or refuses to pay or enter into an agreement to pay the amount of any penalty imposed, including interest, in accordance with Section 9 of this administrative regulation and KRS 205.8467 within sixty (60) days from the date of the department's notice or the date of a hearing decision (if any).

(6) Before the participation of a nursing facility, as defined in 42 USC 1396(a), or an intermediate care facility for the mentally

retarded, as defined in 42 USC 1396d(d), is terminated, it shall have the right to receive a hearing in accordance with Section 13 of this administrative regulation and 42 CFR 431.151 through 431.154.

(7) Except as provided in subsection (6) of this section, a provider's participation in Medicaid shall be terminated if the provider fails to submit a completed and signed application within thirty-five (35) days from the date of the notice to provide the application.

(8) Except as provided in subsection (6) of this section, a provider's participation in Medicaid shall be terminated and a period of exclusion imposed upon a Medicare or Medicaid related conviction through the judicial process.

(9) A provider's participation in Medicaid shall be terminated in accordance with 42 CFR 1003.105 on the date of termination or suspension from Medicare.

(10) Except as provided in subsection (6) of this section, a provider's participation in Medicaid shall be terminated as of the date of any termination, revocation, or suspension of any registration, certification or license to practice a medical profession, or as required to provide medical care, services or supplies under Medicaid.

(11) Except as provided in subsection (6) of this section, a provider's participation:

(a) Shall be terminated and a new application required if the ownership or controlling interest of the provider has substantially changed, since acceptance of its enrollment application, due to one (1) or both of the following actions:

1. The addition or elimination of one (1) or more partners in a provider organized as a partnership; or

2. The sale of the business or assets directly related to the provision of health care under the Medicaid Program if such sale will result in a change of ownership or control of any provider;

(b) May be terminated and a new application required if ownership or controlling interest of the provider has substantially changed since the acceptance of its enrollment application due to the sale or exchange of capital stock in a provider organized as a corporation; and

(c) A notice advising of the termination and of the requirements to make a new application for enrollment shall be sent to the provider thirty (30) days prior to its termination from the program.

(12) Notice of termination.

(a) A notice of termination shall be in writing, mailed to the last known address, and contain the following information:

1. The reason for the termination, if any;

2. The effective date of the termination;

3. The date the provider may submit an application for re-enrollment, if appropriate; and

4. The provider's hearing rights in accordance with Sections 12 and 13 of this administrative regulation.

(b) If notice has been provided in accordance with Section 7(5) of this administrative regulation, no additional notice of termination shall be required.

(13) The department may extend participation or waive termination for any provider of covered medical service if necessary to assure that adequate medical services will be available in the area served by the provider.

(14) The department may terminate a provider immediately if necessary to protect the health or well-being of Medicaid recipients.

Section 11. Provider Reinstatement or Re-enrollment Following Termination. (1) A provider whose participation has been terminated under the provisions of this administrative regulation may request reinstatement in accordance with the provisions set forth in the written notice from the department and shall be subject to the enrollment requirements in Section 2 of this administrative regulation. An application for enrollment under this section shall be identified by the provider as a reinstatement application.

(2) The department may only grant reinstatement from an exclusion based on a program violation if the provider can demon-

strate and assure the department that the violation which led to the sanction is corrected and shall not be repeated.

(3) If the department approves the request for reinstatement, after imposition of a sanction in accordance with Section 9 of this administrative regulation, the department shall provide written notice to the provider and to all others who were informed of the sanction, specifying the date on which program participation may resume.

(4) A provider terminated from the Medicaid Program and excluded for a specified period of time shall be eligible for re-enrollment upon the expiration of the period of exclusion. In addition, providers excluded on the basis of a conviction for a program related offense shall not be eligible for re-enrollment until the conviction is final and unappealable.

Section 12. Resolution of Provider Disputes Prior to Hearing. (1) If a provider disagrees with Medicaid determinations with regard to appealable issues as provided for in Section 13 of [claims payment, sanctions, participation or other matters covered in] this administrative regulation, the provider may request in writing within thirty (30) days of the date of notice a resolution meeting. ~~[; provided, however,]~~ Any disagreements relating to cost based rates including such items as the rate itself, cost reporting, recoupments, withholding, and any other matter relating to the provider's payments and rates, shall be resolved in accordance with Section 14 of this administrative regulation. ~~[A request for a resolution meeting shall not extend the thirty (30) day time period for filing a request for an administrative hearing in accordance with Section 13 of this administrative regulation.]~~

(2) The request from the provider shall clearly identify the disputed issue, the specified basis for believing the department's decision is erroneous, provide any documentation (or a summary supporting the provider's position), and identify the provider's representative(s) expected to attend the resolution meeting.

(3) The agency shall, within five (5) days of receipt of the request, send a written response to the provider identifying the time and place of the meeting which shall be held within thirty (30) days of receipt of the request and identifying the agency's representative(s) expected to attend the meeting.

(4) The resolution meeting shall be conducted in an informal manner as directed by the department's representative with the provider afforded the opportunity to present any evidence or testimony to support his case.

(5) A provider may, within thirty (30) days of the date of the notice, submit any information which the provider wishes considered in relation to the agency determination without requesting a resolution meeting. The submission of additional documentation shall not extend the thirty (30) day time period for requesting a resolution meeting.

(6) The department may rescind, modify or take no action with regard to the disputed issue but shall provide written notice to the provider of the department's ~~[agency's]~~ decision within thirty (30) days from the date of the resolution meeting, or from the date the information to be considered was presented to the department ~~[if no resolution meeting was requested]~~. The notice of the department shall include the determination and the facts upon which it is based with reference to applicable statutes and administrative regulations.

(7) Information submitted for the purpose of informally resolving a provider dispute shall not be considered a request for an administrative hearing.

Section 13. Administrative Hearing Process. (1) The administrative hearing shall be conducted by an impartial hearing officer knowledgeable of Medicaid policy appointed by the secretary of the cabinet.

(2) This process shall be used in the following situations except as specified in Section 14 of this administrative regulation:

(a) If the provider's participation is terminated as specified in Section 10(2), (3), (4), (5), (6), (7), (8), (10), (11) and (14) of this administrative regulation or if a provider alleges discrimination on the

basis of age, race, sex, country of national origin, ethnic group, or disability; or

(b) If the agency imposes a fiscal sanction; or

(c) If the agency requires the repayment of an overpayment or restitution; or

(d) If the provider's payments are being withheld in accordance with Section 8 of this administrative regulation.

(3) A written request for a hearing shall be received by the department within thirty (30) days of the date of the department's notice of a ~~[adverse]~~ determination. This request shall be sent to the Office of the Commissioner, Department for Medicaid Services, Cabinet for Human Resources, 275 East Main Street, 3rd Floor, Cabinet for Human Resources Building, Frankfort, Kentucky 40621. The department shall forward to the hearing officer an administrative record which shall include the notice of action taken, the statutory or regulatory basis for the action taken, the department's decision following the resolution process, and any documentary evidence provided by the appellant to the department.

(4) The hearing officer shall schedule the hearing within thirty (30) days of the receipt of the request from the provider with the hearing to be held not later than thirty (30) days thereafter. Either party may request a prehearing exchange of information and documents or a prehearing conference. At least fifteen (15) calendar days prior to the date of the hearing, written notice shall be sent by the hearing officer to the parties and their representatives. The notice shall inform them of:

(a) The date, time and place of the hearing (with the hearing to be held in Frankfort, Kentucky) and the parties' right to request a postponement;

(b) The manner and means by which a postponement may be requested and granted;

(c) The issues which are to be the subject of the hearing;

(d) The manner in which the hearing will be conducted;

(e) The right of each party to be represented or to represent himself, to testify, to produce witnesses, to present documentary evidence and to examine opposing witnesses; and

(f) The date of the prehearing exchange between the provider and department, if requested.

(5) A prehearing conference may be held at least seven (7) days in advance of the hearing date at which time each party shall disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and identification of witnesses.

(6) A request for a hearing shall be considered to be abandoned if the provider does not appear at the hearing on the scheduled date and the hearing has not been rescheduled. A hearing request shall be withdrawn only under the following circumstances:

(a) The hearing officer receives a written statement from the provider stating that the request is withdrawn; or

(b) The provider makes a statement on the record at the hearing withdrawing the request.

(7) Documentary evidence which may be used at the hearing shall be made available in accordance with the following:

(a) If copies of the documentary evidence which the provider plans to use at the hearing have not been provided to the department, an opportunity to examine the documents shall be afforded the department upon request; and

(b) If copies of the documentary evidence which the department plans to use at the hearing have not been provided to the provider, or the provider's representative, an opportunity to examine the documents shall be afforded the provider upon his request. Information relating to the selection of the provider for audit, investigation notes or other material which may reveal auditor investigation techniques, material prepared for submission to a law enforcement or prosecutorial agency, information concerning law enforcement investigations, or judicial proceedings or confidential sources or confidential information shall not be revealed.

(8) The hearing officer shall preside over the hearing and have all



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the powers conferred by law to require attendance of witnesses and the production of books and records, and to administer oaths and to take testimony.

(9) The provider or representative, counsel or other representative of the department, an interpreter if the appellant is deaf or hearing impaired and an interpreter has been requested, witnesses for both parties, providers who may be called as witnesses by the hearing officer and other providers or members of the public as the hearing officer in his discretion may admit, shall be entitled to be present at the hearing. Staff of the department shall be entitled to observe or to assist the official representative of the department.

(10) The issues and documentation considered at the hearing shall be limited to issues directly relating to the adverse determination.

(a) Formal rules of evidence shall not apply.

(b) Irrelevant and unduly repetitious testimony and cross-examination shall be excluded.

(c) The cabinet shall show the facts, circumstances, administrative regulations, or statutes on which the determination was based, and the provider has the burden of showing that the determination of the department was incorrect.

(d) If the determination is based upon an alleged failure of the provider to comply with applicable generally accepted business, accounting, professional or medical practices or standards of health care, the department shall establish the existence of the practice or standard.

(e) The department shall be responsible for notifying the hearing officer of the record of previous relevant violations by the provider under Medicare, Medicaid, and any program administered by the Cabinet for Human Resources which the department wishes the hearing officer to consider in his deliberations.

(11) Witnesses shall testify under oath or affirmation and shall be subject to cross-examination.

(12) The hearing proceedings shall be recorded but not transcribed unless requested by either party. The cost of a court reporter, if utilized, and the transcription shall be the responsibility of the party making the request. If a third party requests a copy of the original transcript, the party requesting the copy shall be responsible for the cost of the copy.

(13) The hearing officer shall consider the facts as presented at the hearing (including supplementary material, if requested) and prepare a decision based on the record consistent with Medicaid policy as expressed in statutes and administrative regulations.

(a) The hearing officer shall prepare a hearing report to be issued within sixty (60) days of the conclusion of the hearing or the closing of the record, and sent to each of the parties.

(b) The hearing report shall include findings of fact, conclusions of law, determination of issues, and the hearing officer's decision and reasons for the determination.

(c) The hearing officer's decision shall be submitted to the secretary of the cabinet. Either party shall have ten (10) days within which to file exceptions to the hearing officer's decision, with the secretary. The secretary shall make the final decision of the agency pursuant to KRS 211.090(2), supported by findings of fact and conclusions of law.

(d) In the correspondence transmitting the decision, clear reference shall be made to the availability of judicial review.

(14) The hearing officer may grant an extension of any time frames specified in this section, except the requirement that the request for a hearing be filed in a timely manner, if determined necessary for the efficient administration of the hearing process or to prevent an obvious miscarriage of justice with regard to the provider.

Section 14. Administrative Hearing Process for Use in Appeals Relating to Cost Based Rates. Participating providers reimbursed using a cost based system shall have the right to appeal all issues relating to their rates, cost reporting, recoupments, withholding

(except as described in Section 8 of this administrative regulation), and any other matters, except termination, relating to the provider's payments and rates utilizing the process described in this section.

(1) Type of review. This section provides for a program review by the Director, Division of Reimbursement Operations, Department for Medicaid Services, or the director's designee, and an administrative hearing (following the program review) by an administrative hearing officer.

(2) Program review requirements and processes.

(a) Upon receipt of the department's determination with regard to rates, cost reports, withholding, recoupment, or other issues relating to payment rates the provider shall have thirty (30) days, from date of notice by the department, to request a program review of the determination. The department's determination on cost reports shall include the basis for the determination. The request for program review shall be received by the department within the thirty (30) day period.

(b) The request for review shall be in writing and identify the following:

1. The specific aspects of the determination with which the provider is dissatisfied; and

2. The specific reason the provider believes the determination is incorrect.

(c) The request shall be accompanied by any documentary evidence (or an appropriate summary) which the provider considers necessary to support its position.

(d) The department shall schedule the program review to be held within thirty (30) days after receipt of the request from the provider.

(e) If an audited cost report (including cost reports that have been desk reviewed) or rate of reimbursement is not appealed in a timely manner the provider's appeal rights shall terminate for that cost report or reimbursement rate and the cost report or reimbursement rate shall not be subject to reopening unless the department determines that there was suspected fraud or misrepresentation by the provider or that an error has been made by the department which should be corrected. Reopening of a cost report or rate of reimbursement for suspected fraud or misrepresentation by the provider or an error made by the department shall not extend any previous appeal limitations, except that any change made as a result of the reopening may be appealed.

(f) A request for program review of a reimbursement rate, desk review, or audited cost report which does not specify the exact item(s) being appealed shall not be accepted.

(g) The program review shall be conducted in the following manner.

1. The program review shall be conducted by the director or his designee. The proceedings shall be recorded and a transcription made. If transcribed by the department, a copy shall be made available to the provider upon payment of the usual fee for copied material; if transcribed for the department by a court reporter, the provider may obtain a copy from the court reporter upon payment of the court reporter's usual fee for a copy.

2. During the hearing the provider shall provide any testimony or documentation which he desires in support of the provider's contention that the department's decision should be amended or nullified. Cabinet staff within the merit system who are knowledgeable of the issue shall explain the department's position and present any evidence the staff feels supports the department's position.

3. Merit system staff participating in the program review (or as designated by the director or his designee if necessary) shall prepare and submit to the director or his designee a written opinion and recommendation with findings of fact, and supporting documentation, with regard to the director's or his designee's decision. The director or his designee shall make a decision with regard to the issue within thirty (30) days of the hearing either adopting the recommendation of staff, or, if the director's or his designee's decision is different from the recommendation(s) of merit system staff, the director or his



designee shall document his decision and provide, for the record, justification for that decision.

(h) The director or his designee may extend any of the time frames that are specified in subsection (2) of this section, if determined necessary for the efficient administration of the program review process or to prevent an obvious miscarriage of justice with regard to the provider.

(3) Administrative hearing requirements and processes.

(a) Upon receipt of the program review decision of the director or his designee, the provider may appeal the decision (and underlying program issue) by mailing or delivering a request for appeal to the Office of the Commissioner, Department for Medicaid Services, Cabinet for Human Resources, Third Floor, CHR Building, 275 East Main Street, Frankfort, Kentucky, 40621 within thirty (30) days of the decision. The request for a hearing shall be received by the Office of the Commissioner within the thirty (30) day period; if a request for a hearing is not received within the thirty (30) day period the decision of the director shall be final.

(b) The request shall be in writing and identify the following:

1. The specific aspects of the director's decision with which the provider is dissatisfied;

2. The specific reason the provider believes the decision is incorrect; and

3. Be accompanied by the documentary evidence previously before introduced to the director or his designee (or an appropriate summary) which the provider considers necessary to support its position.

(c) The secretary shall appoint a hearing officer who is knowledgeable of Medicaid administrative regulations and policies. The hearing officer shall schedule a hearing on the record within thirty (30) days of receipt by the cabinet of the provider's request for a hearing with the hearing to be held not later than thirty (30) days thereafter. At least fifteen (15) calendar days prior to the date of the hearing, written notice shall be sent by the hearing officer to the parties and their representatives. The notice shall inform them of the date, time, and place of the hearing and of the issues which are to be the subject of the hearing.

(d) The hearing officer shall restrict the scope of the hearing to the same issues considered and determined during the program review.

(e) The following provisions shall govern the conduct of the hearing.

1. The hearing shall be conducted with the hearing officer responsible for ensuring that a complete and accurate record of the proceedings is made. The provider shall notify the hearing officer sufficiently in advance of the hearing if a transcript is desired, with the transcript provided upon payment of customary fees to the department or court reporter as appropriate.

2. The provider shall be afforded the opportunity to present any testimony and documentary evidence in support of its position, including but not limited to a written statement rebutting the program review findings and decision of the director if desired.

3. The department shall be afforded the opportunity to present any testimony and documentary evidence in support of its position, including but not limited to the transcript of the program review, opinions and recommendations of merit system staff that contributed to the director's decision, and the actual program review decision.

4. The hearing officer shall solicit, through questions to participants in the hearing or any other appropriate manner, any further information that he considers necessary for the resolution of the issue.

(f) The hearing officer shall consider the facts as presented at the hearing (including supplementary material if requested) and prepare a decision based on the record consistent with statutes and administrative regulations.

1. The hearing officer shall prepare a hearing report to be issued within sixty (60) days of the conclusion of the hearing or the closing

of the record, and sent to each of the parties.

2. The hearing report shall include findings of fact, conclusions of law, determination of issues, and the hearing officer's decision and reasons for the determination.

3. The hearing officer's decision shall be submitted to the secretary of the cabinet. Either party shall have ten (10) days within which to file exceptions to the hearing officer's decision, with the secretary. The secretary shall make the final decision of the agency pursuant to KRS 211.090(2) supported by findings of fact and conclusions of law.

4. In the correspondence transmitting the decision, clear reference shall be made to the availability of judicial review.

(g) The hearing officer may grant an extension of any time frames specified in subsection (3) of this section, except the requirement that the request for a hearing be filed in a timely manner, if determined necessary for the efficient administration of the hearing process or to prevent an obvious miscarriage of justice with regard to the provider.

MASTEN CHILDERS, II, Commissioner and Secretary

APPROVED BY AGENCY: May 5, 1995

FILED WITH AGENCY: May 5, 1995 at noon

### KENTUCKY HEALTH POLICY BOARD (As Amended)

#### 909 KAR 1:040. Certificate of need process.

RELATES TO: KRS 216B.010 to 216B.130 [340], 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 13A.350, 216B.040, 216B.075

NECESSITY AND FUNCTION: KRS 216B.040 requires the Kentucky Health Policy Board to promulgate administrative regulations outlining the certificate of need review procedures and to establish criteria for the issuance of certificates of need. These administrative regulations set forth the requirements for batching applications, for review of the applications, for the issuance of advisory opinions for public hearings on the applications and for "show cause" hearings on noncompliance.

Section 1. Definitions. (1) "Cost escalation" means an increase in the capital expenditure authorized on a certificate of need which has not been the subject of an obligation as defined in KRS 216B.015(26).

(2) "Defined geographic area" means the area and population the proposal seeks to serve.

(3) "Division of Licensing and Regulation" means the Cabinet for Human Resources, Office of the Inspector General, Division of Licensing and Regulation.

(4) "Emergency circumstances" means natural disasters, fire, vandalism, structural or mechanical failure, or other circumstances affecting existing health facilities and services that pose an imminent threat to the life, health, or safety of any citizen of the Commonwealth if not acted upon immediately.

(5) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.

(6) "Long-term care beds" means those beds located in a nursing facility, nursing home, skilled nursing beds, intermediate care beds, Alzheimer disease facility beds, and personal care beds.

(7) "Medically underserved" means those populations or geographic areas as designated by the board in the state health plan.

(8) "Proposed service area" means the geographic area and population the applicant proposes to serve.

(9) "Public information channels" means the Office of Communications in the Cabinet for Human Resources.

(10) "Show cause hearing" means a hearing before the board or its designee at which a person is required to explain or demonstrate why the person should not be subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

Section 2. Criteria. In determining whether to issue or deny a certificate of need, an applicant shall provide and the board shall utilize the following information:

(1) Consistency with state health plan and any biennial state budget authorizations and limitations directly affecting the proposal.

(2) Need and accessibility.

(a) The defined geographic area's need for the proposed services;

(b) Accessibility of proposed service to the defined population, particularly those with an inability to access such services and those designated in the state health plan as medically underserved;

(c) The extent to which the health professions' schools in the area have access to the services for training purposes;

(3) Interrelationships and linkages.

(a) The relationship of the proposed service with the existing health care system of the defined geographic area and the state.

(b) The relationship, including the organizational relationship, of the proposed health service with ancillary or support services.

(c) The efficiency and appropriateness of the use of similar existing services and facilities to meet identified needs.

(4) Costs, economic feasibility, and resource availability.

(a) The availability of less costly or more effective alternatives to the proposal;

(b) The immediate and long-term financial feasibility of the proposal;

(c) The probable impact of the proposal on:

1. The applicant's costs and charges for providing health services; and

2. The costs and charges of other providers in the defined geographic area.

(d) The availability of resources, including health care personnel, management personnel, and funds for capital and operating needs;

(e) For construction or renovation projects, costs and methods of the project, including the costs and methods of energy provisions;

(f) The effect of competition on the supply of health services being reviewed and whether the approval of the application may unnecessarily increase the cost of health care to the public;

(g) Improvements or innovations in the proposed financing and delivery of health services that foster competition and promote quality and cost effectiveness;

(5) Quality of services.

(a) The quality of care provided by the applicant in the past, or

(b) The qualifications of the persons responsible for the quality of care to be provided;

(c) Any detrimental effects of the proposal on the quality of similar services in the area, including those associated with decreased utilization; and

(d) The ability of the applicant to comply with applicable licensure requirements.

Section 3. Letter of Intent. (1) At least thirty (30) days prior to submitting an application for a certificate of need, an applicant shall file a letter of intent with the board or its designee on Letter of Intent Form Number 1.

(2) A letter of intent shall be valid for one (1) year.

(3) If an application is denied by the board or withdrawn, the applicant shall file a new letter of intent before resubmitting an application.

(4) If an application is withdrawn before the board makes a final decision, the applicant shall file a new letter of intent before resubmitting an application.

(5) A letter of intent shall not be required from an applicant requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation.

Section 4. Application for Certificate of Need. (1) Upon receipt of a letter of intent, the board or its designee shall provide the applicant with:

(a) Written acknowledgement of receipt of the letter of intent; and  
(b) Copies of:

1. "Certificate of Need Application Form Number 2A"; or

2. "Certificate of Need Application for Ground Ambulance, Air Ambulance and Nonemergency Health Transportation Services Form Number 2B".

(2) The applicant shall file an original and three (3) copies of a certificate of need application together with the prescribed fee set forth in 909 KAR 1:050 with the board or its designee on or before the deadlines established by Section 5 of this administrative regulation.

(3)(a) Fifteen (15) days after receipt of an application, the board or its designee shall:

1. Notify the applicant that the application is completed; or

2. Request specific additional information.

(b) If an application is not complete, the applicant shall:

1. Complete the application by submitting the requested specific additional information; or

2. Notify the board that its application shall be processed as submitted.

(4) Upon receipt of an applicant's response, the board or its designee shall:

(a) Declare an application complete; and

(b) Notify the applicant of the beginning of the review.

(5)(a) Public notice of review shall include all applications deemed complete six (6) or more working days before the scheduled date of the applicable public notice.

(b) After an application has been declared complete, an applicant may not submit additional information to be made part of the public record unless the information is introduced at a hearing.

(6)(a) Public notice of review shall include:

1. The schedule for the review; and

2. The period during which a public hearing may be requested by the applicant and other affected persons.

(b) The board or its designee shall provide notice through public information channels.

(c) The board or its designee shall mail notice to mayors, county judge executives, and all known providers of similar services in the proposed service area.

(d) The applicant shall ensure that notice is published in one (1) newspaper of general circulation in the proposed service area pursuant to KRS 424.120.

Section 5. Review of Certificate of Need Application. (1) Batching review cycles shall be as follows:

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Type of Proposal	Applications shall be filed by third Wednesday of:	Month of public notice, ninety (90) days prior to decision date:	Month and day of decision, third Wednesday of:
(a) Hospital, psychiatric, rehabilitation, chemical dependency and psychiatric residential treatment facilities, freestanding ambulatory surgical center, birthing center.	October, January, April, July	November, February, May, August	February, May, August, November
(b) Skilled nursing, nursing home, intermediate care, personal care, nursing facility, and Intermediate Care, Mental Retardation, and Developmentally Disabled facility.	November, May	December, June	March, September
(c) Transplantation, magnetic resonance imaging, lithotripter, radiation therapy, cardiac catheterization, open heart surgery, and new technological developments	December, June	January, July	April, October
(d) Day health care center, ambulatory care clinic, rehabilitation agency, hospice, home health or home health/hospice	October, January, May, July	November, February, June, August	February, May, September, November
(e) Ambulance, nonemergency health transportation, and air ambulance providers.	November, January, April, June, August	December, February, May, July, September	March, May, August, October, December
(f) All mobile services except those covered under specialized equipment and services	October, December, February, April, June, August	November, January, March, May, July, September	February, April, June, August, October, December
(g) Any proposals not listed above shall be placed in the most appropriate cycle as determined by the board.			
(h) Any proposals granted nonsubstantive review status as specified in KRS 216B.095(3)(a) (b)(c)(d)(e)(f) shall be processed in accordance with KRS 216B.095(1)			

(2) The board or its designee shall notify the applicant by certified mail, and any party to the proceeding by regular mail, of the final action on a certificate of need application.

(3) Written notification of approval shall include:

(a) Verification that the criteria have been met;

(b) If the application is inconsistent with any criteria, the reasons for approval despite the inconsistency; and

(c) Notice of appeal rights.

(d) The amount of capital expenditure authorized, where applica-

ble.

(4) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(5) An application that is not declared complete within a year from the date of filing shall expire and shall not be reviewed.

(6) An application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months, absent a showing of significant change in circumstances, as determined by the board.

Section 6. Certificate of Need Hearings. (1) The applicant or any affected person may request a hearing on an application. Notice of hearing shall be mailed by certified mail to the applicant and parties requesting the hearing not less than ten (10) ~~[no later than twenty (20)]~~ days before the date of the hearing. The content of the notice shall conform to KRS 13B.050.

(2) The board or its designee shall provide the following notice of the date, time, and location of the hearing:

(a) Members of the public through public information channels; and

(b) Mailed to county judge executives, mayors and all known providers of similar services in the proposed service area.

(3)(a) A hearing request may be withdrawn by written request filed with the board, or its designee and shall be accepted if it is received by the board at least three (3) working days before the scheduled hearing date.

(b) A public hearing shall be cancelled if all persons who requested the hearing agree in writing to its cancellation; agreement of other affected persons shall not be required.

(4) Preliminary conference. The board or its designee may convene a preliminary conference. The purposes of the conference are to formulate and simplify the issues, identify additional information and evidence needed for the hearing, and dispose of pending motions. Any petitions to intervene filed pursuant to KRS 13B.060 shall also be considered. A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record. The board or its designee may tape record the conference or have a stenographer present. During the preliminary conference, the board or its designee may:

(a) Instruct the parties and others who have indicated an intent to participate in the hearing to:

1. Formulate and submit a list of genuine contested issues to be decided at the hearing;

2. Identify potential witnesses using Form Number 3 and the subject matter of their testimony;

3. Serve subparagraphs 1 and 2 of this paragraph on all parties by mail; and

4. Raise and address issues that can be decided before the hearing.

(b) Submit any exhibits and documents that they wish to introduce at the hearing and list them on Form Number 4 and serve them on all parties to the hearing.

(c) Prescribe the manner and extent of the participation of the parties or persons who shall participate.

(d) Formulate and submit stipulations to facts, laws, and other matters.

(e) Rule on any pending motions for discovery or subpoenas.

(f) Require any additional information relevant to the application requested by the board and any information or evidence to be gathered by discovery shall be filed no less than five (5) ~~[seven (7)]~~ days before the hearing and copies shall be served on all known parties.

(g) Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(5) Public hearing. The board or a member of the board designated by the chairman shall convene the hearing and serve as hearing officer at the hearing upon the application. In no event shall a member of the board act as hearing officer on any application in which he has a conflict of interest as defined in KRS 13B.040 or 45A.340. Any party may file with the chairman a petition for removal based upon a conflict of interest supported by affidavit in accordance with KRS 13B.040(2)(a).

(6) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. Every party appearing shall enter an appearance by stating their name and address. The hearing officer

shall rule on preliminary matters appropriate for disposition prior to receipt of any evidence.

(7) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090. Each party shall have the opportunity to present its case, make opening statements, call and examine witnesses, offer documentary evidence into the record and make closing statements. Every party shall also have the opportunity to cross-examine opposing witnesses on matters covered in direct examination and, at the discretion of the hearing officer, upon other matters relevant to the issues. A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(a) The hearing officer may allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed. He may act to exclude irrelevant, immaterial or unduly repetitious evidence, and may question any party or witness.

(b) The hearing officer is not bound by the Kentucky rules of evidence and may allow hearsay evidence in his discretion if it is relevant to the issue.

(c) The applicant may be allowed to open and close the presentation of evidence and arguments. The hearing officer shall designate the order of presentations in the preliminary order.

(d) Witnesses may appear through deposition or in person. Witnesses shall be examined under oath or affirmation. If the hearing officer determines that the hearing will be expedited and the interests of the parties will not be prejudiced any part or all of the evidence may be received in written form. Written testimony of a witness in the form of questions and answers or a narrative statement may be received in lieu of direct examination, provided that the witness authenticates the document under oath. The witness shall then be subject to cross-examination.

(e) The hearing officer may accept documentary evidence in the form of copies of excerpts if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original. Documents to be considered for acceptance shall be filed with the hearing officer and other parties at least seven (7) days before the hearing.

(f) A document may not be incorporated into the record by reference without the permission of the hearing officer. Any reference document shall be precisely identified.

(g) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time, not to exceed seven (7) ~~[the ten (10)]~~ days after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(8) Within ten (10) days after the conclusion of the hearing, the hearing officer shall forward a copy of the recommended decision by regular mail to each party. The original hearing decision shall be filed in the administrative record maintained by the board.

(9) Within ten (10) ~~[fifteen (15)]~~ days of the date of the recommended order, the parties may file written exceptions to the recommended order with the board. If no exceptions are filed, the recommended order will become final on the day of decision as indicated in Section 5(1) of this administrative regulation. If exceptions are filed, the board shall consider the written exceptions before issuing a final order.

Section 7. Requests for Reconsideration. (1) The board shall act upon requests for reconsideration filed pursuant to KRS 216B.090 within thirty (30) days following receipt of a request. ~~[If no exceptions are filed, the order will become final and the board will issue a CON.]~~

(2) If reconsideration is granted, a hearing before a hearing officer designated by the board shall be held within thirty (30) days of the decision, and a final decision by the board shall be issued no later

than thirty (30) days following the hearing.

Section 8. Maintenance of Administrative Record. The board shall maintain an administrative record of its hearings which shall conform to the requirements of KRS 13B.130.

Section 9. Conditions Relative to Nonsubstantive Review. (1) In addition to the projects specified in KRS 216B.095(3)(a) through (f), the following proposals may be granted nonsubstantive review status:

(a) Technical modifications to an approved certificate of need;  
(b) Emergency circumstances. An applicant acting under this subsection may proceed to relieve any emergency circumstances as defined in Section 1(4) of this administrative regulation provided the board is notified in writing prior to the action, and an application is submitted within thirty (30) days of the occurrence of the emergency.

(2) Procedures for nonsubstantive review.

(a) The original certificate of need application and three (3) copies with a request for nonsubstantive review shall be submitted to the board.

(b) Within fifteen (15) days of the receipt of the application, the board shall:

1. Notify the applicant that the application is complete; or
2. Request specific additional information.

(c) If an application is not complete, the applicant shall:

1. Complete the application by submitting specific additional information; or

2. Notify the board that its application shall be processed as submitted.

(d) Upon receipt of an applicant's response, the board shall:

1. Declare an application complete; and
2. Notify the applicant of the beginning of the review.

(e) The board shall review all documents submitted by the applicant to determine whether the application conforms to the stated grounds for nonsubstantive review and whether the project is necessary to meet the circumstances thereby described.

(f) No later than ten (10) days after an application has been declared complete, the board's decision on a request for nonsubstantive review shall be mailed to the applicant. Notice of a decision to conduct a nonsubstantive review shall be given to the third party payors and members of the public through public information channels, and mailed to newspapers, county judge executives, mayors, and other known affected persons in the proposed service area.

(g) A proposed or final decision order and supporting documents shall be presented to the board for its approval.

(h) If a certificate of need is denied following a nonsubstantive review and the applicant requests a formal review, the filing of the request for nonsubstantive review shall be considered to constitute compliance with any requirement for a letter of intent. The applicant shall provide all information requested in the application that pertains to the formal review process no later than the relevant deadline as provided in Section 5 of this administrative regulation.

(i) Any hearing requested by an affected person will be conducted according to Section 6 of this administrative regulation.

Section 10. Conditions Relative to Certificate of Need. (1) Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) A certificate of need approved for establishment of a new facility or the replacement of an existing facility is valid only for the location stated on the certificate.

(3) Any person found by the board to have violated KRS 216B.0615 shall be subject to the penalties for Class B misdemeanors set forth in KRS 532.090(b), 534.040(2)(b), and 534.050(1) as amended.

(4) A certificate of need holder shall notify the board of any reduction or termination of a health service or a reduction in bed capacity for an approved project no later than the first progress report after the decision to make the change has been determined.

Section 11. Show Cause Hearings. (1) The board may conduct a show cause hearing in order to determine whether there has been a violation of KRS Chapter 216B or these administrative regulations, and may assess penalties if willful violations are found. The accused violator may present evidence to assist the board in determining whether such a violation has occurred.

(2) Prior to convening a show cause hearing, the board or its designee shall give the certificate of need holder not less than twenty (20) days' notice of its intent to conduct a hearing. The notice shall advise the holder of the allegations against him, of any facts determined to exist which support the existence of the allegation, and the statute or administrative regulation alleged to have been violated.

(3) The board, shall convene the hearing and shall allow the holder to establish through testimony or other evidence any grounds in support of its position that no action should be taken by the board.

(4) Within ten (10) days of the conclusion of the hearing, the board shall issue a final decision and order on the matter. A copy of the final decision shall be mailed to the holder or his legal representative with the original hearing decision filed in the administrative record maintained by the board.

Section 12. Cost Escalations. (1) A certificate of need shall be required for an escalation of the capital expenditure authorized by an approved certificate of need if there is a substantial change in the project or the escalation exceeds the following limits:

(a) Twenty (20) percent of the capital expenditure authorized or \$100,000, whichever is greater, if the project's capital expenditure is less than \$500,000;

(b) Twenty (20) percent of the capital expenditure authorized for projects with a capital expenditure of \$500,000 to \$4,999,999;

(c) Ten (10) percent of the amount in excess of \$5,000,000, plus \$1,000,000, for projects with a capital expenditure of \$5,000,000 to \$24,999,999;

(d) Five (5) percent of the amount in excess of \$25,000,000, plus \$3,000,000, for projects with a capital expenditure of \$25,000,000 to \$49,999,999.

(e) Two (2) percent of the amount in excess of \$50,000,000, plus \$4,250,000, for projects with a capital expenditure of \$50,000,000 or more.

(2)(a) Requests for administrative cost escalations shall be submitted to the board or its designee on Form #6 (Cost Escalation).

(b) The requests shall include:

1. Amount of the escalation;
2. Factors causing the escalation; and

3. Information confirming that the scope of the project as originally approved has not changed and that funds have not been obligated in excess of the approved capital expenditure.

(c) The board or its designee shall review all requests for administrative cost escalations and shall notify the certificate of need holder within thirty (30) days of receipt whether the requested escalation meets the requirements of subsection (1) of this section.

(3) The certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure pursuant to the requirements of 909 KAR 1:050.

(4) The board may conduct a show cause hearing in order to determine whether a certificate of need holder has willfully obligated capital expenditure beyond the amount authorized, and may assess penalties if willful obligations are found.

Section 13. Timetables and Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on "Progress Report

Form #8" at the six (6) month intervals specified in this section.

(2)(a) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(b) The board or its designee shall review a progress report and shall:

1. Determine whether the required elements have been completed; and

2. If the required elements have not been completed, whether sufficient reasons for failure to complete have been provided.

(3) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure or occupancy by the Division of Licensing and Regulation;

(b) A final cost breakdown has been submitted; and

(c) Documentation that services are being provided to all of the licensed service area has been submitted.

(4) Until a project is deemed complete by the board, the board may require:

(a) The submission of additional reports; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(5)(a) Except for long-term care bed proposals, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that the failure was due to emergency circumstances or other causes that could not reasonably be anticipated and avoided by the holder, or were not the result of action or inaction of the holder.

(b) If the board determines that required elements have not been completed for reasons other than those set forth in paragraph (a) of this subsection, it shall notify the holder of the certificate of need, in writing, it has determined to revoke the certificate of need.

(c) The revocation shall become final thirty (30) days from the date of notice of revocation, unless the holder requests a hearing to show cause why the certificate of need should not be revoked.

(6) The first progress report for all projects other than long-term care beds shall include:

(a) Projects for the purchase of equipment only: a copy of the purchase order;

(b) Projects involving the acquisition of real property: evidence of an option to acquire the site;

(c) Construction or renovation projects: evidence that schematic plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(7) For projects other than long-term care not deemed complete, a second progress report shall include:

(a) Projects converting beds: documentation that all beds are licensed;

(b) Projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Division of Licensing and Regulation; and

(c) Construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(8) For projects other than long-term care not deemed complete, a third progress report shall include:

(a) Construction or renovation projects:

1. Copy of deed or lease of land;

2. Documentation of final enforceable financing agreement, where applicable.

3. Documentation that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

4. Enforceable contract with a construction contractor.

(b) Projects for purchase of equipment only: evidence of approval

for licensure and occupancy by the Division of Licensing and Regulation.

(9) For projects other than long-term care not deemed complete, a fourth progress report shall include documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation and that construction has begun.

(10) For projects other than long-term care not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(11) For projects other than long-term care not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Division of Licensing and Regulation and if required that the appropriate license has been approved for the health care service or facility.

(12) For projects other than long-term care not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the board or its designee with a written statement showing cause why the certificate should not be revoked. The board may defer revocation action upon a showing by the certificate holder that the project will be completed on a revised schedule. The board or its designee may require additional progress reports.

(13) For projects involving long-term care beds:

(a) The first progress report shall include:

1. Copy of deed or lease of land for projects requiring acquisition of real property;

2. Evidence that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(b) For projects involving long-term care beds not deemed complete, a second progress report shall include: documentation that beds in projects for conversion of beds are licensed.

(14) For construction projects:

(a) Schedule for project completion with projected dates;

(b) Documentation of final financing;

(c) Documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

(d) Enforceable construction contract.

(15) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion;

(16) For projects not involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Division of Licensure and Regulation.

(17) The board or its designee may grant no more than two (2) extensions of six (6) months for good cause shown when the certificate holder of long-term care beds has failed to comply with the above relevant progress report requirements;

(18)(a) Within six (6) months following licensure of a project for which a certificate of need has been issued, the certificate holder shall submit documentation that services are being provided to all of the licensed service area. Failure to provide such documentation shall constitute grounds for revocation of the certificate of need and the license for those areas where service is not being provided.

(b) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

Section 14. Revocation of Certificates of Need. The board may act to revoke a certificate of need at any time in accordance with the requirements of KRS 216B.086.

Section 15. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine that they are in compliance with the terms as listed on their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The board or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

- (a) When the biennial review will be initiated;
  - (b) Request for information necessary for the review to which the board does not have ready access; and
  - (c) A deadline for response to the request for information.
- (4) The board or its designee shall notify the certificate of need holder of any finding that it is not in compliance with the terms of its certificate of need, and shall provide the certificate of need holder with a reasonable period of time in which to demonstrate a good faith effort to remedy the specified deficiencies.

(5) The board may institute disciplinary proceedings, including but not limited to revocation of the certificate of need for willful failure to comply with the terms of a certificate of need as determined by a biennial review.

(6) The board shall notify the Division of Licensing and Regulation of any adverse findings under this subsection.

Section 16. Advisory Opinions. (1) Requests for advisory opinions shall be completed on Form Number 9 (Advisory Opinion).

(2) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a nonclinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(3) The board or its designee may require verification of information and request additional documentation.

(4) The board or its designee shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an opinion or of receipt of additional information.

(5) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter and disseminated through public information channels.

(6) An affected person may request a public hearing regarding an advisory opinion from the board in writing within thirty (30) days of the public notice of the advisory opinion. If a public hearing is not requested, the advisory opinion shall be the final action of the board. Failure to request a public hearing shall not constitute a failure to exhaust administrative remedies.

Section 17. Material Incorporated by Reference. (1) The following forms necessary for the administration of the certificate of need program are hereby incorporated by reference:

- (a) Letter of Intent (Form #1).
- (b) Certificate of Need Application (Form #2A).
- (c) Certificate of Need Application for Ground Ambulance, Air Ambulance and NonEmergency, Health Transportation (Form 2b).
- (d) Certificate of need application for change of location, replacement, or cost escalation (Form #2C).
- (e) Witness List (Form #3).
- (f) Exhibit List (Form #4).
- (g) Notice of Appearance (Form #5)
- (h) Cost Escalation (Form #6)
- (i) Six (6) Month Progress Report (Form #7).
- (j) Advisory Opinion Request (Form #8).
- (k) Acquisition of a Health Facility, Notice of Intent (Form #9).

(2) These forms may be inspected and copied at the Kentucky Health Policy Board, 275 E. Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Section 18. 902 KAR 20:004, Certificate of need process, is hereby repealed.

JACK B. HALL, Chairman

APPROVED BY AGENCY: May 15, 1995

FILED WITH LRC: May 15, 1995 at 11 a.m.

## KENTUCKY HEALTH POLICY BOARD (As Amended)

### 909 KAR 1:060. Licensure hearings.

RELATES TO: KRS 216B.105

STATUTORY AUTHORITY: KRS 13A.350, 216B.040

NECESSITY AND FUNCTION: KRS 216B.040 and 216B.105 authorize the Kentucky Health Policy Board to provide a due process hearing and issue a final determination on all actions by the Cabinet for Human Resources to deny, revoke, modify or suspend a license. This administrative regulation sets forth the hearing procedure for licensure actions.

Section 1. Notice of Action and Request for Hearing. Any applicant or licensee who has been notified of the cabinet's decision to deny, revoke, modify or suspend a license to operate a health facility or health service may request an evidentiary hearing for the purpose of appealing the cabinet's decision. The request must be filed with the chairman of the board within thirty (30) days of the date of mailing of notice of the cabinet's decision.

Section 2. Notice of Hearing. The board shall provide the appellant with notice of date, time and location of the hearing by certified mail at least thirty (30) days before the date of the hearing.

Section 3. Disqualification of Hearing Officer. No hearing officer or board member shall participate in any hearing in which he or she has had within the past twelve (12) months preceding the hearing, any ownership, employment, staff, fiduciary, contractual, creditor, personal, or consultative relationship with the applicant or licensee.

Section 4. Hearing Procedure. (1) The hearing shall be conducted in accordance with KRS 13B.080 and 13B.090. Each party shall have the opportunity to present its case, make opening statements, call and examine witnesses, offer documentary evidence into the record and make closing statements. Every party shall also have the opportunity to cross-examine opposing witnesses on matters covered in direct examination and, at the discretion of the hearing officer, upon other matters relevant to the issues. A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(a) The hearing officer may allow testimony or other evidence on issues that may arise during the course of the hearing, including any additional petitions for intervention which may be filed. The hearing officer may act to exclude irrelevant, immaterial or unduly repetitious evidence, and may question any party or witness.

(b) The hearing officer is not bound by the Kentucky rules of evidence and may allow hearsay evidence in his discretion if it is relevant to the issue.

(c) The applicant or licensee may be allowed to open and close the presentation of evidence and arguments. The hearing officer shall designate the order of presentations, in the preliminary order.

(d) Witnesses may appear through deposition or in person. Witnesses shall be examined under oath or affirmation. If the hearing officer determines that the hearing will be expedited and the interests of the parties will not be prejudiced, any part or all of the evidence may be received in written form. Written testimony of a witness in the form of questions and answers or a narrative statement may be received in lieu of direct examination, provided that the witness authenticates the document under oath. The witness shall then be subject to cross-examination.



(e) A written ~~[or oral]~~ statement from any party, or a statement or resolution of a political subdivision, trade association, civic organization or other organization may be received without cross examination, but will be considered only as argument, and not as proof of any matter addressed in these documents unless the party against whom the document is being offered is allowed to cross-examine the proponent of the document.

(f) The hearing officer may accept documentary evidence in the form of copies of excerpts if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original. Documents to be considered for acceptance shall be filed with the hearing officer and other parties at least seven (7) days before the hearing.

(g) A document may not be incorporated into the record by reference without the permission of the hearing officer. Any reference document shall be precisely identified.

(h) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time, not to exceed the ten (10) days after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(2) In lieu of an evidentiary hearing, the parties to a proceeding, with the consent of the board or designated hearing officer, may file written stipulations of relevant facts. The board or hearing officer may decide the appeal on the basis of such stipulation or may schedule a hearing and take such further evidence as it deems necessary.

(3) The board or designated hearing officer may, at its discretion, grant a continuance of a hearing in order to secure necessary evidence.

Section 5. ~~[6-]~~ Findings and Recommendations. (1) After the hearing, the hearing officer or the board shall prepare written findings of fact and recommendations with a synopsis of the evidence contained in the record on the issues involved. If the applicant or licensee fails to appear and prosecute the appeal, the board or hearing officer may dismiss or recommend dismissal of the appeal.

(2) The hearing officer or board shall, within twenty (20) days of the close of the hearing send findings and recommendations by certified mail to the applicant or licensee and to the licensing agency, who may submit exceptions within seven (7) ~~ten (10)~~ days of receipt.

(3) If the hearing is before a designated hearing officer, within thirty (30) days from the conclusion of the hearing the hearing officer shall transmit the findings and recommendations to the board.

(4) The board shall make its final decision at the first meeting following receipt of the hearing officer's findings and recommendations, but not less than ten (10) days after transmission of the findings and recommendations to [by] the applicant or licensee pursuant to subsection (2) of this section.

(5) The decision of the board shall be final for purposes of judicial appeal, as set forth in KRS 216B.115, upon mailing of notice of the board's decision.

Section 6. ~~[7-]~~ 902 KAR 20:126, Licensure hearings, ~~[Certificate of need process,]~~ is hereby repealed.

JACK B. HALL, Chairman

APPROVED BY AGENCY: May 15, 1995

FILED WITH LRC: May 15, 1995 at 11 a.m.

# ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division of Water (Amended After Hearing)

### 401 KAR 5:030. Nondegradation ~~[Antidegradation]~~ policy implementation methodology.

RELATES TO: KRS Chapter 224

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-110, 40 CFR Part 131, 33 USC 1313, 1342

NECESSITY AND FUNCTION: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. KRS 224.70-100 declares that the policy of the Commonwealth is to conserve its waters for legitimate uses and lists among the purposes of KRS Chapter 224: safeguarding from pollution the uncontaminated waters of the Commonwealth, preventing the creation of any new pollution in the waters of the Commonwealth, and abating any existing pollution. This administrative regulation sets forth a methodology to implement the nondegradation ~~[antidegradation]~~ policy contained in 401 KAR 5:029 by establishing procedures to control water pollution in waters affected by that policy.

Section 1. Implementation of Nondegradation ~~[Antidegradation]~~ Policy. The following procedures shall govern implementation of the nondegradation ~~[antidegradation]~~ policy of 401 KAR 5:029, Section 2 ~~[4]~~.

(1) Surface waters shall be placed into one (1) of three (3) categories ~~[four (4) classifications]~~: outstanding national resource waters, waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, ~~[outstanding state resource waters, high quality waters,]~~ or use protected waters.

(2) Categorization of surface waters to outstanding national resource waters. The following procedures shall govern the categorization of surface waters to outstanding national resource waters.

(a) A surface water shall meet, at a minimum, the requirements for outstanding resource water classification found in 401 KAR 5:031, Section 7.

(b) The water shall be demonstrated to be of national ecological or recreational significance.

(3) Categorization of surface water to waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. Waterbodies in this category shall include any of the following:

(a) Surface waters designated as Kentucky Wild Rivers, unless they are categorized as outstanding national resource waters;

(b) Outstanding resource waters other than those that support federally threatened or endangered aquatic species;

(c) Surface waters that fully support all applicable designated uses and that contain fish communities that are rated "excellent" by the use of the Index of Biotic Integrity, which is in "Methods of Assessing Biological Integrity of Surface Waters", incorporated by reference in Section 4 of this administrative regulation; and

(d) Waters in the cabinet's reference reach network.

(4) ~~[(1)]~~ Procedure for implementing the nondegradation

~~[antidegradation]~~ policy in outstanding national resource waters for point source discharges.

(a) Water quality shall be maintained and protected in outstanding national resource waters.

(b) The cabinet may approve temporary or short-term changes in water quality if the changes to the waters in question have no demonstrable impact on the ability of the waters to support their designated uses.

(5) ~~[(2)]~~ Procedure for implementing the nondegradation ~~[antidegradation]~~ policy in waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water ~~[high quality waters]~~ for point source discharges.

(a) A KPDES permit for a new unpermitted or expanded discharge shall contain effluent limitations that are as follows:

1. Domestic discharges shall have an effluent quality of no greater than ten (10) mg/l five (5) day carbonaceous biochemical oxygen demand, two (2) mg/l ammonia-nitrogen, 0.010 mg/l total residual chlorine, ten (10) mg/l total suspended solids, one (1) mg/l total phosphorus, a minimum seven (7) mg/l dissolved oxygen, a chronic whole effluent toxicity limit unless an acute whole effluent toxicity limit is more stringent, and a geometric mean value for fecal coliform bacteria not to exceed 200 colonies per 100 milliliters during a period of thirty (30) consecutive days nor 400 colonies per 100 milliliters during a period of seven (7) consecutive days.

2. Chloride limits shall be based on the domestic water supply criterion of 250 mg/l.

3. Stormwater discharges are exempt from nondegradation antidegradation implementation procedures for waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water ~~[high quality waters]~~, but are subject to control by existing cabinet programs.

4. Chronic whole effluent toxicity limits shall apply unless an acute whole effluent toxicity limit is more stringent.

5. Carcinogenic pollutants shall be limited as in use protected waters.

6. All other waste discharges shall be restricted to one-half (1/2) of the limitation that would have been permitted for use protected waters at standard design conditions.

7. KPDES permit renewals that result in no increase in pollutant loading are exempt from ~~[high quality waters antidegradation]~~ implementation procedures for waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water.

8. New zones of initial dilution are prohibited in these waters.

(b) If the permit applicant determines that it can meet these limitations, the KPDES permit shall be issued with these limitations without further nondegradation ~~[antidegradation]~~ review as described in subsection (6) ~~[(3)]~~ of this section for use protected waters. If a KPDES permit applicant cannot meet those effluent limitations the applicant may request a less stringent limitation. In making this request, the applicant shall demonstrate to the satisfaction of the cabinet that:

1. The applicant has conducted a thorough alternative or enhanced treatment analysis that investigated other alternative or enhanced treatment options that were available, technically feasible, and cost-effective, including alternate discharge locations that would eliminate the need for less stringent limitations; and

2. The applicant has conducted a thorough pollution prevention alternatives analysis that investigated any cost-effective pollution prevention alternatives and techniques that were available that would

eliminate the need for less stringent limitations or significantly reduce the extent of the less stringent limitations.

3. If the applicant satisfies the requirements of subparagraphs 1 and 2 of this paragraph, the applicant may then be permitted a less stringent level of treatment. In allowing the resultant lowering of water quality, the cabinet shall assure water quality necessary to fully protect existing uses.

(6) [(3)] Procedure for implementing the nondegradation [antidegradation] policy in use protected waters for point source discharges. All surface waters not listed in Section 3 of this administrative regulation as outstanding national resource waters or waterbodies whose quality exceeds that necessary to support fish, shellfish, and wildlife and recreation in and on the water shall be categorized as use protected waters.

(a) All existing uses shall be protected and the level of water quality necessary to protect these uses shall be assured in these surface waters.

(b) The process to allow discharges to these surface waters and to assure their protection is regulated by the requirements in the Kentucky Pollution Discharge Elimination System Program.

(7) [(4)] These procedures shall not preempt the power or authority of a local government to provide by ordinance for a higher level of protection through nondegradation [antidegradation] implementation, for dischargers located within that local government's [its] jurisdiction to surface waters of the Commonwealth.

Section 2. Procedures for Recategorizing Waters. This section shall apply to the recategorization of surface waters to outstanding national resource waters and waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water. The reclassification of waters to outstanding resource waters shall be governed by the procedures in 401 KAR 5:026.

(1) The cabinet may propose to recategorize certain waters to outstanding national resource waters and waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water:

(a) If the cabinet proposes to recategorize these waters, it shall provide notice and an opportunity for public hearing.

(b) The cabinet shall provide the documentation for those surface waters it proposes to recategorize.

(2) Any person may request recategorization of a surface water to an outstanding national resource water or a waterbody whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water by filing a petition with the cabinet.

(a) The petition shall include the name and address of the petitioner and the information and documentation necessary to recategorize the particular water as required by subsection (4) of this section;

(b) The petitioner shall have the burden of proof that the recategorization is appropriate.

(c) The cabinet shall provide notice of the petition and an opportunity for a public hearing.

(d) The cabinet shall review the petition, supporting documentation, and any comments received from the public to determine if the proposed waters qualify for recategorization.

(e) The cabinet shall document the determination to grant or deny recategorization as a result of a petition, and shall provide a copy of the decision to the petitioner and other interested parties.

(3) If a water is to be recategorized the cabinet shall publish notice of the recategorization. Any permit issued after the date of publication shall be issued with limitations based on the new category. When the cabinet reviews its water quality standards pursuant to the provisions of Section 303 of the Clean Water Act, the cabinet shall propose to have all recategorized waters

promulgated as an amendment to this administrative regulation.

(4) The following information, documentation, and data are required to support a petition for recategorization:

(a) To support a petition for outstanding national resource waters:

1. A United States Geological Survey 7.5 Minute Topographic Map showing those surface waters to be recategorized, with a description consisting of a river mile index with any existing and proposed discharge points;

2. Existing uses and water quality data for the surface waters for which the recategorization is proposed. If adequate data are unavailable, additional studies may be required by the cabinet;

3. Descriptions of general land uses (e.g., mining, agricultural, recreation, low, medium, and high density residential, commercial-industrial, etc.) and specific land uses adjacent to the surface waters for which the recategorization is proposed;

4. The existing and designated uses of the waters upstream and downstream of the proposed recategorized waters;

5. General physical characteristics of the surface water including, but not limited to width, depth, bottom composition, and slope;

6. The frequency of occasions when there is no natural flow in the surface water, and the  $7Q_{10}$  and harmonic mean flow values for the surface water and adjacent surface waters;

7. An assessment of the existing and potential aquatic life habitat in the surface waters under consideration and the adjacent upstream surface waters. The existing aquatic life shall be documented including the occurrence of individuals or populations, indices of diversity and well-being, and abundance of species of any unique native biota;

8. A documented rationale as to why the waters qualify for the recategorization; and

9. The rationale used to support the national significance of the water.

(b) To support a petition for waterbodies whose quality exceeds that necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water:

1. A United States Geological Survey 7.5 Minute Topographic Map showing the surface waters to be recategorized, with a description consisting of a river mile index with any existing and proposed discharge points;

2. Descriptions of general land uses, including mining, agricultural, recreational, low, medium, and high density residential, commercial, and industrial, and specific land uses adjacent to the surface waters for which the recategorization is proposed; and

3. The frequency of occasions when there is no natural flow in the surface water, and the  $7Q_{10}$  and annual mean flow values for the surface water;

4. Fish collection data and an Index of Biotic Integrity calculation from a waterbody if that criterion specified in Section 1(3)(c) of this administrative regulation is utilized.

Section 3. List of Surface Water Categories. (1) Surface waters categorized for nondegradation purposes are listed in the following tables. The county column indicates the county in which the mouth or outlet of the surface water is located.

(2) Surface waters not specifically listed in this section are categorized as use protected.

#### LIST OF SURFACE WATERS CATEGORIZED AS OUTSTANDING NATIONAL RESOURCE WATERS

<u>Stream</u>	<u>Zone</u>	<u>County</u>
<u>Red River</u>	<u>River Mile 68.6 to River Mile 49.2</u>	<u>Menifee/ Wolfe</u>

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<u>Underground</u> <u>River System</u> <u>Big South Fork</u> <u>of Cumber-</u> <u>land River</u>	<u>Within Mammoth Cave</u> <u>National Park Boundary</u> <u>River Mile 55.2 to River</u> <u>Mile 45.0</u>	<u>Edmonson/</u> <u>Hart/Barren</u> <u>McCreary</u>
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## LIST OF SURFACE WATERS CATEGORIZED AS WATERBODIES WHOSE QUALITY EXCEEDS THAT NECESSARY TO SUPPORT PROPAGATION OF FISH, SHELLFISH, AND WILDLIFE AND RECREATION IN AND ON THE WATER

<u>Stream</u>	<u>Zone</u>	<u>County</u>
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### LITTLE SANDY RIVER BASIN

<u>Arabs Fork*</u>	<u>Source to confluence with</u> <u>Clay Fork</u>	<u>Carter</u>
<u>Big Caney Creek*</u>	<u>Source to Grayson Lake</u>	<u>Elliott</u>
<u>Big Sinking Creek*</u>	<u>Source to River Mile 10.7</u>	<u>Carter</u>
<u>Laurel Creek*</u>	<u>Source to River Mile 7.6</u>	<u>Elliott</u>

### LICKING RIVER BASIN

<u>Bucket Branch*</u>	<u>Source to confluence with</u> <u>North Fork of Licking River</u>	<u>Morgan</u>
<u>Devils Fork*</u>	<u>Source to confluence with</u> <u>North Fork of Licking River</u>	<u>Morgan</u>
<u>Licking River</u>	<u>River Mile 165.0 to River</u> <u>Mile 154.5</u>	<u>Bath/</u> <u>Rowan</u>
<u>North Fork of</u> <u>Licking River*</u>	<u>Source to River Mile 13.0</u>	<u>Morgan</u>

### KENTUCKY RIVER BASIN

<u>Clear Creek*</u>	<u>Source to River Mile 4.1</u>	<u>Woodford</u>
<u>Clemons Fork*</u>	<u>Source to Buckhorn Creek</u>	<u>Breathitt</u>
<u>Coles Fork*</u>	<u>Source to Buckhorn Creek</u>	<u>Breathitt</u>
<u>Right Fork of</u> <u>Buffalo Creek*</u>	<u>Source to Buffalo Creek</u>	<u>Owsley</u>
<u>South Fork of</u> <u>Station Camp</u> <u>Creek*</u>	<u>Source to River Mile 5.3</u>	<u>Jackson</u>
<u>Station Camp</u> <u>Creek*</u>	<u>River Mile 22.3 to</u> <u>River Mile 19.0</u>	<u>Estill</u>
<u>Sturgeon Creek*</u>	<u>Source to River Mile 4.0</u>	<u>Lee</u>

### SALT RIVER BASIN

<u>Salt Lick Creek*</u>	<u>Source to River Mile 5.3</u>	<u>Marion</u>
<u>Wilson Creek*</u>	<u>Source to River Mile 12.2</u>	<u>Bullitt</u>

### GREEN RIVER BASIN

<u>Beaverdam Creek*</u>	<u>Source to River Mile 7.6</u>	<u>Edmonson</u>
<u>Gasper River*</u>	<u>Source to River Mile 32.3</u>	<u>Logan</u>
<u>Goose Creek*</u>	<u>Source to River Mile 5.6</u>	<u>Casey</u>
<u>Green River</u>	<u>River Mile 207.8 to</u> <u>River Mile 181.7</u>	<u>Edmonson</u>
<u>Russell Creek*</u>	<u>Source to River Mile 60.5</u>	<u>Adair</u>
<u>Trammel Fork*</u>	<u>River Mile 30.15 (Kentucky-</u> <u>Tennessee State Line) to</u> <u>River Mile 19.4</u>	<u>Allen</u>

### LOWER CUMBERLAND RIVER BASIN

<u>Whipporwill Creek*</u>	<u>Source to Red River</u>	<u>Logan</u>
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### TENNESSEE RIVER BASIN

<u>Blood River*</u>	<u>River Mile 15.65</u> <u>(Kentucky-Tennessee State</u> <u>Line) to River Mile 15.1</u>	<u>Calloway</u>
<u>Panther Creek*</u>	<u>Source to River Mile 1.2</u>	<u>Calloway</u>
<u>Soldier Creek*</u>	<u>River Mile 5.3 to River</u> <u>Mile 2.6</u>	<u>Marshall</u>

### TRADEWATER RIVER BASIN

<u>Sandlick Creek*</u>	<u>Source to River Mile 3.5</u>	<u>Christian</u>
<u>Tradewater River*</u>	<u>Source to River Mile 126.0</u>	<u>Christian</u>

### OHIO RIVER BASIN (Main Stem and Minor Tributaries)

<u>Yellowbank Creek*</u>	<u>Source to River Mile 4.4</u>	<u>Breckinridge</u>
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### LAKES AND RESERVOIRS

<u>Metropolis</u>	<u>Entire Lake</u>	<u>McCracken</u>
<u>Swan</u>	<u>Entire Lake</u>	<u>Ballard</u>

### MISSISSIPPI RIVER BASIN (Main Stem and Minor Tributaries)

<u>Murphy's Pond</u>	<u>Entire Pond and Preserve</u> <u>Area</u>	<u>Hickman</u>
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### UPPER CUMBERLAND RIVER BASIN

<u>Bad Branch*</u>	<u>Source to confluence with</u> <u>Poor Fork of Cumberland River</u>	<u>Letcher</u>
<u>Bark Camp Creek*</u>	<u>Source to River Mile 2.6</u>	<u>Whitley</u>
<u>Buck Creek*</u>	<u>River Mile 62.6 to</u> <u>River Mile 28.9</u>	<u>Pulaski</u>
<u>Cane Creek*</u>	<u>Source to River Mile 7.0</u>	<u>Laurel</u>
<u>Cumberland River</u>	<u>River Mile 574.6 to River</u> <u>Mile 558.5 (Headwaters of</u> <u>Lake Cumberland)</u>	<u>McCreary/</u> <u>Whitley</u>
<u>Eagle Creek*</u>	<u>Source to River Mile 3.0</u>	<u>McCreary</u>
<u>Horse Lick Creek*</u>	<u>Source to River Mile 12.3</u>	<u>Jackson</u>
<u>Little South Fork</u> <u>of Cumberland</u> <u>River</u>	<u>River Mile 35.6 to River</u> <u>Mile 4.1</u>	<u>Wayne</u>
<u>Marsh Creek*</u>	<u>Source to River Mile 12.6</u>	<u>McCreary</u>
<u>Martins Fork of</u> <u>Cumberland</u> <u>River</u>	<u>River Mile 31.3 to River</u> <u>Mile 27.4</u>	<u>Harlan</u>
<u>Rock Creek</u>	<u>Tennessee-Kentucky State</u> <u>Line (River Mile 21.9) to</u> <u>White Oak Creek</u>	<u>McCreary</u>
<u>Rockcastle River</u>	<u>River Mile 24.4 to River</u> <u>Mile 8.5</u>	<u>Laurel/</u>
<u>Pulaski</u>		
<u>South Fork of Dog</u> <u>Slaughter</u> <u>Creek*</u>	<u>Source to Dog Slaughter</u> <u>Creek</u>	<u>Whitley</u>

\*Waterbodies in the cabinet's reference reach network

Section 4. Document Incorporated by Reference. The subject matter of this administrative regulation relating to biological assessments shall be governed by the document, "Methods for Assessing Biological Integrity of Surface Water," Kentucky Division of Water, Natural Resources and Environmental Protection Cabinet, October 1993, which is hereby incorporated by reference. The document is available for inspection and copying, subject to copyright laws, during

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normal business hours of 8 a.m. to 4:30 p.m., excluding state holidays, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 15, 1995 at 11 a.m.

### KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD (Amended After Hearing)

#### 418 KAR 1:010. Definitions for 418 KAR Chapter 1, repeal of 301 KAR 10:010.

RELATES TO: KRS 146.415(1), 146.550 through 146.570, 446.010(18)

STATUTORY AUTHORITY: KRS Chapter 13A, 146.550 through 146.570

NECESSITY AND FUNCTION: KRS 146.560(2) directs the board to promulgate, in accordance with the provisions of KRS Chapter 13A, administrative regulations deemed necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also directs the board to promulgate administrative regulations on acquisition. The purpose of this administrative regulation is to define terms used in 418 KAR Chapter 1.

Section 1. Definitions for 418 KAR Chapter 1. The following definitions shall apply to 418 KAR Chapter 1:

(1) "Access land" means land necessary for reasonable and planned ingress and egress from the project site.

(2) "Acquisition" means the procurement of land and includes ~~[- its costs include the applicant's standard acquisition costs which have been approved by the board, including, but not limited to,] options, required carrying costs and relocation assistance, appraisals, maps, surveys, studies, title opinions, title insurance and environmental audits, inspections and remediation. [Its costs also include KHLCFB, staff and agent expenses associated with verifying information on all proposed acquisitions.]~~

(3) "Areas important to migratory birds" means those areas important to the reproduction and survival of migratory birds, including, but not limited to:

- (a) Large tracts of contiguous forest;
- (b) Wooded greenspace areas;
- (c) Shallow open water habitats with expansive areas of shoreline; and
- (d) Wetlands or wetland complexes including marshes, deep water sloughs, and swamps.

(4) "Board" means the Kentucky Heritage Land Conservation Fund Board.

(5) "Buffer land" means land that will aid in protecting the project site from harm, or will prevent degradation of the visitor experience at the project site.

(6) "Carrying costs" include, but are not limited to, interest on borrowed money, reasonable management costs consistent with the preliminary RMP and incurred while land is being held pending sale, and reimbursement of reasonable overhead costs not to exceed three (3) percent of the sale price.

(7) "Chair" means the chairperson of the Kentucky Heritage Land Conservation Fund Board.

(8) "Fund" means the Kentucky Heritage Land Conservation Fund.

(9) "Grant" means an award of money from the Kentucky Heritage Land Conservation Fund pursuant to KRS 146.570(f).

(10) "Greenspace" means undeveloped land in or around urban

areas, including, but not limited to, forests and other natural vegetation, stream-side corridors, natural areas, and abandoned rights-of-way.

(11) "Land" - the definition of "land" is governed by KRS 446.010(18).

(12) "Local governments" means local government entities, including, but not limited to, county governments, municipalities, school districts, and special districts, or a combination thereof.

(13) "Management" means the stewardship necessary to fulfill the purposes of KRS 146.550 through 146.570 and 418 KAR Chapter 1 and encompasses the initial site development costs and reasonable operating costs including, but not limited to, consultant and contractor fees, facility development, supplies, materials, site-specific equipment and staff costs.

(14) "Money" means money received from the Kentucky Heritage Land Conservation Fund.

(15) "Natural area" - the definition of "natural area" is governed by KRS 146.415(1).

(16) "Natural functions" means the interrelationships among the living and nonliving components of ecosystems and includes, but is not limited to, energy fixation and conversions; ecosystem productivity and biomass accumulation; cycling; storage, transport, release, and retention of water and other nutrients; food web relationships and dynamics; weathering ~~[(e.g., rocks)]~~; and development of substrates ~~[(e.g., soils, sediments)]~~.

(17) "Natural state" means the condition of any area which retains, has substantially reestablished, or is in the process of reestablishing, an indigenous ecosystem.

(18) "Outdoor recreation" means activity on a subject property that does not cause meaningful harm to the property or its natural state, or hinder the heritage land conservation purposes of KRS 146.550 through 146.570.

(19) "RMP" means resource management plan.

(20) "Project" means land acquisition and management activities for the purposes set forth in KRS 146.550 through 146.570.

(21) "State agency" means any department, program cabinet, institution, board, commission, office or agency of the Commonwealth of Kentucky.

(22) "Tract" means, in the case of final RMPs, all parcels of land within a project boundary approved by the board, and, in the case of preliminary RMPs, all parcels of land within the project boundary included in the application to the board.

(23) "USGS" means United States Geological Survey.

(24) "Wetlands" - the definition of "wetlands" is governed by KRS 146.550(1).

Section 2. Repeal of 301 KAR 10:010. 301 KAR 10:010, entitled Kentucky Heritage Land Conservation Fund Board, is hereby repealed.

WILLIAM H. MARTIN, Chairman

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 15, 1995 at 9 a.m.

### KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD (Amended After Hearing)

#### 418 KAR 1:020. Administrative procedures of the board.

RELATES TO: KRS 61.805 through 61.850, 61.870 through 61.884, 146.550 through 146.570,

STATUTORY AUTHORITY: KRS 146.560, 146.565, 146.570

NECESSITY AND FUNCTION: KRS 146.560(2) directs the board to promulgate, in accordance with the provisions of KRS Chapter 13A, administrative regulations deemed necessary for the application

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for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also directs the board to promulgate administrative regulations on acquisition. KRS 146.565 requires prior board approval of acquisition of land and expenditure of funds. This administrative regulation establishes the administrative procedures the board will employ to implement these duties.

Section 1. Meetings. (1) Meetings of the board shall be conducted in accordance with the Kentucky Open Meetings Laws, KRS 61.805 through 61.850.

(2) Regular meetings. The board shall meet quarterly at times and places designated by the chair. The board shall provide for a yearly schedule of regular meetings pursuant to KRS 61.820. This schedule shall be made available to the public. Should any regular meeting be rescheduled, the board shall provide written notice of the rescheduled meeting pursuant to KRS 61.823(3) through (4).

(3) Special meetings. The chair or a majority of the [any four (4)] members of the board may call a special meeting. The board shall provide written notice of a special meeting pursuant to KRS 61.823(3) through (4), unless the meeting is an emergency meeting, in which case the board shall comply with the notice requirements of KRS 61.823(5).

(4) Closed sessions [meetings]. Deliberations on the future acquisition of land may be closed to the public when publicity would be likely to affect the value of the land. Sessions [Meetings] may also be closed to the public for any other reason permitted by KRS 61.810. The board shall meet the requirements for closed sessions set forth in KRS 61.815.

Section 2. Quorum. Seven (7) members of the board, including at least three (3) who are members pursuant to KRS 146.560(1)(a) through (e) and four (4) who have been appointed pursuant to KRS 146.560(1)(f) through (k), shall constitute a quorum. The board shall act by a majority of those present at a meeting at which a quorum is present.

Section 3. Meeting Participation. (1) Board members may participate in meetings in person or by video teleconference pursuant to KRS 61.826.

(2) The designation of a board member pursuant to KRS 146.560(1)(a) through (e) shall be in writing and shall be submitted to the board prior to any meeting the designee attends as a member. If the requirements of this subsection are not met, the designee shall not be permitted to vote.

Section 4. Meeting Minutes, Annual Report. (1) Meeting minutes. Minutes of each meeting of the board shall be prepared, mailed to the members of the board, and made available to interested parties upon request to the chair.

(2) Annual report. An annual report of the activities of the board for the previous year shall be prepared. This report shall include a cumulative list of all approved projects and a brief status report of all areas acquired through the fund. The board shall submit the annual report to the Legislative Research Commission by October 1 of each year. Upon receipt of the annual report, the Legislative Research Commission may publish it in the Legislative Record or other appropriate publication.

Section 5. Inspection of Public Records. Public records of the board shall be made available for public inspection in accordance with the Kentucky Open Records Act, KRS 61.870 through 61.884. The title and address of the official custodian of the board's records shall be Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 663 Teton Trail, Frankfort, Kentucky 40601.

Section 6. Principal Office. The principal office of the board shall be located at the Office of the Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 663 Teton Trail, Frankfort, Kentucky 40601. Its regular office hours are 8 a.m. to 4:30 p.m., Monday through Friday, except for state holidays.

Section 7. Officers. The board shall nominate and elect a vice-chair and a treasurer. The vice-chair's duty is to preside over meetings in the absence of the chair. The treasurer, which shall be a member appointed pursuant to KRS 146.560(1)(f) through (k), shall monitor and report disbursements and receipts.

Section 8. Committees. (1) There shall be two (2) standing committees, a projects review committee and a stewardship committee. The chair, with board approval, may also create other committees for specific purposes and a definite term.

(2)(a) The purpose of the projects review committee shall be to review state agency project applications submitted pursuant to 418 KAR 1:030 and competitive grant applications submitted pursuant to 418 KAR 1:040 and determine their compliance with the four (4) priorities for acquisition set forth in KRS Chapter 146.560(2)(a) through (d) and their completeness and accuracy. The findings as to each application shall be set forth in a report which shall be submitted to individual board members at least fifteen (15) days prior to any meeting of the board at which the application is to be considered. A copy of this report shall also be delivered to the applicant. The projects review committee may also assist applicants in the preparation of applications. The projects review committee may contact an applicant at any time before its report is due to correct minor deficiencies in an application.

(b) The purpose of the stewardship committee shall be to review, and make recommendations to the board concerning, RMPs (preliminary and final) and to ensure that the management of land purchased, in whole or in part, with fund money meets the requirements of KRS 146.550 through 146.570, this chapter, memorandums of agreement between the board and a recipient of fund money, conservation easements which pertain to the project site, and the latest RMP approved by the board.

(3) Each committee shall consist of at least five (5) board members. The members, including a chair for each committee, shall be appointed by the chair of the board, with approval of the board.

(4) A majority of the members of a committee shall constitute a quorum. A committee shall act by a majority of those present at a meeting at which a quorum is present.

(5) Committee members shall serve for a term of one (1) year, but shall remain in office until removed or a successor is appointed. Committees shall be reestablished at the last meeting of each calendar year. Committee members shall be eligible for reappointment.

WILLIAM H. MARTIN, Chairman

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 15, 1995 at 9 a.m.

### KENTUCKY HERITAGE LAND CONSERVATION FUND BOARD (Amended After Hearing)

#### 418 KAR 1:030. State agency projects.

RELATES TO: KRS 146.200 to 146.360, 146.550 through 146.570

STATUTORY AUTHORITY: KRS 146.560, 146.565, 146.570

NECESSITY AND FUNCTION: KRS 146.560(2) directs the board to promulgate, in accordance with the provisions of KRS Chapter

13A, administrative regulations deemed necessary for the application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also directs the board to promulgate administrative regulations on acquisition. KRS 146.565 requires prior board approval of acquisition of land and expenditure of funds. KRS 146.570(4)(a) through (e) authorizes the allocation of fund money to certain state agencies. This administration regulation establishes standards for the review and approval of proposed state agency projects funded pursuant to KRS 146.570(4)(a) through (e).

Section 1. Approval of Certain Expenditures. Upon written request of a state agency, the board may give advance approval to certain categories of expenditures of money received pursuant to KRS 146.570(4)(a) through (e), including ~~but not limited to,~~ appraisals, title opinions, and environmental audits.

Section 2. Application. (1) A state agency seeking approval for projects funded pursuant to KRS 146.570(4)(a) through (e) shall submit to the board a completed project application. Application shall be made on the form incorporated by reference in Section 6 of this administrative regulation. This subsection shall not apply to expenditures that have received approval pursuant to Section 1 of this administrative regulation.

(2) The state agency project application shall contain at least the following:

(a) General information about the applicant, including, but not limited to, its name and address and the name, address, and phone number of its contact person;

(b) An identification of the priorities for acquisition, as set forth in KRS 146.560(2)(a) through (d), for which the site qualifies;

(c) A description of the project and project site and a delineation of project significance, including a description of how the project site qualifies for each applicable priority for acquisition;

(d) A 1:24,000 USGS topographic map with project site clearly outlined, and other maps, as appropriate;

(e) A preliminary RMP which meets the requirements of KRS 146.550 through 146.570, this chapter, and the preliminary RMP instructions incorporated by reference in 418 KAR 1:060, Section 16;

(f) An estimation of acquisition and management costs, the total amount of money requested from the fund, a specification of the forms and sources of matching funds, if any, and assurances as to the certainty of those funds; and

(g) A certification clause signed by an authorized agency official. In the case of joint applications, the certification clause shall be signed by an authorized official from each joint applicant.

(3) State agencies may submit joint project applications. The preliminary RMP for a joint project shall specify which state agency will perform each aspect of management. Each joint applicant shall remain responsible for all aspects of management.

(4) Beginning January 1, 1996, an application shall be received by the board at least sixty (60) days prior to the meeting at which it is to be considered. Applications and information received after this deadline ~~shall~~ will be considered at the next available meeting. Applications ~~shall~~ will be promptly forwarded to members of the projects review committee for review. Individual board members shall receive the project review committee's report on an application at least fifteen (15) days prior to a meeting at which that application is to be considered. If the project review committee report lists deficiencies in the application, the state agency shall have an opportunity to correct these deficiencies. However, no additional information will be accepted after the sixty (60) day deadline, except that the projects review committee may, at its discretion, accept information to correct minor deficiencies after the sixty (60) day deadline but at least fifteen (15) days before the meeting at which the information is to be considered.

Section 3. Review of Application. After reviewing the report received from the projects review committee pursuant to 418 KAR 1:020, Sections 8(2)(a), and 2(4) of this administrative regulation, the board shall review each application and evaluate it based on the following criteria:

(1) Whether the proposed project meets one (1) or more of the following priorities for acquisition:

(a) Natural areas that possess unique features such as habitat for rare and endangered species;

(b) Areas important to migratory birds;

(c) Areas that perform important natural functions that are subject to alteration or loss; and

(d) Areas to be preserved in their natural state for public use, outdoor recreation and education;

(2) Whether the proposed project site is a natural area or wetland, and whether access or buffer land is necessary;

(3) Property costs, seeking to maximize public benefit by taking advantage of priority areas below fair market value and where public or private funds are available on a matching basis;

(4) The completeness and accuracy of the application;

(5) The information in the application and its attachments;

(6) Whether the preliminary RMP furthers the purposes of KRS 146.550 through 146.570;

(7) The applicant's ability to complete the acquisition and manage the land consistent with the preliminary RMP;

(8) The significance of the natural and educational resources on the project site;

(9) The prevalence of this type of project and project site in public systems;

(10) The threat of loss or degradation of the project site if not protected;

(11) The overall cost compared to the benefit to the Commonwealth of Kentucky; and

(12) In the case of a project application submitted pursuant to KRS 146.570(4)(d), whether the proposed acquisition is within a wild river corridor established by the Kentucky Wild Rivers Act, KRS 146.200 to 146.360, and the administrative regulations promulgated pursuant thereto.

Section 4. Project Approval or Denial. (1) The board shall approve or deny a project application, with or without conditions or amendments, by the vote of a majority of those present at a meeting at which a quorum is present.

(2) The board shall mail to the applicant, within fifteen (15) days of board action, written notice of the approval or denial of a project application and, if denied, the reasons for denial.

Section 5. Agreements. Funds shall not be disbursed until the applicant enters into a written memorandum of agreement with the board which requires the applicant, at a minimum, to meet the requirements of KRS Chapter 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth of Kentucky, the application, any conservation easement which pertains to the project site, and the latest RMP approved by the board.

Section 6. Incorporation by Reference. The following document is incorporated by reference and is available for public inspection and copying between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the Office of the Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 663 Teton Trail, Frankfort, Kentucky 40601: State Agency Project Application, Form Number HL-1, Kentucky Heritage Land Conservation Fund Board, Frankfort, Kentucky, April 1995.

WILLIAM H. MARTIN, Chairman

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 15, 1995 at 9 a.m.



KENTUCKY HERITAGE LAND  
CONSERVATION FUND BOARD  
(Amended After Hearing)

418 KAR 1:040. Competitive grants.

RELATES TO: KRS 146.550 through 146.570, 382.800 through 382.860

STATUTORY AUTHORITY: KRS 146.560, 146.565, 146.570

NECESSITY AND FUNCTION: KRS 146.560(2) directs the board to promulgate, in accordance with the provisions of KRS Chapter 13A, administrative regulations deemed necessary for the application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. It also directs the board to promulgate administrative regulations on acquisition. KRS 146.565 requires prior board approval of acquisition of land and expenditure of funds. KRS 146.570(f) authorizes the allocation of fund money to state agencies, local governments, and state colleges and universities. This administrative regulation establishes standards for the review and approval of grants funded pursuant to KRS 146.570(4)(f).

Section 1. Application. (1) State agencies, local governments, and state colleges and universities seeking grants pursuant to KRS 146.570(4)(f) shall submit to the board a completed competitive grant application package. Application shall be made on the form incorporated by reference in Section 5 of this administrative regulation.

(2) The competitive grant application shall contain at least the following:

(a) A cover letter which contains the original signature of the authorized official who signs the certification clause and which authorizes the contact person, if any, to represent the applicant;

(b) General information about the applicant, including, but not limited to, its name and address and the name, address, and phone number of its contact person;

(c) An identification of the priorities for acquisition, as set forth in KRS 146.560(2)(a) through (d), for which the site qualifies;

(d) The status of land acquisition;

(e) An estimation of acquisition and management costs, the amount of money requested from the fund, a specification of the forms and sources of matching funds, if any, and assurances as to the certainty of those funds;

(f) A description of the project and project site which augments the preliminary RMP and includes the following information:

1. A description of the project and the project site;

2. A comparison of the project site to the surrounding landscape;

3. The importance of the project to the applicant and the Commonwealth of Kentucky;

4. An explanation of why the project qualifies for fund money;

5. A description of partnerships with other agencies;

6. A detailed budget describing proposed fund expenditures and total project expenditures; and

7. An identification of nonfund money and its sources.

(g) A 1:24,000 topographic map with the project site clearly outlined and any nearby public lands identified;

(h) A site map of appropriate scale which clearly identifies existing and planned facilities, access points and other appropriate information;

(i) A preliminary RMP which meets the requirements of KRS 146.550 through 146.570, this chapter, and the preliminary RMP instructions incorporated by reference in 418 KAR 1:060, Section 16;

(j) Other pertinent information, including at least two (2) project endorsements; and

(k) A certification clause signed by an authorized agency official. In the case of joint applications, the certification clause shall be signed by an authorized official from each joint applicant.

(3) Money expended by an applicant in connection with a denied

application for funds, grants or projects under this section shall not be reimbursed to the applicant.

(4) An applicant shall not supply false or misleading information to the board and shall provide to the board verification that all information in the grant application is true and accurate.

(5) Grant applicants may submit joint applications. The preliminary RMP for a joint application shall specify which entity will perform each aspect of management. Each joint applicant shall remain responsible for all aspects of management.

(6) Beginning January 1, 1996, an application shall be received by the board at least sixty (60) days prior to the meeting at which it is to be considered. Applications and information received after this deadline ~~shall~~ ~~will~~ be considered at the next available meeting. Applications ~~shall~~ ~~will~~ be promptly forwarded to members of the Projects Review Committee for review. Individual board members shall receive the Projects Review Committee's report on an application at least fifteen (15) days prior to a meeting at which that application is to be considered. If the project review committee report lists deficiencies in the application, the applicant shall have an opportunity to correct these deficiencies. However, no additional information will be accepted after the sixty (60) day deadline, except that the Projects Review Committee may, at its discretion, accept information to correct minor deficiencies after the sixty (60) day deadline but at least fifteen (15) days before the meeting at which the information is to be considered.

Section 2. Review of Application. (1) After reviewing the report received from the Projects Review Committee pursuant to 418 KAR 1:020, Sections 8(2)(a), and 1(6) of this administrative regulation, each board member shall review each application package and evaluate it based on the following criteria:

(a) Whether the fund contains adequate money to fund the proposed project;

(b) Whether the proposed project meets one (1) or more of the following priorities for acquisition:

1. Natural areas that possess unique features such as habitat for rare and endangered species;

2. Areas important to migratory birds;

3. Areas that perform important natural functions that are subject to alteration or loss; and

4. Areas to be preserved in their natural state for public use, outdoor recreation and education;

(c) Whether the proposed acquisition is a natural area or wetland and whether access or buffer land is necessary;

(d) Property costs, seeking to maximize public benefit by taking advantage of priority areas below fair market value and where public or private funds are available on a matching basis;

(e) The completeness and accuracy of the application package;

(f) The information in the application package;

(g) Whether the preliminary RMP furthers the purposes of KRS 146.550 through 146.570;

(h) The applicant's ability to complete the acquisition and manage the land consistent with the preliminary RMP;

(i) The significance of the natural and educational resources on the project site;

(j) The prevalence of this type of project and project site in public systems;

(k) The threat of loss or degradation of the project site if not protected;

(l) The overall cost compared to the benefit to the Commonwealth of Kentucky; and

(m) Any other factors deemed relevant by the board.

(2) The board shall approve or deny a competitive grant application, with or without conditions or amendments, by the vote of a majority of those present at a meeting at which a quorum is present. The board may only approve expenditures that do not exceed funds currently available, and, in the case of numerous applications, the

total cost of which exceeds funds available, the board may conduct a series of votes to narrow the list of applications.

(3) Funds and grant applications may be carried over from meeting to meeting and the board may decline to approve any or all grant applications at a given meeting.

(4) The board may, itself or through an agent, verify the accuracy of the information in a grant application and make such further investigation of the merits of a proposed acquisition as the board deems appropriate.

(5) The board shall mail to the applicant, within fifteen (15) days of board action, written notice of the approval or denial of a grant application and, if denied, the reasons for denial.

Section 3. Agreements. Funds shall not be disbursed until the applicant has entered into a written memorandum of agreement with the board which requires the applicant, at a minimum, to meet the requirements of KRS Chapter 146.550 through 146.570, this chapter, any other applicable laws of the Commonwealth of Kentucky, the application, conservation easements which pertain to the project site, and the latest RMP approved by the board.

Section 4. Conservation Easements. Local governments shall convey to the Commonwealth of Kentucky a conservation easement in perpetuity over all land acquired, in whole or in part, with fund proceeds. This conveyance shall occur simultaneously with the disbursement of fund money. The conservation easement shall, at a minimum, meet the requirements of KRS 382.800 through 382.860 and ensure that lands acquired are maintained in perpetuity for the purposes set out in KRS 146.560.

Section 5. Incorporation by Reference. The following document is incorporated by reference and is available for public inspection and copying between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the Office of the Commissioner, Department for Natural Resources, Natural Resources and Environmental Protection Cabinet, 663 Teton Trail, Frankfort, Kentucky 40601: Competitive Grant Application, Form Number HL-2, Kentucky Heritage Land Conservation Fund Board, Frankfort, Kentucky, April 1995.

WILLIAM H. MARTIN, Chairman

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 15, 1995 at 9 a.m.

**KENTUCKY HERITAGE LAND  
CONSERVATION FUND BOARD  
(Amended After Hearing)**

**418 KAR 1:070. Remedies.**

RELATES TO: KRS 146.550 through 146.570

STATUTORY AUTHORITY: KRS 146.560, 146.565, 146.570

NECESSITY AND FUNCTION: KRS 146.570(3) requires each recipient of money to implement a RMP for each tract acquired, allocate at least ten (10) percent of moneys received for management, and maintain in perpetuity, for the purposes set out in KRS 146.560, lands acquired with fund money. It also requires fund money to be spent exclusively on acquisition and management of lands as defined in KRS 146.560. Pursuant to KRS 146.565, board approval is a prerequisite to land acquisition and expenditure of funds. This administrative regulation ensures that land acquired with fund money is maintained in accordance with these requirements and that fund money is used for acquisition and management only, in accordance with KRS 146.560.

Section 1. Forfeiture of Money. (1) Funds approved by the board pursuant to KRS 146.570(4)(f) for land acquisition which, within two

(2) years of board approval, is not expended on acquisition of approved land shall revert to the fund ~~board~~. The board may grant written extensions for cause upon receipt of a written request.

(2) Money initially approved by the board for management pursuant to KRS 146.570(4)(f) which, within two and one-half (2 1/2) years of land acquisition, is not expended on management of approved land shall revert to the fund ~~board~~. The board may grant written extensions for cause upon receipt of a written request.

Section 2. Forfeiture of Land. (1) The following occurrences may result, as determined by the board, in the forfeiture of land acquired with fund proceeds:

(a) Failure to maintain and manage land acquired with fund proceeds for the purposes set forth in KRS 146.560;

(b) Violation of a memorandum of agreement between the board and the recipient of fund money;

(c) Violation of the terms of any conservation easement which pertains to land purchased, in whole or in part, with fund proceeds;

(d) Falsification of information or inaccurate information in the application for a competitive grant or state agency project;

(e) Failure to provide, within ninety (90) days of acquisition, verification of land acquisition and money expended for acquisition;

(f) Falsification of information or inaccurate information in the preliminary or final RMP;

(g) Failure to adhere strictly to, or implement, the most recent RMP which has received board approval;

(h) Failure to file with the county clerk's office, within two and one-half (2 1/2) years of land acquisition, a final RMP which has been approved by the board;

(i) Expenditure of fund money on anything other than items which have received prior board approval;

(j) Failure to provide verification, within three (3) years of land acquisition or six (6) months of expenditure of funds, whichever comes first, of money expended on management of the land;

(k) Failure to permit entry of members or agents of the board pursuant to 418 KAR 1:060, Section 13;

(l) Failure to submit reports to the board pursuant to 418 KAR 1:060, Section 11;

(m) Any attempt to transfer land in violation of 418 KAR 1:060, Section 14; or

(n) Dissolution of the recipient entity.

(2) Any land forfeited pursuant to this administrative regulation shall be transferred to an appropriate land management entity, as designated by the board. Forfeited land shall continue to be managed in accordance with 418 KAR 1:060, Section 1.

Section 3. Other Remedies. The board may utilize all other remedies available to it by law, including, but not limited to, injunctions and restraining orders to enforce the provisions of KRS 146.550 through 146.570, this chapter, and any other applicable laws of the Commonwealth of Kentucky; any application submitted to the board; any memorandum of agreement between the board and a recipient of fund money; any conservation easement which pertains to land purchased, in whole or in part, with fund money; and any RMP approved by the board.

WILLIAM H. MARTIN, Chairman

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 15, 1995 at 9 a.m.

## PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JUNE 15, 1995

KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
(Amendment)

## 11 KAR 4:040. Educational institution participation requirements.

RELATES TO: KRS 164.740, 164.748(6), (13), 34 CFR Part 668 subparts A, B, D, E, F

STATUTORY AUTHORITY: KRS 13A.100, 164.748(4)

NECESSITY AND FUNCTION: The Kentucky Higher Education Assistance Authority ("authority") administers programs of student financial assistance. The authority is empowered by KRS 164.748(6) and (13) to enter contracts with eligible educational institutions to provide for the administration of student financial assistance programs, and approve, disapprove, limit, suspend, or terminate the participation of such institutions. This administrative regulation sets forth the conditions under which the authority will execute a contract with an educational institution for participation in any or all of the authority's programs. The amendment eliminates standards and documentation of financial responsibility and administrative capability that are redundant of federal requirements, and thereby eliminating the separate determination by the authority of a school's compliance in lieu of the determination by the secretary. [specifies documentation and standards that are a precondition to execution of an administrative agreement.]

Section 1. Definitions. (1) The definition of "authority" is governed by KRS 164.740.

(2) The definition of "business school" is governed by KRS 164.740.

(3) The definition of "college" is governed by KRS 164.740.

(4) "Eligible course of study" means, for purposes of Sections 7 and 8 of this administrative regulation, a program offered by an educational institution which:

(a) is of at least two (2) academic years duration; and

(b) leads to a degree in a field other than theology, divinity or religious education at the institution at which the student is enrolled.

(5) The definition of "eligible program of study" is governed by KRS 164.769(2)(b) for purposes of Section 8 of this administrative regulation, and is governed by 11 KAR 5:001, Section 1(9), for purposes of Sections 6 and 9 of this administrative regulation. [means, for purposes of Section 10 of this administrative regulation, an undergraduate or graduate program of study which is preparatory to initial teacher certification or recertification, and which does not lead to a certificate, diploma, or degree in theology, divinity, or religious education.]

(5) [(6)] The definition of "federal act" is governed by KRS 164.740.

[(6) [(7)] "Fiscal year default rate" means, for any fiscal year in which thirty (30) or more current and former students at the institution enter repayment on federal Stafford loans or federal SLS loans (or on the portion of a loan made under the Federal Consolidation Loan Program that is used to repay such loans) [GSL or SLS program loans] received for attendance at the institution, the percentage, determined by the secretary, of those current and former students who enter repayment on such [GSL or SLS program] loans [received for attendance at that institution in that fiscal year] who default before the end of the following fiscal year. For any fiscal year in which less than thirty (30) of the institution's current and former students enter repayment on federal Stafford loans or federal SLS loans (or on the portion of a loan made under the Federal Consolidation Loan Program that is used to repay such loans) received for attendance at

the institution, the percentage of those current and former students who entered repayment on federal Stafford loans or federal SLS loans in any of the three (3) most recent fiscal years, who default before the end of the fiscal year immediately following the year in which they entered repayment. [the term "fiscal year default rate" means the average, determined by the secretary, of the rate calculated under the preceding sentence for the three (3) most recent fiscal years. In the case of a student who has attended and borrowed at more than one (1) school, the student (and his or her subsequent repayment or default) is attributed to each school for attendance at which the student received a loan that entered repayment in the fiscal year. A loan on which a payment is made by the school, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower is considered as in default for purposes of this definition.]

(7) [(8)] "Fiscal year" means the period from and including October 1 of the calendar year through and including September 30 of the following calendar year.

(8) "Federal Stafford loans or federal SLS loans" [(9) "GSL or SLS program loans"] means loans reinsured by the secretary pursuant to sections 428 or 428A of the federal act (20 USC §1078 or 1078-1).

(9) [(10)] The definition of "insured student loan" is governed by KRS 164.740.

(10) [(11)] The definition of "school of nursing" is governed by KRS 164.740.

(11) [(12)] The definition of "secretary" is governed by KRS 164.740.

(12) [(13)] The definition of "vocational school" is governed by KRS 164.740.

Section 2. General Rule. The authority shall execute an administrative agreement with any educational institution which meets the eligibility criteria established by KRS 164.740 et seq., KRS 164.780 et seq., and (as applicable to a particular authority program) the federal act, and which is approved for participation by the authority and (as applicable) the secretary. The authority shall approve for participation in any authority program an educational institution which:

(1) is certified by the secretary to participate in programs of student financial assistance authorized by the federal act, and has in force, if required by the secretary, a participation agreement with the secretary to participate in any of those programs; [Demonstrates to the satisfaction of the authority, in accordance with standards set forth in Section 5 of this administrative regulation, financial responsibility and administrative capability to administer authority programs of student financial assistance;]

(2) is not presently suspended or terminated from participation in student financial assistance programs by either the authority, and organization authorized to insure loans under the federal act, or the secretary;

(3) [Holds all licenses, in full force and effect, necessary to transact business in the Commonwealth of Kentucky;]

[(4)] Meets the criteria set forth in Sections 4 through 10 [(13)] of this administrative regulation, as applicable to the particular authority program(s) in which the educational institution seeks participation; and

[(4) [(5)] Has been in continuous operation for at least two (2) years, unless otherwise required by the federal act.

Section 3. Maintenance of Participation. An administrative agreement executed pursuant to Section 2 of this administrative regulation shall remain in force, subject to 11 KAR 4:020, in accordance with its terms, for so long as the educational institution conforms to the criteria set forth in Section 2 of this administrative

regulation, except that the agreement may, at the discretion of the authority, remain in force for one or more programs, as circumstances warrant, notwithstanding Section 2(2) of this administrative regulation. The authority may periodically reevaluate the status [financial and administrative capability] of an institution [and compliance] with respect to the criteria established in this administrative regulation.

Section 4. Documentation of Federal Eligibility, ~~Financial Responsibility, and Administrative Capability~~. (1) The institution shall demonstrate to the authority that it is approved by the secretary to participate, and holds all necessary licenses to offer academic programs by submitting to the authority a true and complete copy of the most recent[~~]~~:

(a) federal application for institutional eligibility, eligibility letter, and program participation agreement executed by the secretary;

(b) Letter of accreditation from each organization accrediting the institution and its programs and copies of any letters denying, limiting or suspending accreditation of the institution; and

(c) License from each governmental organization responsible for licensing the institution or its programs.

(2) The institution shall provide evidence of its financial responsibility by submitting to the authority:

(a) A complete copy of audited financial statements and auditors notes and management letter (including any audit of student financial assistance programs), prepared by a certified public accountant in accordance with generally accepted accounting standards, for the preceding two (2) complete fiscal years, except that an institution already participating may submit an unaudited profit and loss statement and balance sheet (based on the same basis of accounting used by the institution for financial reporting) for the current and one (1) of the preceding two (2) complete fiscal years and audited financial statements not older than two (2) years;

(b) Information indicating the type of organizational ownership and the names of all current owners and corporate officers; and

(c) A list of the three (3) student loan lenders and guarantors providing the highest dollar volume of student loans to the institution's students during the preceding twenty-four (24) months.

(3) The institution shall provide evidence of its capability to administer the student financial assistance programs and provide the services publicized to students by submitting to the authority:

(a) A current copy of the consumer information required by federal and state law to be made available to students and prospective students, including the institution's catalog, enrollment contract, brochures and printed advertisements; and (unless contained in the foregoing materials) a current description of the financial assistance programs available, cost of attendance, programs of study, facilities, the experience of the instructional and administrative staff, and average starting salaries of graduates (if such starting salary information is otherwise distributed);

(b) A current statement of the institution's policies on recruitment and admission, attendance, refund and repayment of student financial assistance, and the ability to benefit and satisfactory academic progress standards;

(c) Information for the preceding two (2) years on total annual enrollment, fiscal year default rates, accreditation and student financial assistance program review reports, and any sanctions imposed on the institution by the secretary or a student loan guaranty agency;

(d) All materials currently used or proposed to be used in student financial assistance counseling involving entrance and exit interviews, student loan debt management, student financial assistance authorizations and disbursement forms, and standardized student budgets;

(e) A current analysis of information and a current plan of remedial measures required pursuant to 34 CFR Section 668.15(b)(2), (c), (d), and (e), if the secretary requires these materials to be prepared by the institution;

(2) [(4)] The authority may disapprove, limit, suspend, or termi-

nate the participation of an institution upon failure to submit the required documentation within forty-five (45) days following request by the authority, ~~except that audited financial statements required under subsection (2) of this section shall be submitted within ninety (90) days following request~~.

[(5) The authority in its sole discretion may waive all or any part of the documentation requirements in this section if the institution's fiscal year default rate is twenty (20) percent or less or upon a showing by the institution that submission of required documentation would impose an undue hardship, provided that the authority is satisfied from documentation that is provided or available from other sources that the institution can reasonably be presumed to meet the requirements of this administrative regulation. If the institution advises the authority that any documentation required under this section has been submitted to a third party and so requests, the authority shall seek the documentation from the third party, and shall consult with other governmental agencies responsible for making contemporaneous determinations on financial responsibility.

Section 5. Standards of Financial Responsibility and Administrative Capability. The authority may conduct an on-site review of the institution to determine compliance with the following standards prior to execution of an administrative agreement. An eligible institution demonstrates that it is financially responsible and administratively capable if it:

(1) Provides the services described in its official publications and statements;

(2) Provides the administrative resources necessary to comply with the requirements of this administrative regulation;

(3) Meets all of its financial obligations, including, but not limited to:

(a) Refunds of institutional charges; and

(b) Repayments to the authority for liabilities and debts incurred in programs administered by the authority;

(4) Has not:

(a) Had operating losses during its two (2) most recent fiscal years; or

(b) Had, for its most recent fiscal year, a deficit net worth, in which its liabilities exceed its assets; or

(c) Under a fund accounting system, sustained material deficits over at least its two (2) most recent fiscal years in its unrestricted operating funds;

(5) Has a ratio of current assets to current liabilities of at least 1:1 under an accrual basis of accounting at the end of its most recent fiscal year;

(6) Designates an individual competent and responsible for administering all of the student financial assistance programs in which it participates and coordinating the authority's programs with the institution's other programs of student financial assistance, and communicates to that individual all information received by any institutional office that affects a student's eligibility for student financial assistance;

(7) Uses an adequate number of persons competent to administer the student financial assistance programs in which it participates, taking into account the number of students aided, the number and types of programs in which the institution participates, the number of applications evaluated, the amount of funds administered, and the financial aid delivery system used by the institution;

(8)(a) Administers authority programs with checks and balances in its system of internal controls; and

(b) Divides the functions of authorizing payments and disbursing funds so that no office has responsibility for both functions with respect to any particular student aided under the program;

(9) Establishes, publishes, and applies reasonable standards for measuring whether a student is maintaining satisfactory academic progress in a program of study, which standards shall:

(a) Conform with the standards of satisfactory progress of the

nationally recognized accrediting agency that accredits the institution, if the institution is accredited by such an agency, and if the agency has those standards;

(b) Be, for a student enrolled in an eligible program who is to receive assistance under an authority program, the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under an authority program;

(c) Include grades, work projects completed, or comparable factors that are measurable against a norm;

(d) Include a maximum time frame determined by the institution in which the student must complete his or her educational objective (degree, diploma or certificate), based on the student's enrollment status and increments no longer than one (1) academic year;

(e) Include a schedule established by the institution, designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment in order to complete the educational objective, degree, or certificate within the maximum time frame;

(f) Include a determination at the end of each increment by the institution whether the student has successfully completed the appropriate percentage or amount of work according to the established schedule;

(g) Be consistently applied to all students within categories of students (i.e., full time, part time undergraduate, etc.) and programs established by the institution;

(h) Specifically define the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses upon satisfactory academic progress and student charges;

(i) Specify the procedures under which a student may appeal a determination that the student is not making satisfactory progress, and the procedures for reinstatement of satisfactory academic standing and eligibility for student financial assistance;

(10) Develops and applies an adequate system to identify and resolve discrepancies in the information it receives from different sources with respect to a student's application for student financial assistance, and refers to United States Department of Education's Office of Inspector General or other appropriate law enforcement agencies any information indicating that an applicant or employee or agents of the institution may have engaged in fraud or other criminal misconduct;

(11) Provides adequate counseling to student financial assistance applicants regarding the source and amount of each type of aid offered, the method by which awards are determined and disbursed, the rights and responsibilities of the student, and the policies of the institution affecting the student's receipt of financial assistance;

(12) Complies with institutional policies and procedures, including any remedial measures required by the secretary pursuant to 34 CFR Part 668, in all applicable requirements of the institution's accrediting and licensing agencies;

Section 5. [6-] Insured Student Loan Program Participation. In order to participate in the authority's insured student loan program, the educational institution shall:

(1) [Qualify as a "public or private, nonprofit institution of higher education" or a "vocational school" pursuant to the federal act;

(2)] Be certified by the secretary to participate and have in force, if required by the secretary, a participation agreement with the secretary; and

(2) [(3)] Execute an administrative agreement with the authority, provided that the authority may permit an educational institution, otherwise approved, to participate without an agreement if the institution's fiscal year default rate is twenty (20) percent or less or the volume of loans insured by the authority for students attending that institution in any fiscal year does not exceed \$50,000.

[Section 7. State Student Incentive Grant Program Participation.

In order to participate in the authority's SSIG program, an educational institution shall:

(1) Qualify as a "public or private, nonprofit institution of higher education," a "proprietary institution of higher education," or a "postsecondary vocational institution" pursuant to the federal act;

(2) Qualify as a "business school," "college," "school of nursing," or "vocational school";

(3) Be located within the Commonwealth of Kentucky;

(4) Offer an "eligible course of study," as defined in 11 KAR 5:020, which is not comprised solely of sectarian instruction; and

(5) Execute an administrative agreement with the authority.]

Section 6. [8-] Kentucky Tuition Grant Program Participation. In order to participate in the authority's KTG program, an educational institution shall:

(1) Qualify as a private, nonprofit "college";

(2) Be located within the Commonwealth of Kentucky;

(3) Offer an "eligible program [course] of study," as defined in 11 KAR 5:020, which is not comprised solely of sectarian instruction; and

(4) Execute an administrative agreement with the authority.

Section 7. [9-] KHEAA Work Study Program Participation. In order to participate in the authority's KHEAA work study program, an educational institution shall:

(1) Qualify as a "business school," "college," "school of nursing," or "vocational school";

(2) Be located within the Commonwealth of Kentucky;

(3) Offer a program of study not comprised solely of sectarian instruction; and

(4) Execute an administrative agreement with the authority.

Section 8. [10-] Teacher Scholarship Participation. In order to participate in the authority's teacher scholarship program, an educational institution shall:

(1) Qualify as a "business school," "college," "school of nursing," or "vocational school";

(2) Be located within the Commonwealth of Kentucky; and

(3) Offer an "eligible program of study; and

(4) Execute an administrative agreement with the authority.

Section 9. [11-] College Access Program Participation. In order to participate in the authority's college access program, an educational institution shall:

(1) Qualify as a "business school," "college," "school of nursing," or "vocational school" [public or private, nonprofit college]; and

(2) Be located within the Commonwealth of Kentucky; and

(3) Offer an "eligible program of study"; and

(4) Execute an administrative agreement with the authority.

Section 10. [12-] The authority will execute an administrative agreement with an educational institution which may include nonmain campuses of the institution that are not separately incorporated.

[Section 13. Notwithstanding any other section of this administrative regulation, the authority shall not execute an administrative agreement with an eligible institution, except as provided in subsection (4) of this section, if:

(1) The institution, its owner, or its chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of student financial assistance funds, or has been judicially determined to have committed fraud involving student financial assistance funds;

(2) The institution employs an individual in a capacity that involves the administration of programs, or the receipt of authority program funds who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of student financial assistance funds, or who has been judicially

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determined to have committed fraud involving federal funds; or

(3) The institution uses any individual, agency, or organization that has been, or whose officers or employees have been:

(a) Convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of student financial assistance funds; or

(b) Judicially determined to have committed fraud involving student financial assistance funds.

(4) The authority may execute an administrative agreement if:

(a) The funds that were fraudulently obtained, or criminally acquired, used, or expended have been repaid and any related financial penalty has been paid;

(b) The individuals who were convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime; and

(c) At least five (5) years have elapsed from the date of the conviction, nolo contendere plea, guilty plea, or judicial determination.

~~Section 14. The authority may accept, as evidence of financial responsibility, a good and sufficient surety bond or other collateral in an amount necessary to ensure that the educational institution can meet its financial obligations to its students and to the authority, provided that no separate bond shall be required if the authority is assured to its satisfaction that indemnification is provided to the authority and students in an amount sufficient to cover any potential student aid liability through a bond required by a third party. Said surety bond or other collateral shall be conditioned to provide indemnification to the authority and to any grantee or payee of benefits under an Authority administered program, related to a student's enrollment or acceptance for enrollment at the educational institution, for loss or damage suffered by reason of the insolvency of the institution, cessation of operation of the institution, misappropriation of student financial assistance funds by the institution, fraud or misrepresentation by the institution in obtaining student financial assistance benefits for students, or failure by the institution to make timely and proper disposition of funds. The Authority may require such surety bond or other collateral when a reasonable probability exists that the conditions of indemnification may occur.]~~

MARY JO YOUNG, Chairman

APPROVED BY AGENCY: March 17, 1995

FILED WITH LRC: June 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, July 21, 1995 at 10 a.m. at 1050 U.S. 127 South, Suite 101, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, July 17, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Mr. Paul P. Borden, Executive Director, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Suite 102, Frankfort, Kentucky 40601, (502) 564-7990.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: Potentially, 8,000 schools could be affected nationally, with 150-200 Kentucky schools eligible. Practically, 10-12 Kentucky schools will be new applicants annually and 10-12 Kentucky schools will be reviewed annually.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no appreciable changes in Cost of Living and/or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Cost of doing business for new school applicants will be reduced to the extent of eliminating cost of assembling and submitting documentation to the administrative body. Actual cost is undeterminable and would vary from school to school.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition for the:

1. First year following implementation: Reporting and paperwork requirements will be virtually eliminated for schools initially applying for participation, with substantial amount of paperwork replaced by submission of documents of federal compliance and approval by the secretary.

2. Second and subsequent years: Same as (c)(1) above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will be a reduction in the number of worker hours spent processing and reviewing documents and contacting schools for additional information or clarification.

2. Continuing costs or savings: Same as (3)(a)(1) above.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Eliminating the redundancy of separate, independent review of compliance with federal requirements will greatly reduce the volume of pertinent paperwork processed and stored by the administrative body.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation. Federally restricted loan guarantee fund (KRS 164.754(2)).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented. There will be no noticeable economic impact.

(b) Kentucky. Same as (6)(a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered. This amendment to the administrative regulation 11 KAR 4:040 would eliminate redundant submission by schools of documentation and thereby eliminate the separate determination by the authority of a school's compliance with federal standards of financial responsibility and administrative capability in lieu of the determination by the secretary.

(8) Assessment of Expected Benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effect on public health and environmental welfare.

(b) State whether a detrimental effect on the environment or public health would result if not implemented: Same as (8)(a) above.

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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

(10) Any additional information or comments N/A

(11) Tiering: Was tiering applied? No. If no, explain why tiering was not applied. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within



parameters prescribed by the federal act, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 CFR §682.401(b)(6) and (b)(18).
2. State in sufficient detail the state compliance standards: This regulation provides for participation in authority programs by educational institutions that are certified by the U.S. Secretary of Education and participate in federal student financial assistance programs, are not suspended or terminated from participation in such programs by the authority or a similar agency in another state, and has been in operation for at least two years, (unless otherwise required by the federal act. The primary change in the standards set by this administrative regulation is that the institution has previously been required to demonstrate independently to the satisfaction of the authority that it meets certain standards of financial and administrative capability and submit sufficient documentation to the authority evidencing this. Under the proposed amendment, the institution need only provide evidence of certification by the U.S. Secretary of Education, which will itself demonstrate the financial and administrative capability.
3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal mandate requires the Authority as the designated state guarantee agency to ensure by adoption of standards, policies, and procedures that its loan insurance program, and all of the participants (i.e. borrowers, lender, and educational institutions) in its program, at all times meet the requirements of the applicable federal regulations (34 CFR Part 682) and the federal act. 34 CFR §682.401(b)(6) specifies that, unless an institution is suspended or terminated from participation, an institution that has in effect a program participation agreement with the secretary is eligible to participate in the program of the guarantee agency, under reasonable criteria established by the guarantee agency and approved by the secretary. 34 CFR §682.401(b)(18) provides that a guarantee agency shall establish, disseminate and enforce standards and procedures relating to, among other things, institutional participation.
4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The regulation does not impose stricter requirements than the federal mandate. The authority is provided with some discretion in establishing standards and procedures related to institutional participation. The authority has decided to rely on certification by the secretary as evidence of administrative and financial responsibility of the institution.
5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements:  
N/A

#### FINANCE AND ADMINISTRATION CABINET Office of Financial Management and Economic Analysis (Amendment)

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

RELATES TO: KRS Chapter 103

STATUTORY AUTHORITY: KRS 103.286, 26 USC Sec. 146

NECESSITY AND FUNCTION: Pursuant to KRS 103.286, the Kentucky Private Activity Bond Allocation Committee shall attempt to allocate the state ceiling for the issuance of private activity bonds of Kentucky in order to foster economic development within the Commonwealth and promote the general welfare of its citizens and the public purposes of the Commonwealth. KRS 103.286 provides that the Secretary of the Finance and Administration Cabinet (as Chairman of the Kentucky Private Activity Bond Allocation Committee) shall promulgate administrative regulations in accordance with KRS Chapter 13A to provide for the allocation of the state ceiling for the issuance of private activity bonds among all issuers of such bonds within the Commonwealth of Kentucky. This administrative regulation establishes the formula by which state ceiling for the issuance of private activity bonds will be allocated.

Section 1. Definitions. For the purposes of this administrative regulation:

- (1) "Affected bonds" means "private activity bonds" as defined in the Internal Revenue Code of 1986, as amended by 26 USC sec. 146, et seq. (the "Code"), excluding any such obligations not subject to the state ceiling under the Code;
- (2) "Bonds" means bonds, notes and other like obligations;
- (3) "Committee" means the Kentucky Private Activity Bond Allocation Committee;
- (4) "Issuer" or "issuing authority" means the public or authorized governmental body which issues the bonds;
- (5) "Issued" means delivered and paid for;
- (6) "Local issuer pool" means the portion of the state ceiling from which allocations for local projects are made to issuers of affected bonds issued on behalf or for the benefit of an entity which is not a state agency;
- (7) "Local project" means a project for which bonds are issued on behalf or for the benefit of an entity which is not a state agency;
- (8) "Single issuer pool" means the portion of the state ceiling from which allocations are made to any issuer;
- (9) "Staff" means the Office of Financial Management and Economic Analysis of the Finance and Administration Cabinet.
- (10) ~~[(6)]~~ "State ceiling" means the cap imposed by Section 146 of the Code on private activity bonds issued within the Commonwealth of Kentucky;
- (11) "State issuer pool" means the portion of the state ceiling from which allocations for state projects are made to issuers of affected bonds issued on behalf or for the benefit of a state agency;
- (12) "State project" means a project for which bonds are issued on behalf or for the benefit of a state agency; and
- (13) ~~[(7)]~~ "Year" shall mean calendar year.

#### Section 2. Allocation of State Ceiling for Private Activity Bonds.

- (1) On January 1 of each year, the state ceiling for private activity bonds shall be divided into two (2) separate pools, a state issuer pool and a local issuer pool. Sixty (60) percent of the state ceiling shall be reserved for the local issuer pool and forty (40) percent shall be reserved for the state issuer pool. On and after July 1 of each year, any remaining unallocated portion of the state ceiling in the state issuer pool shall revert to the single issuer pool. On October 1 of each year, any remaining unallocated state ceiling in the local issuer pool shall revert to the single issuer pool. On and after October 1 of each year, any remaining unallocated portion of the single issuer pool



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shall be allocated on a first come, first-served basis, subject to the limitations of KRS 103.286(2)(a).

Section 3. Allocations For Local Projects. Prior to October 1 of any year the committee shall not allocate a portion of the state ceiling for any project in an aggregate principal amount greater than ten (10) percent of the amount of the local issuer pool.

Section 4. Evaluation of Local Projects. Local projects seeking allocation from the state ceiling prior to October 1 shall be evaluated by the committee using the following criteria:

- (1) Creation of new jobs, as well as preservation of existing jobs, by the project;
- (2) Average salary per employee proposed for the project;
- (3) Capital investment in Kentucky being made as a result of the project;
- (4) Unemployment rate in the county of the project;
- (5) State economic development incentives awarded to the project, if any.

Section 5. Committee Meetings. The committee shall meet at least quarterly to allocate the state ceiling. Special meetings may be held on the call of the committee (chairman).

~~[Section 2. General. The state ceiling on private activity bonds shall be allocated among all issuers on a first come, first served basis, subject, however, to the limitations of KRS 103.286(2)(a). On and after October 1, of each year, any remaining unallocated portion of the sixty (60) percent of the state ceiling reserved for local bond issuance authorities by KRS 103.286(2)(a), shall be available for allocation among all issuers on a first come, first served basis.]~~

Section 6. [3.] Obtaining Confirmations in Advance-notice of Intent[; Notice of Issuance]. The committee shall issue a confirmation allocating to the issuer a portion of the state ceiling equal to the amount of the bonds proposed to be issued. No affected bonds shall be issued by any issuer prior to receiving confirmation by the committee of an allocation under the state ceiling. A confirmation [An allocation of a portion of the state ceiling] authorizing the issuance of affected bonds shall be obtained by the filing by or on behalf of the issuer with the committee of a written notice of intention to issue such bonds (the "notice of intent"). [The committee shall issue a confirmation allocating to the issuer a portion of the state ceiling equal to the amount of the bonds proposed to be issued.] Confirmations shall be dated and numbered in the order issued. [The committee shall endeavor to issue confirmations in the same order in which properly completed notices of intent to issue bonds are received by the committee.]

Section 7. Notice of Issuance - Original Confirmation Effective for Ninety (90) Days. A confirmation shall expire ninety (90) calendar days from the date of issuance by the committee, or December 15, whichever is earlier. [4. Original Confirmation Effective for Sixty (60) Days; First Renewal of Confirmation for Thirty (30) Days. (1) A confirmation shall expire sixty (60) calendar days from the date of issuance by the committee.] The issuer shall deliver to the committee a notice that the affected bonds have been issued. The notice of issuance shall be transmitted by means the issuer may select, but shall be sent in time sufficient to allow the notice to reach committee by the close of business on the 60th day after the confirmation. If such period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day.

~~[(2) If for any reason the affected bonds are not issued within the initial confirmation period the issuer may file with the committee a new notice of intention to issue bonds. Such new notice shall not be filed more than five (5) business days before the end of the initial~~

~~confirmation period. A new confirmation shall be issued on the basis of the new notice of intention to issue bonds which shall be effective for thirty (30) calendar days from the date of issuance. If notice of the issuance of the affected bonds is not received by the committee from the issuer by the close of business on the 30th day after the date of issuance of the new confirmation, the new confirmation shall expire, and shall not be extended or reissued. If the thirty (30) day confirmation period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day.]~~

Section 8. [5.] Subsequent Renewals - Thirty (30) Day Waiting Period. If the applicable bonds are not issued within such ninety (90) day period [(sixty (60) days plus thirty (30) days),] no new notice of intent for a project consisting of all or any part of the project described in any prior notice of intent may be filed until the expiration of thirty (30) days following the expiration of the last confirmation. If so filed, the confirmation issued upon such new notice of intent shall expire [within] thirty (30) days after the date of such subsequent confirmation.

Section 9. [6.] Supplementary Confirmation for Excess Amounts Required. If the amount of affected bonds proposed to be issued is insufficient to pay the costs of the proposed project, an issuer may file with the committee a supplementary notice of intention to issue additional bonds. The committee shall confirm the supplementary notice of intention to issue bonds, if any, by a supplementary confirmation. [The supplementary confirmation shall be given priority as to the increased amount of the proposed bond issue according to the date and amount of the supplementary notice of intention to issue bonds.] The supplementary confirmation shall expire on the date of the confirmation that it supplements.

Section 10. [7.] Issuance of Bonds in Lesser Amounts than Confirmation - [\$400,000 or] Eighty-five (85) Percent Requirement. A confirmation shall be effective as to affected bonds issued in amounts less than the confirmed amount, provided that the face amount of the bonds issued is not less than [the greater of \$400,000, or] eighty-five (85) percent of the confirmed amount of the affected bonds. The issuer shall notify the committee if the bonds issued are within the limits expressed herein and the unused part of the allocation shall revert to the issuer pool from which the allocation was made, or to a single issuer pool after July 1 of any year. [state ceiling and be available for allocation among all issuers on a first come, first served basis.]

Section 11. [8.] Elective Carry Forward. Any issuer may file with the committee by December 31, of each year, in which the state ceiling exceeds the aggregate amount of private activity bonds issued during the preceding calendar year, a "carry forward notice of intent" and a "carry forward election of unused private activity bond volume cap" (currently, U.S. Treasury Department Form 8328), for the carry forward to the next calendar year, for any purpose authorized by Section 146(f) of the Internal Revenue Code of 1986, of an unallocated portion of the state ceiling. The committee shall issue a carry forward confirmation confirming the notice and election to carry forward the unused portion of the state ceiling. Failure to file the carry forward notice and election forms by December 31, shall not adversely affect an issuer's right to carry forward under this section, provided such forms are filed with the committee within a reasonable time after December 31, of the preceding year, and, in any event, within a time frame acceptable to the Internal Revenue Service.

Section 12. [9.] Confirmations. No confirmations of notices of intent to issue affected bonds shall be issued by the committee after [when] the total aggregate amount of bonds for which confirmations, including carry forward confirmations, issued during the year equals

the state ceiling for that calendar year.

Section 13. [40-] Form and Manner. The committee shall prescribe forms for notices and confirmations required to be filed with and issued by the committee under this administrative regulation. No issuer shall file a notice of intent to issue affected bonds sooner than will reasonably permit issuance of the bonds within the time frame established by Section 7 [4] of this administrative regulation, nor seeking an allocation of the state ceiling in excess of the amount reasonably required to pay the costs of the project to be financed through sale of the proposed bonds.

Section 14. [44-] Delegation of Functions. The committee will review and allocate all requests for state ceiling. No delegation of authority to make allocations of the state ceiling to staff shall be made except for in cases of surplus or carry-forward allocations for which the committee gives specific authority to staff. [The committee may delegate to its staff authority to receive from issuers notices of intent to issue bonds, and notices of issuance of bonds, and to issue on behalf of the committee, confirmations, supplemental confirmations, and carry forward confirmations, but no such delegation shall authorize the staff to issue a confirmation, supplemental confirmation or carry forward confirmation for a proposed bond issue of more than \$25,000,000.] Such delegations of authority, including limits thereto, shall be recorded verbatim in the minutes of the committee meeting at which the delegation is made.

CRIT LUAllen, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 15, 1995 at noon

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on July 25, 1995 at 10 a.m. in the Capitol Annex Building, Room 386, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 20, 1995 five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by the date, the hearing may be cancelled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Kim Blitch, Financial Analyst, Office of Financial Management, and Economic Analysis, 261 Capitol Annex, Frankfort, Kentucky 40601, (502) 564-2924.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Kim Blitch, Financial Analyst

(1) Type and number of entities affected: This regulation will affect the Kentucky Housing Corporation, the Kentucky Higher Education Student Loan Corporation, the Kentucky Infrastructure Authority, the State Property and Building Commission, and local bond issuing entities in all Kentucky counties.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: There are no direct or indirect costs or savings on the cost of living or employment in Kentucky, in the aggregate, as a result of this administrative regulation. However, there may be a redistribution of the savings realized by the ability to issue private purpose bonds on a tax-exempt basis within the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from public comments received: There are no direct or indirect costs

or savings on the cost of doing business in Kentucky, in the aggregate, as a result of this administrative regulation. However, there may be a redistribution of the savings realized by the ability to issue private purpose bonds on a tax-exempt basis within the state.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Each local project requesting an allocation of the state ceiling will be required to provide the Kentucky Private Activity Bond Allocation Committee with the following additional information: average salary per employee of the project, whether the project has received other state incentives and capital investment being made in Kentucky as a result of the project.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Additional staff time will be required.

2. Continuing costs or savings: Additional staff time will be required.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Reporting and paperwork requirements will be increased. The Office of Financial Management and Economic Analysis will evaluate all local projects requesting cap before October 1 of each year and will make recommendations to the Kentucky Private Activity Bond Allocation Committee for allocations of the state ceiling.

(4) Assessment of anticipated effect on state and local revenues: Possibly increased state and local revenues because those projects creating more jobs and investing more capital in the state will rank higher in the evaluation process therefore receiving a portion of the limited private activity bond cap.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No source of revenue to be used for implementation and enforcement of this administrative regulation is necessary. Existing funds will be used.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Statewide. The 10% limitation imposed on local projects could possibly result in more job creation because more projects will receive private activity bond cap. The 40% state set aside will provide the Kentucky Housing Corporation with continuing and reliable mortgage revenue bond resources needed to provide for affordable low and moderate income housing for Kentucky residents. The Kentucky Higher Education Student Loan Corporation, a public entity with a statewide mission, can continue to provide and plan for higher educational opportunities for Kentuckians based on a predictable amount of tax-exempt funding each year.

(b) Kentucky: Statewide. The 10% limitation imposed on local projects could possibly result in more job creation because more projects will receive private activity bond cap. The 40% state set aside will provide the Kentucky Housing Corporation with continuing and reliable mortgage revenue bond resources needed to provide for affordable low and moderate income housing for Kentucky residents. The Kentucky Higher Education Student Loan Corporation can continue to provide and plan for higher educational opportunities for Kentuckians based on a predictable amount of tax-exempt funding each year. The proposed amendment will allow the allocation of private activity bonds in a manner which will best achieve the issuance of private activity bonds, foster economic development within the Commonwealth, and promote the general welfare of its citizens and the public purposes of the Commonwealth as required by KRS 103.286.

(7) Assessment of alternative methods; reasons why alternatives were rejected: A work group composed of representation from the Cabinet for Economic Development, the Office of Financial Manage-

ment and Economic Analysis, the Governor's Office on Policy and Management and the Department of Local Government was assigned the task of proposing changes to 200 KAR 15:010. Before proposing the current amendments the work group surveyed other states regarding their allocation procedures and individuals who have participated in the Kentucky private activity bond allocation process. The work group also did a historical review of where the state ceiling has been allocated geographically as well as among issuers. The decision of the work group to impose a 10% limitation on local projects, establish the proposed evaluation criteria, and provide a 40% set aside for state issuers was a result of information received from all of the above sources.

(8) Assessment of expected benefits: The proposed amendment will allow the allocation of private activity bonds in a manner which will best achieve the issuance of private activity bonds, foster economic development within the Commonwealth, and promote the general welfare of its citizens and the public purposes of the Commonwealth as required by KRS 103.286.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on public health or environmental welfare in Kentucky as a result of this administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would not be a detrimental effect on the environment or public health if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(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: None

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Yes. The administrative regulation is tiered in that established criteria will be used to evaluate local projects but no criteria will be used in evaluating state projects. Also until October 1 of every year there is a 10% limitation imposed on local projects with no such limitation on state projects. The administrative regulation also establishes a 40% set aside of the state ceiling for state issuers and a 60% set aside for local issuers until October 1 of each year.

**FINANCE AND ADMINISTRATION CABINET  
Kentucky Infrastructure Authority  
(Amendment)**

**200 KAR 17:050. Guidelines for federally assisted wastewater revolving fund.**

RELATES TO: KRS Chapter 224A

STATUTORY AUTHORITY: KRS Chapter 13A, 224A.070(1), 224A.113

NECESSITY AND FUNCTION: KRS 224A.070(1) and 224A.113 authorize the Kentucky Infrastructure Authority to promulgate administrative regulations to implement KRS 224.111. This administrative regulation [in accordance with KRS Chapter 13A, to] governs the application for and provision of financial assistance to governmental agencies for the construction of infrastructure projects from the federally assisted wastewater revolving fund.

Section 1. Definitions. For the purposes of this administrative regulation the words and terms used shall have the same meaning as in KRS 224A.011, with the following additions:

(1) "Applicant" shall mean any governmental agency that has submitted an application to the authority and the cabinet for a loan from the federally assisted wastewater revolving fund.

(2) "Application" shall mean an application submitted by an applicant for a loan from the federally assisted wastewater revolving fund.

(3) "Authority staff" shall mean the Office of Financial Management and Economic Analysis.

(4) "Cabinet" shall mean the Natural Resources and Environmental Protection Cabinet.

(5) "Closing date" shall mean the date established by the authority for execution of the assistance agreement upon satisfaction of the conditions contained in the conditional commitment letter.

(6) "Conditional commitment letter" shall mean a letter delivered to the applicant stating the authority's commitment to provide a loan under specifications and subject to the satisfaction of certain conditions by the applicant on or before the closing date.

(7) "Replacement reserve fund" shall mean the special depreciation fund required to be established by an applicant by Section 7 of this administrative regulation in connection with a loan from the federally assisted wastewater revolving fund. [~~"Index rate" shall mean the average of the Bond Buyer's Index of twenty (20) G.O. Bonds as published weekly in the Bond Buyer (a financial newspaper published in New York) calculated based on the weeks falling within each calendar quarter. This average shall be rounded to the nearest one-tenth (.1) of one (1) percent.~~]

(8) "Requisition for funds" shall mean the form identified in and attached to the assistance agreement to be used by the governmental agency for obtaining disbursements of the loan from the authority as construction of the wastewater project progresses.

(9) "State clearinghouse review" shall mean a review conducted by the Department of Local Government which has been designated as the single point of contact pursuant to federal and state laws and [or] regulations.

(10) [~~"Special depreciation fund" shall mean the special depreciation fund required to be established by an applicant by Section 7 of this administrative regulation in connection with a loan from the federally assisted wastewater revolving fund.~~]

(11) [~~(12)~~] "Wastewater project" shall mean a wastewater project described in Section 3 of this administrative regulation.

(11) [(12)] "Project [construction] priority list" shall mean the list developed periodically [annually] by the cabinet containing all eligible wastewater projects in priority order.

Section 2. Eligible Applicants. Any governmental agency [applicant] shall be eligible to apply for financial assistance for planning, design and construction of eligible wastewater projects described in Section 3 of this administrative regulation.

Section 3. Eligible Wastewater Projects. (1) Funds in the federally assisted wastewater revolving fund shall be used for planning, design and construction of wastewater collection, conveyance, and treatment facilities; [and] for the implementation of nonpoint source pollution control management programs; and for refinancing eligible debt. Wastewater projects may include: wastewater treatment facilities, interceptor sewers and pump stations, collector sewers, inflow/infiltration correction[s], major sewer rehabilitation and elimination and treatment of combined sewer overflow.

(2) Only projects identified on the state's [construction] project priority list shall be considered for funding.

Section 4. Submission Requirements and Review Process. (1) The original and two (2) copies [one (1) copy] of each application shall be submitted [to the address listed below or if different,] to the address listed on the application: Kentucky Division of Water, Facilities Construction Branch, Frankfort Office Park, 14 [48] Reilly Road, Frankfort, Kentucky 40601, Attention: Branch Manager[and

~~one (1) copy of each application shall be simultaneously submitted to: Kentucky Infrastructure Authority, Room 075, Capitol Annex Building, Frankfort, Kentucky 40601, Attention: Executive Director.~~

(2) The application form, substantially in the form as in effect on June 15, 1995 ~~[April 15, 1994]~~, which is incorporated by reference and is made a part hereof as if fully set forth herein, may be obtained at the Division of Water from 8 a.m. to 4:30 p.m., Monday through Friday. Only a completed application, including all supporting documentation, shall be considered for assistance from the federally assisted wastewater revolving fund.

(3) Financial information contained in the application shall be consistent with the estimates contained in the cost effective alternative selected in the facilities planning process. Prior to issuance of a conditional ~~[binding]~~ commitment by the authority, the application and facilities planning document shall be routed through state clearing-house review.

Section 5. Criteria for Selecting Eligible Wastewater Projects. (1) The cabinet shall select and determine eligible wastewater projects from the project ~~[construction]~~ priority list for loans and recommend such projects to the authority for consideration. Wastewater projects which meet all the requirements stated in this administrative regulation, shall have priority for funding as indicated herein. Priority points shall be given each applicant based upon factors which consider:

- (a) The ratio of proposed wastewater treatment costs to wastewater transportation costs;
- (b) The impact the wastewater project has on any existing drinking water supply;
- (c) Outstanding resource waters in the area as defined by 401 KAR 5:029, Section 1(v);
- (d) The operational, municipal performance ratings received by the applicant from the Division of Water;
- (e) Populations to be served that presently do not have sewer systems available;
- (f) The ratio of stream flow upstream to the existing or proposed discharge; and
- (g) The ability to comply with the required discharge perimeters for various pollutants for the applicant.

(2) The authority and the cabinet shall take into consideration the following factors in recommending wastewater projects for funding:

- (a) Whether the cost of completing the wastewater project is reasonable given the geographic location of the project, current pricing trends, required professional services, and any other factors that may have a bearing on the wastewater project. Cost figures submitted in the application shall be reviewed to determine whether the proposed budget for the wastewater project is feasible.
- (b) Whether the most beneficial and effective project has been planned for the use of the federally assisted wastewater revolving fund.

Section 6. Wastewater Project Requirements. (1) In addition to other requirements stated in this administrative regulation, the following specific requirements shall be met:

- (a) The wastewater project shall use the best practicable waste treatment technology.
- (b) If ~~[Alternative technologies shall have been considered in wastewater project planning.~~
- ~~[(c)]~~ the related sewer collection system is ~~[shall not be]~~ subject to excessive inflow/infiltration, assurance for necessary repairs shall be provided.

~~[(d)] Innovative and alternative treatment technologies shall have been studied in an effort to construct revenue producing facilities and to make more efficient use of energy and resources.~~

~~[(e)] Potential recreation and open space opportunities have been analyzed in the planning of the proposed facility.~~

~~[(f)]~~ The wastewater project is included in the statewide plans developed under Sections 208 and 303(e) of the Federal Clean Water

Act.

~~[(g)]~~ The applicant has developed an adequate user charge system and the applicant has the legal, institutional, managerial and financial capability to construct, operate and maintain the wastewater project.

~~[(h)] The applicant shall agree, one (1) year after the date of completion of construction and initiation of operation, to certify to the cabinet that the facility meets design specifications and effluent limitations included in the discharge permit.~~

~~[(i)]~~ The treatment system is cost effective, and a value engineering review will be conducted for wastewater treatment plant projects having construction costs over \$2,000,000; ~~provided that the foregoing engineering review shall not be required for collector sewers and minor sewer rehabilitation.~~

~~[(j)]~~ The wastewater project has undergone appropriate reviews to ensure compliance with the National Environmental Policy Act.

~~[(k)]~~ The applicant shall ensure that wages paid for the construction of the facilities shall conform to the prevailing wage rates established for the locality by the United States Department of Labor under the Federal Davis-Bacon Act or state wage rates, whichever rates are higher, as applicable.

~~[(l)]~~ The applicant shall ensure compliance with all applicable federal laws and regulations.

~~[(m)]~~ Certification by the applicant that it has complied with the procurement requirements as described in the application by the cabinet.

~~[(n)]~~ Construction contracts shall be awarded to the lowest responsive responsible bidder.

(2) The wastewater project shall comply with any federal requirements that may be established by Congress from time to time. These requirements shall be provided in writing to the applicant by the cabinet.

Section 7. Loan Process. (1) Upon completion of the credit review by the authority's staff, the application shall be submitted to the authority's board of directors for final action.

(2) If the authority approves the application, a conditional commitment letter shall be issued to the applicant. This letter shall set forth the conditions and documentation required by the authority prior to execution of an assistance agreement. No funds shall be provided until the assistance agreement is fully executed and any special conditions included therein met. The commitment shall be made upon the authority's satisfaction that the wastewater project proposed is financially feasible, the applicant is credit worthy and that the wastewater project will comply with all technical and program requirements set forth in state and federal laws and regulations.

(3) The authority shall establish interest rates annually ~~[quarterly]~~ based on prevailing market conditions, availability of funds and funding demand. The executive director of the authority shall recommend rates to the authority board of directors for its approval. The rate of interest on each loan shall be set forth in the conditional commitment letter. There shall be two (2) rates of interest offered, the standard rate and the hardship rate. Applicants shall receive the standard rate of interest unless they meet the hardship test and receive the hardship rate. The hardship rate shall be two (2) percent less than the standard rate. The hardship test includes the following criteria:

(a) The median household income of the applicant's jurisdiction is below the state median; and

(b) After undertaking the proposed wastewater project, the residential sewer bill for 4000 gallons of usage is reasonably estimated to exceed 1.25 percent of the median household income. [above median income interest rate and the below median income interest rate. The above median income interest rate shall be the index rate less three (3) percent. The above median interest rate shall apply to applicants whose jurisdiction lies within a county whose median family income level is above or equal to the statewide median

household income level. The below median interest rate shall be the index rate less five (5) percent. The below median interest rate shall apply to applicants whose jurisdiction lies within a county whose median family income is below the statewide median family income.] The most recent statistics on household [family] income as published by the Urban Studies Center, University of Louisville, shall apply. If an applicant's jurisdiction lies within more than (1) one city or county, the [average of the] median household [family] income of the city or county containing over fifty (50) percent of the users will be used in criteria (a) and (b) in this subsection of the hardship test. If no one (1) city or county contains fifty (50) percent, an average of all will be used. [all the counties covered by the applicant's jurisdiction shall determine the applicable interest rate. If the median family income level of an applicant's community differs significantly from that of the applicant's county.] The authority may consider adjustments of the interest rate to the hardship [below median income] rate in situations where the applicant can document that the median household income of their users is lower than the data being applied. If the nature of a wastewater project financed by the authority's loan causes interest on any authority bonds issued to fund the wastewater project to become taxable, the authority may consider adjustments in the interest rate to reflect the additional costs of authority funds.

(4) Principal on any loan shall be repaid over a period not to exceed federal requirements or the life of the facilities being financed [twenty (20) years]. Repayment of principal shall commence within one (1) year of the initiation of operation of the [completion date] of the wastewater project or upon such other date as may be set forth in the assistance agreement. Principal shall be payable semiannually, unless the authority establishes a more frequent payment schedule due to credit concerns. The loan repayment period may be equal to less than the federally permitted maximum [twenty (20) years] upon election of the authority.

(5) Interest payments on the outstanding principal amount of the loan shall be paid semiannually and shall commence within six (6) months of initial disbursement of loan proceeds, unless such interest payments are dependent upon revenues generated from the wastewater project. In the event interest payments are deferred as provided above, interest payments shall begin within six (6) months after the wastewater project is completed, and interest to cover the authority's cost of money during the construction period may be added to the amount of the loan.

(6) The principal amount of each loan shall be equal to the amount approved by the authority. The final loan amount may be adjusted by up to ten (10) percent of the amount stated in the conditional commitment letter without further action by the authority, subject to the availability of user fees [funds] to service the debt and authority funds to provide the increase.

(7) To ensure adequate funds for major maintenance and replacement of the wastewater projects funded by this program, the applicant shall be required to set aside annually to a replacement reserve fund [special depreciation fund] from current revenues, after taking into account costs of operations and maintenance and debt service requirements, an amount to be determined by the cabinet [authority]. Monies may be withdrawn from the account when major maintenance or replacement of equipment in excess of budgeted amounts are required.

(8) The assistance agreement between the authority and applicant shall contain such terms and conditions as the authority deems necessary to maintain the financial integrity of the federally assisted wastewater revolving fund according to the circumstances of each wastewater project.

Section 8. Applicant's Management Capacity. The cabinet and the authority's staff may require as a condition of any loan that the applicant perform any or all of the following:

(1) Document compliance with the statutory mandates for financial accountability and personnel management.

(2) Demonstrate the ability to operate, as well as maintain, the project in a proper manner through the final maturity date of the loan or the useful life of the project, whichever is greater.

(3) Document compliance with any other state or federal requirements that apply to this program.

Section 9. Submission and Review of Requisition for Funds. (1) The original and one (1) copy of each requisition for funds with the required invoices attached shall be submitted to the authority and one (1) copy of each requisition for funds with the required invoices attached shall be submitted to the Kentucky Division of Water at the address set forth in Section 4 of this administrative regulation.

(2) The cabinet shall review requisitions for funds for compliance with federal and state requirements as defined in the conditional commitment letter and assistance agreement before approving payment by the authority.

Section 10. Loan Closing and Extensions. An applicant shall meet all conditions for loan closing and take action to award contracts for the wastewater project within not more than eleven (11) calendar months after the date of the conditional commitment letter, otherwise, the loan commitment shall expire. One (1) extension period of up to six (6) months may be granted upon request of the applicant, if the authority staff, after consultation with the cabinet, determines that circumstances warrant the granting of the extension. If the extension is denied, the loan commitment shall be rescinded. If a request for a time extension is granted, but all the conditions still cannot be met during the extension period, the loan commitment may be rescinded. The applicant may reapply for a loan for any wastewater project for which the loan commitment has expired or has been rescinded under this section. An applicant that reapplies for a loan for substantially the same project will be given, at the authority's discretion, the standard or hardship interest rate applicable at the time of such reapplication or the initial rate assigned, depending on affordability. However, the interest rate will be no lower than the initial rate assigned to the project.

Section 11. Authority to Administer the Program. The authority staff shall monitor the assistance agreements and require that financial reports be made available to the authority by the governmental agency at such intervals as shall be deemed necessary by the authority. The authority staff shall monitor the cash flows of the wastewater project, and perform all actions that shall be required to assure that the agreements continuously meet the program standards established by this administrative regulation. There shall be an annual administrative fee of two-tenths (.2) of one (1) percent charged on the unpaid balance of all loans. This fee shall be applied to the servicing costs of the loans and necessary operating expenses of the program.

CRIT LUALLEN, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 15, 1995 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 31, 1995, at 10 a.m., at the Kentucky Infrastructure Authority, Suite 261 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 26, 1995, five calendar days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Marilyn

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Eaton-Thomas, Kentucky Infrastructure Authority, Room 261, Capitol Annex, Frankfort, Kentucky 40601, (502)564-2090.

### REGULATORY IMPACT ANALYSIS

Contact person: Marilyn Eaton-Thomas

(1) Type and number of entities affected: All local governmental agencies such as cities, counties and special districts of which there are over 600.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No comments to date.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No comments to date.

(c) Compliance reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Should be some savings as a result of some planning requirements being deleted from Section 6. Savings would amount to less than \$500 per application.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Some staff time will be saved as a result of not having to review the planning requirements deleted from Section 6. The amount of time saved would not be sufficient to delete any personnel.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: Since the method of setting interest rates is being changed, revenues could be effected but it is impossible at this time to measure.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: This regulation will not alter existing cost of program implementation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: No comments received.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternative were rejected:

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This program enables local governments to undertake wastewater projects which are environmentally beneficial. This amendment to the existing regulation supports the program.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None effected.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering does not apply.

### GENERAL GOVERNMENT CABINET Kentucky Board of Dentistry (Amendment)

#### 201 KAR 8:220. Clinical examination.

RELATES TO: KRS 313.050, 313.060, 313.100

STATUTORY AUTHORITY: KRS 313.220

NECESSITY AND FUNCTION: Sets forth requirements of the clinical examination, grade to be attained and permits the Board to dismiss candidate for gross malperformance or misconduct.

Section 1. Definitions. (1) "Gross malperformance" means gross injury to the hard or soft tissue or gross failure to observe accepted dental principles as determined by the examiners.

(2) "Misconduct" means cheating on the examination which consists of either giving help on the examination to or receiving help on the examination from another individual; or disorderly conduct or harassment as defined by KRS 525.060 and 525.070.

Section 2. [4-] (1) Clinical examination. The requirements of the clinical examination shall be within the discretion of the board as to subject matter but these requirements shall be agreed upon one (1) year prior to the examination, and shall [must] remain within the subjects contained in the regular curriculum of accredited dental schools.

(2) Successful completion of the clinical examination adopted for use by the Kentucky Board of Dentistry requires that a candidate successfully pass one (1) of the following examinations:

(a) The examination of the Southern Regional Testing Agency, Inc.;

(b) The examination of the Western Regional Testing Association; or

(c) The CORE examination offered through the Northeast Regional Board and the Central Regional Testing Association.

(3) Regional testing agencies may conduct examinations in the Commonwealth of Kentucky only with the authorization of the Kentucky Board of Dentistry.

(4) [(3)] A candidate may be dismissed during the course of the examination for gross malperformance or misconduct.

[(4) For the purposes of subsection (3) gross malperformance and misconduct shall be defined as follows:

(a) Gross malperformance shall be defined as gross injury to the hard or soft tissues; gross failure to observe accepted dental principles as determined by the examiners.

(b) Misconduct shall be defined as cheating on the examination which consists of either giving help on the examination to or receiving help on the examination from another individual; or disorderly conduct or harassment as defined by KRS 525.060 and 525.070 respectively.]

(5) A candidate who is dismissed from the examination for malperformance or misconduct shall have the right to appeal his [such] dismissal to the Kentucky Board of Dentistry. Thereafter, a majority vote by the board members present shall determine the issue.

DAN RAY CLAGETT, D.M.D., President

APPROVED BY AGENCY: June 10, 1995

FILED WITH LRC: June 12, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on the 28th day of July, 1995, at 9 a.m., at the Board of Dentistry Office, 10101 Linn Station Road, Suite 420, Louisville, Kentucky 40223. Individuals interested in attending this hearing shall notify this agency in writing by the 23rd day of July, 1995, five days prior to the meeting, 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



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person who attend 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: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Louisville, Kentucky 40223, (502) 423-0573, FAX (502) 423-1239.

### REGULATORY IMPACT ANALYSIS

Contact person: D. Brent Irvin, Assistant Attorney General

(1) Type and number of entities affected: Approximately 100 applicants for Kentucky licensure by clinical examination annually.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There may be some initial savings on new applicants who may find it more convenient and cost efficient to take one of the regional examinations other than the examination offered by the Southern Regional Testing Agency, Inc., depending on their individual circumstances.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no direct or indirect costs or savings on the compliance, reporting, and paperwork requirements the first year following implementation.

2. Second and subsequent years: There are no direct or indirect costs or savings on the compliance, reporting, and paperwork requirements the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated direct or indirect costs or savings the first year.

2. Continuing costs or savings: There are no anticipated continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There may be some additional reporting or paperwork requirements for the board staff, in verifying examination results.

(4) Assessment of anticipated effect on state and local revenues: There is no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be the fees charged by the testing agencies.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation was amended to allow candidates for licensure to have the option of taking the clinical examination given by other regional testing agencies in addition to the Southern Regional Testing Agency, Inc. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy is known to exist.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(10) Any additional information or comments: This administrative regulation should be helpful to graduates of Kentucky's dental schools, or dental schools outside Kentucky who have indicated that it would be more convenient for some of them to take other regional examinations. The Board of Dentistry believes that the other regional examinations are of equal quality to the examination presently accepted, and that the public welfare would not be compromised by allowing candidates this option.

(11) TIERING: Is tiering applied? Tiering was not applied because all applicants for licensure are treated uniformly under law.

### GENERAL GOVERNMENT CABINET Kentucky Board of Dentistry (Amendment)

**201 KAR 8:277. Written and clinical examination grade requirements.**

RELATES TO: KRS 313.270

STATUTORY AUTHORITY: KRS 313.270

NECESSITY AND FUNCTION: Sets forth requirements and qualifications for the written examination prior to the candidates' participation in the clinical examination.

Section 1. The provisions of 201 KAR 8:180 and [.] 201 KAR 8:185 [and 201 KAR 8:190] shall be applicable to dental hygienists for the purpose of establishing the time of examination, and the grading of the examinations of all applicants for a license to practice dental hygiene, and [such] other provisions of these rules as pertain to the procedures and conducting of examinations.

Section 2. (1) Written Examination. To successfully complete the written portion of the Kentucky Board of Dentistry's licensure examination, all applicants shall achieve [must have achieved] a grade of at least seventy-five (75) percent on each section of the examination conducted by the Council of National Board of Dental Examiners.

(2) This requirement shall [must] be satisfied prior to admission to the clinical portion of the Kentucky Board of Dentistry's licensure examination.

Section 3. Clinical Examination. (1) To successfully complete the clinical portion of the Kentucky Board of Dentistry's clinical examination, all applicants must achieve an overall average grade of at least seventy-five (75) percent on any of the following examinations:

(a) The examination of the Southern Regional Testing Agency, Inc.;

(b) The examination of the Western Regional Testing Association;

or

(c) The CORE examination offered through the Northeast



Regional Board and the Central Regional Testing Association.

(2) Regional testing agencies may conduct examinations within the Commonwealth of Kentucky only with the authorization of the Kentucky Board of Dentistry. ~~[An overall average of at least seventy-five (75) percent is required for successful completion of the clinical section of the Kentucky Board of Dentistry's licensure examination. No license may be issued unless this requirement is met.]~~

DAN RAY CLAGETT, D.M.D., President

APPROVED BY AGENCY: June 10, 1995

FILED WITH LRC: June 12, 1995 at 3 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on the 28th day of July, 1995, at 9 a.m., at the Board of Dentistry Office, 10101 Linn Station Road, Suite 420, Louisville, Kentucky 40223. Individuals interested in attending this hearing shall notify this agency in writing by the 23rd day of July, 1995, five days prior to the meeting, 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 attend 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: Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Louisville, Kentucky 40223, (502) 423-0573, FAX (502) 423-1239.

**REGULATORY IMPACT ANALYSIS**

Contact person: D. Brent Irvin, Assistant Attorney General

(1) Type and number of entities affected: Approximately 1200 licensed registered dental hygienists.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings on the cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There may be some initial savings on new applicants who may find it more convenient and cost efficient to take one of the regional examinations other than the examination offered by the Southern Regional Testing Agency, Inc., depending on their individual circumstances.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no direct or indirect costs or savings on the compliance, reporting, and paperwork requirements the first year following implementation.

2. Second and subsequent years: There are no direct or indirect costs or savings on the compliance, reporting, and paperwork requirements the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated direct or indirect costs or savings the first year.

2. Continuing costs or savings: There are no anticipated continuing costs or savings.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There may be some additional reporting or paperwork requirements for the board staff, in verifying examination results.

(4) Assessment of anticipated effect on state and local revenues:

There is no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation and enforcement of this administrative regulation will be the fees charged by the testing agencies.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact is anticipated in the geographical area.

(b) Kentucky: No economic impact is anticipated in Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation was amended to allow candidates for licensure to have the option of taking the clinical examination given by other regional testing agencies in addition to the Southern Regional Testing Agency, Inc. No other alternatives were deemed appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects are anticipated on public health and environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effects on environment and public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No such statute, regulation, or policy is known to exist.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(10) Any additional information or comments: This administrative regulation should be helpful to graduates of Kentucky's dental hygiene schools, or dental hygiene schools outside Kentucky, who have indicated that it would be more convenient for some of them to take other regional examinations. The Board of Dentistry believes that the other regional examinations are of equal quality to the examination presently accepted, and that the public welfare would not be compromised by allowing candidates this option.

(11) TIERING: Is tiering applied? Tiering was not applied because all applicants for licensure are treated uniformly under the law.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Nursing  
(Amendment)**

**201 KAR 20:240. Fees for applications and for services.**

RELATES TO: KRS 314.041(5), 314.042(3), (6), 314.051(3), 314.071(1), (2), 314.073(4), (6), 314.161

STATUTORY AUTHORITY: KRS 314.131

NECESSITY AND FUNCTION: To establish fees to carry out the provisions of KRS Chapter 314.

Section 1. Fees for Licensure and Registration Applications. (1) The board shall collect fees for applications for licensure or for registration, and for renewal or reinstatement thereof.

(2) The fees shall not exceed the amounts indicated for the following applications:

(a) Licensure as a registered nurse - seventy (70) dollars.

(b) Licensure as a licensed practical nurse - seventy (70) dollars.

(c) Biennial renewal of active license - fifty-five (55) ~~forty-five (45)~~

dollars.

- (d) Biennial renewal of inactive license - thirty-five (35) dollars.
- (e) Reinstatement of license - seventy (70) dollars.
- (f) Active to inactive license status - thirty-five (35) dollars.
- (g) Inactive to active license status - fifty (50) dollars.
- (h) Endorsement verification of Kentucky licensure or registration - twenty (20) dollars.
- (i) Duplicate license or registration card or letter - twenty (20) dollars.
- (j) Registration as an advanced registered nurse practitioner - seventy (70) dollars.
- (k) Biennial renewal of registration as an advanced registered nurse practitioner - fifty (50) dollars.
- (l) Reinstatement of registration as an advanced registered nurse practitioner - seventy (70) dollars.
- (3) An application shall not be evaluated unless current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The board shall collect fees for applications for approval of providers of continuing education and for renewal or reinstatement thereof not to exceed the following amounts:

- (1) Initial provider approval - \$100.
- (2) Reinstatement of provider approval - \$100.
- (3) Biennial renewal of approval - seventy-five dollars.
- (d) Individual review of continuing education offerings - thirty-five (35) dollars.

Section 3. Fees for Services. (1) The board shall collect fees for the following services not to exceed the amounts indicated:

- (a) Applicants for licensure who are retaking the examination - sixty (60) dollars.
- (b) Verification of licensure or registration letter - ten (10) dollars.
- (c) Copy of examination results or transcripts - ten (10) dollars.
- (d) Nursing certificate (optional) - thirty (30) dollars.
- (2)(a) The fee for copies of statutes, administrative regulations, and duplicated or printed materials shall be one (1) dollar minimum or shall not exceed twenty-five (25) cents per page.
- (b) The fee to affix an official certification to any records shall not exceed fifteen (15) dollars per document.

(3) An applicant for licensure who takes or retakes the licensure examination shall pay the current examination fee as required by the national council of state boards of nursing in addition to the board application for licensure and retake fees pursuant to subsection (5) of this section.

(4) A nurse who is licensed in another state, United States territory or country and who submits an application for licensure in Kentucky as a registered nurse or a licensed practical nurse, but who is required to take or retake the licensure examination, shall pay the current examination fee as required by the national council of state boards of nursing in addition to the board application for licensure and retake fees.

(5) Applicants retaking the licensure examination shall:

- (a) Submit fee for retake prior to each time examination is taken; and
- (b) Submit new application and current fees if more than one (1) year has passed since the date the applicant was declared eligible to take the examination initially.

(6) Graduates of foreign schools of nursing shall assume responsibility for costs incurred to submit credentials translated into English, commission on graduates of foreign nursing schools certificates, immigration documents and other documents needed to verify meeting licensure requirements.

Section 4. With the exception as stated in Section 3(5)(b) of this administrative regulation, an application which is not completed within one (1) year from the date the application form is filed with the board

office shall lapse and the fee shall be forfeited.

Section 5. An applicant who meets all requirements for approval, licensure or registration shall be issued the appropriate approval, license or registration without additional fee.

Section 6. Refunds. (1) Current administration of examination fee on file for an examination candidate unable to be present for the administration of an examination due to unusual circumstances such as weather conditions, accidents, illness, family circumstances, shall be refunded upon submission of written request by candidate.

(2) Overpayment of five (5) dollars or more of current fee shall be refunded upon submission of written request by payer.

Section 7. A partial application fee may be held on record for one (1) year and shall be applied toward the fee to meet the requirements for licensure or registration.

Section 8. Fees properly collected by the board shall not be refunded, except as provided in Section 6 of this administrative regulation.

PATRICIA B. BURGE, President

APPROVED BY AGENCY: May 24, 1995

FILED WITH LRC: May 31, 1995 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1995, at 9 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 1995, five days prior to the meeting, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given the opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

#### REGULATORY IMPACT ANALYSIS

Contact person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: All active licensees, approximately 49,000.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(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
- (4) Assessment of anticipated effect on state and local revenues: Will increase revenue to the agency.
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: License renewal fee; certification fee.
- (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
  - (a) Geographical area in which administrative regulation will be implemented: None
  - (b) Kentucky: None
- (7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were applicable.
- (8) Assessment of expected benefits:
  - (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Continued functioning of agency.
  - (b) State whether a detrimental effect on environment and public health would result if not implemented: Yes
  - (c) If detrimental effect would result, explain detrimental effect: The agency would not have sufficient revenue to function.
- (9) 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:
- (10) Any additional information or comments:
- (11) TIERING: Is tiering applied? Not applicable.

**WORKFORCE DEVELOPMENT CABINET  
Department of Vocational Rehabilitation  
(Amendment)**

**781 KAR 1:040. Rehabilitation technology services.**

RELATES TO: KRS 151B.190, 29 USC 706(8)(A), 34 CFR 361.31(b)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY AND FUNCTION: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to prescribe rules and administrative regulations governing the services and administration of the Department of Vocational Rehabilitation. This administrative regulation prescribes when, and under what conditions, rehabilitation technology services shall be provided, in order to distribute limited funds more equitably over the entire population of otherwise eligible clients.

Section 1. Definitions. (1) "Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(3) "Agency" or "department" means the Department of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

Section 2. Computer Hardware and Software. The Department of Vocational Rehabilitation shall not purchase computers, microcomput-

ers, other hardware or software for the personal use of applicants or clients. The agency may consider the provision or upgrade of computer hardware and software when:

- (1) The equipment is essential to compensate for the limitations caused by the disability;
- (2) The equipment is required for the client to achieve a vocational objective of competitive employment;
- (3) In addition, one (1) or more of the following criteria shall be met:
  - (a) The equipment is required for vocational preparation;
  - (b) The equipment is required by the job and no provision is made by the employer to supply the equipment; or
  - (c) The equipment will enable a client to become competitive with nondisabled employees performing the same duties.

Section 3. Vehicle Modification (General). (1) Modification of a van for a client who can be functional in an automobile shall be authorized only to the maximum cost of the automobile modification.

(2) The agency may provide van modifications for clients determined by the agency specialist of the Driver Evaluation/Vehicle Modification Program to be unable to transfer independently into and out of an automobile.

(3) Vehicle modifications shall be provided only on the recommendation of the agency specialist of the Driver Evaluation/Vehicle Modification Program.

(4) Individuals who are not clients of the agency in need of drive evaluation, driver training or vehicle modification may purchase evaluation services on a fee for service basis when all agency applicants and clients have been served.

(5) Vehicle modification shall be provided only after the client completes a driver evaluation and vehicle modification assessment by an agency specialist of the Driver Evaluation/Vehicle Modification Program.

(6) Vehicle modifications shall be inspected and approved by an agency specialist from the Driver Evaluation/Vehicle Modification Program before payment is made.

Section 4. Specific Modifications Costing Less than \$1,000. Agency staff may approve modifications to a vehicle when the following conditions apply:

- (1) Modifications is simple and is not related to overall vehicle engine or body condition;
- (2) Modification is not of a substantial structural nature; and
- (3) Maintenance records and overall condition of the vehicle can justify modification.

Section 5. Specific Vehicle Modifications Costing More Than \$1,000. (1) Except as provided in subsection (2) of this section, vehicle modifications costing in excess of \$1,000 shall be provided only for clients whose vocational objective is competitive employment and who are within one (1) year of job placement.

(2) Vehicle modifications may be provided to individuals who are not within one (1) year of job placement if the division director of program services determines that documentation exists that the modification would result in a substantial cost savings to the department.

(3) Vehicle modifications costing in excess of \$1,000 shall only be provided on new vehicles except as provided in this section.

(4) The agency may approve vehicle modifications for older vehicles in excess of \$1,000 when maintenance records and overall condition of the vehicle can justify the modification as attested by an agency specialist of the Driver Evaluation/Vehicle Modification Program. The modification must demonstrate cost savings to the agency.

Section 6. Upgrading and Repair of Vehicle Modification. (1) Vehicle modification upgrades and repair may be provided for a client

when such upgrades are needed for obtaining or maintaining employment.

(2) Upgrading and repair of vehicle modification in excess of \$1,000 shall require the approval of the Director of Program Services or a designee.

Section 7. Second Time Modifications. (1) Except as provided in this section, the agency shall provide only one (1) vehicle modification per client.

(2) The agency may approve a second time vehicle modification under the following conditions:

(a) The client has demonstrated a two (2) year continuous work history;

(b) The client's employer attests that the modification is needed to maintain employment.

Section 8. Vehicle Repair. (1) The agency shall not provide repair to vehicles.

(2) The agency shall not provide or repair any standard or optional automatic equipment. Equipment includes but is not limited to: power steering, power brakes, automatic transmission, air conditioning, tilt steering, etc.

Section 9. Property Modification. (1) Permanent, nonrecoverable modification to private homes, businesses or property is an allowable expenditure if determined essential to achieve the employment objective [necessary to effect vocational rehabilitation] of the individual. A direct relationship between the provision of the modification and the projected employment goal shall be demonstrated. The individual shall meet economic need qualifications. The counselor shall make every attempt to utilize recoverable, nonpermanent modifications if possible or cost effective.

(2) The agency may provide essential services necessary to alter or adapt the work situation to enable the client to obtain employment or to insure continuation of employment, including but not limited to the building of a permanent ramp for a wheelchair, modification of machinery to enable the individual to use that particular machine, or a specially designed safety device.

(3) Except as provided in this section, property modifications in excess of \$6,000 shall not be allowed.

(4) Property modifications in excess of \$6,000 may be provided if the division director of program services determines that documentation exists that the modification has a direct relationship to the employment goal and that failure to provide the modification would preclude the successful achievement of the employment goal. ~~[would result in a substantial cost savings to the department.]~~

SAM SERRAGLIO, Commissioner

APPROVED BY AGENCY: May 8, 1995

FILED WITH LRC: June 13, 1995 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 28, 1995 at 10 a.m. Eastern Time in the 2nd Floor Board Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency by July 23, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: George Parsons, Department of Vocational Rehabilitation, 935 Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-3694.

The Department of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

## REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: Applicants and clients of the Department of Vocational Rehabilitation who are in need of rehabilitation technology services.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(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: The only reporting requirements are those needed to promulgate this regulation.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No revenue implication.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare on the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) 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: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: Officials of the Rehabilitation Services Administration have advised that the policy

described in this administrative regulation be changed in order to conform with federal guidelines. This administrative regulation is being amended to comply with the standards established in the 1992 Amendments to the Rehabilitation Act of 1973 and implementing federal regulations.

(11) TIERING: Is tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or clients for vocational rehabilitation services.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 revised by Federal Register (52 FR 44366) November 18, 1987.

2. State compliance standards. This administrative regulation details the agency standards for providing rehabilitation technology to eligible individuals.

3. Minimum or uniform standards contained in federal mandate. The federal mandate permits a state to restrict access to services based on acceptable policy.

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

5. Justification or imposition of the stricter standards, or additional or different responsibilities or requirements. Rehabilitation technology is heavily emphasized in the 1992 amendments to the Rehabilitation Act. Technology is available to assist individuals with severe disabilities to achieve suitable employment outcomes. This regulation establishes guidelines for the provision of services that are not addressed in the Act.

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (Amendment)

#### 815 KAR 7:100. The Kentucky Building Code.

RELATES TO: KRS Chapter 198B

STATUTORY AUTHORITY: KRS 198B.040(7), 198B.050

NECESSITY AND FUNCTION: Pursuant to KRS 198B.040(7), the Kentucky Board of Housing, Buildings and Construction promulgated and adopted a uniform state building code establishing standards for construction of buildings in the state and set forth in administrative regulation 815 KAR 7:090, which will be repealed by this administrative regulation. This administrative regulation incorporates by reference the 1994 Kentucky Building Code and sets forth printing errors not previously noted, as well as includes certain recent amendments approved by the board. This amendment is necessary to correct inconsistencies between provisions and technical clarifications to make the code easier to understand and to clarify the interpretation of remoteness of exits. [make certain technical changes in the code that are necessary for clarification, and amendments approved by the Board of Housing.]

Section 1. Adoption of Code. (1) The Kentucky Building Code/1994, Sixth Edition, as adopted by the Kentucky Board of Housing, Buildings and Construction, is hereby incorporated by reference except as amended in Sections 2 through 13 of this administrative regulation.

(2) The code is published by Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Road, Country Club Hills, Illinois 60477.

(3) The code is updated by and available from the Kentucky Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(4) A copy of the code book is available to be inspected at the Department of Housing, Buildings and Construction at the above address Monday through Friday between 8 a.m. to 4:30 p.m.

Section 2. Amendments to Chapter 1 of the 1994 Kentucky Building Code. (1) Section 104.1 shall be amended to read: "104.1 Building code official: Each local government shall employ or otherwise provide for a certified Level I code official, certified electrical inspector and other code enforcement personnel necessary to enforce this code within its jurisdiction. The department shall be responsible for the enforcement of this code as it pertains to the buildings assigned to it by law."

(2) Section 105.1.3 shall be amended to read: "105.1.3 In churches: The local code official shall be responsible for the examination and approval of plans and specifications and the inspections necessary to determine compliance for all church buildings having a capacity of 400 or less persons and all church buildings having 6,000 square feet (558 m<sup>2</sup>) or less of total floor area."

(3) Section 105.2.1 shall be amended to read: "105.2.1 Buildings classified as assembly occupancies having a capacity in excess of 100 persons, except church buildings having a capacity of 400 or less persons and church buildings having 6,000 square feet (558 m<sup>2</sup>) or less of total floor area."

(4) Section 107.7 shall be amended to read: "107.7 Engineering details: The code official may require adequate details of structural, mechanical and electrical work, including computations, stress diagrams and other essential technical data to be filed, including how the required structural and fire-resistance rating integrity shall be maintained, and where penetrations will be made for electrical, mechanical, plumbing and communication conduits, pipes, and systems. All engineering plans and computations shall bear the signature of the responsible design professional."

(5) Section 108.3 shall be amended to read: "108.3 Previous approvals: This code shall not require changes in the construction documents, construction or designated use group of a building for which a lawful permit has been issued or otherwise lawfully authorized by approved construction documents, if substantial construction on the project has commenced within six (6) months from the date the permit was issued."

Section 3. Amendments to Chapter 3 of the 1994 Kentucky Building Code. Section 310.5 shall be amended by deleting the reference "(see Section 709.0)" from the end of the paragraph.

Section 4. Amendments to Chapter 4 of the 1994 Kentucky Building Code. Section 422.11 shall be amended to read: "422.11 Barrier-free design: All new work shall comply with the applicable provisions of Chapter 11. Exception: Church day care centers."

Section 5. Amendments to Chapter 5 of the 1994 Kentucky Building Code. Delete Section 504.4, Day care centers, in its entirety from the 1994 Kentucky Building Code.

Section 6. Amendment to Chapter 9 of the 1994 Kentucky Building Code. (1) Amend Section 916.1 to read as follows: "916.1 Private hydrants: Fire hydrants installed on private property as part of a private fire protection system shall be located so as to meet the requirements of National Fire Protection Association (NFPA) Pamphlet #24 listed in Chapter 35, except that hydrants shall be spaced so that the hose line does not exceed 500 feet. Yard hydrant installation shall be coordinated with the local fire code officials who shall not make recommendations which exceed the requirements of National Fire Protection Association (NFPA) Pamphlet #24. Yard hydrants shall not be installed on a water main less than 6 inches in diameter."

(2) Amend Section 917.10 by deleting "and 72E" from the reference to NFPA pamphlets and leaving the reference to "NFPA

72."

(3) [(2)] Amend Sections 918.1, 918.4.3 and the Exception under Section 918.8 by deleting the reference to 'NFPA 72E' and replacing it with reference to "NFPA 72."

(4) [(3)] Amend Sections 919.1 and 919.6 by deleting the reference to 'NFPA 74' and replacing it with reference to "NFPA 72."

(5) [(4)] Method 1 in section 923.1 shall be amended to read: "1. Approved central-station system in accordance with NFIPA 72 listed in Chapter 35;"

Section 7. Amendments to Chapter 10 of the 1994 Kentucky Building Code. (1) Amend Section 1005.3 to read as follows: "1005.3 Protruding objects: A minimum headroom of 80 inches (2032 mm) shall be provided for any walking surface, including walks, halls, corridors, aisles and passageways. Structural elements, fixtures or furnishings shall not project from either side more than 4 inches (102 mm) over any walking surface between the heights of 27 (686 mm) and 80 inches (2032 mm) above the walking surface. A free-standing object mounted on a post(s) or pylon(s) shall not overhang that post(s) or pylon(s) more than 12 inches (305 mm) where the lowest point of the leading edge is more than 27 inches (686 mm) and less than 80 inches (2032 mm) above the walking surface. Door closers and stops shall not reduce headroom to less than 78 inches (1981 mm). See Chapter 11 for buildings and facilities required to be accessible to persons with physical disabilities."

(2) Amend Section 1006.4 to read as follows: "1006.4 Remote location: Wherever more than one (1) exit is required from any room, space or floor of a building, such exits shall be placed as remote from each other as practicable, and shall be arranged and constructed to provide direct access in separate directions from any point in the area served so as to minimize the possibility that multiple exits will be blocked by any one (1) fire or other emergency condition."

(3) Amend Section 1006.4.1.1 to read as follows: "1006.4.1.1. Three (3) or more: Where three (3) or more exits or exit access doors are required, at least two (2) exits or exit access doors shall be separated as provided for in Section 1006.4.1. The additional exits shall be arranged a reasonable distance apart so that if one (1) becomes blocked, the others will be available."

(4) [(2)] Delete the Exception from Section 1006.6 in its entirety because the section it references was previously deleted.

(5) [(3)] Amend Section 1016.3 to read as follows: "1016.3 Maximum slope: The maximum slope of means of egress ramps shall be one unit vertical in eight units horizontal (1:8); except ramps required for persons with physical disabilities, see Chapter 11."

(6) [(4)] Amend Section 1018.5 to read as follows: "1018.5 Adjacent areas: Each revolving door shall have a conforming side-hinged swinging door in the same wall as, and within 10 feet (3048 mm) of, the revolving door. See Chapter 11 for buildings and facilities required to be accessible to persons with physical disabilities. Exception: The adjacent swinging door is not required for street floor elevator lobbies if a stairway, escalator or door from other parts of the building does not discharge through the lobby and the lobby does not have any occupancy other than as a means of travel between the elevators and street."

(7) [(5)] Section 1022.2.5 shall be amended to read: "1022.2.5 Handrail grip size: All stairway handrails shall have a circular cross section with an outside diameter of at least one and one-quarter (1 1/4) inches (32 mm) and not greater than two (2) inches (51 mm). (See Exception 2 for accessible handrails). Exceptions:

1. Any other shape with a perimeter dimension of at least four (4) inches (100 mm), but not greater than six and one-quarter (6 1/4) inches (158 mm) with the largest cross-sectional dimension not exceeding two and one-quarter (2 1/4) inches (57 mm).

2. New handrails in facilities required to be accessible shall comply with Figure 39 of ADAAG."

Section 8. Amendments to Chapter 11 of the 1994 Kentucky

Building Code. (1) Amend Section 1101.3 by deleting the word "shall" and replacing it with the word "may".

(2) Exception #3 under Section 1103.1 shall be amended to read: "3. Church buildings, single family dwellings and apartment complexes consisting of less than twenty-five (25) units."

(3) Exception #2 under Section 1104.2 shall be amended to read: "2. The exceptions listed in Section 4.1.3(5) of ADAAG."

(4) Section 1105.2 shall be amended to read: "1105.2 Multiple-family dwellings: Assigned parking spaces shall be provided in accordance with Section 13.3.2(4)(a) of ADAAG for apartments occupied by a resident with a disability."

(5) Section 1107.4.3 shall be amended to read: "1107.4.3 Minimum requirements for multiple-family dwellings: A required accessible dwelling unit shall be on an accessible route and shall have accessible elements and spaces complying with Sections 13.3.2 and 13.4 of ADAAG."

(6) Section 1107.4.5.1 shall be amended to read: "1107.4.5.1 Minimum number: When dwelling units are altered in an existing facility, one (1) in twenty-five (25), but not less than one (1), of the dwelling units altered shall comply with the requirements of Section 13.3 and 13.4 of ADAAG for each alteration until the number of accessible dwelling units in each facility equals the number of required to be accessible by Section 1107.4.2."

(7) Section 1109.2 shall be amended to read: "1109.2 Signs: Signs which designate permanent rooms and spaces shall comply with Sections 4.30.1; 4.30.4; 4.30.5 and 4.30.6 of ADAAG. Required accessible elements shall be identified by the International Symbol of Accessibility at the following locations:

1. Accessible parking spaces required by Section 1105.1.
2. Accessible passenger loading zones.
3. Accessible areas of refuge required by Section 1111.2.
4. Accessible toilet and bathing units.
5. Accessible entrances."

(8) Section 1109.2.1 shall be amended to read: "1109.2.1 Directional signage: Directional signage indicating the route to the nearest like accessible element shall be provided at the following locations: (See ADAAG Sections 4.30.1; 4.30.2; 4.30.3 and 4.30.5)."

(9) Section 1109.3 shall be amended to read: "1109.3 Visible alarms: Visible alarm-indicating appliances shall be provided in public and common areas of all buildings and areas of buildings housing the hearing impaired in accordance with Section 917.0 of this code and Section 4.28.3 of ADAAG."

(10) Section 1111.2 shall be amended to read: "1111.2 Area of rescue assistance: Areas of rescue assistance shall be provided as required by Section 4.1.3(9) of ADAAG."

Section 9. Amendments to Chapter 16 of the 1994 Kentucky Building Code. (1) Amend Section 1612.1.8 to read as follows: "1612.1.8 Site limitation for Seismic Performance Category E: A building assigned to Category E shall not be sited over a known fault that has previously caused a rupture of the ground surface immediately under the proposed building."

(2) Amend Exception #5 of Section 1612.6 to read as follows: "5. Architectural, mechanical and electrical components and systems in buildings located in Risk Zone 1 as shown in Table 1612.1.3."

Section 10. Amendments to Chapter 18 of the 1994 Kentucky Building Code. Amend Section 1806.1 by deleting the word "below" from the fifth line of this section and replacing it with the word "to."

Section 11. Amendments to Chapter 28 of the 1994 Kentucky Building Code. (1) Section 2801.2 shall be amended to read: "2801.2 Mechanical code: All mechanical equipment and systems shall be constructed, installed and maintained in accordance with the mechanical code listed in Chapter 35."

(2) Section 2801.4 shall be amended to read: "2801.4 Unfired pressure vessels: All unfired pressure vessels shall meet the



standards set forth in Section VIII of the 1989 edition of the ASME Boiler and Pressure Vessel Code, American National Standards Institute, Inc./American Society of Mechanical Engineers (ASNI/ASME) BPV-VIII-1, as required by Kentucky boiler administrative regulations set forth in Title 815, Chapter 15, Kentucky Administrative Regulations."

(3) Delete Section 2813.0, Superseding provisions for mechanical ventilation, from the 1994 Kentucky Building Code in its entirety.

Section 12. Amendments to Chapter 30 of the 1994 Kentucky Building Code. Amend Section 3014.1 to read as follows: "3014.1 General: Inclined stairway chairlifts and inclined and vertical wheelchair lifts shall conform to the requirements of ASME A17.1 listed in Chapter 35."

Section 13. Amendments to Chapter 35 of the 1994 Kentucky Building Code. (1) Amend Chapter 35 by inserting an additional reference to "Addendum 62A-1990" under "ASHRAE."

(2) Amend Chapter 35 under "ASME" by updating the edition of A17.1 to "1993" and deleting the language "with the exception to Rule 102.2(c)(4)."

(3) Amend Chapter 35 under "NFIPA" by updating the editions of sprinkler standards (13, 13R and 13D) to "1994".

CHARLES A. COTTON, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: June 12, 1995

FILED WITH LRC: June 14, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 27, 1995 at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 22, 1995, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: Contractors, architects, engineers, design professionals.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No costs or savings involved because administrative regulation only establishes acceptability and sets standards.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No costs or savings involved as stated above.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None to users of KBC.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of printing KBC but this is recouped by the sale of the Code books.

2. Continuing costs or savings: Cost of printing revised or updated pages.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Paperwork requirements to agency involve updating code by reprinting and distributing to purchasers.

(4) Assessment of anticipated effect on state and local revenues: No anticipated effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Plan review fees, pursuant to 815 KAR 7:013.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Kentucky Building Code is used and enforced statewide, however, there is no known economic impact on these particular code changes.

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative option available; Board of Housing adopts or amends material within limits defined.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public safety concerns.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Without amendments, the Code would not conform to the latest safety standards listed and confusion over some provisions make design more difficult.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No known conflict of statute or policy.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was applied in that the mandatory requirements for buildings are different depending upon the occupancy type and number of persons occupying a building; building size and construction type.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect a part of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation will affect local government where there is a local building inspection program. KRS 198B.060 requires local government to provide for building officials to enforce the Kentucky Building Code.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):



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Other Explanation: There is no increased fiscal impact created by this regulation, nor does it increase the number of persons needed by local government. State revenues are neither increased nor decreased by this administrative regulation.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Housing, Buildings and Construction**  
**Division of Plumbing**  
**(Amendment)**

**815 KAR 20:110. Traps and clean-outs.**

RELATES TO: KRS Chapter 318

STATUTORY AUTHORITY: KRS 318.010, 318.130

NECESSITY AND FUNCTION: The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code. This administrative regulation relates to the quality, location and the placing of traps and clean-outs to prevent harmful gases and odors from entering buildings and homes that are served by plumbing systems. This administrative regulation also identifies the manufacturer's specification number of the material accepted in those installations. This amendment is necessary to allow the use of plastic devices (see Section 14 of this administrative regulation) which have, in fact, been utilized for several years with success. ~~[delete language in Section 13 that is no longer enforced by the division and make amendments to comply with KRS Chapter 13A drafting rules.]~~

Section 1. Traps, Kind and Minimum Size. Every trap shall be self-cleaning. Traps for bathtubs, lavatories, sinks and other similar fixtures shall either be tubular brass, tubular ABS or PVC produced and labeled as ASTM F-409, cast brass, cast iron, lead or schedule 40 PVC (polyvinyl chloride) or ABS (acrylonitrile-butadiene-styrene) traps. Tubular or schedule 40 PVC or ABS p-traps may be either the union-joint or solvent welded type. Tubular brass traps shall be seventeen (17) gauge. Tubular brass, tubular PVC or tubular ABS traps shall not be installed below the finished floor serving a fixture. Traps shall have a full-bore, smooth interior waterway. The threads in cast brass and cast iron traps shall be tapped out of solid metal. Lead traps shall be extra heavy.

Section 2. Traps, Prohibited. A trap which depends upon the action of movable parts or concealed interior partitions for its seal shall not be used.

Section 3. Traps, Where Required. A fixture shall be separately trapped by a water-seal trap placed as near as possible to the fixture but not to exceed ten (10) inches from the bottom of the fixture to the dip of the seal. Waste from a bathtub or other fixture shall not discharge into a water closet bend. A fixture shall not be double trapped.

Section 4. Water Seal. A fixture trap shall have a water seal not less than two (2) inches or more than four (4) inches.

Section 5. Trap Clean-outs. Trap clean-outs shall be optional.

Section 6. Trap Levels and Protection. Traps shall be set true with respect to their water seals and shall be protected from frost and evaporation.

Section 7. Pipe Clean-outs. The bodies of clean-out ferrules shall be made in standard pipe sizes, conforming in thickness to that of the pipe and fittings and shall not extend less than one-quarter (1/4) inch above the hub in which it is placed. The clean-out cap or plug shall be heavy red brass not less than one-eighth (1/8) inch thick and shall have a raised nut or recessed pocket for removal.

Section 8. Pipe Clean-outs, where Required. A clean-out shall be easily accessible and shall be provided at the base of each vertical waste or soil stack. There shall be at least two (2) clean-outs in the house drain, one (1) at or near the base of the stack and the other with full size branch inside the wall or outside the building at a point not beyond two (2) feet from the foundation wall. Clean-outs shall be of the same nominal size as the pipe it serves up to four (4) inches, and shall not be less than four (4) inches for larger pipe.

Section 9. Manholes. Underground clean-outs in a building, except where clean-outs are flush with the floor or wall, shall be made accessible by a manhole or with a proper cover.

Section 10. Clean-outs (Equivalents). A floor or wall connection of a fixture trap, whether bolted or screwed to the floor or wall, shall be regarded as a clean-out with the exception of the clean-out where the house drain enters a building.

Section 11. Grease Traps. If a grease trap is installed, it shall be placed as near to the fixture it serves as practical and shall be approved by the department. Grease traps used inside a building shall have a sealed cover and shall be properly vented. Grease traps shall be installed for restaurants and food service establishments and other business establishments deemed necessary by the Department of Housing, Buildings and Construction or as required by municipal ordinance. If food establishments use a private sewage system, grease traps shall be installed as required by the Cabinet for Human resources administrative regulation 902 KAR 10:085.

Section 12. Sand Traps. Sand traps shall be readily accessible and shall meet the requirements of the Department of Housing, Buildings and Construction.

Section 13. Basement Floor Drains. A basement floor drain shall connect to a trap and be readily accessible for cleaning and shall be of sufficient size to serve the purpose intended. If drains are subject to back flow or back pressure, the drains shall be equipped with a backwater valve approved by administrative regulation of the Department of Housing, Buildings and Construction.

Section 14. Back Water Valves. A back water valve shall be of noncorrosive material ~~[metals]~~ and shall be constructed to insure a positive mechanical seal except when discharging wastes.

Section 15. Residential Utility Room Floor Drains. A two (2) inch floor drain with an individual waste and vent may be installed in a residential utility room.

Section 16. Directional Flow Fittings and Continuous-waste. Kitchen sink units, or fixtures with more than one (1) unit may be connected with a continuous-waste, if a directional flow fitting is used. Continuous-waste shall be either seventeen (17) gauge tubular brass or schedule 40 ABS or PVC or tubular ABS or PVC material.

CHARLES A. COTTON, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: June 12, 1995

FILED WITH LRC: June 14, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 27, 1995 at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 22, 1995, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to

comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: Licensed master and journeyman plumbers; users of the State Plumbing Code.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: Implementation of this amendment will not affect the cost of living or employment in any area.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in the cost of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No reporting or paperwork required by users of the State Plumbing Code.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No costs or savings on the administrative agency involved in this arrangement.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Preparing amendment to Code and distributing the information to users.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue with the implementation of this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Enforcement of this regulation will not increase agency costs.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Administrative regulation implemented statewide; however, its implementation should have no economic impact to the area or statewide.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: State Plumbing Code Committee and Board of Housing review proposed amendments and accept on basis within limits defined.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Implementation will have no effect except to make more quality materials available.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment will result if not implemented.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering used in that each standard approved is considered separately for compliance.

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Office of State Fire Marshal (Amendment)

#### 815 KAR 35:015. Certification of electrical inspectors.

RELATES TO: KRS Chapter 227

STATUTORY AUTHORITY: KRS 13A.100, 227.489

NECESSITY AND FUNCTION: The Commissioner of the Department of Housing, Buildings and Construction is required by KRS 227.489 to certify electrical inspectors based on standards of the National Electrical Code. This administrative regulation is needed to establish the procedures for achieving and maintaining the certification. This amendment is necessary to encourage inspectors to pass the national examination sooner (see Section 4 of this administrative regulation). ~~[specify the number of times an applicant may retake the examination for temporary certification and numerous other amendments for clarification.]~~

Section 1. Definitions. (1) "Applicant" means the person seeking to be certified as an electrical inspector.

(2) "Authority having jurisdiction" as used in the National Electrical Code means the Department of Housing, Buildings and Construction.

(3) "Certified electrical inspector" means any person who has met the criteria established by the commissioner, satisfactorily passed the examination as required by this administrative regulation, and received a certificate attesting thereto. The categories are:

(a) One (1) and two (2) family - persons who have passed the NCPCCI examination and persons classified as residential inspectors on the effective date of this administrative regulation. These inspectors shall be deemed qualified to perform electrical inspections and approve electrical installations related to one (1) and two (2) family dwellings and mobile homes only.

(b) General - persons who have passed the NCPCCI examination of the same name and persons classified as commercial inspectors on the effective date of this administrative regulation. These inspectors shall be deemed qualified to inspect and approve all types of residential, commercial, industrial and other properties which require electrical inspection.

(4) "Code" means the National Electrical Code (NEC) and any amendments adopted by the department.

(5) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(6) "Department" means the Department of Housing, Buildings and Construction.

(7) "Electrical" means the installation of wires and conduits for the purpose of transmitting electricity and the installation of related fixtures and equipment.

(8) "Electrical industry" means those engaged in the generation, transmission and distribution of electricity and the design, manufacture, construction, installation, alteration or repair of electrical wiring facilities and apparatus for the utilization of electricity.

(9) "Employee" means one who is employed on a full-time, part-time, or contractual basis.

(10) "Temporary certification" means a certificate issued by the department which is valid for a limited period of time. The department shall issue temporary certification to qualified persons under the

conditions of Section 4 of this administrative regulation.

(11) "NCPCCI" means National Certification Program for Construction Code Inspectors and are examinations developed by national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence [~~and professionalism~~] in construction code enforcement.

Section 2. Applicability. This administrative regulation shall apply to all electrical inspectors in the Commonwealth of Kentucky and to applicants for certification as electrical inspectors.

Section 3. Responsibilities of the Commissioner of the Department of Housing, Buildings and Construction. (1) The Commissioner of the Department of Housing shall require inspectors to be certified. Examinations shall be based on the edition of the National Electrical Code adopted in the Kentucky Building Code.

(2) The commissioner shall administer this administrative regulation, provide for continuing education of certified electrical inspectors and schedule examinations at regular intervals.

(3) It shall be the duty of the commissioner to investigate all complaints of alleged misconduct of any electrical inspector as certified under this administrative regulation if, in the opinion of the commissioner, there is sufficient evidence to suggest that misconduct exists.

Section 4. Applications Requirements for Temporary Certification. Prior to being examined by the department for "temporary certification" as an electrical inspector, applicants shall comply with the following:

(1) Applicants under "one (1) and two (2) family dwelling" category shall meet the following requirements:

(a) An applicant shall have not less than five (5) years of experience immediately preceding the application in the installation and design of all types of residential wiring systems installed in accordance with the National Electrical Code or shall be a registered professional electrical engineer engaged in his profession for not less than three (3) years; and

EXCEPTION: In circumstances where an applicant cannot show the precise experience required above, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the documentation and approve the applicant under this section if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(b) The applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties; and

(c) The applicant shall submit a duly notarized application, which shall be supplied by the department on request, containing all pertinent personal information and experience. Applications shall be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting; and

(d) Applications for temporary certification shall be accompanied by a written statement of need for certification from the local official responsible for the electrical or building inspection program; and

(e) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the State Treasurer, Commonwealth of Kentucky.

(2) Applicants under "general" category shall meet the following requirements:

(a) An applicant shall have not less than five (5) years of experience immediately preceding the application in the installation and/or design of all types residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code or shall be a registered professional electrical engineer engaged in his profession for not less than three (3) years.

EXCEPTION: In circumstances where an applicant cannot show the precise experience required above, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the documentation and approve the applicant under this section if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(b) The applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties; and

(c) The applicant shall submit a duly notarized application, which shall be supplied by the department on request, containing all pertinent personal information and experience. Applications shall be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting; and

(d) Applications for temporary certification shall be accompanied by a written statement of need for certification from the local official responsible for the electrical or building inspection program; and

(e) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the State Treasurer, Commonwealth of Kentucky.

(3) Applicants shall receive credit earned for any electrical courses satisfactorily completed from any accredited vocational school or college on a year-for-year basis. Credit for education to replace applicant's experience requirements shall be limited to a total of two (2) years.

(4) The electrical advisory committee shall review all applicants for temporary certification to determine their eligibility to sit for the examination.

(5) Temporary certification shall expire at the end of nine (9) ~~eighteen (18)~~ months from the time of initial certification and shall not be reissued.

Section 5. Examinations for Temporary Certification. (1) Following the review and acceptance of the applicant's qualifications by the electrical advisory committee, the applicant shall pass the department's written examination for the class of temporary certification.

(2) Examinations for qualified applicants shall be administered within thirty (30) days after acceptance by the electrical advisory committee. Examinations required under this section shall be administered at the department's office in Frankfort, Kentucky, unless another location is specifically designated.

(3) Examinations shall be based on the edition of the National Electrical Code adopted in the Kentucky Building Code and the examination shall be open book.

(4) A grade of seventy (70) percent shall be considered passing. An applicant, otherwise qualified, who fails to make a passing score may reapply to be scheduled for the next examination date upon payment of an additional fee of ten (10) dollars.

(5) An applicant shall not be permitted to retake the examination more than three (3) times.

Section 6. Requirements for Full Certification as an Electrical Inspector: General and One (1) and Two (2) Family. (1) The applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties.

(2) The applicant shall have had not less than five (5) years of experience immediately preceding the application in the installation and/or design, of all types of residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code or shall be a registered professional electrical engineer engaged in his profession for not less than three (3) years.

EXCEPTION: In circumstances where an applicant cannot show the precise experience required by this subsection, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the

documentation and approve the applicant under this section if it is satisfied that the level of exposure to electrical construction practices is substantially equivalent.

(3) The applicant shall submit a duly notarized application, which shall be supplied by the department on request, containing all pertinent personal information and experience. Applications shall be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting.

(4) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the State Treasurer, Commonwealth of Kentucky.

(5) The applicant shall provide proof of successful completion of the NCPCCI examination for electrical inspector general or the NCPCCI examination for electrical inspector one (1) and two (2) family.

(6) Following review and approval of the applicant's qualifications and examination results by the electrical advisory committee, the department shall issue certification for the appropriate electrical inspector classification and the inspector shall be authorized to conduct inspections as specified in Section 1(3) of this administrative regulation.

(7) Certificates issued pursuant to this section shall be valid from July 1 to June 30.

(8) Fully certified inspectors shall, upon request, be placed on "inactive" status upon payment of fees and otherwise complying with this administrative regulation. The "inactive" certificate shall be converted to "active" in order to be authorized to make electrical inspections.

(9) All certified electrical inspectors holding a valid certification under previous law shall be exempt from the testing requirements of this administrative regulation.

**Section 7. Renewals of "General" and "One (1) and Two (2) Family" Certificates.** (1) Certification shall be issued to individuals and shall not be issued to corporations, partnerships, companies or any other entities.

(2) All electrical inspector certifications, except temporary certificates, shall expire on June 30 every year. The department shall mail each certified inspector, prior to the date of expiration, a renewal application form and the certification shall be renewed subject to the terms and conditions of this administrative regulation.

(3) A renewal fee in the sum of twenty-five (25) dollars shall be paid by each certified electrical inspector. The fee shall be paid before June 30 in each succeeding year in order to maintain certification.

**Section 8. Duties and Responsibilities of a Certified Electrical Inspector.** (1) Each certified electrical inspector shall attend at least one (1) continuing education program each year. These programs shall be acceptable only if approved by the electrical advisory committee.

(2) All electrical inspections shall be made in compliance with the edition of the National Electrical Code, set forth in the Kentucky Building Code (815 KAR 7:100 [7:090]).

(3) In addition to the National Electrical Code, the electrical inspector shall familiarize himself with the applicable building codes or fire safety codes governing buildings in the area where he performs inspections to the extent that it is necessary to determine the occupancy load of a facility.

(4) The electrical inspector shall make a rough-in and final inspection and other inspections as may be necessary to approve the system.

(a) Upon completion of the rough-in inspection, the inspector shall attach a red sticker with his signature and certification number on the main service equipment or at some other appropriate location.

(b) Upon final approval of an electrical installation, the inspector shall attach a green sticker to the main service equipment with his

signature and certification number, name of the project and location, stating that the system is in compliance with the National Electrical Code. The inspector shall also provide the owner or the owner's agent with a certificate of compliance.

(c) Temporary approvals issued by the inspector shall not authorize occupancy of the facility. The sticker issued for temporary approval shall be yellow.

(5) Red, yellow and green stickers and certificates of compliance to be used by the electrical inspector shall be issued or approved by the department.

(6) Each electrical inspector shall make and retain for a minimum of three (3) years a complete record of each inspection. These records shall contain, as a minimum, the following information:

(a) Sufficient information to identify the location of the structure inspected;

(b) The date of the inspection;

(c) The type of structure, whether residential, commercial, industrial or other;

(d) The designation of any required permits and the agency granting the permit;

(e) The size and complexity of the structure;

(f) Deficiencies in meeting code requirements and any action required to comply; and

(g) Any other pertinent information considered necessary to allow for a review of the inspection.

(7) These records shall be available for examination by any authorized representative of the department upon request.

**Section 9. Complaints and Grievance Procedures.** (1) A person who believes that any act or omission of an electrical inspector certified by the department has caused an undue hardship on him as a result of the alleged misconduct in the performance of his duties, shall file a complaint against the inspector.

(2) All complaints or allegations of misconduct shall be submitted in writing to the commissioner; shall include the nature of the alleged misconduct, with specific details as to acts, names, dates and witnesses; and shall specify the action requested of the commissioner.

(3) Following an investigation, the commissioner may, at his discretion, cause the matter to be heard and a recommendation rendered by the electrical advisory committee; or, he may set the matter for public hearing or take any other appropriate action to resolve or correct the matter.

**Section 10. Suspension and Revocation of Certification.** The commissioner shall revoke, suspend or refuse to renew the certificate of an electrical inspector who is determined, by the commissioner after a departmental hearing, to have:

(1) Engaged as an electrical contractor, worked as an electrician or engaged in any other activity in the electrical industry or has pecuniary or associational interests which constitutes a conflict of interest; or

(2) Engaged in fraud, deceit or misrepresentation in obtaining certification; or

(3) Been guilty of negligence, incompetence or misconduct as set forth by this administrative regulation in the field of electrical inspection; or

(4) Affixed or caused to be affixed a seal of approval of issuing certificates of approval for any electrical installation subject to his inspection when he has not personally inspected the installation and found it to be satisfactory in accordance with the code; or

(5) Operated as an electrical inspector in any locality where a court of competent jurisdiction has adjudged him to be in conflict with state or local laws, ordinances, or regulations; or

(6) Knowingly overruled the proper findings of another electrical inspector or attempted to supplant, overrule or otherwise invalidate the judgment of another electrical inspector without first obtaining

express written consent from the original inspector; or

(7) Maintained inaccurate or inadequate recordkeeping as required by Section 8 of this administrative regulation.

Section 11. Electrical Inspections by State Employed Certified Electrical Inspectors. (1) All state-owned property including all buildings being constructed by the state under the authority of the Finance and Administration Cabinet shall be inspected by a certified electrical inspector who is an employee of the state.

(2) State employed certified electrical inspectors shall also inspect, for a fee, if a certified electrical inspector has not been made available by the local government.

(3) State employed certified electrical inspectors shall assert jurisdiction for the electrical inspection of any project subject to state plan review under the Kentucky Building Code.

(4) State employed certified electrical inspectors may inspect state leased facilities, upon request.

Section 12. Interpretations. If any provision of the National Electrical Code can be shown to be unreasonable or impractical as applied to a particular installation and if deviation from strict compliance would not create a safety hazard because of a particular use or condition, an individual may request to appear before the electrical advisory committee of the Department of Housing, Buildings and Construction to request a variance from the code. Upon advice from the committee, the department shall render its decision in the matter and the decision shall be appealable to the Board of Housing, Buildings and Construction where appropriate.

CHARLES A. COTTON, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: June 14, 1995

FILED WITH LRC: June 14, 1995 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 27, 1995 at 10 a.m., local time, in the office of the Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 22, 1995, (five days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Judith G. Walden, General Counsel

(1) Type and number of entities affected: Approximately 10 state certified electrical inspectors who obtain temporary certification each year.

(2) Direct and indirect costs or savings on the: This amendment of the administrative regulation impacts the duration of a temporary certificate and does not impact the cost.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: This amendment will have no impact on either cost of living or employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: This administrative regulation is implemented statewide but does not affect the cost of doing business within the state.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: The amendment itself will not increase costs or paperwork; renewal information sent out once a year and this information will be included at that time.

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or 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: No additional paperwork requirements created by this amendment.

(4) Assessment of anticipated effect on state and local revenues: State revenue could increase slightly if the need for temporary certification increases as the result of the certification duration being reduced from 18 months to 9 months.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Temporary certification fees will more than cover the administrative costs of this change which is very limited in scope.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on: No significant impact because of limited scope of regulation change. Only approximately 10 state certified inspectors will be affected each year.

(a) Geographical area in which administrative regulation will be implemented: Statewide

(b) Kentucky: Statewide.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Electrical Advisory Committee considered various alternatives and recommended that temporary certification be reduced from 18 months to 9 months.

(8) Assessment of expected benefits: Will provide greater assurance of qualified inspectors.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effect on public health or environmental welfare created by this amendment. Public safety only slightly enhanced by greater assurance of qualified inspectors.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: Enhancement of public safety would not be achieved.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: ( a ) Necessity of proposed regulation if in conflict: No known statute, regulation or policy in conflict with this proposed amendment.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Limited scope and nature of this change does not lend itself to tiering.

## ADMINISTRATIVE REGISTER - 121

### CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management and Development (Amendment)

#### 904 KAR 2:046. Adverse action; conditions.

RELATES TO: KRS 205.200(2), 205.245, 45 CFR 205.10(a)(4), 206.10(a)(4)

STATUTORY AUTHORITY: KRS 13A.120, 194.050

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall administer public assistance programs including Aid to Families with Dependent Children (AFDC) and mandatory and optional supplementation of persons who are certain aged, blind and have a disability ~~(disabled individuals)~~. This administrative regulation sets forth the conditions under which an application is denied or assistance is decreased or discontinued and advance notice requirements.

Section 1. Definitions. (1) "Applicant" means an individual applying for:

- (a) State supplementation benefits; or
- (b) AFDC benefits.
- (2) "Application" means the process set forth in 904 KAR 2:035.
- (3) "Recipient" means:
  - (a) A person who is [An] aged, blind, or has a disability ~~(disabled individual)~~ receiving state supplementation benefits; or
  - (b) A member of an AFDC assistance group as defined in 904 KAR 2:016.

Section 2. Reasons for Adverse Action. (1) An application shall be denied if:

- (a) Income or resources exceed the standards for the specific assistance program as set forth in 904 KAR 2:016 and 904 KAR 2:015;
- (b) The applicant does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 904 KAR 2:006, 904 KAR 2:015 and 904 KAR 2:370;
- (c) Despite receipt of written notice detailing the additional information needed for a determination, the applicant fails to provide sufficient information or clarify conflicting information necessary for a determination of eligibility;
- (d) The applicant fails to keep the appointment for an interview;
- (e) The applicant requests in writing voluntary withdrawal of application;
- (f) Department staff is unable to locate the applicant; or
- (g) The applicant is no longer domiciled in Kentucky.
- (2) Assistance shall be discontinued or decreased if:
  - (a) Income or resources of the recipient increase or deductions decrease resulting in reduced or discontinued benefits as set forth in 904 KAR 2:016 or 904 KAR 2:015;
  - (b) The recipient does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 904 KAR 2:006, 904 KAR 2:015 or 904 KAR 2:370;
  - (c) Despite receipt of written notice detailing the additional information needed for a redetermination, the recipient fails to provide sufficient information or clarify conflicting information necessary for a redetermination of eligibility;
  - (d) The recipient fails to keep the appointment for an interview;
  - (e) The cabinet is recovering AFDC overpayments through recoupment;
  - (f) Department staff is unable to locate recipient;
  - (g) The recipient is no longer domiciled in Kentucky;
  - (h) Change in program policy adversely affects the recipient; or
  - (i) For AFDC only, the grant amount is less than ten (10) dollars.

Section 3. Notification of Denial of Applications. If an application

is denied, the applicant shall be given:

- (1) Written notification of the denial which shall include:
  - (a) The reason for the denial; and
  - (b) The cites of the applicable state administrative regulation.
- (2) The right to a fair hearing as provided by 904 KAR 2:055.

Section 4. Advance Notice of a Decrease or Discontinuance. (1) The recipient shall be given ten (10) days advance notice of the proposed action if a change in circumstances indicates:

- (a) A money payment shall be:
  - 1. Reduced;
  - 2. Suspended; or
  - 3. Discontinued; or
- (b) An individual shall be removed from the AFDC grant, even if the grant increases.
- (2) The ten (10) days advance notice of the proposed action shall:
  - (a) Be in writing;
  - (b) Explain the reason for the proposed action;
  - (c) Cite the applicable state administrative regulation;
  - (d) Extend the opportunity to confer with the worker or to request a fair hearing.
- (3) A hearing request received during the advance notice period may result in delay of the decrease or discontinuance pending the hearing officer's decision, as provided in 904 KAR 2:055, Section 4.

Section 5. Exceptions to the Advance Notice Requirement. An advance notice of proposed action shall not be required, but written notice of action taken shall be given, if the decrease or discontinuance results from:

- (1) Information reported by the recipient if the recipient signs a waiver of the notice requirement indicating understanding of the consequences;
- (2) A clear written statement, signed by the recipient, that he no longer wishes assistance is received by the department;
- (3) Factual information that the recipient, or an AFDC payee when there is no relative who can serve as a new payee, has died is received by the department;
- (4) Whereabouts of the recipient are unknown and mail addressed to him is returned indicating no known forwarding address; however, a returned check shall be made available to him if his whereabouts become known during the payment period covered by the returned check;
- (5) Establishment by the agency that assistance has been accepted in another state;
- (6) Removal from the home of an AFDC child by judicial order or voluntary placement in foster care by his legal guardian;
- (7) The person who is aged, blind or has a disability and is a ~~(disabled)~~ supplementation recipient, enters a nursing facility resulting in vendor payment status;
- (8) The recipient enters:
  - (a) A penal institution; or
  - (b) If under sixty-five (65), a tuberculosis hospital; or
  - (c) If between twenty-one (21) and sixty-five (65), a mental hospital;
- (9) The granting of a special allowance, or time limited assistance, which:
  - (a) Shall be terminated at the end of a specified period or under specific conditions; and
  - (b) The recipient shall be informed in writing at the time the allowance or assistance is granted of the automatic termination; and
  - (c) The notice may be provided at the time of approval, or subsequently.

Section 6. Material Incorporated by Reference. (1) The form necessary for adverse action in the AFDC and Mandatory and Optional Supplementation Programs is being incorporated effective December 1, 1993. This form is the KIM-105, revised 9/94 ~~9/92~~.



(2) Material incorporated by reference may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner  
MASTEN CHILDERS, II, Secretary

APPROVED BY AGENCY: May 9, 1995

FILED WITH LRC: June 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1995 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by July 16, 1995 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: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: This amendment only implements appropriate language as required by the ADA. It does not make any policy changes as they relate to adverse actions.

(2) Direct and indirect cost or savings to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect cost or savings: None

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No funding involved in the amendment.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. American with Disabilities Act.

2. State compliance standards. Same as federal mandate.

3. Minimum or uniform standards contained in the federal mandate. Language shall not be insensitive, demeaning or otherwise unacceptable to persons with a disability.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. None

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? None

#### CABINET FOR HUMAN RESOURCES Department for Social Insurance Division of Management and Development (Amendment)

904 KAR 2:050. Time and manner of payments.

RELATES TO: KRS 205.220(1), 45 CFR 255.3

STATUTORY AUTHORITY: KRS 194.050, 45 CFR 255.3

NECESSITY AND FUNCTION: The Cabinet for Human Resources shall, under the provisions of KRS Chapter 205, administer the assistance programs of Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills (JOBS) and a state funded program of money payments to those persons who are aged, blind and have a disability who are ~~disabled individuals~~ disadvantaged by the implementation of the Supplemental Security Income (SSI) Program. In addition KRS 205.245 provides for money payments to certain other persons who are aged, blind or have a disability ~~disabled individuals~~. The cabinet shall make payments, described in 904 KAR 2:015, for the persons with mental illness or mental retardation ~~mentally ill or mentally retarded~~ (MIMR) supple-



ment program. This administrative regulation sets forth the time and the manner in which payments are made.

Section 1. Authorization of AFDC Assistance Payments. (1) Method of payment.

- (a) A payment shall be issued monthly by check; and
- (b) A payment shall be issued prospectively.
- (2) Initial payment.
- (a) An AFDC approval shall not be made for any period prior to the date of application.
- (b) The effective date of an initial payment for an AFDC approval shall be the date an application is filed if all eligibility factors are met as of that date.

(c) If all eligibility factors are not met as of the day of application, the approval shall be effective the date on which all factors are met.

(3) Subsequent and special payments.

(a) A subsequent AFDC payment shall be made for an entire month in which all technical eligibility factors are met as of the first day of the month.

(b) A subsequent AFDC payment shall not be made to an individual for any month in which the amount of the benefit payment, prior to any recoupment, would be less than ten (10) dollars. Any individual who is denied a payment for this reason shall be deemed a recipient of AFDC for all other purposes.

(c) A special payment shall be issued:

1. When the regular monthly payment received is less than the entitled amount based on the household circumstances; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of payments.

(a) An AFDC payment is unconditional and is exempt from any remedy for the collection of a debt, lien or encumbrance from any individual or agency other than the cabinet.

(b) The cabinet shall initiate recoupment to recover overpayment of benefits.

(5) Eligible payee.

(a) A money payment shall usually be issued in the name of the eligible applicant.

(b) A protective payment may be made to a third party payee if:

1. A determination has been made by the agency that poor money management is contributing to the unsuitability of the home for a needy child; or

2. The payee has refused, without good cause as specified in 904 KAR 2:006 and 904 KAR 2:370, to participate in the Job Opportunities and Basic Skills (JOBS) Program or the Child Support Program.

(c) An AFDC payment for the month of death may be reissued to:

1. The widow or widower;

2. The parent;

3. The guardian; or

4. The executor or administrator of the estate.

(d) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

Section 2. Supportive Services for JOBS Participants. (1) A JOBS supportive services or child care payment shall be made by check and shall be made monthly.

(2) A supportive services payment for a JOBS participant shall be made according to the type of service provided, as follows:

(a) A child care payment shall be issued:

1. On a one (1) month retrospective cycle;

2. Directly to the provider; and

3. Within thirty (30) days of receipt of appropriate verification, as specified in 904 KAR 2:017.

(b) Transportation.

1. A transportation payment shall be made prospectively, not to exceed ninety-three (93) dollars a month, for anticipated transportation costs.

2. A transportation payment shall be made directly to the AFDC recipient.

(c) Other approved supportive services payments shall be made:

1. Directly to the provider; and

2. Within thirty (30) days of receipt of appropriate verification of service delivery of billing, as specified in 904 KAR 2:017.

Section 3. Authorization of a State Supplementation Payment. (1) Method of payment.

(a) A payment shall be issued monthly by check; and

(b) A payment shall be issued prospectively.

(2) Initial payment.

(a) The effective date for State Supplementation Program (SSP) approval shall be the first day of the month in which:

1. An application is filed; and

2. All eligibility factors are met.

(b) A SSP approval shall be made for the entire month during any part of which eligibility factors are met.

(3) Subsequent and special payments.

(a) A SSP payment shall be made for an entire month in which eligibility factors are met as of the first day of the month.

(b) A special payment shall be made:

1. When the regular monthly payment received is less than the entitled amount based on the household circumstances; and

2. For a period of up to twelve (12) months preceding the month of error correction, if the error existed in the preceding months.

(4) Inalienability of a payment.

(a) A SSP money payment is unconditional and is exempt from any remedy for the collection of a debt, lien or encumbrance from any individual or agency other than the cabinet.

(b) The cabinet may initiate recoupment to recover overpayment of benefits.

(5) Eligible payee.

(a) A money payment shall usually be issued in the name of the eligible applicant.

(b) A money payment may be issued to:

1. The legally appointed committee or guardian; or

2. The person serving as the representative payee for another statutory benefit such as SSI.

(c) A SSP payment for the month of death may be reissued to:

1. The widow or widower;

2. The parent;

3. The guardian; or

4. The executor or administrator of the estate.

(d) If the payment is reissued to an executor or administrator, a copy of the appointment order shall be obtained as verification.

Section 4. Authorization of Persons With Mental Illness or Mental Retardation [a Mentally Ill or Mentally Retarded] (MIMR) Supplement Program Payment. (1) Method of payment.

(a) The MIMR supplement payment shall be made:

1. Quarterly;

2. By the last day of the month following the month in which the certified quarter ends.

(b) The training reimbursement payment for the MIMR Supplement Program shall be issued within thirty (30) days of receipt of appropriate documentation, as specified in 904 KAR 2:015.

2. Initial payment.

(a) Following the notification of the cabinet by the personal care home (PCH) of its intent to participate, the effective date of the MIMR supplement shall be the first day of a quarter in which certification requirements contained in 904 KAR 2:015 are met.

(b) MIMR approvals shall be made:

1. For the entire quarter during any part of which certification factors are met, unless a conditional rating is received from the Office of the Inspector General; and

2. If a conditional rating occurs, payment shall be made only for

eligible months as specified in 904 KAR 2:015.

(3) Subsequent payments shall be made for any month within a quarter in which eligibility factors are met.

(4) Eligible payee.

(a) Payment for the MIMR supplement shall be made to the participating PCH, meeting MIMR certification requirements, for an eligible calendar quarter, as specified in 904 KAR 2:015.

(b) Payment for the MIMR training reimbursement shall be made to the participating PCH.

JOHN L. CLAYTON, Commissioner

MASTEN CHILDERS, II, Secretary

APPROVED BY AGENCY: June 2, 1995

FILED WITH LRC: June 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1995 at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by July 16, 1995 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: William K. Moore, Deputy Counsel for Administrative Law, Cabinet for Human Resources, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: This amendment only implements appropriate language as required by the ADA. It does not make any policy changes as they relate to time and manner of payments.

(2) Direct and indirect cost or savings to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect cost or savings: None

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No funding involved in the amendment.

(6) To the extent available from the public comments received,

the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(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: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Eligibility conditions for AFDC must be applied on a consistent and equitable basis in accordance with federal regulations at 45 CFR 233.10(a)(1).

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. American with Disabilities Act.

2. State compliance standards. Same as federal mandate.

3. Minimum or uniform standards contained in the federal mandate. Language shall not be insensitive, demeaning or otherwise unacceptable to persons with a disability.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. None

3. State the aspect or service of local government to which this administrative regulation relates. None

4. How does this administrative regulation affect the local government or any service it provides? None

## PROPOSED ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JUNE 15, 1995

**KENTUCKY HIGHER EDUCATION  
STUDENT LOAN CORPORATION  
(New Administrative Regulation)**

**15 KAR 1:040. Eligibility for insured student loans made directly by the corporation.**

RELATES TO: KRS 164A.040, 164A.050(2), 164A.060(1), (2), (4), 164A.065, 34 CFR 668.7, 682.201, 20 USC 1078(a), 1078-2, 1078-3, 1078-8, 1091

STATUTORY AUTHORITY: KRS 13A.100, 164A.060(8)

NECESSITY AND FUNCTION: KRS 164A.040 authorizes the Kentucky Higher Education Student Loan Corporation to finance student loan operations in Kentucky. KRS 164A.060(1) empowers the corporation to make or participate in the making of insured student loans. KRS 164A.065 authorizes the corporation to exercise all of its powers in furtherance of making loans, including federal PLUS loans authorized by Section 428B of the federal Act (20 USC 1078-2) and federal consolidation loans authorized by Section 428C of the federal Act (20 USC 1078-3). This administrative regulation is necessary to establish the eligibility and procedures for applying for an insured student loan made directly by the corporation.

Section 1. Definitions. (1) "Adverse credit history" means information available to the corporation that indicates that the applicant:

(a) Is ninety (90) days or more delinquent in the repayment of a debt;

(b) Has been, within five (5) years preceding the date of any credit report on which the determination of adverse credit is based, the subject of a determination of default, foreclosure, repossession, tax lien, or wage garnishment for any debt or a write-off of any debt under the federal Act.

(2) The definition of "corporation" is governed by KRS 164A.020(3).

(3) The definition of "eligible borrower" is governed by Section 428C(a)(3) of the federal Act (20 USC 1078-3(a)(3)).

(4) The definition of "eligible institution" is governed by KRS 164A.020(4).

(5) The definition of "eligible student loans" is governed by Section 428C(a)(4) of the federal Act (20 USC 1078-3(a)(4)).

(6) "Federal consolidation loan" means the loan program authorized by Section 428C of the federal Act (20 USC 1078-3).

(7) "Federal Family Educational Loan Program (FFELP)" means the programs of insured student loans authorized by Part B of Title IV of the federal Act (20 USC 1071, et seq.) including federal consolidation loans, federal PLUS loans, and Robert T. Stafford federal student loans.

(8) "Federal PLUS Loan" means the loan program authorized by Section 428B of the federal Act (20 USC 1078-2).

(9) The definition of "federal Act" is governed by KRS 164A.020(6).

(10) The definition of "guarantee agency" is governed by KRS 164A.020(7).

(11) The definition of "insured student loan" is governed by KRS 164A.020(9), as augmented by KRS 164A.065.

(12) "Pell Grant" means the grant program authorized by subpart 1 of Part A of the federal Act (20 USC 1070a).

(13) The definition of "qualified student" is governed by KRS 164A.020(8).

(14) "Reaffirmation" means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower signing a new promissory

note or repayment schedule, or making a payment on the loan;

(15) "Robert T. Stafford Federal Student Loan" means the student loan program, consisting of subsidized and unsubsidized loans, authorized by sections 428 and 428H of the federal Act (20 USC 1078 and 1078-8).

Section 2. Eligibility for Federal Consolidation Loan Made by the Corporation. An individual shall be eligible to borrow a federal consolidation loan from the corporation if, at the time of application:

(1) The applicant:

(a) Is an eligible borrower with eligible student loans outstanding;

(b) Has no other application pending with any other lender for a federal consolidation loan;

(c) Supplies the names, addresses and telephone numbers of a minimum of two (2) verifiable personal references who are not attending an educational institution;

(d) Is determined by the corporation to not have an adverse credit history, except that if the individual's credit history is adverse, the individual shall demonstrate that he has made an effort to resolve past delinquencies, including payment arrangements satisfactory to a guarantee agency on any defaulted student loan;

(e) Is gainfully employed or otherwise has sufficient verifiable income to repay the federal consolidation loan on the payment schedule established by the corporation;

(f) Agrees to notify the holder of the loan of any changes in address; and

(g) Certifies that the corporation holds an outstanding eligible student loan of the borrower that is being consolidated or that the borrower has unsuccessfully sought a federal consolidation loan from the holders of the outstanding eligible student loans and was unable to secure a federal consolidation loan from the holder; and

(2) The federal consolidation loan is determined eligible for insurance by the Kentucky Higher Education Assistance Authority or another guarantee agency of the corporation's choice.

Section 3. Eligibility for a FFELP Loan Other than Federal Consolidation Loans. An individual shall be eligible to borrow a FFELP loan, other than a federal consolidation loan, if, at the time of application, the applicant:

(1) In the case of an undergraduate student who seeks a Robert T. Stafford loan for the cost of attendance at a school that participates in the Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Pell Grant, a preliminary determination, from the school of the student's eligibility or ineligibility for a Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(2) In the case of a borrower whose previous FFELP loan was cancelled due to total and permanent disability:

(a) Provides reaffirmation of the loan amount that previously was canceled due to the borrower's total and permanent disability or that was written off;

(b) Obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

(c) Signs a statement acknowledging that any new FFELP loan the borrower receives cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates;

(3) Is not serving in a medical internship or residency program, except for an internship in dentistry.

(4) Is a resident of Kentucky or is in attendance at a Kentucky institution of higher education;

(5) Is an eligible student or a parent borrowing on behalf of an

eligible student as specified in Section 4 of this administrative regulation;

(6) Submits an application and promissory note fully completed and signed by the borrower;

(7) For purposes of borrowing a federal PLUS Loan, is determined by the corporation to not have an adverse credit history, except:

(a) If the applicant demonstrates to the satisfaction of the corporation that extenuating circumstances exist that excuse or correct the adverse credit history; or

(b) The applicant obtains an endorser who is determined by the corporation to not have an adverse credit history.

(8) Is determined to be eligible for loan insurance by the Kentucky Higher Education Assistance Authority or another guarantee agency of the corporation's choice.

Section 4. Student Eligibility. The eligibility of a student for purposes of obtaining a FFELP loan is governed by 34 CFR 668.7; 52 FR 45725, Dec. 1, 1987; 56 FR 36697, July 31, 1991; 57 FR 9006, March 13, 1992; 57 FR 27703, 27704, June 22, 1992; 58 FR 32200, 32202, 32203, June 8, 1993; 59 FR 12520, March 16, 1994; 59 FR 21866, April 26, 1994.

Section 5. Request for Redetermination of Eligibility. (1) Upon a determination by the corporation that the loan will not be made on the basis of an adverse credit history, the applicant or any prospective endorser declined due to an adverse credit history may submit a written request for redetermination of eligibility to the corporation within thirty (30) calendar days after the date of the denial notice provided by the corporation. The applicant or prospective endorser may submit with the request such documentation as the applicant or prospective endorser believes necessary, and shall submit such additional documentation as the corporation finds necessary, to demonstrate to the satisfaction of the corporation that:

(a) The credit report or other information relied upon by the corporation is erroneous or outdated;

(b) Extenuating circumstances beyond the control of the individual contributed materially to the adverse credit history; or

(c) The individual has made a substantial good faith effort to resolve past delinquencies, including payment arrangements satisfactory to a guarantee agency on any defaulted insured student loan;

(2) The corporation shall, upon timely submission of all documentation, notify the applicant and any prospective endorser in writing of the final decision on whether it will make the desired loan.

JOHN S. CAIN, Chairman

APPROVED BY AGENCY: May 16, 1995

FILED WITH LRC: June 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, July 21, 1995 at 10 a.m. at 10180 Linn Station Road, Louisville, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by July 17, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who 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: Mr. Roger Tharp, Chief Operating Officer, Kentucky Higher Education Student Loan Corporation, P.O. Box 24266, Louisville, Kentucky 40224-0266, (502) 329-7079.

## REGULATORY IMPACT ANALYSIS

Agency Contact: Paul P. Borden

(1) Type and number of entities affected: It is estimated that approximately 600 borrowers will consolidate their loans during the first year, compared with approximately 4,000 other FFELP loans. The Kentucky Higher Education Student Loan Corporation anticipates making \$10,800,000 in consolidation loans and \$12,000,000 in FFELP loans within the first year of implementation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no appreciable changes in cost of living and/or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no appreciable change in the cost of doing business.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The number of applications processed for consolidation and FFELP loans will equal the number of borrowers.

2. Second and subsequent years: The number of applications processed for consolidation loans is expected to increase by 15%.

(3) Effects on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: Expected first year costs include: \$40,000 for additional staff; \$20,000 loan referral fee paid to lenders of other FFELP loans; \$53,000 federal consolidation loan fee; \$5,130 from .5% lender loan fee on consolidations; and \$5,700 from lender loan fee on FFELP loans. Also, a 1% guarantee fee will be paid to the guarantor on consolidation loans and a 3% origination fee will be paid to the United States Department of Education by the borrower of a FFELP loan. Expected first year revenues include: \$1,026,000 from interest @ 9.5% on consolidation loans; and \$1,140,000 from interest on other FFELP loans.

2. Continuing costs or savings: As the volume of consolidation loans is expected to increase by 15% annually, the costs (except for staffing costs) and revenues will increase proportionately.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The number of applications processed will equal the number of borrowers.

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenue is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Higher Education Student Loan Corporation will be the source of revenue for implementation and enforcement of this regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: There will be no noticeable impact.

(b) Kentucky: Same as (6)(a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative method was considered. This new administrative regulation 15 KAR 1:040 authorizes the Kentucky Higher Education Student Loan Corporation to make direct and consolidation loans. This regulation is necessary to establish the procedures for making direct and consolidation loans to eligible borrowers.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effect on public health and environmental welfare.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: Same as (8)(a) above.

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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

(10) Any additional information or comments: N/A

(11) Was tiering applied? No. The concept of tiering is not applicable to this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by the federal Act, and consequently does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 CFR 682.201; 34 CFR 668.7; 20 USC 1078, 1078-2, 1078-3, 1078-8, 1091(b).

2. State in sufficient detail the state compliance standards: This regulation provides for borrowers' eligibility for FFEL Program Loans, including federal consolidation loans. The regulation provides that the borrower shall meet the federal requirements for a loan. The borrower must be an eligible borrower under the federal statutes and regulations, and, for a consolidation loan, the loans to be consolidated must be eligible loans under the federal statutes and regulations. The borrowers will be evaluated on the basis of the criteria contained in the federal statutes and regulations. The loans made by the corporation must be loans that are subject to insurability by the Kentucky Higher Education Assistance Authority, and thus must meet all federal requirements for insurability. 34 CFR 682.201, entitled "eligible borrowers", describes the qualifications for borrowing federally reinsured loans under the FFEL program, and requires that the borrower meet conditions set forth in 34 CFR 668.7. Those requirements include, for a student, that the student is enrolled at least half-time in a participating institution, reaffirms any previously cancelled loan, and submits documentation of eligibility for Pell Grant. Those requirements include, for a parent, meeting the same qualifications as a student pertaining to citizenship, non-default on other loans, and submission of a statement of educational purpose. 34 CFR 668.7, entitled "eligible student", contains the requirements for student eligibility to receive student financial assistance, including student loans. The requirements encompass citizenship status, enrollment status, non-default on other student loans, and a determination by the institution of ability to benefit from the instruction. 20 USC 1078 contains the requirements for reinsurance by the federal government of federal Stafford loans. 20 USC 1078-2 contains the requirements for reinsurance by the federal government of federal PLUS loans. 20 USC 1078-3 contains the requirements for reinsurance by the federal government of federal consolidation loans. 20 USC 1078-8 contains the requirements for reinsurance by the federal government of unsubsidized Stafford loans for middle-income borrowers. 20 USC 1091(b) contains the requirements for student eligibility for any loan under the FFEL Program.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal mandate requires the corporation, as a lender under the Higher Education Act, to ensure

that its lending standards, policies, and procedures comport with the Higher Education Act, 20 USC 1071, et seq. and that its program meets all regulatory requirements for making loans to eligible students and other borrowers.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The regulation does not impose stricter requirements than the federal mandate. The intended purpose of the administrative regulation is to assure that any person eligible for a FFELP Loan may receive such a loan from the Kentucky Higher Education Student Loan Corporation as a participating lender. Under the federal statutes and regulations, a participating lender, such as the Kentucky Higher Education Student Loan Corporation, retains the discretion to establish its own lending policies, subject to federal and state nondiscrimination laws and consumer credit laws. A lender could limit loans to only a relatively small segment of the public eligible to receive loans under the federal program. The Kentucky Higher Education Student Loan Corporation intends to provide the broadest possible access to loans for the public by adopting as its borrower eligibility requirements the minimum requirements set forth in the federal statutes and regulations.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: None

#### KENTUCKY REVENUE CABINET Office of General Counsel Division of Tax Policy and Research (New Administrative Regulation)

**103 KAR 16:190. The unitary method of reporting for corporation income tax purposes.**

RELATES TO: KRS 141.120, 141.200

STATUTORY AUTHORITY: KRS 131.130(1), 141.050(4), 141.120 (as interpreted by the Kentucky Supreme Court in the cases styled: *Dept. of Revenue v. Early & Daniel Co., Inc.*, Ky. 628 S.W.2d 630 (1982), *Armco, Inc. v. Revenue Cabinet, Ky.*, 748 S.W.2d 372 (1988), and *GTE & Subsidiaries v. Revenue Cabinet, Commonwealth of Kentucky*, 94-SC-168-DG (Dec. 22, 1994))

NECESSITY AND FUNCTION: This administrative regulation is necessary to clarify the methods available for calculating Kentucky taxable net income in light of the Kentucky Supreme Court's interpretations of the KRS Chapter 141, particularly KRS 141.120 and 141.200. It also serves to establish consistent guidelines for filing corporation income tax returns of corporations comprising unitary business groups. The lack of authoritative guidelines has been a significant problem for taxpayers and the cabinet for more than twenty (20) years. This administrative regulation sets forth the unitary method of reporting the business income of corporations comprising a unitary business group and the principles that determine the scope of a unitary business group for the filing of a unitary income tax report. While the *GTE* decision upheld the right of a group of unitary corporations to compute business income on a unitary basis, the power of the cabinet to compute business income on a unitary basis had previously been upheld by the Kentucky Supreme Court in its *Early & Daniel* and *Armco* decisions. (These decisions specifically construed KRS 141.120.) Furthermore, the Kentucky Supreme Court held in *GTE* that a unitary business group such as GTE and subsidiaries could not compute its business income without using the unitary reporting method. Finally, the Kentucky Supreme Court's decision in

GTE was based on the fact that GTE did not seek authority to change its reporting methods from year to year.

Section 1. Definitions. For purposes of this administrative regulation:

(1) "Common parent" means a corporation who directly or indirectly owns more than fifty (50) percent of the voting power of the stock of one (1) or more corporations and no other corporation owns more than fifty (50) percent of the voting power of the stock of that corporation.

(2) "Corporation" includes:

(a) Any partnership electing to be treated as a corporation for federal income tax purposes; and

(b) Any limited liability company treated as a corporation for federal income tax purposes.

(3) "Domestic international sales corporation" or "DISC" means a domestic corporation making an election under 26 USC 992.

(4) "Employment of any other method" shall not include the unitary method of reporting the business income of a unitary business group.

(5) "Entity assignment fraction" means the ratio used to assign the unitary business income or loss as apportioned to Kentucky to a Kentucky unitary corporation.

(6) "Exclusion of any one (1) or more of the factors" means that the three (3) factor formula of property, payroll, and sales as prescribed by KRS 141.120(8) may be changed to a two (2) factor formula by eliminating one (1) of the three (3) factors (property, payroll, or sales) or a one (1) factor formula by eliminating two (2) of the three (3) factors (property, payroll, or sales).

(7) "Foreign sales corporation" or "FSC" means a corporation as defined in 26 USC 922.

(8) "Inclusion of one (1) or more additional factors" means that the three (3) factor formula of property, payroll, and sales prescribed by KRS 141.120(8) may be changed by adding one (1) or more additional factors.

(9) "Income apportionment fraction" means the ratio used to apportion the unitary business income or loss to Kentucky.

(10) "Intercompany" means between two (2) or more corporations in the same unitary business group.

(11)(a) "Kentucky corporation" means any corporation:

1. Organized under the laws of Kentucky;

2. Having its commercial domicile in Kentucky;

3. Owning or leasing property in Kentucky; or

4. Having one (1) or more individuals receiving compensation in Kentucky as defined in KRS 141.120(8)(b).

(b) The property or activity described in subparagraphs 3 and 4 of paragraph (a) shall not include any property or activity protected by 15 USC 381 ("PL 86-272").

(12) "Kentucky unitary corporation" means a Kentucky corporation in a unitary business group.

(13) "Net operating loss" as used in 26 USC 172 for Kentucky income tax purposes means the Kentucky taxable net loss as computed in Section 9 of this administrative regulation.

(14) "Part-year member" means a corporation which either becomes a member or ceases to be a member of the unitary business group after the beginning of a taxable year.

(15) "Principal Kentucky corporation" means the Kentucky unitary corporation responsible for all income tax filings, maintenance of records, and audits of the unitary business group.

(16)(a) "Related group" means:

1. A common parent and all corporations in which it directly or indirectly owns more than fifty (50) percent of the total voting power of the stock of the corporation or corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts directly or indirectly own more than fifty (50) percent of the total voting power of the stock of each corporation.

(b) For purposes of paragraph (a) of this subsection, the constructive ownership rules of 26 USC 1563(e) shall apply.

(17) "Separate accounting" means to specifically account for the income, expenses, and net income from each separate location of a corporation's business activity.

(18) "Separate entity reporting" means a method of income tax reporting which treats each corporate entity discretely for the purpose of determining the business income or loss as well as the nonbusiness income or loss of a single corporation.

(19) "Separate income tax return" means a single Kentucky corporation income tax return by which a Kentucky corporation reports the taxable net income or loss and remits the corporation income tax due for the corporation.

(20) "Taxable income" means:

(a) As used in 26 USC 170 for Kentucky income tax purposes, the unitary business income or loss subject to apportionment as computed in accordance with Section 4 of this administrative regulation before the adjustment for nonbusiness income or loss provided in Section 4(4) of this administrative regulation.

(b) As used in 26 USC 172 for Kentucky income tax purposes, the Kentucky taxable net income or loss before the Kentucky net operating loss deduction as computed in Section 9 of this administrative regulation.

(21) "Unitary business group" means two (2) or more corporations which are in the same related group whose business activities are interdependent as demonstrated by:

(a) Centralized management; and

(b) 1. Functional integration; or

2. Economies of scale.

(22) "Unitary income tax report" means a single Kentucky corporation income tax report of the unitary business group the purpose of which is to determine the following:

(a) Unitary business income or loss;

(b) Income apportionment fraction;

(c) Unitary business income or loss apportioned and nonbusiness income or loss allocated to Kentucky;

(d) Entity assignment fraction; and

(e) Unitary business income or loss attributable to Kentucky unitary corporations.

(23) "Unitary method of reporting" means a method of reporting the business income or loss of a unitary business group whereby all items of business income and all items claimed as business expense are aggregated to determine net business income or loss of the unitary business group. The aggregate business income is apportioned by means of an apportionment formula to determine the amount of business income or loss attributable to Kentucky. Nonbusiness income or loss is accounted for separately.

(24) "936 corporation" means a corporation making an election under 26 USC 936.

Section 2. Reporting Requirements. (1) Every unitary business group including at least one (1) corporation which is a Kentucky corporation and at least one (1) corporation which has property or payroll without Kentucky shall compute and report its Kentucky business income or loss using the unitary reporting method.

(2) Every Kentucky corporation which is not part of a unitary business group shall compute and report its Kentucky business income or loss using separate entity reporting.

Section 3. Composition of the Unitary Business Group. (1) General rule. A unitary business group shall include:

(a) Any Kentucky corporation;

(b) Any corporation that is not a Kentucky corporation;

(c) Any holding company;

(d) Any domestic international sales corporation;

(e) Any foreign sales corporation; and

(f) Any 936 corporation;

provided that corporation is part of the unitary business group.

(2) Specific prohibitions. A unitary business group shall not include:

(a) Any partnership whether publicly-traded or not publicly-traded (including a joint venture or a limited liability company classified as a partnership for federal income tax purposes), trust, estate, or individual;

(b) Any corporation specifically exempted from the provisions of KRS 141.040;

(c) Any corporation (including a limited liability company) electing the provisions of 26 USC 1361-1379 ("S corporations"); or

(d) Any corporation organized under the laws of any foreign country or political subdivision thereof except as provided in subsection (1)(e) of this section.

(3) For purposes of this section, notwithstanding any other provision of this administrative regulation or any Kentucky Revised Statute, "person" where used in 15 USC 381 ("PL 86-272") to refer to a corporation means a unitary business group.

(4) Presumption.

(a) Any related group is presumed to be a unitary business group.

(b)1. The presumption prescribed in paragraph (a) of this subsection may be rebutted by any corporation in the related group or the cabinet.

2. Any corporation in the related group or the cabinet rebutting the presumption shall present clear and convincing evidence that centralized management or that both functional integration and economies of scale do not exist within the unitary business group.

3. That centralized management or that both functional integration and economies of scale do not exist between each and every corporation in a related group shall not establish that the corporations in the related group are not within the same unitary business group.

Section 4. Computation of Unitary Business Income or Loss Subject to Apportionment. The unitary business income or loss subject to apportionment shall be computed as follows:

(1) Each corporation in a unitary business group shall determine its items of income and the items claimed as deductions in accordance with the provisions of KRS Chapter 141;

(2) The separate items of income, the separate items claimed as deductions, and any intercompany transactions eliminated in accordance with Section 7 of this administrative regulation of every corporation in the unitary business group shall be aggregated to arrive at the combined items of income and the combined items claimed as deductions;

(3) The total combined items claimed as deductions of the unitary business group shall be subtracted from the total combined items of income of the unitary business group; and

(4) Any nonbusiness net income shall be deducted and any nonbusiness net loss shall be added back.

Section 5. Charitable Contribution Deduction. (1) General rule. Every unitary business group shall apply the provisions of 26 USC 170 for Kentucky income tax purposes for any charitable contribution made by any corporation in the unitary business group.

(2) Carry-over of excess contributions.

(a) Any excess contribution allowed by 26 USC 170(d) shall be assigned to each corporation in the unitary business group making a contribution by a fraction:

1. The numerator of which is the separate contribution of the corporation; and

2. The denominator of which is the total contributions of the unitary business group.

(b) Any excess contribution assigned to a corporation in the unitary business group shall be a contribution carry forward of the corporation to whom the excess contribution was assigned.

Section 6. Capital Loss Deduction. (1) The provisions of 26 USC

1211-1212 shall apply for Kentucky income tax purposes to any capital loss of the unitary business group.

(2) The excess of all capital losses of the unitary business group over all capital gains of the unitary business group shall be assigned to each corporation in the unitary business group generating a net capital loss by a fraction,

(a) The numerator of which is the separate net capital loss before intercompany eliminations of every corporation in the unitary business group having a net capital loss; and

(b) The denominator of which is the total net capital losses before intercompany eliminations of the unitary business group.

(3) Any excess capital loss assigned to a corporation in the unitary business group shall be a capital loss carry-back or carry-forward of the corporation to which the capital loss is assigned.

Section 7. Elimination of Intercompany Transactions. (1) Any receipt or expense, any income or loss, and any gain or loss arising from an intercompany transaction shall be eliminated in accordance with the provisions of this section.

(2) Inventories.

(a) Any intercompany profit or loss shall be eliminated from the beginning and ending inventories in computing the cost of goods sold for the unitary business group.

(b) Any elimination of intercompany profit or loss required by paragraph (a) of this subsection shall be made for purposes of the property factor.

(3) Fixed assets and capitalized items.

(a) Any gain or loss on an intercompany sale of business fixed assets or any capitalized intercompany charge or expenditure shall be deferred until:

1. Either the seller or purchaser ceases to be in the unitary business group; or

2. The unitary business group for any reason ceases to use the unitary method of reporting.

(b)1. Any gain or loss that was deferred under paragraph (a) of this subsection shall be reported by the selling corporation as sold on the day immediately preceding the date either corporation ceases to be in the unitary business group or the unitary business group ceases to use the unitary reporting method.

2. If an asset is sold to a person not in the unitary business group, any gain or loss that was deferred under paragraph (a) of this subsection shall be reported by the unitary business group in the year of the sale to the person not in the unitary business group.

(c) When any gain or loss is deferred under paragraph (a) of this subsection, the basis of the asset for property factor purposes shall be the seller's cost.

(d)1. The provisions of paragraph (a) of this subsection shall not apply when an affiliated group which files a consolidated federal return elects not to defer gain or loss on intercompany transfers in which case the federal election will be recognized for Kentucky income tax purposes.

2. A copy of the federal election shall be attached to the unitary income tax report.

(4) Rent.

(a) Any intercompany rental income or expense shall be eliminated from items of income and items claimed as deductions of the unitary business group.

(b) Any intercompany rent charge, expense, or deduction shall be eliminated in computing the property factor and the sales factor.

(5) Sales.

(a) Any intercompany item of income or intercompany item claimed as a deduction shall be eliminated in determining combined items of income and combined items claimed as a deduction of the unitary business group.

(b) Any intercompany sale or any other item of intercompany revenue shall be eliminated in computing the sales factor.



Section 8. Computation of the Income Apportionment Fraction. (1) General rule. An income apportionment fraction for the unitary business group shall be computed in accordance with the provisions of KRS 141.120(8) except as provided in subsections (2) to (8) of this section.

(2) The property, payroll, and sales factors of the unitary business group shall be computed in accordance with KRS 141.120(8)(a), (b), and (c), respectively, by aggregating for both the numerators and denominators of each factor the property, payroll, and sales, respectively, of all corporations in the unitary business group.

(3) All intercompany activity among corporations in the unitary business group shall be eliminated in accordance with Section 7 of this administrative regulation.

(4) The destination of any sale made by the unitary business group shall be determined on the basis of the first sale made by a corporation in the unitary business group to a customer not in the unitary business group.

(5) Any adjustment required by subsection (3) or (4) of this section shall be made for both the numerator and denominator of the income apportionment fraction.

(6) The provisions of 15 USC 381 ("PL 86-272") shall not prohibit the inclusion of the property, payroll, or sales of any corporation in the numerators of the aggregate property, payroll, or sales factor of the unitary business group.

(7) In the event KRS 141.120(10) applies to any corporation in the unitary business group (i.e., a public service corporation or a financial institution), the amounts of property, payroll, and sales of such corporations to be included in the income apportionment fraction shall be determined in accordance with 103 KAR 16:100, 103 KAR 16:110, 103 KAR 16:120, 103 KAR 16:130, 103 KAR 16:145 or 103 KAR 16:150.

(8) For each corporation in the unitary business group subject to 103 KAR 16:150, the outstanding loan balance shall be used in lieu of any tangible property and aggregated with the tangible property of the other corporations in the unitary business group for computation of the combined property factor.

(9) If the allocation and apportionment provisions of this administrative regulation do not fairly represent the extent of the business activity in Kentucky of a unitary business group or a corporation not in a unitary business group, the unitary business group or the corporation not in a unitary business group may petition for or the cabinet may require, in respect to all or any part of the business activity of the unitary business group or corporation not in the unitary business group, if reasonable:

- (a) Separate accounting;
- (b) Exclusion of any one (1) or more of the factors;
- (c) Inclusion of one (1) or more additional factors; or
- (d) Employment of any other method.

Section 9. Computation of Kentucky Taxable Net Income or Loss Before the Kentucky Net Operating Loss Deduction. (1) General rule. Each Kentucky unitary corporation shall compute Kentucky taxable net income or loss before the Kentucky net operating loss deduction in accordance with subsections (2) to (4) of this section.

(2) The unitary business income or loss subject to apportionment shall be multiplied by the income apportionment fraction to arrive at the unitary business income or loss apportioned to Kentucky.

(3) The unitary business income or loss apportioned to Kentucky shall be multiplied by the entity assignment fraction of each Kentucky unitary corporation to assign the unitary business income or loss apportioned to Kentucky to each Kentucky unitary corporation in the unitary business group.

(4) Any nonbusiness income or loss allocable to Kentucky shall be assigned to the Kentucky unitary corporation generating the nonbusiness income or loss.

(5) Computation of entity assignment fraction.

(a) The entity assignment fraction shall be a fraction:

1. The numerator of which is the average percent for each Kentucky unitary corporation; and

2. The denominator of which is the total of the average percents of all Kentucky unitary corporations in the unitary business group.

(b) The average percent is a fraction:

1. The numerator of which is the property factor, plus the payroll factor, plus the sales factor which is multiplied by two (2), of each Kentucky unitary corporation as computed in subparagraph 3 of this paragraph; and

2. The denominator of which is four (4).

(c) For purposes of this subsection, the property, payroll and sales factors for each Kentucky unitary corporation shall each be fractions:

1. The numerators each of which are the amounts of Kentucky property, payroll, and sales, respectively, of each Kentucky unitary corporation reflected in the computation of the aggregate factors determined in accordance with Section 8 of this administrative regulation; and

2. The denominators each of which are the amounts of total property, payroll, and sales, respectively, of the unitary business group reflected in the computation of the aggregate factors determined in accordance with Section 8 of this administrative regulation.

Section 10. Computation of the Kentucky Net Operating Loss Deduction. (1) General rule.

(a) Every Kentucky unitary corporation shall apply the provisions of 26 USC 172 for Kentucky income tax purposes to any net operating loss in accordance with the provisions of this section.

(b) For purposes of the election provided in 26 USC 172(b)(3) (to relinquish the carry-back period and carry the entire loss forward), every Kentucky unitary corporation shall follow the provisions pertaining to the election except that every Kentucky unitary corporation shall file a separate election for Kentucky income tax purposes.

(2)(a) The amount of any net operating loss that may be deducted in any carry-back year or any carry-forward year shall be limited to the Kentucky taxable net income before the Kentucky net operating loss deduction of the Kentucky unitary corporation in the carry-back or carry-forward year.

(b) No amount of the net operating loss assigned using the entity assignment fraction to a Kentucky unitary corporation may be carried back to any year or part-year in which the Kentucky unitary corporation was not a member of the unitary business group that generated the net operating loss.

(3) Any amount of the net operating loss, whether carried forward by a Kentucky unitary corporation from a taxable year in which the Kentucky unitary corporation was not a member of the unitary group or assigned using the entity assignment fraction to a Kentucky unitary corporation, shall be a carry-forward of the corporation carrying forward the net operating loss or a carry-back or carry-forward of the corporation to whom the net operating loss was assigned.

Section 11. Computation of the Tax Liability of a Kentucky Unitary Corporation. (1) The tax rates prescribed in KRS 141.040(3) shall be applied to the Kentucky taxable net income after the net operating loss deduction as reported on the separate income tax return of each Kentucky unitary corporation.

(2)(a) The application of any nonrefundable tax credit listed in KRS 141.0205 in any taxable year shall be limited to the Kentucky income tax liability of each Kentucky unitary corporation.

(b) If the total tax credits (other than payments) of any Kentucky unitary corporation exceeds the Kentucky income tax liability of that Kentucky unitary corporation for any taxable year, the excess, if available for carry-forward, shall be carried forward to the succeeding taxable years of the Kentucky unitary corporation that generated the tax credit.

(3)(a) Each Kentucky unitary corporation shall be responsible for its own payment of estimated corporation income tax and any

additional payments required under KRS Chapter 141.

(b) Any payment of the estimated corporation income tax and any additional payment required under KRS Chapter 141 may be made by any corporation in the unitary business group provided the method of payment details the amount of each payment and the Kentucky unitary corporation and Kentucky corporation income tax account number for whom the payment or partial payment is to be credited.

(c) The excess of total payments over the total tax liability (income and corporation license) of any Kentucky unitary corporation may be assigned to another Kentucky unitary corporation in the unitary business group as provided on the payment reconciliation schedule.

(4) Penalties. The underpayment or late payment of estimated income tax penalty imposed by KRS 131.180(3) shall be computed after any assignment of timely estimated income tax payments noted on the payment reconciliation schedule.

Section 12. Filing Requirements. (1) General rule. All requirements regarding the filing of an income tax return and the submission of information as required by KRS Chapters 131 and 141 shall apply to every Kentucky unitary corporation as modified by subsections (2) to (7) of this section.

(2)(a) Every unitary business group shall prepare a unitary income tax report.

(b) Only the principal Kentucky corporation shall attach the unitary income tax report to its separate income tax return.

(3)(a) Every Kentucky corporation which is not part of a unitary business group shall file a separate income tax return.

(b) Every Kentucky unitary corporation shall file a separate income tax return in accordance with the provisions of this administrative regulation.

(4)(a)1. With regard to any separate item of business income or any separate item claimed as a business deduction, every Kentucky unitary corporation shall report only the unitary business income or loss assigned to that corporation as stated on the unitary income tax report in lieu of reporting any separate item of business income or any separate item claimed as a business deduction.

2. Any schedule or form detailing any separate item of business income or any separate item claimed as a business deduction shall be filed with the unitary income tax report.

(b) The separate income tax return of every Kentucky unitary corporation shall include a listing of any contribution carry-forward, any capital loss carry-back or carry-forward, any net operating loss carry-back or carry-forward, and any nonrefundable tax credit carry-forward of that Kentucky unitary corporation.

(5) The separate income tax return of every Kentucky unitary corporation shall denote the principal Kentucky corporation and the common parent, if other than the principal Kentucky corporation, of the unitary business group that included the Kentucky unitary corporation.

(6) The separate corporation license tax return of each Kentucky unitary corporation subject to the corporation license tax of KRS 136.070 shall be attached to the separate income tax return of each Kentucky unitary corporation.

(7) The unitary income tax report and the separate income tax returns of every Kentucky unitary corporation shall be mailed to the cabinet as one (1) group.

Section 13. Preparation of the Unitary Income Tax Report. (1) The unitary income tax report shall include and be compiled for filing in the following order:

(a) A unitary profit and loss statement in columnar form showing the items of income, items claimed as deductions, and intercompany eliminations for each corporation included in the unitary business group including any schedule or form detailing any separate item of business income or any separate item claimed as a business deduction (which statement shall follow the designation of items of

income and expense used for Kentucky income tax purposes);

(b) A unitary beginning and ending balance sheet in columnar form for each corporation included in the unitary business group;

(c) A unitary property factor in columnar form showing for each corporation the composition of the numerator and denominator with a line showing the amounts of intercompany eliminations for both the numerator and denominator;

(d) A unitary payroll factor in columnar form showing for each corporation the composition of the numerator and denominator with a line showing the amounts of intercompany eliminations for both the numerator and denominator;

(e) A unitary sales factor in columnar form showing for each corporation the composition of the numerator and denominator with a line showing the amounts of intercompany eliminations for both the numerator and denominator;

(f) A payments reconciliation schedule listing the names and Kentucky corporation income tax account numbers of the payor/assignor and assignee corporations, if any, any carry-over of prior year payments, any current year payments, and any assignment of any excess payments;

(g) A stock ownership schedule reflecting for each corporation in the related group the name, address, federal identification number, Kentucky corporation income tax account number (if applicable), name of corporation or other owner owning directly or indirectly more than fifty (50) percent of the corporation's stock, percentage of stock owned, date stock was acquired, and indicate whether or not the corporation is included in the unitary income tax report;

(h) If any corporation is added to or any corporation is no longer included in the unitary business group, a separate schedule identifying the name, address, federal identification number, Kentucky corporation income tax account number (if applicable) of the corporation added to or of the corporation no longer included in the unitary business group, and the information that reasonably substantiates the inclusion or non-inclusion of the corporation that is added to or the corporation that is no longer included in the unitary business group;

(2)(a) The unitary business group shall prepare the unitary income tax report in the name of the common parent, whether or not the common parent is a Kentucky corporation, or in the name of the principal Kentucky corporation if there is no common parent, denoted as "common parent and related corporations" or "principal Kentucky corporation and related corporations."

(b) The unitary income tax report shall bear the Kentucky corporation income tax account number of the principal Kentucky corporation.

Section 14. Accounting Periods. (1) General rule. The income or loss of the unitary business group shall be determined using the same accounting period for all members of the unitary business group in preparing a unitary income tax report.

(2)(a) The income or loss of all corporations in the unitary business group shall be determined on the basis of the taxable year of the common parent.

(b) Where there is no common parent in the unitary business group, the income or loss of all corporations in the unitary business group shall be determined on the basis of the taxable year of the principal Kentucky corporation.

(3)(a) The income or loss of any corporation in the unitary business group not having the same taxable year as the common parent or the principal Kentucky corporation shall be converted to the taxable year of the common parent or the principal Kentucky corporation on the basis of the number of months within the applicable taxable year.

(b)1. Where the pro rata method prescribed in paragraph (a) of this subsection requires the inclusion of the income of a corporation whose taxable year has not yet closed, an estimate of the income or loss based on available information shall be made.

2. Any difference between the estimate and the actual income or

loss shall be included in the unitary income tax report for the succeeding taxable year of the unitary business group without regard to whether that corporation becomes a part-year member.

3. If the difference between the estimate and the actual income or loss is material, amended returns and an amended report shall be required.

(4) The factors of the company whose income or loss is converted shall be computed using the actual accounting period prescribed in subsection (2) of this section.

(5) Example. If a common parent has a calendar taxable year and a subsidiary includable in the unitary business group has a September 30 taxable year, the unitary business group shall assign nine-twelfths (9/12) of the subsidiary's unitary income of one (1) taxable year and three-twelfths (3/12) of the unitary income of the succeeding taxable year to arrive at a full twelve (12) months' income for the subsidiary to be included in the unitary income tax report.

Section 15. Part-year Members. (1) General rule. The accounting year of any corporation that is a part-year member shall consist of two (2) short periods.

(2)(a) Any part-year member which is a Kentucky unitary corporation shall file:

1. A short period return for the period the part-year member was in a unitary business group;

2. A short period return for the period the part-year member was not in a unitary business group or was in a different unitary business group.

(b) The short period return for the period the part-year member was in a unitary business group shall be a separate income tax return prepared in accordance with this administrative regulation that reflects the income or loss for the period in which the part-year member was a member of the unitary business group.

(c) The short period return for the period the part-year member was not in a unitary business group or was in another unitary business group shall reflect the income or loss for the portion of the taxable year in which the part-year member was not part of the unitary business group and shall be determined using separate entity reporting if the part-year member was not in a unitary business group or the unitary method of reporting if the part-year member was in another unitary business group.

(d) For purposes of KRS 141.140(3), "taxable net income" shall mean Kentucky taxable net income after the Kentucky net operating loss.

(3) Every unitary business group shall include in its unitary income tax report the short period of any part-year member which is not a Kentucky corporation and which was a member of the unitary business group subject to the provisions of this administrative regulation.

Section 16. Principal Kentucky Corporation. (1)(a) Every unitary business group shall designate the common parent as the principal Kentucky corporation provided the common parent is a Kentucky unitary corporation.

(b) If the common parent is not a Kentucky unitary corporation, the unitary business group shall designate any Kentucky unitary corporation as the principal Kentucky corporation.

(c) If the unitary business group fails to designate the principal Kentucky corporation, the cabinet shall designate a Kentucky unitary corporation as the principal Kentucky corporation.

(2) The principal Kentucky corporation established in subsection (1) shall continue to be the principal Kentucky corporation unless that corporation ceases to be a member of the unitary business group.

(3) The unitary business group shall designate the principal Kentucky corporation by filing a written statement with the unitary income tax report.

(4) The principal Kentucky corporation shall be responsible for:

(a) Filing the unitary income tax report including any extension,

other report, or any other document required by KRS Chapters 131 and 141 on behalf of a unitary business group;

(b) Maintaining the records of the unitary business group relating to the unitary income tax report; and

(c) Coordinating the requests by the cabinet (including reviews and audits) for information to substantiate any item presented on the unitary income tax report.

(5)(a) The principal Kentucky corporation may request an extension of time within which to file the separate income tax returns of all Kentucky unitary corporations in a unitary business group.

(b) Any extension requested pursuant to paragraph (a) of this subsection shall state the name, address, federal identification number, and Kentucky corporation income tax account number of every Kentucky unitary corporation in the unitary business group.

Section 17. This administrative regulation shall apply to taxable years beginning after December 31, 1994.

KIM BURSE, Secretary

APPROVED BY AGENCY: June 15, 1995

FILED WITH LRC: June 15, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1995, at 10 a.m. in the Third Floor Training Room at 200 Fair Oaks Lane, Frankfort, Kentucky 40620. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jennifer C. Hays, Kentucky Revenue Cabinet, Division of Tax Policy & Research, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40620, (502) 564-6843.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Jennifer C. Hays

(1) Type and number of entities affected: All multistate affiliated groups of corporations subject to Kentucky corporation income tax that operate as a single business enterprise rather than separate and discrete business enterprises will be affected.

(2) Direct and indirect costs or savings on the entities affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No anticipated impact.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No anticipated impact.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Different reporting requirements will be implemented for members of a unitary business group as opposed to single corporations, however, the costs associated with the unitary income tax report will be offset by the computational aspects of the unitary income tax report such as the graduated tax rates applied to each separate corporation and the aggregating aspects such as eliminating intercompany activity.

2. Second and subsequent years: No additional impact.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Additional costs will be incurred for training

taxpayers and cabinet employees. Savings will be incurred by processing multiple separate returns at one time.

2. Continuing costs or savings: No additional costs or savings.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Cabinet databases will have to be altered to collect the data for evaluating unitary business groups.

(4) Assessment of anticipated effect on state and local revenues: Some corporate taxpayers will pay less Kentucky income tax and some corporate taxpayers will pay additional Kentucky income tax but the overall effect will be neutral. No local revenues will be affected.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Revenue Cabinet general budget.

(6) Economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No anticipated impact.

(b) Kentucky: No anticipated impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative method of separate entity reporting was rejected by the Kentucky Supreme Court in *GTE & Subsidiaries v. Revenue Cabinet*, 94-SC-168-DG (Dec. 22, 1994).

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The provisions of this regulation will be applied equally to all taxpayers.

**ECONOMIC DEVELOPMENT CABINET**  
**Kentucky Economic Development Finance Authority**  
**(New Administrative Regulation)**

**307 KAR 1:030. Kentucky Rural Economic Development Act Tax Credit Program.**

RELATES TO: KRS 154.22-010 through 154.22-070

STATUTORY AUTHORITY: KRS 154.22-040(2)

NECESSITY AND FUNCTION: This administrative regulation is necessary to set out the application processes and project selection criteria for the Kentucky Rural Economic Development Act Tax Credit Program established pursuant to KRS 154.22-010 through 154.22-070.

Section 1. Definitions. (1) "Act" means KRS 154.22-010 through 154.22-070.

(2) "Affiliate" is defined in KRS 154.22-010.

(3) "Agribusiness" is defined in KRS 154.01-010.

(4) "Approved company" is defined in KRS 154.22-010.

(5) "Authority" is defined in KRS 154.22-010.

(6) "Commonwealth" is defined in KRS 154.22-010.

(7) "Economic development project" is defined in KRS 154.22-010.

(8) "Eligible company" is defined in KRS 154.22-010.

(9) "KRS" means the Kentucky Revised Statutes, as they may be

amended from time to time.

(10) "Manufacturing" is defined in KRS 154.22-010.

Section 2. Economic Development Project; Acquisition of Real Estate. "Economic development project" shall include, for purposes of acquisition of real estate by an approved company or its affiliate, the possession of land pursuant to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, which is incorporated by reference in Section 7 of this administrative regulation.

Section 3. Eligible Company; Corporation. "Eligible company" shall include as a corporation a limited liability company and foreign limited liability company each as defined in KRS 275.015 and as a partnership a registered limited liability partnership as defined in KRS 362.155.

Section 4. Eligibility Standards. (1) The authority shall approve eligible companies based upon the information supplied to the authority in the application, pursuant to Section 5(1)(a) through (o) of this administrative regulation.

(2) In determining whether to approve an eligible company for the Kentucky Rural Economic Development Act Tax Credit Program the authority shall give greatest weight to the information supplied in the application pursuant to Section 5(1)(e) through (j) of this administrative regulation.

Section 5. Kentucky Rural Economic Development Act Tax Credit Program. (1) Companies that wish to participate in the Kentucky Rural Economic Development Act Tax Credit Program shall file an application with the authority. The following information and materials shall be submitted as part of the application:

(a) A brief history of the business of the eligible company and a description of the economic development project;

(b) General information about the eligible company, including company ownership;

(c) Information regarding the eligible company's attorney, primary bank, project lender and accountant;

(d) The current number of jobs at the facility;

(e) Copies of the eligible company's financial statement for the most recent fiscal year end;

(f) The projected number of jobs to be created at the facility;

(g) The total number of jobs projected two (2) years after completion of the economic development project;

(h) The number of jobs retained because of the economic development project;

(i) The number of skilled, semiskilled, unskilled, managerial and technical jobs created by the economic development project and the average hourly wage and average salary wage of such job categories;

(j) Estimated annual revenues and expenses for a three (3) year period after the date of commencement of operations of the business of the eligible company at the site of the economic development project;

(k) Estimated project costs and a breakdown of these costs;

(l) Proposed project financing;

(m) If the economic development project constitutes a new location for the eligible company, information related to the project site including whether the project consists of new construction or acquisition of an existing facility;

(n) If the economic development project is an expansion of the existing manufacturing or agribusiness facilities of the eligible company, information related to the project site, including whether it is owned or leased by the eligible company;

(o) A detailed explanation setting forth the reasons why the economic development project will not otherwise occur in the Commonwealth without the approval of the inducements;

(p) A letter from the appropriate local elected official (Mayor and/or County Judge-Executive) endorsing the project;

(q) 1. A completed Economic Development Incentive Disclosure Statement and Benefit Analysis Data Form.

2. The Disclosure Statement and Data Form are incorporated by reference in Section 7 of this administrative regulation.

(2) The application to be filed with the authority shall contain notices of the following fees to be paid by the eligible company:

(a) An administrative fee of one-quarter (.25) of one (1) percent of the estimated approved costs for the entire period which is due and payable upon execution of the financing agreement;

(b) A \$500 nonrefundable application fee which is due and payable to the authority upon submission of the application;

(c) The one (1)-time \$2,500 fee required by KRS 154.35-042(1);

(d) The annual five (5) percent fee required by KRS 154.35-042(2); and

(e) The legal fees for the preparation of the financing agreement by the authority's counsel which are payable upon execution of the financing agreement.

(3) Pursuant to KRS 154.22-040 the authority may by resolution approve an eligible company after consideration of the application for the Kentucky Rural Economic Development Act Tax Credit Program if it determines the eligible company meets all the requirements of the act and this administrative regulation.

Section 6. Financing Agreement Contents. The authority may require the following information, as part of the negotiated terms of the financing agreement, in addition to the information required pursuant to KRS 154.22-050:

(1) Annual, quarterly or monthly progress reports to the authority;

(2) Annual, quarterly or monthly financial reports to the authority;

(3) Annual certifications of debt service payments being made by the eligible company; and

(4) Access to the approved company's records.

Section 7. Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) The "Application for the Kentucky Rural Economic Development Act (KREDA) Tax Credit Program - KRS 154.22" which also includes the "Economic Development Incentive Disclosure Statement" and "Benefit Analysis Data Form" (June 12, 1995); and

(b) The "Statement of Financial Accounting Standards No. 13, Accounting for Leases" (June 1, 1989).

(2) Copies of the "statement" and the form of "application" referred to in subsection (1) of this section may be inspected, copied or obtained at the offices of the Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

HAROLD G. DORAN, JR., Chairman

APPROVED BY AGENCY: June 13, 1995

FILED WITH LRC: June 15, 1995 at noon

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on July 31, 1995, at 10 a.m. at 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 26, 1995; five days prior to the hearing, of their intent to attend. If no notification or intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be

heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Larry R. Brown, Commissioner, Financial Incentives, Kentucky Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

## REGULATORY IMPACT ANALYSIS

Agency contact: Larry R. Brown

(1) Type and number of entities affected: This regulation affects companies which apply for status as approved companies under KRS 154.22-010 to 154.22-070 (the "Act"), entitling them to certain benefits provided under the Act. The number of companies which will apply is unknown.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no direct and indirect costs or savings to those affected entities because the regulation does not require information in excess of the requirements mandated by the Act.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Kentucky Economic Development Finance Authority since the regulation merely clarifies the requirements set forth in the statutes.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Some additional reporting or paperwork requirements will be created by this regulation since the result of its promulgation will be an expansion of the information required in the application of an applicant for the incentives provided under the Kentucky Rural Economic Development Act Tax Credit Program.

(4) Assessment of anticipated effect on state and local revenues: The Act's tax credit program affects state and local revenues by reducing future revenues to the Commonwealth of Kentucky through the granting of income tax credits to both the companies and the employees of the companies. However, the regulation itself has no anticipated effect on state and local revenues since it merely clarifies the standards for applications by eligible companies.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Although future revenues to the Commonwealth of Kentucky are reduced by the Act's tax credit program, no revenues are used to implement and enforce the regulation since it merely clarifies the standards for applications by eligible companies.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The regulation should have no economic impact since it does not require information in excess of the requirements mandated by the Act.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are available to accomplish the purpose of the regulation because the Act requires the selection

criteria for the approval of eligible companies to be addressed by administrative regulations.

(8) Assessment of expected benefits: The regulation will provide those interested persons with accurate and updated information regarding the project selection criteria and application process for the Kentucky Rural Economic Development Act Tax Credit Act Program.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on the environment and public health will not result if the regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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: No statute, administrative regulation or government policy was found to be in conflict with the regulation.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. (Explain why tiering was or was not used) No tiering was applied because all eligible companies applying for benefits under the Kentucky Rural Economic Development Act Tax Credit Program will be treated in a uniform manner.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will affect the treasury departments of local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to the local government's collection of revenues. KRS 154.22-040 sets forth the criteria to be included in administrative regulations regarding the approval of eligible companies and economic development projects conducted by those companies. KRS 154.22-060 provides the inducements available to approved companies, one of which is a credit against local occupational taxes.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect.

Revenues (+/-): Specific dollar estimates cannot be determined.

Expenditures (+/-): Specific dollar estimates cannot be determined.

Other Explanation: The purpose of this administrative regulation is to set out the application process and project selection criteria for the Kentucky Rural Economic Development Act Tax Credit Program established pursuant to KRS 154.22-010 through 154.22-070. This administrative regulation indirectly will increase the number of persons from whom the local government may collect tax revenues, although by imposition of the job development assessment fee under KRS 154.22-010 through 154.22-070, the local government may be unable to collect any local occupational tax or the amount of such fees may be less than the local government could normally collect from employees. For those employees whose employers require them to pay a job development assessment fee and whose jobs have been determined to have been created as a result of the economic development project, the local government will forego revenues to the extent that such employee receives a credit against the local occupational license tax incurred for the tax year in the jurisdiction in which the economic development project is located.

#### ECONOMIC DEVELOPMENT CABINET Kentucky Economic Development Finance Authority (New Administrative Regulation)

#### 307 KAR 4:010. Kentucky Industrial Development Act Tax Credit Program.

RELATES TO: KRS 154.28-010 through 154.28-090

STATUTORY AUTHORITY: KRS 154.28-030(5)

NECESSITY AND FUNCTION: This administrative regulation is necessary to set out the application processes and project selection criteria for the Kentucky Industrial Development Act Tax Credit Program established pursuant to KRS 154.28-010 through 154.28-090.

Section 1. Definitions. (1) "Act" means KRS 154.28-010 through 154.28-090.

(2) "Agribusiness" is defined in KRS 154.01-010.

(3) "Approved company" is defined in KRS 154.28-010.

(4) "Authority" is defined in KRS 154.28-010.

(5) "Commonwealth" is defined in KRS 154.28-010.

(6) "Economic development project" is defined in KRS 154.28-010.

(7) "Eligible company" is defined in KRS 154.28-010.

(8) "Inducement" is defined in KRS 154.28-010.

(9) "Manufacturing" is defined in KRS 154.28-010.

Section 2. Economic Development Project; Acquisition of Real Estate. "Economic development project" shall include for purposes of acquisition of real estate capital leases as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, which is incorporated by reference in Section 7 of this administrative regulation.

Section 3. Eligible Company; Corporation. "Eligible company" shall include as a corporation a limited liability company and foreign limited liability company each as defined in KRS 275.015 and as a partnership a registered limited liability partnership as defined in KRS 362.155.

Section 4. Eligibility Standards. (1) The authority shall approve eligible companies based upon the information supplied to the authority in the application, pursuant to Section 5(1)(a) through (g) of this administrative regulation.

(2) In determining whether to approve an eligible company for the Kentucky Industrial Development Act Tax Credit Program the authority shall give greatest weight to the information supplied in the application pursuant to Section 5(1)(a) through (d) of this administrative regulation.

Section 5. Kentucky Industrial Development Act Tax Credit Program. (1) Companies that wish to participate in the Kentucky Industrial Development Act Tax Credit Program shall file an application with the authority. The following information and materials shall be submitted as part of the application:

(a) A brief history of the business of the eligible company and a description of the economic development project;

(b) Copies of the eligible company's financial statements for the most current fiscal year end;

(c) The projected number of employees to be hired in the future at the manufacturing or agribusiness facility of the eligible company from the commencement date of the financing agreement and as a result of the receipt of the inducements. As a part of its analysis pursuant to this paragraph the authority shall consider the following information:

1. The current number of full-time and part-time jobs at the project location;



2. The total number of full-time and part-time jobs projected two (2) years after project completion; and

3. The number of skilled, semiskilled, unskilled, managerial and technical jobs to be created by the project and the average hourly wage and average salary wage of such job categories;

(d) Estimated annual revenues and expenses for a three (3) year period after the date of commencement of operations of the business of the eligible company at the site of the economic development project;

(e) The effect on existing manufacturing or agribusiness facilities in the Commonwealth if the eligible company undertakes its economic development project within the Commonwealth;

(f) A letter from the eligible company providing information required pursuant to KRS 154.28-080(4);

(g) The effect of an expansion on the existing manufacturing or agribusiness facilities of the eligible company;

(h) The lending source for the project;

(i) A letter from the appropriate local elected official (Mayor and/or County-Judge Executive) endorsing the project; and

(j) 1. A completed Economic Development Incentive Disclosure Statement and Benefit Analysis Data Form.

2. The Disclosure Statement and Data Form are incorporated by reference in Section 7 of this administrative regulation.

(2) The application to be filed with the authority shall contain notices of the following fees to be paid by the eligible company:

(a) An administrative fee of one-quarter (.25) of one (1) percent of the estimated approved costs for the entire period which is due and payable upon execution of the financing agreement;

(b) A \$500 nonrefundable application fee which is due and payable to the authority upon the submission of the application;

(c) The one (1)-time \$2,500 fee required by KRS 154.35-042(1);

(d) The annual five (5) percent fee required by KRS 154.35-042(2); and

(e) The legal fees for the preparation of the financing agreement by the authority's counsel which are payable upon execution of the financing agreement.

(3) Pursuant to KRS 154.28-080(5) the authority may designate an eligible company to be an approved company after consideration of the application for the Kentucky Industrial Development Act Tax Credit Program if it determines the company meets all the requirements of the Act and this administrative regulation.

Section 6. Financing Agreement Contents. The authority may require the following additional information as a part of the negotiated terms of a financing agreement pursuant to KRS 154.28-090:

(1) Annual, quarterly or monthly progress reports to the authority;

(2) Annual, quarterly or monthly financial reports to the authority; and

(3) Access to the approved company's records.

Section 7. Incorporation by Reference. (1) The following documents are incorporated by reference:

(a) The "Application for the Kentucky Industrial Development Act ("KIDA") Tax Credit Program-KRS 154.28" which also includes the "Economic Development Incentive Disclosure Statement" and "Benefit Analysis Data Form" (June 12, 1995); and

(b) The "Statement of Financial Accounting Standards No. 13, Accounting for Leases" (June 1, 1989).

(2) Copies of the "statement" and the form of "application" referred to in subsection (1) of this section may be inspected, copied or obtained at the offices of the Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky, between 8 a.m. and 4:30 p.m., Monday through Friday.

HAROLD G. DORAN, JR., Chairman

APPROVED BY AGENCY: June 13, 1995

FILED WITH LRC: June 15, 1995 at noon

**PUBLIC HEARING:** A public hearing on this proposed administrative regulation shall be held on July 31, 1995, at 10:30 a.m. at 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 26, 1995, five days prior to the hearing, of their intent to attend. If no notification or intent to attend the hearing is received by that date, the hearing may be cancelled. Persons who need accommodation for a disability should request the needed accommodation in the notification of intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Larry R. Brown, Commissioner, Financial Incentives, Kentucky Cabinet for Economic Development, 24th Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Larry R. Brown

(1) Type and number of entities affected: This regulation affects companies which apply for status as approved companies under KRS 154.28-010 to 154.28-090 (the "Act"), entitling them to certain benefits provided under the Act. The number of companies which will apply is unknown.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. There are no direct and indirect costs or savings to those affected entities because the regulation does not require information in excess of the requirements mandated by the Act.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None

(a) Direct and indirect costs or savings: This regulation will not result in any direct or indirect costs or savings to the Kentucky Economic Development Finance Authority since the regulation merely clarifies the requirements set forth in the statutes.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Some additional reporting or paperwork requirements will be created by this regulation since the result of its promulgation will be an expansion of the information required in the application of an applicant for the incentives provided under the Kentucky Industrial Development Act Tax Credit Program.

(4) Assessment of anticipated effect on state and local revenues: The Act's tax credit program affects state and local revenues by reducing future revenues to the Commonwealth of Kentucky through the granting of income tax credits to both the companies and the employees of the companies. However, the regulation itself has no anticipated effect on state and local revenues since it merely clarifies the standards for applications by eligible companies.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Although future revenues to



the Commonwealth of Kentucky are reduced by the Kentucky Industrial Development Act Tax Credit Program, no revenues are used to implement and enforce the regulation since it merely clarifies the standards for applications by eligible companies.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The regulation should have no economic impact since it does not require information in excess of the requirements mandated by the Act.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods are available to accomplish the purpose of the regulation because the Act requires the selection criteria for the approval of eligible companies to be addressed by administrative regulations.

(8) Assessment of expected benefits: The regulation will provide those interested persons with accurate and updated information regarding the project selection criteria, hearing procedure and application process for the Kentucky Industrial Development Act Tax Credit Act Program.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on the environment and public health will not result if the regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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: No statute, administrative regulation or government policy was found to be in conflict with the regulation.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. (Explain why tiering was or was not used) No tiering was applied because all eligible companies applying for benefits under the Kentucky Industrial Development Act Tax Credit Program will be treated in a uniform manner.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation will indirectly affect the various service divisions of local governments by virtue of the fact that the Kentucky Industrial Development Act Tax Credit Program induces the location of facilities of companies to local communities. This administrative regulation will also indirectly affect the treasury departments of local governments.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation indirectly relates to those services of the local government that are provided to its local residents. This administrative regulations also indirectly relates to the local government's collection of revenues.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect.

Revenues (+/-): Specific dollar estimates cannot be determined.

Expenditures (+/-): Specific dollar estimates cannot be determined.

Other Explanation: The purpose of this administrative regulation

is to set out the application process and project selection criteria for the Kentucky Industrial Development Act Tax Credit Program established pursuant to KRS 154.28-010 through 154.28-090. This administrative regulation indirectly will increase the number of persons from whom the local government may collect tax revenues.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

##### Department for Environmental Protection (New Administrative Regulation)

**401 KAR 100:050. Site characterization, risk assessment, and remedial options.**

RELATES TO: KRS 224.01, 224.10, 224.43, 224.46, 40 CFR 240-241, 260-268

NECESSARY AUTHORITY: KRS 224.01-400, 224.10-100

NECESSITY AND FUNCTION: KRS Chapter 224 requires the Natural Resources and Environmental Protection Cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.01-400 requires a person possessing or controlling a hazardous substance, pollutant, or contaminant that is released to the environment, or any person responsible for such a release, to characterize the extent of the release as necessary to determine the effect of the release on the environment. KRS 224.01-400 also requires that the person take actions necessary to correct the effect of the release on the environment. KRS 224.01-400(18) establishes four (4) options that can be used in determining an appropriate plan for correcting the effect of a release on the environment. This administrative regulation implements these provisions of KRS 224.01-400.

Section 1. Definitions. Unless otherwise specifically defined in KRS Chapter 224, terms used in this administrative regulation shall have the meanings given in this section.

(1) "Background" means the concentration of substances consistently present in the environment at, or regionally proximate to, a release, but outside of the influence of the release. There are two (2) types of background as follows:

(a) "Natural background" means the amount of naturally-occurring substances in the environment, exclusive of that from anthropogenic sources; and

(b) "Ambient background" means the amount of both naturally-occurring substances and ubiquitous anthropogenic substances in the environment at levels that are representative of the region surrounding the site and at levels not attributable to activities on the property.

(2) "Carcinogenic risk" means the probable increase in cancer incidence in humans, which is the product of the combined cumulative exposure and cancer slope factors according to the procedures specified in this administrative regulation.

(3) "De minimus risk" means an increase in the individual, lifetime cancer risk, due to the release, equal to or less than  $1 \times 10^{-6}$ , and a noncarcinogenic hazard index equal to or less than 1.0.

(4) "Department" means the Department for Environmental Protection within the Kentucky Natural Resources and Environmental Protection Cabinet.

(5) "Hazard index" means the sum of more than one (1) hazard quotient. This includes the following:

(a) A stressor hazard index, which is the sum of hazard quotients of all pathways of exposure to that stressor;

(b) A pathway hazard index, which is the sum of hazard quotients for all stressors by a single pathway; and

(c) A site hazard index, which is the sum of all stressors for all pathways.

The Hazard Index is calculated separately for chronic, subchronic,

and shorter-duration exposures.

(6) "Hazard quotient" means the exposure level for a single chemical divided by the reference dose (RfD) for that chemical. The term may also mean the concentration of a chemical in a medium divided by a reference concentration (RfC) for that chemical.

(7)(a) "Pathway" means the four (4)-component process by which a hazardous substance, pollutant, or contaminant interacts with a receptor. The four (4) components are as follows:

1. A hazardous substance, pollutant, or contaminant in a medium (air, soil, sediments, water, or biota);
2. A mode of transport or point of direct contact;
3. A human or ecological receptor (for example, organism, individual, or population); and
4. A route of exposure (for example, ingestion, inhalation, or dermal contact).

(b) "Potential pathway" means a pathway in which any component listed in paragraph (a) of this subsection is not currently present, but has the possibility to be present.

(c) "Complete pathway" means a pathway in which all four (4) components are currently present.

(8) "Potential contaminant of concern" means a stressor that is related or could possibly be related to the release.

(9) "Reasonable maximum exposure" or "RME" means an upper-bound exposure scenario estimate that is within the range of possible exposures expected to occur at a site under current and future site conditions.

(10) "Release" shall have the meaning specified in KRS 224.01-400.

(11) "Responsible party" means a person who possesses or controls a release or a threatened release of a hazardous substance, pollutant, or contaminant or a person who causes the release of a hazardous substance, pollutant, or contaminant.

(12) "Risk assessment" means the analytical procedures used to evaluate the potential adverse human health and ecological effects that have occurred or may occur as a result of exposure to any stressor or stressors.

(13) "Site" shall have the meaning specified in KRS 224.01-400.

(14) "Site characterization" means the process of determining the nature and extent of contamination resulting from the release of a hazardous substance, pollutant, or contaminant into the environment.

(15) "Stressor" means any physical, chemical, or biological agent that may induce an adverse effect on human or ecological health. The term may include any hazardous substance, pollutant, or contaminant; petroleum or petroleum product; solid waste; or special waste.

(16) "Target risk" means an acceptable level of risk. For the Commonwealth of Kentucky, target risk shall be de minimus risk.

**Section 2. Applicability.** This administrative regulation applies to any responsible party required to address a release under cabinet supervision pursuant to KRS 224.01-400. A responsible party shall perform site characterization, risk assessment, and a remedial option in accordance with the requirements of the Remedial Options Guidance, Site Characterization Guidance, and Risk Assessment Guidance, which are incorporated by reference in Section 6 of this administrative regulation.

**Section 3. Remedial Options.** Responsible parties who are required to address a release to the environment shall comply with the Remedial Options Guidance incorporated by reference in Section 6 of this administrative regulation.

**Section 4. Site Characterization.** Responsible parties shall characterize the extent of a release, as necessary to determine an effect of a release on the environment, in accordance with the Site Characterization Guidance incorporated by reference in Section 6 of this administrative regulation.

**Section 5. Risk Assessment.** Responsible parties who are required to assess the risk to human health, safety, and the environment from the effects of a release shall make this demonstration in accordance with the Risk Assessment Guidance incorporated by reference in Section 6 of this administrative regulation.

**Section 6. Incorporation by Reference.** (1) The following documents are hereby incorporated by reference:

- (a) "Remedial Options Guidance" (June 1995);
- (b) "Site Characterization Guidance" (June 1995); and
- (c) "Risk Assessment Guidance" (June 1995).

(2) The documents incorporated by reference in subsection (1) of this section are available from the Department for Environmental Protection, 14 Reilly Road, Frankfort, Kentucky 40601, (502) 564-2150, from 8 a.m. to 4:30 p.m. eastern time, Monday through Friday, excluding state holidays.

**Section 7. Miscellaneous.** (1) The responsible party may request an extension to any deadline provided for in the documents incorporated by reference in Section 6 of this administrative regulation. The extension request shall be submitted in writing to the cabinet prior to the deadline. The cabinet may grant extensions on a case-by-case basis.

(2) The responsible party may request a variance from any requirement specified in the documents incorporated by reference in Section 6 of this administrative regulation, excluding those contained in state statute. The variance request shall be submitted in writing to the cabinet. The cabinet may grant variances on a case-by-case basis.

(3) The responsible party may request a final determination from the cabinet in accordance with KRS 224.01-400(22).

(4) This administrative regulation shall not supersede the requirements of any program to have work performed by registered or certified professionals including, but not limited to, the engineering requirements of KRS Chapter 322, the geology requirements of KRS Chapter 322A, and the well drilling requirements of KRS Chapter 223.

PHILLIP J. SHEPHERD, Secretary

APPROVED BY AGENCY: June 14, 1995

FILED WITH LRC: June 15, 1995 at 10 a.m.

**PUBLIC HEARING:** A public hearing to receive comments on this proposed administrative regulation has been scheduled for Monday, July 31, 1995, at 7 p.m. eastern time in the State Board Room, first floor of the Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing must notify James Hale in writing, at the address noted below, by July 26, 1995, of their intent to attend the hearing. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. This hearing is open to the public. Any person wishing to be heard will be given an opportunity to comment on the proposed administrative regulation. Persons testifying at the hearing are requested to provide a written copy of their testimony, if available. A transcript of the hearing will not be made unless a written request for a transcript is filed with Mr. Hale by July 26, 1995. Written comments may also be submitted on the proposed administrative regulation. Written comments must be received by Mr. Hale no later than close of the public hearing on July 31, 1995. The Department for Environmental Protection does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services. Upon request, the department will provide reasonable accommodation, including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities. Requests for reasonable accommodation for this public hearing, such as a interpreter or alternate formats for printed materials, must be submitted to Mr. Hale at the address below by July 26, 1995.

CONTACT PERSON: James Hale, Division of Waste Management,

14 Reilly Road, Frankfort, Kentucky 40601, (502)564-2225, ext. 221.

## REGULATORY IMPACT ANALYSIS

Contact person: James Hale

1. Type and number of entities affected: This proposed administrative regulation will principally affect three categories of entities: (1) persons responsible for a release into the environment of a hazardous substance, pollutant, or contaminant (HSPC) that must be remediated under cabinet supervision; (2) owners of property onto which an HSPC is released; and (3) individuals exposed to the release of an HSPC through direct or indirect pathways (e.g., ingestion of contaminated water, dermal contact with contaminated soil, or ingestion of contaminated plants or fish). Since this administrative regulation affects the extent to which contamination may be left on property without further remedial activities, the regulation indirectly affects all citizens of the Commonwealth. In 1994, there were 1,147 sites with suspected releases of an HSPC (see The State of Kentucky's Environment: 1994 Status Report, Kentucky Environmental Quality Commission, February 1995, page 63).

2. Direct and indirect costs or savings on the affected entities:

(a) Effect on the cost of living and employment in the geographic area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation will allow a de minimus level of contamination to be left on property, without further remedial action, after the release of an HSPC. This de minimus level of risk is defined in the regulation as an increase in the individual, life-time cancer risk, due to the release, equal to or less than one in a million and a noncarcinogenic hazard index equal to or less than 1.0. This will result in the probability of some additional incidences of cancer and other health problems caused by leaving contamination in place.

One commenter stated that leaving contamination in place, even at a de minimus level, will devalue property (even if the contamination is simply on adjacent property) and will adversely affect the health and well-being of persons in the area. The commenter stated that this will adversely affect the health care costs to that individual and to the public at large. The commenter noted that the effect of leaving contamination in place is a "taking" of that individual's property, which the commenter states is unconstitutional.

The cabinet acknowledges the concerns raised by this commenter; however, the cabinet believes that the administrative regulation will expedite site remediation that would not occur under the existing standard of removing all contamination to background. Hence, this administrative regulation will speed identification of release sites and encourage the responsible party to conduct remediation to a de minimus level, if not to ambient background. The overall benefit to Kentucky and its citizens will be to decrease the number of overall health threats posed by releases.

By adopting this administrative regulation, which allows a de minimus level of contamination to remain on site, the cabinet anticipates a savings to industries responsible for such releases. This should encourage employment within the Commonwealth.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: One commenter stated that currently site contamination and clean-up standards are a major barrier to the redevelopment of older industrial sites. The commenter noted that it has incurred costs on two recent clean-ups of over \$500,000, and that direct costs to all Kentucky businesses could exceed the 100 million dollar level.

Another commenter stated that no one in the public or private sector has the resources to clean every contaminated site up to background or pristine conditions. The commenter stated that in many instances a great deal of time is spent arguing over what background is, with the result of wasting time and money, but more importantly, causing unnecessary delays in the clean-up work itself.

Another commenter supported the risk assessment approach to site clean-ups and remediation. The commenter stated that a regulatory protocol for using risk assessment could save the regulated community and taxpayers millions of dollars by eliminating expensive clean-ups to background level where virtually no risk exists to human health or the environment.

Another commenter stated that the administrative regulation should have flexibility, so that a company has options on how to approach a clean-up in the most cost-effective manner possible.

Another commenter stated that cost-effectiveness should be built into every level of the site characterization, risk assessment, and remediation processes.

Another commenter stated that the use of any cost/benefit analysis to support the shifting of costs and responsibilities for remediation must be avoided, since it is impossible to quantify health and environmental costs. The commenter felt that the end result of the process is biased analysis that obscures the moral and constitutional issues associated with a state-sanctioned decision to allow a responsible party to shift the costs of remediation to the "commons" - that is, adjoining landowners or the public at large.

The cabinet notes that, in response to these comments, the administrative regulation incorporates multiple levels of tiering within the site characterization, risk assessment, and site remediation processes. These tiers are designed to enable the responsible party to reembody the release by the most cost-effective method possible, while at the same time assuring that the risk posed by the release stays below a de minimus level. The decision as to which remedial option is most cost-effective at a given site rests with the responsible party.

To assure uniformity in program implementation, the administrative regulation clarifies what is meant by "natural background" and how the concept of "ambient background" is to be incorporated into characterization, risk assessment, and remediation processes. Moreover, the regulation excludes ambient background from remediation efforts, which will resolve certain problems encountered in the past at sites where widespread contamination from off-site sources has confused the focus of clean-up efforts.

This administrative regulation will allow a de minimus amount of contamination to remain on-site after remediating the release of an HSPC. Previous regulatory requirements mandated that such releases be remediated to natural or pristine background levels. This administrative regulation should, therefore, reduce the cost of performing some remedial activities. However, for other sites, remediation will continue to occur to background, with the result of no cost benefits, or perhaps even additional costs to comply with the standards of this administrative regulation. Regardless of the site, this administrative regulation sets forth a standard protocol, yet the responsible party is given flexibility to select the most cost-effective approach to site remediation.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon completion), to the extent available from the public comments received, for the:

1. First year following implementation: Several commenters stated that this administrative regulation will impose undue reporting and paperwork requirements, which should not be required. Commenters stated that such paperwork should be substituted with the certification of a registered professional, such as a geologist or engineer.

The cabinet cannot relegate its responsibilities under KRS Chapter 224 to the certification programs of state law. Those programs buttress, but do not diminish, the need for plans and critical data to be submitted for cabinet review.

This administrative regulation standardizes the reporting requirements associated with implementation of the clean-up options under KRS 224.01-400. This will allow responsible parties to avoid submitting duplicative or unnecessary reports, which currently occurs in some situations. The standardization of reporting requirements also

assures that responsible parties can submit all the information that the cabinet needs at one time, rather than speculating what the cabinet will require and waiting for a deficiency letter to identify additional needs.

2. Second and subsequent years: The compliance, reporting, and paperwork requirements instituted during the first year will continue for the second and subsequent years.

3. Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will incur some additional expenses in printing and distributing the documents incorporated by reference into this administrative regulation; however, this expense should be minor. There also will be additional expense associated with conducting reviews of sites every 5 years, for those sites remediated by on-site containment or treatment and other sites where restoration or remediation of the environment has not been achieved; however, the need to conduct 5-year reviews is set by statute.

2. Continuing costs or savings: The costs instituted during the first year will continue for the second and subsequent years.

3. Additional factors increasing or decreasing costs: There are no additional factors affecting the cabinet's costs or savings.

b. Reporting and paperwork requirements: This administrative regulation will not impose any additional reporting or paperwork requirements on the cabinet.

4. Assessment of anticipated effect on state and local revenues: State and local agencies will need to comply with this administrative regulation, should they be responsible for the release of an HSPC.

By establishing risk-based clean-up goals, not all sites will need to be restored to natural background conditions. This should enhance the ability of responsible parties to effect clean-up, rather than having state government incur the expense. Of the 1,147 potential sites with HSPCs in 1994 (see item 1 above), 894 (78%) were investigated by the cabinet and 495 of those investigated (55%) were found to have contamination. The 495 sites found with contamination and the 253 sites that were not investigated totals 748 potentially contaminated sites. Of these 748 sites, only 200 (27%) were being remediated by the potentially responsible party. The state was taking the lead in remediating 13 of the sites, 85 sites were being contained using state funds, and 20 sites were being addressed under the federal Superfund Program. This left 430 sites that were not addressed. (The State of Kentucky's Environment: 1994 Status Report, Kentucky Environmental Quality Commission, February 1995, page 63).

The funds used by the state in conducting remediations are obtained from the Hazardous Waste Management Fund. This fund raises about \$2.2 million a year to reembody contaminated sites. A portion of the fund is set aside for the clean-up of the 20 federal National Priority List Superfund sites located in the state. In 1994, the fund was also used to address problems at 98 other sites where emergency actions were needed or where a responsible party could not be found or was financially unable to clean-up the site. (The State of Kentucky's Environment: 1994 Status Report, Kentucky Environmental Quality Commission, February 1995, page 63).

By adopting a risk assessment process that allows a de minimus level of contamination to remain on site, the cabinet anticipates that more responsible parties will be able to effect clean-up, without passing that responsibility on to the cabinet. This should therefore reduce the percentage of sites that need to be remediated with state funds.

5. Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for the review of site characterizations and risk assessments and for overseeing implementation of remedial options is provided by the state general fund and the Hazardous Waste Management Fund.

6. To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which administrative regulation will be

implemented: This administrative regulation will be implemented statewide. Therefore, please refer to item "b" below.

(b) Kentucky: One commenter stated that a regulatory protocol for using risk assessment could save the regulated community and taxpayers millions of dollars by eliminating expensive clean-ups to background levels where virtually no risk exists to human health or the environment. Other economic impacts mentioned by commenters include devaluation of property by leaving contamination in place and health care costs from the remaining contamination. Still other commenters were concerned about the expense of conducting risk assessments. These economic issues are discussed in more detail in item "2" above.

7. Assessment of alternative methods; reasons why alternatives were rejected: Under KRS Chapter 13A, there were no alternatives to promulgating this regulation to achieve uniform implementation of KRS 224.01-400(18).

8. Assessment of expected benefits of the administrative regulation: This administrative regulation should expedite clean-up of HSPC releases. The regulation will also standardize the processes for conducting site characterizations, for preparing risk assessments, for implementing remedial options, and for submission of documents on these efforts to the cabinet.

9.(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and Kentucky: As noted in item "2.a." above, this administrative regulation will allow a de minimus level of contamination to be left on property, without further remedial action, after the release of an HSPC. This de minimus level of risk is defined in the regulation as an increase in the individual, life-time cancer risk, due to the release, equal to or less than one in a million and a noncarcinogenic hazard index equal to or less than 1.0. This will result in the probability of some additional incidences of cancer and other health problems caused by leaving contamination in place.

One commenter stated that leaving contamination in place, even at a de minimus level, will devalue property (even if the contamination is on adjacent property) and will adversely affect the health and well-being of persons in the area. The commenter stated that this will adversely affect the health-care costs to individuals and to the public at large. The commenter noted that the effect of leaving contamination in place is a "taking" of that individual's property, which the commenter states is unconstitutional.

The cabinet acknowledges the concerns raised by this commenter; however, the cabinet believes that the administrative regulation will expedite site remediation that would not occur under the existing standard of removing all contamination to background. Hence, this administrative regulation will speed identification of release sites and encourage the responsible party to conduct remediation to a de minimus level, if not to ambient background. The overall benefit to Kentucky and its citizens will be to decrease the number of overall health threats posed by releases.

By adopting this administrative regulation, which allows a de minimus level of contamination to remain on site, the cabinet anticipates a savings to industries responsible for such releases. This should encourage employment within the Commonwealth.

b. State whether a detrimental effect on the environment and public health would result if not implemented: If not implemented, there would continue to be confusion and misunderstanding as to how KRS 224.01-400(18) is to be implemented. The result of this confusion and misunderstanding has been misdirected use of private moneys, inefficient use of state moneys, and remediation of a relatively low percentage of sites affected by contamination. These problems have a negative impact on public health and the environment.

This administrative regulation provides a standard means of implementing the provisions of KRS 224.01-400(18). Such standardization will have a positive impact on public health and the environment. Persons responsible for releases of HSPCs will know what is

expected of them in conducting site characterizations and risk assessments and in implementing remedial action plans. They will therefore be able to make informed decisions in such matters, including selecting the most cost-effective remedial option for their site. The environmental and public health results of this will be an increase in the percentage of sites remediated, which will remove threats to public health and the environment. For additional information, see the response to item "a" above.

(c) If detrimental effect would result, explain detrimental effect: See the response to item "b" above.

10. Identify any statute, administrative regulation, or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not overlap, duplicate, or conflict with any statute, administrative regulation, or governmental policy.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was the effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

11. Any additional information or comments: In January 1995, the cabinet organized an advisory group comprised of persons with interests in technical, industrial, legal, local government, and public interest issues. This advisory group, along with two independent contractors with long-term expertise in ecological and human health risk assessments, have advised the cabinet on key issues and critiqued several versions of this administrative regulation. Discussions with these groups have been used to mold and shape this administrative regulation.

12. TIERING: Is tiering applied? (Explain why tiering was or was not used): Yes, tiering was applied to this administrative regulation. The tiering provides for different levels of effort in conducting site characterizations and risk assessments and in implementing remedial options. These tiers allow the responsible party to select and implement the most cost-effective remedial option for a site, while maximizing protection of public health and the environment.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate: There is no federal mandate for this administrative regulation. KRS Chapter 224 is a state mandate that requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.01-400(18) requires that any person possessing or controlling a hazardous substance or a pollutant or contaminant that is released into the environment, or any person responsible for such a release, characterize the extent of the release as necessary to determine the effect of the release on the environment, as well as take actions necessary to correct the effect of the release on the environment.

Pursuant to this mandate, this administrative regulation establishes criteria for compliance with the four options provided by the statute to correct the effect of the release on the environment. The options are as follows: 1) demonstrating that no action is necessary to protect human health, safety, and the environment; 2) managing the release in a manner that controls and minimizes the harmful effects of the release and protects human health, safety, and the environment; 3) restoring the environment through the removal of the hazardous substance, pollutant, or contaminant; and 4) any combination of options 1-3. This administrative regulation also provides guidance and sets minimum standards for performing a site characterization, prescribes the process and requirements for performing risk assessments, and establishes procedures and criteria for submitting and evaluating remedial option and risk management plans. The requirements of this administrative regulation are protective of human health, safety, and the environment and are consistent with federal clean-up requirements of the Comprehensive Environmental Response,

Compensation, and Liability Act (CERCLA).

2. State compliance standards: This proposed administrative regulation incorporates by reference three documents: 1) Site Characterization Guidance, which establishes minimum standards for performing a site characterization; 2) Risk Assessment Guidance, which prescribes the process and requirements for conducting risk assessments; and 3) Remedial Options Guidance, which establishes procedures and criteria for submitting and evaluating remedial option and risk management plans. These documents employ a tiered approach based on the affected media, the number of chemicals released, and the amount of time required to reach the remedial goal.

3. Minimum or uniform standards contained in the federal mandate: There is no federal mandate for this administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? There is no federal mandate for this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: There is no federal mandate for this administrative regulation.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part, or division of local government this administrative regulation will affect. This administrative regulation will affect any state, county, or local office of government that is responsible for a release into the environment of a hazardous substance, pollutant, or contaminant that is required to be remediated under cabinet supervision.

3. State the aspect or service of local government to which this administrative regulation relates. KRS Chapter 224 requires the cabinet to promulgate administrative regulations establishing a comprehensive program for the prevention, abatement, and control of all water, land, and air pollution. KRS 224.01-400(18) requires any person possessing or controlling a hazardous substance, pollutant, or contaminant that is released into the environment, or any person responsible for such a release, to characterize the extent of the release as necessary to determine the effect of the release on the environment, as well as take actions necessary to correct the effect of the release on the environment.

This administrative regulation establishes criteria for compliance with the four options provided by KRS 224.01-400(18) to correct the effect of the release on the environment. The options are as follows: 1) demonstrating that no action is necessary to protect human health, safety, and the environment; 2) managing the release in a manner that controls and minimizes the harmful effects of the release and protects human health, safety, and the environment; 3) restoring the environment through the removal of the hazardous substance, pollutant, or contaminant; and 4) any combination of options 1-3. The agencies referenced in item 2 of this fiscal note will be subject to these requirements.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impacts of the administrative regulation.

Revenues (+/-): This administrative regulation will not affect state, county, or local revenue.

Expenditures (+/-): If a state, county, or local government is responsible for a release, they will have four options that can be used in correcting the effect of the release (see item "3." above). Like the statute, the options within this administrative regulation have been tiered to provide flexibility so that the responsible party may select a

cost-effective remediation that will be protective of human health, safety, and the environment. The standardization that this administrative regulation provides will enable a responsible party to gather all information necessary to characterize, assess, and remediate a release without conducting multiple investigations, which can be costly and encompass large expenditures of time and resources. The cost of correcting the effect of the release will generally decrease because this administrative regulation allows a de minimus level of contamination to remain in place.

Other Explanation: None.

# **SOIL AND WATER CONSERVATION COMMISSION** **(New Administrative Regulation)**

## **416 KAR 1:010. Administration of Kentucky Soil Erosion and Water Quality Cost-share Fund.**

RELATES TO: KRS 146.080 to 146.121, 224.71-100 to 224.71-140, Chapter 262

STATUTORY AUTHORITY: KRS 146.110 to 146.121

NECESSITY AND FUNCTION: KRS 146.110 to 146.121 authorize the Soil and Water Conservation Commission to promulgate administrative regulations governing administration of the Kentucky Soil Erosion and Water Quality Cost-share Fund. The fund provides cost-share assistance to persons engaged in agricultural and silvicultural production for implementation of best management practices for such purposes as providing cleaner water through the reduction in the loading of sediment, nutrients, and pesticides in Kentucky streams, rivers, and lakes; and reducing the loss of topsoil vital to the sustained production of food and fiber; and preventing surface water and groundwater pollution. This administrative regulation establishes criteria for participation in that cost-share program.

Section 1. Definitions. (1) "Agricultural or silvicultural production" means any farm operation on a tract of land, including all income-producing improvements and farm dwellings, together with other farm buildings and structures incident to the operation and maintenance of the farm, used for the production of livestock, livestock products, poultry, poultry products, milk, milk products, or silviculture products, or for the growing of crops such as, but not limited to, tobacco, corn, soybeans, small grains, fruit and vegetables; or devoted to and meeting the requirements and qualifications for payments to agriculture programs under an agreement with the state or federal government.

(2) "Agriculture water quality plan" means a document incorporating the conservation plan, compliance plan, or forest stewardship management plan as necessary to prevent groundwater and surface water pollution from an agricultural or silvicultural production.

(3) "Applicant" means a person who applies for cost-share assistance from the Kentucky Soil Erosion and Water Quality Cost-share Fund.

(4) "Available funds" means moneys budgeted, unobligated and approved by the commission for cost-share assistance.

(5) "Best management practices" means, for agricultural or silvicultural production, the most effective, practical, and economical means of reducing and preventing water pollution provided by the United States Department of Agriculture Natural Resources Conservation Service and the Soil and Water Conservation Commission. Best management practices shall establish a minimum level of acceptable quality for planning, siting, designing, installing, operating, and maintaining these practices.

(6) "Case file" means the collection of materials that are assembled and maintained for each application for cost-share assistance.

(7) "Compliance plan" means a conservation plan containing best management practices developed for persons engaged in agricultural production by the United States Department of Agriculture Natural

Resources Conservation Service in conjunction with local conservation districts as required for eligibility under the Federal Food Security Act.

(8) "Conservation district" or "district" means a subdivision of state government organized pursuant to KRS Chapter 262 for the specific purpose of assisting persons engaged in agricultural or silvicultural production and land users in solving soil and water resources problems, setting priorities for conservation work to be accomplished, and coordinating the federal, state, and local resources to carry out these programs.

(9) "Conservation plan" means a plan describing best land management practices, including an installation schedule and maintenance program, which when completely implemented, will improve and maintain soil, water, and related plant and animal resources of the land in accordance with the Natural Resources Conservation Service Technical Guide or developed by others in accordance with the Natural Resources Conservation Service Technical Guide and in cooperation with a conservation district.

(10) "Cost-share assistance" means cost-share funds awarded by the commission from the Kentucky Soil Erosion and Water Quality Cost-share Fund.

(11) "District supervisor" means a member of the governing board of a conservation district.

(12) "Ecosystem-based assistance process" means a specific application of a planning process that considers the integration of ecological, economic, and social factors to maintain and to enhance the quality of the environment to best meet current and future needs, which may include the following components:

(a) Inclusion of private land and public land within the watershed;

(b) Identification of and suggested solutions for various resource problems within the watershed;

(c) Establishment of opportunities for public participation in plan development and implementation;

(d) Inclusion of mechanisms for developing a comprehensive resource plan for the watershed and for reporting conservation accomplishments within the watershed;

(e) Identification and prioritization of local resource concerns, and inclusion of mechanisms to address these concerns within the watershed; and

(f) Development within current county conservation district boundaries with coordination of plans across county lines for protection of the watershed.

(13) "Eligible land" means land on which agricultural or silvicultural production is being conducted.

(14) "Eligible person" means a person eligible to apply for cost-share assistance.

(15) "Eligible practices" means those best management practices that have been approved by the commission.

(16) "Forest stewardship management plan" means a plan developed by the Natural Resources and Environmental Protection Cabinet's Division of Forestry or other cooperating entities which establishes practices for a person engaged in an agricultural or silvicultural production to manage forest lands in accordance with sound silvicultural and natural resource principles.

(17) "Groundwater" means subsurface water occurring in the zone of saturation beneath the water table and any perched water zones below the B soil horizon.

(18) "Obligated funds" means moneys from a district's portion of the Kentucky Soil Erosion and Water Quality Cost-share Fund allocated by the commission and committed to an applicant after final approval of the application for cost-share assistance.

(19) "Performance and maintenance agreement" means a written agreement between an eligible person and the district in which the eligible person agrees to implement and to maintain the best management practices for which cost-share assistance is being awarded.

(20) "Program year" means the period from July 1 to June 30.



(21) "Soil and Water Conservation Commission" or "commission" means the commission established by KRS 146.090.

(22) "Surface water" means those waters having well-defined banks and beds, either constantly or intermittently flowing; lakes and impounded waters, marshes and wetlands; and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface. Effluent ditches and lagoons used for waste treatment which are situated on property owned, leased, or under valid easement by a permitted discharger shall not be considered to be surface waters of the Commonwealth.

(23) "Water priority protection region" means an area specifically delineated where water pollution from agricultural or silvicultural production has been scientifically documented.

(24) "Watershed" means all the area from which all drainage passes a given point downstream.

Section 2. Eligibility of Persons. (1) Eligible persons. Persons conducting agricultural or silvicultural production are eligible to receive cost-share assistance for best management practices if the following conditions are met:

(a) The person has had prepared a conservation plan, a compliance plan, a forest management or forest stewardship plan, or an agriculture water quality plan; and

(b) The person agrees to perform and to maintain best management practices for the period of time specified by the commission.

(2) Ineligible persons. A person engaged in agricultural or silvicultural production who has failed or refused to comply with agriculture water quality planning requirements and has been deemed a "bad actor" under KRS 224.71-130 shall lose eligibility for further cost-share assistance.

Section 3. Eligible Best Management Practices. (1) Purposes of best management practices. The Kentucky Soil Erosion and Water Quality Cost-share Funds shall be used to provide cost-share assistance for development and implementation of best management practices for the following purposes:

(a) Providing cleaner water through the reduction in sediment loading of Kentucky streams, rivers, and lakes;

(b) Reducing the loss of topsoil vital to sustain production of food and fiber; and

(c) Preventing surface water and groundwater pollution.

(2) Approved best management practices. Complete listings of eligible best management practices are contained in the document entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual", incorporated by reference in Section 13 of this administrative regulation.

(3) A district may request the commission's approval of best management practices not included in the commission's list of approved practices if those best management practices solve a problem unique to the requesting district and conform to one or more of the purposes listed in subsection (1) of this section. A request shall be filed in writing with the commission in time for the commission to review the request and to notify the district of its decision prior to the advertisement of the program for the next program year. Conservation practices may be included in a district's list of eligible practices offered for cost-share assistance only if approved by the commission in accordance with this subsection.

Section 4. Solicitation of Applications. The commission shall establish for each program year a deadline for submittal of applications for cost-share assistance. Each conservation district shall provide an opportunity for persons within the district to submit applications in time for the next program year by advertising the availability of cost-share assistance in appropriate news media, such as local newspapers, local radio stations, and any newsletters published by the district.

Section 5. Contents and Completion of Applications. (1) Contents of application. An applicant shall submit to the conservation district in which the eligible land is located the application incorporated by reference in Section 13 of this administrative regulation in order to apply for cost-share assistance. The applicant shall append to the application:

(a) Any conservation plan, compliance plan, forest stewardship plan, or agriculture water quality plan in effect for the eligible land; and

(b) If known to the applicant or as made in consultation with the appropriate technical agency, the anticipated total cost of the best management practice to be implemented and the percentage, if any, of the cost which the applicant proposes to bear, which percentage shall not be less than minimums established by the commission for the particular best management practice.

(2) Completion of applications. An applicant who does not have a conservation plan, compliance plan, forest stewardship plan, or agriculture water quality plan in effect for the eligible land; or who has not determined the anticipated total cost of the requested best management practice may request technical assistance from the conservation district in developing a best management practices plan and determining costs. When the best management practices plan has been developed and the anticipated total cost determined, the application will be reviewed in accordance with the eligibility and prioritization criteria established by this administrative regulation.

Section 6. Review of Applications. Each conservation district shall review and determine the eligibility of all applications which were submitted to the district by the established deadline. The board of supervisors for the district shall vote upon eligibility at a meeting conducted in accordance with the Open Meetings Law, KRS 61.805 to 61.850, and record the outcome in the minutes of the board of supervisors for that meeting. A district supervisor who is also an applicant for cost-share assistance shall not vote on eligibility. The district shall forward the applications to the commission within fifteen (15) days after determining eligibility. A district may submit both individual applications for eligible lands within the district and watershed-based applications for eligible lands within the district.

Section 7. Prioritization of Applications. The commission shall prioritize the applications of persons determined by the conservation districts to be eligible for cost-share assistance and shall make the final award of cost-share assistance.

(1) Classification of priorities. Applications shall be prioritized based on the following criteria:

(a) Applicants conducting agricultural or silvicultural production needing animal waste management systems where animal waste has been identified by the Natural Resources and Environmental Protection Cabinet as a water pollution problem;

(b) Applicants who are members of agricultural districts; and

(c) Applicants who have implemented a conservation plan, a compliance plan, an agriculture water quality plan, or a forest stewardship plan, and are part of a watershed where the ecosystem-based assistance process is ongoing.

(2) Applications within each classification identified in subsection (1) of this section shall be prioritized based on the following criteria:

(a) Presence of water pollution, based on:

1. Notification by a local, state or federal agency that the applicant's agricultural or silvicultural production has caused or contributed to water pollution;

2. Determination of the Natural Resources and Environmental Protection Cabinet that a surface water affected by the applicant's agricultural or silvicultural production is not meeting its designated use;

3. Identification by the Natural Resources and Environmental Protection Cabinet of a water priority protection region encompassing the location of the applicant's agricultural or silvicultural production;



and

4. Other documentation of water pollution, such as through a biological assessment; or

5. Potential for development of water pollution from agricultural or silvicultural production in the watershed in which the applicant's agricultural or silvicultural production is being conducted.

(b) Types of water pollutants, based on:

1. Animal waste;
2. Sediment run-off;
3. Nutrient loading; or
4. Pesticide application, storage or disposal.

(c) Proximity of pollutant to groundwater or surface water;

(d) Magnitude of water pollution; and

(e) Location in designated water quality planning area, based on the existence of:

1. An ecosystem-based assistance process;
2. A Federal Clean Water Act Section 319 demonstration area;
3. A wellhead protection area; or
4. An agriculture water priority protection region.

Section 8. Allocation of Cost-share Assistance. (1) The available funds received by the commission for the cost-share program shall be allocated to the conservation districts based on requests from districts approved by the commission prior to each program year. The district shall receive a share of the Kentucky Soil Erosion and Water Quality Cost-share Fund based on the commission's approval of an initial district request based on the objectives identified in Section 8 of this administrative regulation, and in accordance with the prioritization system established in Section 7 of this administrative regulation.

(2) Any funds allocated by the commission to a district for a program year shall revert to the commission if the district has not obligated the funds within one (1) year from allocation.

(3) The commission shall retain ten (10) percent of the available funds in a contingency fund to be allocated to assist persons engaged in agricultural or silvicultural productions and implementing the agriculture water quality program mandated by KRS 224.71.

Section 9. Design of Best Management Practices. Once cost-share assistance has been awarded by the commission, the local district shall designate a technician to develop final design and layout for the approved best management practices.

Section 10. Execution of Performance and Maintenance Agreements. After an application has been awarded cost-share assistance and before the applicant has received payment of the cost-share funds, the applicant and the conservation district shall execute a performance and maintenance agreement.

(1) Requirements of performance and maintenance agreements. The performance and maintenance agreement shall require the applicant to meet the following requirements:

(a) The applicant shall agree to perform those best management practices approved in accordance with this administrative regulation;

(b) The applicant shall agree to maintain approved best management practices for the expected life of each practice agreed upon in the performance and maintenance agreement;

(c) Upon completion of the approved best management practice the applicant shall notify the district that the practice has been installed and shall provide to the district for its inspection all vouchers, bills, and receipts associated with the practice;

(d) The applicant shall agree that at the time of transfer of ownership of land where a best management practice has been applied using cost-share assistance and the expected life assigned the practice has not expired, the applicant shall execute a contract with the transferee requiring continuation of those practices until completed;

(e) The applicant shall agree that if the applicant destroys the best management practice installed or voluntarily relinquishes control

or title to the land on which the installed practice has been established and the new owner, heir, or operator does not agree in writing to properly maintain the practice for the remainder of its specified lifespan, the applicant shall refund all or part of the cost-share assistance, as determined by the district; and

(f) The applicant shall agree that if the applicant does not maintain the approved best management practices on the schedule provided in the plan the applicant shall forfeit the cost-share assistance, and the commission shall be authorized to recover the funds disbursed.

(2) Effect of performance and maintenance agreement. Requirements for performance and maintenance of best management practices applied using cost-share assistance shall be established in the performance and maintenance agreement and reviewed with the applicant at the time of application submittal and before completion of a certification of practices.

(3) Refund of funds disbursed. The district may require a refund of cost-share assistance when an approved best management practice has not been performed or maintained in compliance with approved design standards and specifications for the practice during its expected life as agreed in the performance and maintenance agreement.

(4) Application for future cost-share assistance. Best management practices that have been successfully completed and which later fail as the result of floods, drought, or other natural disasters, and not the fault of the applicant, shall not prohibit the applicant from applying for additional cost-share assistance to restore the practices to their original design standards and specifications.

(5) Certification. Upon notification by the applicant that the approved best management practice has been completed and before disbursement of funds from the district, the appropriate technical agency shall certify to the district that the practice has been installed in accordance with the document entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual," incorporated by reference in Section 13 of this administrative regulation.

(6) Limitations on awards. Cost-share assistance awarded to an applicant shall be limited to a maximum of seventy-five (75) percent of the actual cost, not to exceed an amount approved by the commission, for each best management practice, with the assisted applicant providing twenty-five (25) percent of the cost, which may include in-kind support, with a maximum of \$7,500 per year to each applicant for all practices except for the more expensive animal waste storage practices which have a maximum of \$20,000 per year for each applicant. Cost-share assistance may be used with federal or local cost-share funds on the same practices as long as the total cost share payment does not exceed seventy-five (75) percent of the practice cost. Cost-share assistance shall not be awarded to best management practices in progress prior to cost-share approval or previously-installed practices by the applicant.

Section 11. Reporting and Accounting. (1) District reporting and accounting. A district shall conduct the following reporting and accounting procedures:

(a) Maintain a control ledger showing the current request to the commission and cost share funds obligated for approved applications, based on estimated cost;

(b) Submit a quarterly report to the commission indicating the unobligated balance of allocated and disbursed cost-share funds as shown on each ledger;

(c) Submit an annual progress report to the commission showing accomplishments "to date" for the current program year; and

(d) Assemble case files for each approved application, filed by program year and accessible for public inspection, containing:

1. The approved application for allocated funds;
2. A copy of the estimated cost sheet;
3. Certification of practice completion;
4. Applicant's vouchers, bills or receipts;

5. Final designs for best management practices;
6. The performance and maintenance agreement;
7. Any amendments to the performance and maintenance agreement; and

8. A map locating the practices.

(2) Commission reporting and accounting. The commission shall conduct the following reporting and accounting procedures:

(a) Receive and maintain reports from districts showing the unobligated balance of allocated and disbursed cost share funds as shown on each ledger; and

(b) Submit consolidated quarterly reports based on the reports from districts on the unobligated balance of the Kentucky Soil Erosion and Water Quality Cost-share Fund.

Section 12. Appeals. (1) Procedure for filing appeal. An applicant aggrieved by a decision of the commission denying an application or limiting the amount of financial assurance may file a written appeal with the commission within thirty (30) days of the decision and shall set forth the basis for the appeal.

(2) Procedure for hearing appeal. The commission shall notify the applicant and the local district that they may appear before the commission and present testimony or written documentation on the issues presented by the appeal. The commission shall have sixty (60) days in which to make a decision and to notify the local district and the applicant.

(3) Review of final decision. The decisions of the commission may be appealed to the Franklin Circuit Court.

Section 13. Incorporation by Reference. The documents entitled "Kentucky Soil Erosion and Water Quality Cost-share Manual", dated March 1, 1995 is hereby incorporated by reference. It is available for public inspection and copying, subject to copyright law, at the office of the Soil and Water Conservation Commission, 691 Teton Trail, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m., Mondays through Fridays, excluding state holidays.

THOMAS E. NEAL, Chairman

APPROVED BY AGENCY: June 10, 1995

FILED WITH LRC: June 14, 1995 at noon

PUBLIC HEARING: A public hearing to receive comments on this administrative regulation is scheduled July 25, 1995 at 9 a.m. (EDT) in the 21st Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify Steve Coleman in writing at the address noted below by July 20, 1995 of their intent to attend the hearing and be heard. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on this administrative regulation. Persons testifying at the hearing are asked to provide the soil and Water Conservation Commission with a written copy of their testimony, if available. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this administrative regulation. Written comments must be received by Steve Coleman at the address below no later than the close of the public hearing on July 25, 1995. The Soil and Water Conservation Commission does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The meeting facility is accessible to people with disabilities. The commission will provide, upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact Mr. Coleman at the address below by July 20, 1995 between 8 a.m. and 4:30 p.m. (EDT).

CONTACT PERSON: Steve Coleman, Executive Director, Soil and Water Conservation Commission, 691 Teton Trail, Frankfort,

Kentucky 40601, (502) 564-3080.

## REGULATORY IMPACT ANALYSIS

Contact Person: Steve Coleman

(1) Type and number of entities affected: Persons engaged in agricultural or silvicultural production.

(2) Direct and indirect costs or savings on the affected entities: This cost-share assistance program will provide a savings for recipients of cost-share assistance; there are no costs associated with this program, since the Soil and Water Conservation Commission and the local conservation districts will assist with the preparation of applications for cost-share assistance.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Not applicable.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Not applicable.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: Not applicable.

2. Second and subsequent years: Not applicable.

(3) Effects on the promulgating administrative body: The cost-share assistance program will be administered by the Soil and Water Conservation Commission and the local conservation districts. No new costs on these agencies are anticipated, since they already provide technical support for the best management practices contemplated by the program.

(a) Direct and indirect costs or savings: Not applicable.

1. First year: Not applicable.

2. Continuing costs or savings: Not applicable.

3. Additional factors increasing or decreasing costs: Not applicable.

(b) Reporting and paperwork requirements: The Soil and Water Conservation Commission and the local conservation districts will be handling the applications and accompanying documents, but do not anticipate an additional burden in doing so.

(4) Assessment of anticipated effect on state and local revenues: The cost-share assistance program may benefit state and local revenues by reducing the costs to persons engaged in agricultural and silvicultural production of implementing best management practices.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: HB 452 (1994) authorized the funding of the cost-share assistance program by registration fees received by the Department of Agriculture, Division of Pesticides. The total amount now available for the program is \$550,000.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which administration regulation will be implemented: Not applicable.

(b) Kentucky: Not applicable.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were evaluated because there is a specific legislative directive to implement the cost-share assistance program.

(8) Assessment of expected benefits of the administrative regulation: The cost-share assistance program will aid persons engaged in agricultural or silvicultural production in implementing best management practices.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The

cost-share assistance program will aid persons engaged in agricultural or silvicultural production in implementing best management practices. This will improve environmental conditions in the areas of soil conservation and prevention of groundwater pollution.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If cost-share assistance is not made available, persons engaged in agricultural or silvicultural production will be required to pay all the costs of implementing best management practices, and some may undergo financial harm as a result.

(c) If detrimental effect would result, explain detrimental effect: See (b) above.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: Not applicable.

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? Yes, by identifying eligible persons and prioritizing their applications.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. None

2. State compliance standards. The administrative regulation is promulgated pursuant to KRS 146.080 through 146.121, which establish the Kentucky Soil and Water Quality Cost-share Fund, to assist persons engaged in agricultural and silvicultural production in implementing best management practices for such purposes as providing cleaner water through the reduction in the loading of sediment, nutrients, and pesticides in Kentucky streams, rivers, and lakes; reducing the loss of topsoil vital to the sustained production of food and fiber; and preventing surface water and groundwater pollution.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part of division of local government this administrative regulation will affect. The administrative regulation will affect any local government engaged in agricultural or silvicultural production.

3. State the aspect or service of local government to which this administrative regulation relates. See answer 3 above.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollars estimate cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): The administrative regulation will provide the opportunity to receive cost-share assistance.

Expenditures (+/-): There should be no costs associated with applying for cost-share assistance, since the Soil and Water Conservation Commission and local conservation districts will assist with the preparation of applications for cost-share assistance.

Other Explanation:

#### JUSTICE CABINET Division of Charitable Gaming (New Administrative Regulation)

##### 500 KAR 11:001. Definitions.

RELATES TO: KRS 238.500 to 238.995

STATUTORY AUTHORITY: KRS 238.515(9)

NECESSITY AND FUNCTION: KRS Chapter 238 authorizes the Division of Charitable Gaming to adopt administrative regulations to carry out the provisions of the chapter. This administrative regulation establishes definitions of terms used throughout 500 KAR Chapter 11.

Section 1. Definitions. The following definitions describe terms used in administrative regulations found in 500 KAR Chapter 11. Terms not defined below shall have the meanings given to them by KRS 238.505 or if not so defined, the meanings attributed by common use.

(1) "Card" means a card or paper containing five (5) rows of five (5) squares with twenty-four (24) preprinted numbers and a free center space, and the letters, "B", "I", "N", "G", "O" printed in order over the five (5) columns.

(2) "Cash" means currency, coinage or a negotiable instrument.

(3) "Covered" means daubed or smeared with indelible ink.

(4) "Deal" means each separate game or series of charity game tickets with the same serial number.

(5) "Designator" means an item used in the number selection process, such as a ping pong ball, upon which bingo letters and numbers are imprinted.

(6) "Disposable paper bingo card" means a nonreusable, paper bingo card bearing preprinted numbers and assembled in multiple card sheet, single sheet, pad or packet form.

(7) "Face" means a card or paper containing five (5) rows of five (5) squares with twenty-four (24) preprinted numbers and a free center space, and the letters "B", "I", "N", "G", "O" printed in order over the five (5) columns.

(8) "Flare" means a piece of paper or cardboard or similar material which bears printed information relating to the number of prizes to be awarded and the specific prize amounts in a particular deal of charity game tickets.

(9) "Perm number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

(10) "Selection device" means a device that may be operated manually or automatically and is used to randomly select bingo numbers.

(11) "Serial number" means a unique number printed by the manufacturer on each card in a set and which is unique to that set.

(12) "Series number" means the number of unique card faces contained in a set.

(13) "Set" means a specific group of cards from the same product line which are the same color, border pattern and imprinted with the same serial number. A set of cards may include more than one (1) series of cards or faces.

(14) "Verification book" means a book compiled by the manufacturer of bingo cards that lists the unique pattern of numbers on each card by perm number and is used to verify the authenticity of a winning card.

(16) "Year" means calendar year.

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: June 14, 1995

FILED WITH LRC: June 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, July 21, 1995, at 9 a.m. at the Justice Cabinet Conference Room, 2nd Floor, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in

attending this hearing shall notify this agency in writing by July 16, 1995, five (5) 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 this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 17, 1995. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690, PH: (502) 564-5528, FAX: (502) 564-6625.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All licensed manufacturers (currently 17), licensed distributors (currently 56), and licensed charitable organizations (currently 667).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(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

(4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charity Gaming Regulation Account (KRS 238.570(2)).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None known.

(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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is inapplicable.

#### JUSTICE CABINET Division of Charitable Gaming (New Administrative Regulation)

#### 500 KAR 11:070. Exempt activities.

RELATES TO: KRS 238.535

STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.535(1), (2)

NECESSITY AND FUNCTION: Any organization exempt from licensure requirements under KRS 238.535(1) is to notify the Division of Charitable Gaming in writing of its intent to engage in exempt charitable gaming. This administrative regulation establishes a reporting method and form by which exemption notices are to be filed with and processed by the division.

Section 1. Any charitable organization which otherwise fully qualifies for licensure but claims to be exempt from licensure under KRS 238.535(1) shall submit to the division, thirty (30) days before the exempt charitable gaming activities first occur, a satisfactorily completed form entitled "Notice of Exemption From Charitable Gaming Licensure Requirement", Form CG-T-Exempt. The division shall acknowledge receipt of Form CG-T-Exempt and the charitable organization may present such acknowledgment to licensed distributors or other vendors or entities requiring verification of licensure status as proof that the charitable organization has notified the division of its exempt status. Provided the gaming activities of the charitable organization remain exempt, no additional exemption notice shall be filed with the division. The charitable organization shall promptly notify the division of any changes in information contained on the Form CG-T-Exempt.

Section 2. Incorporation by Reference. (1) Form CG-T-Exempt, "Notice of Exemption From Charitable Gaming Licensure Requirement, (3/95)", is hereby incorporated by reference.

(2) This form may be inspected, obtained or copied at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Frankfort, Kentucky 40601-2690, 8 a.m. to 4:30 p.m., Monday through Friday.

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: June 14, 1995

FILED WITH LRC: June 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, July 21, 1995, at 9 a.m. at the Justice Cabinet Conference Room, 2nd Floor, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 16, 1995, five (5) 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 this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 17, 1995. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690, PH: (502) 564-5528, FAX:

(502) 564-6625.

# REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All charitable organizations conducting exempt charitable gaming will be affected. It is estimated that approximately 500 charitable organizations may be affected.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No license fee will be required of the charitable organization, and no statutory fee (of one-half of one percent of all gross gaming receipts) will be required.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Form CG-T-Exempt will be filed by all exempt charitable organizations the first year and acknowledgments will be sent out by the Division of Charitable Gaming.

2. Second and subsequent years: Only charitable organizations who have not previously filed a Form CG-T-Exempt will do so in subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The printing of the Form CG-T-Exempt will be the only significant cost incurred by the Division of Charitable Gaming.

2. Continuing costs or savings: The printing of the Form CG-T-Exempt will be the only significant cost incurred by the Division of Charitable Gaming.

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Although the regulation's paperwork requirements are created by the Forms CG-T-Exempt themselves, it is anticipated that the division will establish methods by which to acknowledge receipt of the exemption notice and to keep records (based on geographic location, type(s) of organization(s), type(s) of gaming), and other such informational reports.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)) will be used.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 238.535 directs that notice be given the Division of Charitable Gaming of exempt activities. The use of a form is most convenient for both the charitable organization and the Division of Charitable Gaming.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. KRS 238.535(2) did not provide for tiering. Tiering is inapplicable.

## JUSTICE CABINET Division of Charitable Gaming (New Administrative Regulation)

### 500 KAR 11:080. Special charity fundraising event.

RELATES TO: KRS 238.505(9)

STATUTORY AUTHORITY: KRS 238.505(9), 238.515(2), (9), 238.535

NECESSITY AND FUNCTION: KRS 238.505(9) authorizes a special charity fundraising event, such as a fair, carnival, bazaar or festival, that is of short, definite and limited duration and requires licensure by the Division of Charitable Gaming. This administrative regulation further defines a special charity fundraising event, and establishes prize amounts, duration and frequency.

Section 1. A limited license shall be issued to a licensed charitable organization for the special charity fundraising event described in KRS 238.505(9) if:

(1) The licensed charitable organization submits the satisfactorily completed CG-T-Schedule A referred to in 500 KAR 11:010 and 500 KAR 11:015;

(2) The total cash or fair market value of all prizes to be awarded at the event on games of chance does not exceed \$5,000; and

(3) The event does not last longer than five (5) continuous days.

Section 2. No more than two (2) special charity fundraising event licenses will be issued to any one (1) licensed charitable organization in one (1) year.

Section 3. There shall be no separate fee charged by the Division of Charitable Gaming for the issuance of a special charity fundraising event license.

Section 4. If special limited games are conducted at a special charity fundraising event, the licensed charitable organization shall also be licensed to hold the special limited games in accordance with KRS 238.545(4).

Section 5. If bingo is held at a special charity fundraising event licensed under Section 1 of this administrative regulation, the provisions of KRS 238.545(1) limiting the frequency and duration of bingo are inapplicable.

Section 6. A special charity fundraising event licensed under Section 1 of this administrative regulation may be held at a location other than the location specified on the charitable organization's license to conduct charitable gaming issued under KRS 238.535.

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: June 14, 1995

FILED WITH LRC: June 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, July 21, 1995, at 9 a.m. at the Justice Cabinet Conference Room, 2nd Floor, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 16, 1995, five (5) 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 this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 17, 1995. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690, PH: (502) 564-5528, FAX: (502) 564-6625.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: Licensed charitable organizations which conduct fairs, bazaars, festivals or carnivals (estimate 500 in number).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs of producing and issuing greater number of special events licenses resulting in increased staff time. Increased staff time to review CG-T-Schedule A applications.

2. Continuing costs or savings: Costs of producing and issuing greater number of special events licenses resulting from increased staff time. Increased staff time to review CG-T-Schedule A applications.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: Quarterly reports are required of all licensees. A separate license will be issued for each such event.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative prize amount ceilings and lengths of duration were considered, but it was believed that the regulation arrived at fairly and adequately addresses the organizations conducting these "special charity fundraising events."

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. This regulation will apply equally to all licensed charitable organizations. Tiering would not be applicable to this situation.

#### JUSTICE CABINET

Division of Charitable Gaming  
(New Administrative Regulation)

500 KAR 11:090. Special limited charitable games.

RELATES TO: KRS 238.505(18)

STATUTORY AUTHORITY: KRS 238.505(18), 238.515(2), (9), 238.535(1)

NECESSITY AND FUNCTION: The Division of Charitable Gaming is authorized to approve games to be included among those classified as "special limited charitable games", to establish circumstances under which such games will be conducted, and to establish reporting requirements.

Section 1. In addition to those special limited charitable games described in KRS 238.505(18), all games of chance shall be considered special limited charitable games requiring licensure by the division of charitable gaming where:

(1) The winner is selected on the spinning of a wheel;

(2) The cost of each chance to win exceeds two (2) dollars; and

(3) The fair market value of any one (1) noncash prize awarded the winner exceeds \$100.

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: June 14, 1995

FILED WITH LRC: June 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, July 21, 1995, at 9 a.m. at the Justice Cabinet Conference Room, 2nd Floor, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 16, 1995, five (5) 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 this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 17, 1995. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690, PH: (502) 564-5528, FAX: (502) 564-6625.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All licensed charitable organizations conducting wheel games (estimate as many as 500



organizations per year).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: It is anticipated that more exemption notices under KRS 238.535(1) will be filed with the Division of Charitable Gaming for staff review, but considerably less staff time will be utilized because fewer special limited charitable game license applications will be filed, thus resulting in some savings.

2. Continuing costs or savings: It is anticipated that more exemption notices under KRS 238.535(1) will be filed with the Division of Charitable Gaming for staff review, but considerably less staff time will be utilized because fewer special limited charitable game license applications will be filed, thus resulting in some savings.

3. Additional factors increasing or decreasing costs: None known.

(b) Reporting and paperwork requirements: Quarterly reports are required of all licensees. There will be less licenses required to be issued as a result of this regulation and, therefore, less quarterly reports to process. More exemption notices will be filed with the Division of Charitable Gaming, however.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: There will be no separate "special limited charitable game" license fee required for qualifying wheel games and, in instances where an exemption is available, no general charitable gaming (organization) license will be required, thus resulting in greater savings to the charitable organizations.

(b) Kentucky: There will be no separate "special limited charitable game" license fee required for qualifying wheel games and, in instances where an exemption is available, no general charitable gaming (organization) license will be required, thus resulting in greater savings to the charitable organizations.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative prize amounts and cost levels of participation were considered, but it was believed that the regulation arrived at fairly and adequately addresses the organizations conducting noncash prize wheel games.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All charitable organizations will be treated the same.

**JUSTICE CABINET  
Division of Charitable Gaming  
(New Administrative Regulation)**

**500 KAR 11:100. Division employees prohibited from playing charitable games.**

RELATES TO: KRS 238.510(4)

STATUTORY AUTHORITY: KRS 238.515(2), (9)

NECESSITY AND FUNCTION: KRS Chapter 238 authorizes the Division of Charitable Gaming to adopt administrative regulations necessary to carry out the provisions of the chapter. This administrative regulation prohibits employees of the Division of Charitable Gaming, which is charged with licensure and enforcement of charitable gaming in the Commonwealth of Kentucky, from playing any charitable games, and in so doing, removes any potential conflict of interest or appearance of impropriety.

Section 1. No division employee, during his or her term of employment, shall play any charitable game authorized in KRS Chapter 238 unless the employee's participation in the game is authorized in advance by the division director as a necessary function of the employee's job duties.

PAUL F. ISAACS, Secretary

APPROVED BY AGENCY: June 14, 1995

FILED WITH LRC: June 14, 1995 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, July 21, 1995, at 9 a.m. at the Justice Cabinet Conference Room, 2nd Floor, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by July 16, 1995, five (5) 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 this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to attend the public hearing, you may submit comments on this administrative regulation by July 17, 1995. Send written notification to attend the public hearing or comments on this administrative regulation to: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, First Floor, Frankfort, Kentucky 40601-2690, PH: (502) 564-5528, FAX: (502) 564-6625.

**REGULATORY IMPACT ANALYSIS**

Contact Person: Christopher W. Johnson, Director

(1) Type and number of entities affected: All staff of the Division of Charitable Gaming (currently 21).

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No costs or savings.

(c) Compliance, reporting, and paperwork requirements, including



factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None
2. Second and subsequent years: None
- (3) Effects on the promulgating administrative body:
  - (a) Direct and indirect costs or savings:
    1. First year: None
    2. Continuing costs or savings: None
  3. Additional factors increasing or decreasing costs: N/A
  - (b) Reporting and paperwork requirements: None
  - (4) Assessment of anticipated effect on state and local revenues:

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Charitable Gaming Regulatory Account (KRS 238.570(2)).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternatives which would satisfactorily avoid any potential conflict of interest.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applicable in this instance as regulation applies equally to all Division of Charitable Gaming staff.

#### EDUCATION, ARTS, AND HUMANITIES CABINET

Department of Education

Management Support Services

(New Administrative Regulation)

**702 KAR 7:081. Repeal of 702 KAR 7:080, Recruiting of student athletes prohibited.**

RELATES TO: KRS 156.070

STATUTORY AUTHORITY: KRS 156.070

NECESSITY AND FUNCTION: 702 KAR 7:080 is no longer necessary because this administrative regulation is redundant of the Kentucky High School Athletic Association Bylaw 10, which is approved by the Kentucky Board of Education in 702 KAR 7:065.

Section 1. 702 KAR 7:080, Recruiting of student athletes prohibited, is hereby repealed.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Thomas C. Boysen  
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: June 13, 1995

FILED WITH LRC: June 14, 1995 at 12:15 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 28, 1995, at 10 a.m. in the State Board Room, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 23, 1995, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Randy Kimbrough

(1) Type and number of entities affected: 176 local school districts.

(2) Direct and indirect costs or saving to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(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

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is required.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation eliminates duplication of Kentucky High School Athletic Association (KHSAA) Bylaw 10.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would occur, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: This

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regulation eliminates duplication of Kentucky High School Athletic Association (KHSAA) Bylaw 10.

(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

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. The administrative regulation applies equally to all 176 local school districts.

### EDUCATION, ARTS, AND HUMANITIES CABINET

Department of Education  
Management Support Services  
(New Administrative Regulation)

**702 KAR 7:091. Repeal of 702 KAR 7:090, Requirements for coaches and other personnel staffing interscholastic programs.**

RELATES TO: KRS 156.070, 161.044, 161.180

STATUTORY AUTHORITY: KRS 156.070

NECESSITY AND FUNCTION: 702 KAR 7:090 is no longer necessary because this administrative regulation is redundant of the Kentucky High School Athletic Association Bylaw 27, which is approved by the Kentucky Board of Education in 702 KAR 7:065.

Section 1. 702 KAR 7:090, Requirements for coaches and other personnel staffing interscholastic programs, is hereby repealed.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Thomas C. Boysen  
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: June 13, 1995

FILED WITH LRC: June 14, 1995 at 12:15 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 28, 1995, at 10 a.m. in the State Board Room, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 23, 1995, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Randy Kimbrough

(1) Type and number of entities affected: 176 local school districts.

(2) Direct and indirect costs or saving to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available

from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(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

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is required.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation eliminates duplication of Kentucky High School Athletic Association (KHSAA) Bylaw 27.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would occur, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: This regulation eliminates duplication of Kentucky High School Athletic Association (KHSAA) Bylaw 27.

(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

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. The administrative regulation applies equally to all 176 local school districts.

### EDUCATION, ARTS, AND HUMANITIES CABINET

Department of Education  
Bureau of Learning Support Services  
(New Administrative Regulation)

**704 KAR 3:470. Ranking of certified school personnel.**

RELATES TO: KRS 157.390

STATUTORY AUTHORITY: KRS 156.160, 157.390

NECESSITY AND FUNCTION: KRS 157.390 authorizes the Kentucky Board of Education to adopt administrative regulations to classify teachers in rank. This administrative regulation defines the process and standards for the classification of teachers in rank for purposes of the state teacher salary schedule.

Section 1. (1) The ranks for certified school personnel shall meet the standards and requirements set by the Education Professional Standards Board in 704 KAR Chapter 20 for issuance and renewal of certification in accord with KRS 161.028(1).

(2) The collegiate preparation required for the classification of certified school personnel in ranks shall be completed in a college or university which meets standards established by the Education

Professional Standards Board in 704 KAR Chapter 20.

(3) The standards for approval of "equivalent" preparation at any level shall be those established in 704 KAR Chapter 20 by the Education Professional Standards Board.

Section 2. (1) It shall be the responsibility of each certified professional seeking a change in rank to document completion of the approved program by application to the Education Professional Standards Board.

(2) Each certified school district employee shall place on file with the employing school district the certificate identifying the rank of qualifications.

(3) For purposes of the state teacher salary schedule the rank of each certified school employee shall be determined by the certificate on file in the local school district.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Thomas C. Boysen  
Commissioner of Education

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: June 13, 1995

FILED WITH LRC: June 14, 1995 at 12:15 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 28, 1995, at 10 a.m. in the State Board Room, 500 Mero Street, First Floor, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 23, 1995, five days prior to the hearing, of their intent to attend. If the required notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Mr. Kevin M. Noland, Associate Commissioner, Department of Education, First Floor, Capital Plaza Tower, Frankfort, Kentucky 40601.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Betty Lindsey

(1) Type and number of entities affected: Approximately 42,400 public school certified personnel.

(2) Direct and indirect costs or saving to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional costs.

2. Second and subsequent years: No additional costs.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs or savings.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: This regulation will continue the process of ranking the qualifications of school personnel under the operation of the Division of Certification. All applications and transcripts for issuing certificates and for ranking as well as subsequent actions are maintained as a permanent record in the Division of Certification.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general fund within existing appropriations.

(6) To the extent available from public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: None

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 157.390 requires ranking be established by regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No direct impact on public health and environment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would occur, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping or duplicative: 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:

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. The requirements for ranks are applied uniformly to all applicants based on standards and requirements set by the EPSB.

#### EDUCATION, ARTS AND HUMANITIES CABINET Education Professional Standards Board (New Administrative Regulation)

#### 704 KAR 20:056. Dating of certification.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY AND FUNCTION: KRS 161.020 requires professional school personnel to hold a certificate of legal qualifications for the position. This administrative regulation establishes the effective and expiration dates for certification and repeals administrative regulation 704 KAR 20:055, as it is being replaced by this administrative regulation.

Section 1. (1) The effective date for statements of eligibility, certificates, and certificates issued for internship shall be determined in accordance with Sections 2, 3, and 4 of this administrative regulation.

(2) The calendar year of the effective date shall be the base year. The year of expiration shall be determined by adding the years of duration to the base year in accordance with the applicable certification administrative regulation in 704 KAR Chapter 20.

Section 2. Statements of Eligibility. (1) A statement of eligibility shall be issued to become effective on July 1 provided all requirements are completed on any date from July 1 to September 1 inclusive and to expire on June 30 of the last year of duration.

(2) If requirements for a statement of eligibility are completed at the close of the spring semester of an academic year, the statement of eligibility shall become effective from the date all requirements are completed and to expire on June 30 of the last year of duration.

(3) If requirements are completed on any date after September 1 up to and including the close of the fall semester, the statement of eligibility shall become effective from the date all requirements are completed. The statement of eligibility shall expire on December 31 of the last year of duration.

(4) If requirements are completed after the beginning of the spring semester and before the close of the spring semester, the statement shall become effective from the date all requirements are completed. The statement of eligibility shall expire on June 30 of the last year of duration.

Section 3. Certificates. (1) A certificate shall be issued to become effective on July 1 provided all requirements are completed on any date from July 1 to September 1 inclusive and to expire on June 30 of the last year of duration.

(2) If requirements for a certificate are completed after the beginning of the spring semester and before July 1, the certificate shall become effective from the date all requirements are completed and to expire on June 30 of the last year of duration.

(3) If requirements are completed after September 1 up to and including the close of the fall semester, the certificate shall be dated to become effective from the date all requirements are completed. The certificate shall expire on June 30 of the last year of duration.

Section 4. Certificates Issued for Internship. (1) Certificates for the internship shall be issued for the fall and spring semester of the school year provided the confirmation of employment is received in the Office of Teacher Education and Certification in sufficient time for the applicant to complete seventy (70) days during the semester or 140 days during the school year.

(2) In the event a person is employed during the fall semester but cannot complete the year of internship of 140 days, the internship may be established for one (1) semester and the certification shall become effective the date the confirmation of employment is received in the Office of Teacher Education and Certification.

(3) A certificate may be issued only when seventy (70) days exists to establish an internship.

Section 5. 704 KAR 20:055, Date of issuance; expiration, is hereby repealed.

DANIEL GREENE, Chair

APPROVED BY AGENCY: June 14, 1995

FILED WITH LRC: June 14, 1995 at 10 a.m.

PUBLIC HEARING: A hearing on this administrative regulation will be held on July 28, 1995, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by July 23, 1995, five days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Dr. Betty Lindsey, Office of Teacher Education and Certification, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4606.

## REGULATORY IMPACT ANALYSIS

Contact Person: Betty Lindsey

(1) Type and number of entities affected: The proposed revision will affect approximately 1,500 individuals who complete requirements for certification at the end of the fall semester.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on 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

(4) Assessment of anticipated effect on state and local revenues: No impact on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None. No comments received.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: The proposed revision will bring the issuance of the statement of eligibility in conformity with KRS 161.030.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: No direct impact on public health and environment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) 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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. The procedure to establish effective date and expiration dates for issuing certification shall be uniformly applicable to all individuals.

## PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance (New Administrative Regulation)

806 KAR 47:010. Designation of a contact person.

RELATES TO: KRS 304.47-050, 304.47-080

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any

provision of the Kentucky Insurance Code. This administrative regulation requires insurers to designate a contact person to communicate with the Insurance Fraud Unit. This administrative regulation will assist insurers with their reporting requirement of KRS 304.47-050.

Section 1. Every insurer shall designate at least one (1) primary contact person but not more than four (4) primary contact persons who shall communicate with the Insurance Fraud Unit on matters relating to the reporting, investigation, and prosecution of suspected fraudulent insurance acts as defined in KRS 304.47-020.

Section 2. Every insurer shall notify the Insurance Fraud Unit in writing of the names, addresses, and telephone numbers of the insurer's primary contact person or persons.

DON W. STEPHENS, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: June 14, 1995

FILED WITH LRC: June 15, 1995 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1995 at 10 a.m. (ET) in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 1995, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on July 21, 1995, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Carla H. Montgomery, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number (502) 564-6032 Ext. 239.

#### REGULATORY IMPACT ANALYSIS

Contact person: Carla H. Montgomery, Counsel

(1) Type and number of entities affected: All insurers governed by KRS 304.47 which is approximately 1475.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No public comments were received on this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. Not available in public comments.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Insurers will be required to report the name, address and phone number of the contact person or persons to the department.

2. Second and subsequent years: No reporting or paperwork unless the contact person is changed.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There should be a savings of time if the Insurance Fraud Unit has to contact a specific person or persons.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Insurance Fraud Unit will make a directory of contact persons.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget currently prescribed for the Insurance Fraud Unit will be used to implement this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Not available through public comments.

(b) Kentucky: Not available through public comments.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation coordinates communication between the Insurance Fraud Unit and insurers. It assures more efficiency in the investigation of fraudulent insurance acts.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: If the Insurance Fraud Unit has efficient and effective investigations and prevents fraud, the public will benefit by the elimination of fraudulent insurance acts.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) 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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: This administration regulation is applied to all insurers equally.

#### PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

(New Administrative Regulation)

#### 806 KAR 47:020. Reporting fraudulent insurance acts.

RELATES TO: KRS 304.47-050

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code. Every licensee shall report fraudulent insurance acts to the Insurance Fraud Unit pursuant to KRS 304.47-050. This administrative regulation explains the procedure for this reporting requirement.

Section 1. (1) All persons identified in KRS 304.47-050(2) shall report in writing all suspected fraudulent insurance acts to the Insurance Fraud Unit.

(2) The report shall be filed within fourteen (14) days of determination by the reporter that a suspected fraudulent insurance act has been committed.

Section 2. (1) When a suspected fraudulent insurance act is reported, the following information, if known, shall be reported to the Insurance Fraud Unit:

(a) Date of preparation of the report.

(b) Information about insurance company:

1. Name of insurance company;
2. Phone number and fax number of insurance company;
3. Policy number or claim number; and
4. Insurance policy type.
- (c) Information about referring person if not an insurance company:
  1. Complete name;
  2. Occupation and title;
  3. Complete address; and
  4. Phone number and fax number.
- (d) If you have reported to some other agency or entity, identify the agency or entity by name, address, and phone number.
- (e) Information about loss or occurrence:
  1. Date of loss or occurrence;
  2. Location of loss including the complete address;
  3. Estimated value of claim for loss; and
  4. Whether claim was paid or not paid.
- (f) Detailed narrative of what fraudulent insurance act is suspected and why it is suspected.
- (g) Information concerning the parties involved and their roles as follows:
  1. Complete names of all parties;
  2. Business and alias names of parties;
  3. Roles of each party;
  4. Complete address of each party;
  5. Phone number of each party;
  6. Date of birth or age of each party;
  7. Social Security number of each party;
  8. Tax identification number of each party;
  9. Driver's license number of each party.
- (h) List the type of documents in your possession, for example police reports, photographs, or falsified documents.
- (2) The information provided should be signed and dated by the reporting party or an authorized representative of the reporting party.

DON W. STEPHENS, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: June 14, 1995

FILED WITH LRC: June 15, 1995 at 8 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on July 21, 1995 at 10 a.m. (ET) in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 1995, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on July 21, 1995, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Carla H. Montgomery, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number (502) 564-6032 Ext. 239.

#### REGULATORY IMPACT ANALYSIS

Contact person: Carla H. Montgomery, Counsel

(1) Type and number of entities affected: All insurers governed by KRS 304.47 which is approximately 1475.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in

which the administrative regulation will be implemented, to the extent available from the public comments received. Not available in public comments.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. All persons identified in KRS 304.47-050(2) will be required to report all fraudulent insurance acts. It may cost those persons time and some money to prepare reports. However, if the law prevents fraud, insurers will eventually save money. No information was provided in public comments.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: All persons identified in KRS 304.47-050(2) shall report all suspected fraudulent insurance acts to the Insurance Fraud Unit and give the appropriate information.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(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: The Insurance Fraud Unit will receive reports and begin investigations.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget currently designated for the Insurance Fraud Unit will be used.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Not available in public comments.

(b) Kentucky: Not available in public comments.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation helps implement the reporting requirements in KRS 304.47-050. The 14 day requirement helps keep the investigation contemporaneous and efficient. Requiring that the report be in writing helps insurers and others prove that they have met the reporting requirement.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The ultimate goal of reporting fraudulent insurance acts is to prevent fraud and lower the costs of insurance.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) 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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Tiering is not applied because the administrative regulation is applied equally to all insurers and others required to report fraudulent insurance acts.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Insurance**  
**(New Administrative Regulation)**

**806 KAR 47:030. Requirements for special investigative units.**

RELATES TO: KRS 304.47-080

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY AND FUNCTION: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. The administrative regulation sets forth policies and procedures for insurers to adopt for their special investigative unit.

Section 1. Definitions. "Special investigative unit" or "SIU" means a unit to investigate fraudulent insurance acts as required in KRS 304.47-080.

Section 2. All insurers shall implement the following in conjunction with their SIU's:

- (1) Systematic and effective methods to detect and investigate suspected fraudulent insurance claims;
- (2) Development and implementation of a corporate antifraud strategy to provide for the appropriate disposition of fraudulent insurance claims;
- (3) Provisions to educate and train all claims handlers to identify possible insurance fraud;
- (4) Policies for the SIU to cooperate with the insurer's claims handlers, the insurer's legal personnel, technical support personnel, and database support personnel;
- (5) Procedures to facilitate insurer communications with the Insurance Fraud Unit and compliance with mandatory reporting of suspected fraudulent insurance acts, pursuant to KRS 304.47-050; and
- (6) Procedures to encourage, coordinate, and effectuate communication and cooperation between the SIU, the Insurance Fraud Unit, and other relevant law enforcement agencies.

Section 3. (1) Within ninety (90) days of the effective date of this administrative regulation, every insurer shall submit to the Insurance Fraud Unit a written report setting forth the manner in which the insurer is complying with Section (2) of this administrative regulation.

(2) The above report shall also include the following:

- (a) If the insurer formed the SIU in house and solely governs it, the year that the SIU was formed;
- (b) If the insurer has contracted SIU services through another company, the following shall be reported:
  1. The identity of the company providing SIU services;
  2. The initial year of the contract between the insured and the company providing SIU services; and
  3. A copy of the contract between the insurer and the company providing SIU services;
- (c) The total number of the SIU investigative staff;
- (d) The total number of SIU investigative staff investigating cases for multiple jurisdictions including Kentucky; and
- (e) The total number of SIU investigative staff limited to investigating cases in Kentucky.

Section 4. Within thirty (30) days of a material change of the information provided in the above report, the insurer shall amend the written report and refile the report in accordance with this section.

DON W. STEPHENS, Commissioner

EDWARD J. HOLMES, Secretary

APPROVED BY AGENCY: June 14, 1995

FILED WITH LRC: June 15, 1995 at 8 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on July 21, 1995 at 10 a.m. (ET) in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 1995, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on July 21, 1995, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Carla H. Montgomery, Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032 Ext. 239.

**REGULATORY IMPACT ANALYSIS**

Contact person: Carla H. Montgomery, Counsel

(1) Type and number of entities affected: All insurers who are governed by KRS 304.47 which is approximately 1475.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. Not available in public comments.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. Insurers are required to maintain an investigative unit pursuant to KRS 304.47-080. Insurers may incur costs to begin their investigative unit and implement the policies and procedures. The cost for each insurer will be different. No specific costs were identified in the public comments.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Insurers must report how they are implementing the policies and procedures for their SIU.

2. Second and subsequent years: No reporting requirement unless original report changes.

(3) Effects on the promulgating administrative body:

(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: The department will receive reports from the insurers and any charges in that report.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The same budget that is currently in effect for the Insurance Fraud Unit will be used.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Not available in public comments.

(b) Kentucky: Not available in public comments.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This administrative regulation provides for basic policies and procedures for insurers as they begin their special investigative unit. This makes the SIU more uniform and consistent.



(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) 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

(10) Any additional information or comments: None

(11) TIERING: Tiering is not applied because the statute is applied equally to all insurers.

**KENTUCKY HEALTH POLICY BOARD  
(New Administrative Regulation)**

**909 KAR 1:080. Accountable health plan certification.**

RELATES TO: KRS 304.17A

STATUTORY AUTHORITY: KRS 304.17A-070(2)

NECESSITY AND FUNCTION: KRS 304.17A-070 requires the promulgation of administrative regulations relating to the certification of accountable health plans eligible to serve members of the Kentucky Health Purchasing Alliance. This administrative regulation applies to all accountable health plans that seek to offer services to Kentucky Health Purchasing Alliance members.

Section 1. Definitions. (1) The definition of "accountable health plan" or "AHP" is governed by KRS 304.17A-010(1).

(2) "Alliance" or "Kentucky Health Purchasing Alliance" means the state agency created by KRS 304.17A-020 as the exclusive entity for the oversight and coordination of health benefit purchasing through accountable health plans certified by the alliance.

(3) "Kentucky Health Policy Board" means a quorum of the board or a member of the board designated to represent the board.

Section 2. Accountable Health Plan Application Process. (1) An authorized officer of an AHP shall apply for certification by submitting an original application and three (3) copies to the Kentucky Health Purchasing Alliance on the form "Application for Accountable Health Plan Certification" incorporated herein by reference.

(2) The Kentucky Health Purchasing Alliance shall certify accountable health plans in consultation with the board and the commissioner of insurance. Applications shall be evaluated in order of their receipt. Within thirty (30) days of receiving an application, the Kentucky Health Purchasing Alliance shall provide the applicant with written notice of its findings. That notice shall:

(a) Specify approval or rejection of the application and the grounds for that decision; or

(b) Specify additional information needed to clarify the application and a deadline for submitting that information. If additional information is not provided by the deadline, the application shall be rejected. Within thirty (30) days of receiving timely additional information, the Kentucky Health Purchasing Alliance shall provide a written notice of findings, as described in paragraph (a) of this subsection.

(3) In evaluating and authorizing accountable health plans, the following criteria shall be considered:

(a) The AHP's conformity with the criteria set forth in Section 2 of this administrative regulation;

(b) The adequacy of the financial and organizational resources of the AHP; and

(c) The ability of the AHP to meet the evaluation requirements described in KRS 304.17A-030.

**Section 3. Revocation of Accountable Health Plan Certification.**

(1) The Kentucky Health Purchasing Alliance may revoke the certification of an accountable health plan at any time if one (1) or more of the following conditions exist:

(a) The AHP does not comply with the provisions of this administrative regulation or other applicable provisions of the Kentucky Insurance Code;

(b) A participating insurer or health maintenance organization becomes subject to suspension or revocation of its certificate of authority; or

(c) There has been a misrepresentation of a material fact in the AHP application or any subsequent report required of the AHP.

(2) The Kentucky Health Purchasing Alliance shall provide written notice of an intent to revoke certification to the AHP setting forth the basis of the revocation and granting the AHP fifteen (15) days from the date of the notice to make a written response.

(3) After reviewing the response, the Kentucky Health Purchasing Alliance shall issue an order directing the AHP to remedy specific defects, and may revoke the AHP certification or, at the discretion of the alliance, set a time and place for hearing.

Section 4. Examination of Records. The Kentucky Health Purchasing Alliance or the Kentucky Health Policy Board may make or cause to be made examinations of the books and records of an accountable health plan to ensure compliance with this administrative regulation and the representations made by the AHP on its application for certification or recertification.

Section 5. Incorporation by Reference. The Application for Accountable Health Plan Certification herein incorporated by reference is available for copying at the offices of the Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky 40601 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

JACK B. HALL, Chairman

APPROVED BY AGENCY: June 12, 1995

FILED WITH LRC: June 14, 1995 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 21, 1995 at 10 a.m. at the Kentucky Health Policy Board Conference Room, 909 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 16, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack B. Hall, Chairman, Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-4040.

**REGULATORY IMPACT ANALYSIS**

Contact Person: Jack B. Hall

(1) Type and number of entities affected: All health insurance carriers, health maintenance organizations, and provider-sponsored health care delivery systems throughout the Commonwealth.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented and to the extent available from the public comments received: There is no

anticipated impact on the cost of living and employment in any geographical area in the Commonwealth as a result of this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments have been received from the public indicating that the cost of doing business will be affected by this regulation.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Compliance, reporting and paperwork requirements concerning accountable health plan certification during the first year following implementation will be limited to those required by KRS 304.17A.

2. Second and subsequent years: See above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This regulation will not result in any new costs or savings or the promulgating body.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: See above.

(b) Reporting and paperwork requirements: This regulation requires entities desiring to provide health services to Kentucky Health Purchasing Alliance members to demonstrate compliance with the statutory requirements set forth in KRS 304.17A, and will therefore result in additional written work requirements by the Kentucky Health Purchasing Alliance in the processing and evaluation of these applications.

(4) Assessment of anticipated effect on state and local revenue: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget of the Commonwealth as established by House Bill 2 enacted by the 1994 General Assembly; application fees.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: No public comments have been received, and no economic effects are expected.

(b) Kentucky: See above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were available. KRS 304.17A-070 requires the Kentucky Health Policy Board to establish regulations for accountable health plan certification and sets forth the requirements for these regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: One of the goals of the Kentucky Health Reform Act is to improve the health status of all Kentuckians. This certification process is intended to assure that those health care entities providing services to public sector employees and other alliance members meet specified standards of quality and access that have been determined by the General Assembly to further the goal of improved health status.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Because certification is a mandatory precondition to the provision of services to members of the Kentucky Health Purchasing Alliance, failure to implement this regulation would nullify the ability of the alliance to contract for services.

(c) If detrimental effect would result, explain detrimental effect: See above.

(9) 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

(10) Any additional information or comments: N/A

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used): Tiering was not applied because this regulation applies equally to all entities statewide.

# KENTUCKY HEALTH POLICY BOARD (New Administrative Regulation)

## 909 KAR 1:090. Establishment of the Kentucky Risk Assessment and Risk Adjustment System.

RELATES TO: KRS 304.17A.130

STATUTORY AUTHORITY: KRS 304.17A.130

NECESSITY AND FUNCTION: KRS 304.17A-130 provides that the Kentucky Health Policy Board shall promulgate administrative regulations for the establishment of a risk adjustment process to be used in equalizing risk between insurers.

Section 1. Definitions. (1) "Age" means a person's attained age. For the purpose of attributing age to a family unit, "age" is determined as the age attained by the policyholder.

(2) "Benefit plan" means any plan as defined by KRS 304.17A-100(4) which is subject to this administrative regulation.

(3) "Board" means the Kentucky Health Policy Board.

(4) "Continuation coverage" means continuation coverage provided by the Consolidated Omnibus Budget Reconciliation Act of 1987 or provided through the Kentucky Health Purchasing Alliance.

(5) "Demographic Risk Adjustment Fund" means the risk adjustment fund established under Section 7 of this administrative regulation, including amounts owed to the fund by insurers plus any interest accrued on the amounts paid by the insurers prior to the payout of amounts due from the fund in accordance with Section 7 of this administrative regulation.

(6) "Diagnosis" means any diagnosis listed in the high cost case in Tables 2 and 2A.

(7) "Eligible insurer" means an insurer eligible for a payment from the High Cost Case Fund as defined in Section 12 of this administrative regulation.

(8) "Family composition category" means one (1) of the four (4) categories of family types (single, couple, single parent family and dual parent families) distinguished in the modified community rating structure established pursuant to KRS 304.17A-120.

(9) "High Cost Case Fund" means the risk adjustment fund referred to under Section 10 of this administrative regulation, including the contributions required under Section 12 of this administrative regulation plus any interest accrued.

(10) "Insurer" means a person or entity as defined by KRS 304.17A-100(5) which issues or renews benefit plans for employers with 100 employees or less, individuals, or members of the Kentucky Health Purchasing Alliance, affiliated groups, trusts, or associations consisting of 100 individuals or less or any number of employers with 100 employees or less.

(11) "MCRC" means modified community rating cell which is a premium rating cell classification based on:

(a) Age;

(b) Family composition category;

(c) Geographic area;

(d) Benefit plans;

(e) Alliance status;

(f) Group versus nongroup.

(12) "Member months of enrollment" means the number of policyholders enrolled in benefit plans subject to this administrative regulation multiplied by the number of months of such enrollment over the reporting periods defined in Section 7 of this administrative regulation for demographic risk adjustment and Section 11 of this

administrative regulation for high cost case adjustment.

(13) "Months of exposure" means the date of diagnosis or the performance of a procedure listed in Tables 2 and 2A, as appropriate, through the end of the reporting period or episode of illness, whichever comes first. In the case of transplantation, the episode of illness shall be considered to begin with the provision of preoperative care and end with immediate postoperative follow up care.

(14) "Policyholder" means:

(a) For individual policy health insurance of a commercial insurance company - the policyholder;

(b) For a health maintenance organization - a subscriber;

(c) For small group health insurance other than that provided by a health maintenance organization - the certificateholder.

(15) "PRAF" means prospective risk adjustment factor which are the factors in Table 1 associated with any of the demographic and coverage status categories or cells which include gender (by age), COBRA status and retiree status.

(16) "Procedure" means any procedures listed in the high cost case Tables 2 and 2A.

(17) "Retiree" means a former employee covered under a group insurance policy sponsored by the employer excluding a former employee receiving continuation coverage. Retirement status shall be determined for an individual by the group sponsor.

(18) "Risk adjustment administrator" (administrator) means the contractor retained by the Kentucky Health Policy Board pursuant to Section 13 of this administrative regulation.

(19) "Risk assessment cell" means those classification bases referred to in Table 1.

Section 2. Applicability. (1) This administrative regulation applies to all benefit plans that are subject to KRS 304.17A-120(1) and to all insurers defined in this administrative regulation.

(2) The risk adjustment system established pursuant to this administrative regulation shall be applied on an insurer-by-insurer basis. Risks covered by all of the benefit plans offered by a single insurer shall be cumulated across those plans for the purpose of determining the insurer's relative risk and adjusting the insurer's premium income accordingly, irrespective of whether the enrollment is through the alliance or not.

Section 3. Demographic Risk Assessment. The first stage of the risk adjustment system is demographic risk assessment which represents the development stage of the system. In demographic risk assessment, the variation in health care costs among specified population groups is analyzed and weighted to adjust for these differences.

(1) To calculate an insurer's composite PRAF the insurer shall:

(a) Determine the number of policyholders in each risk assessment cell (Table 1) for all health benefit plans.

(b) Multiply the sum of policyholders for each risk assessment cell determined in paragraph (a) of this subsection by the PRAF associated with each cell in Table 1, or in schedules of factors subsequently developed as provided for in Section 4(2) of this administrative regulation;

(c) Sum the products of paragraph (b) of this subsection for all cells and divide by the total number of policyholders to get the composite PRAF.

(2) Prior to October 1, 1996, each insurer shall calculate its composite PRAF using the factors indicated in Table 1 and the enrollment, by risk assessment cells, for the final month in each calendar quarter. Subsequent to September 30, 1996, insurers shall calculate their composite PRAFs using the most recent PRAF updates developed in accordance with Section 4(2) of this administrative regulation.

(3) Each insurer shall quarterly file with the administrator, by the 15th day of the final month of each calendar quarter;

(a) Its current composite PRAF;

(b) The total number of policyholders included in calculating the composite PRAF as specified in Section 7(2) of this administrative regulation; and

(c) Its member months of enrollment for that calendar quarter.

The administrator shall then calculate a statewide composite PRAF, weighted by the number of policyholders, to be used quarterly in calculating the quarterly adjustment amounts in Section 7(1) of this administrative regulation.

Section 4. Schedule of PRAFs and Updates. (1) PRAFs to be used prior to October 1, 1996 are displayed in Table 1.

(2) Starting September 1, 1996, the administrator shall generate a revised table of PRAFs annually for each family composition category based on information about the actual distribution of policyholders across risk adjustment cells and available data on the relative benefit costs of that population.

Section 5. Reference Premium. A reference premium shall be determined by the administrator quarterly to be used in calculating the quarterly adjustment amounts in Section 7(1) of this administrative regulation. Each insurer shall file quarterly with the administrator, by the 15th day of the final month of each calendar quarter, its total annualized premium for all policyholders enrolled in the month specified in Section 7(2) of this administrative regulation. The reference premium shall equal the statewide average annualized premium per policyholder.

Section 6. Insurer-specific Rated Risk Ratio. (1) Not later than March 1 and September 1 of each year, the administrator shall estimate the enrollment weighted average monthly premium of each MCRC cell.

(2) The administrator shall calculate the average rated risk factor for all insurers as a whole. This factor represents the average premium across all MCRC weighted by the enrollment in each cell. To calculate this factor, the administrator shall multiply the number of policyholders enrolled in each MCRC by the values calculated in subsection (1) of this section and divide the sum of the products by the total number of policyholders insured by all insurers.

(3) To calculate each insurer's specific rated risk factor, the administrator shall multiply the number of policyholders in each MCRC by the values calculated in subsection (1) of this section and divide the sum of those products by the total number of policyholders insured by the insurer.

(4) The Insurer-specific rated risk ratio to be used to calculate the quarterly adjustment amounts in Section 7(1) of this administrative regulation shall be determined by the Administrator according to the following formula:

Insurer-Specific Rated Risk Ratio = Insurer Specific Rated Risk Factor/Average Rated Risk Factor

The insurer-specific rated risk ratios based on the March 1 MCRC premium estimates each year shall be used to determine quarterly adjustment amounts in Section 7 of this administrative regulation for the March 20 and June 20 calculation dates that year. Ratios based on the September 1 MCRC cell premium estimates each year shall be used to determine quarterly adjustment amounts for September 20 and December 20 calculation dates that year.

Section 7. Demographic Risk Adjustment. (1) On a quarterly basis, the administrator shall calculate and inform each insurer of the amount owed to the demographic risk adjustment fund (-) or the amount due from the fund (+) for each insurer no later than ten (10) days following the dates specified in (2) by applying the following formula in which "i" represents a unique value for each insurer participating in the risk adjustment system:

Quarterly Adjustment Amount<sub>i</sub> = (Composite PRAF<sub>i</sub> - Statewide Average Composite PRAF) \* Reference Premium \* Rated Risk Ratio<sub>i</sub> \* Member Months of Enrollment<sub>i</sub> \* .0833

(2) The quarterly calculation dates are as follows:

First Quarter:	March 20
Second Quarter:	June 20
Third Quarter:	September 20
Fourth Quarter:	December 20

For quarterly calculation dates through June 20, 1996, composite PRAF and reference premium information shall be based on enrollment in the final month of the calendar quarter. Subsequently, composite PRAF and reference premium information shall be based on enrollment in the final month of the immediately preceding calendar quarter. The member months of enrollment shall always be based on enrollment with the insurer over the current calendar quarter.

(3) In the case of an insurer for which the adjustment amount is negative, the insurer is obligated to make the full payment to the administrator within twenty (20) days following the dates provided in subsection (2) of this section in a form and manner determined by the administrator, subject to Section 8 of this administrative regulation. Insurers failing to make such payments will be subject to decertification by the Insurance department, or such intermediate sanctions as determined appropriate by the board.

(4) In the case of an insurer for which the adjustment amount is positive, the insurer is entitled to receive a payment for that amount from the administrator subject to Section 8 of this administrative regulation. This amount shall be paid on a quarterly basis, subsequent to the collection of payments owed to the Demographic Risk Adjustment Fund pursuant to subsection (3) of this section.

**Section 8. Fund Equalization.** (1) In the event that the Demographic Risk Adjustment Fund is in deficit because the amount of money due insurers exceeds the amount of payments insurers owe, payments to insurers eligible for a payment from the fund shall be reduced proportionately.

(2) In the event that the Demographic Risk Adjustment Fund is in surplus because the amounts due insurers is less than the amount of money insurers owe, payments owed by insurers shall be reduced proportionately.

**Section 9. Reporting Requirements.** (1) Insurers shall collect such information from enrollees and group sponsors as may be necessary in order to classify risks in accordance with Section 3 of this administrative regulation including, but not limited to, the active/retiree status of each policyholder.

(2) Insurers shall provide the administrator with any information required by the administrator in a form and content determined by the administrator, to:

- Verify the calculation of composite PRAFs as described in Section 3 of this administrative regulation;
- Calculate average weighted premiums as described in Section 5 of this administrative regulation;
- Calculate rated risk factors as required under Section 6 of this administrative regulation;
- Manage the Demographic Risk Adjustment Fund pursuant to Section 8 of this administrative regulation and this section; and
- Perform other duties specified in Section 13 of this administrative regulation.

**Section 10. High Cost Case Fund.** Insurers shall be eligible for a payment from the High Cost Case Fund on the basis of the number of months of exposure during a year for enrollees having a diagnosis or receiving a procedure listed in Tables 2 and 2A. Payment shall be

subject to additional conditions established in Section 12(10) of this administrative regulation.

**Section 11. High Cost Reports.** (1) Insurers shall file with the administrator detailed information about enrollees with procedures/diagnoses on the high cost case list. Initial information regarding a case shall be filed by an insurer as soon as it is available in order that the administrator may confirm its probable eligibility as a high cost case. The information to be included with the initial filing shall, at a minimum, contain the insurer NAIC number (or, if no NAIC number has been assigned to the insurer, an insurer identification number assigned by the Department of Insurance), the names of the enrollee (patient) and policyholder, the effective date of the case, the procedure/diagnosis classification, and any medical records which would support confirmation of the cases's eligibility (such as, physician's attestation, operative reports for transplants, respiratory therapy records for ventilator dependence, delivery room records and NICU progress notes for neonate). The administrator, after initial review for determination as to possible eligibility as a high cost case, shall assign a claim number to the case for future reference. Subsequently, the insurer shall file with the administrator for each such case, not less frequently than each calendar quarter, detail information relative to the case including, at a minimum, the claim number, patient name, effective date of the case, termination date of the case (if terminated), an abstract of the patient's medical records, case management records, utilization records, itemized bills, dates of service, and proof of payments.

(2) Not later than March 1, 1996, insurers shall file 1995 high cost case annual summary reports with the administrator. Such reports shall, for each procedure/diagnosis on the high cost case list, indicate the claim number, patient name, effective date of the case, termination date of the case (if terminated), the number of months of exposure during 1995, and the total payments made by the insurer during 1995 for health care services on the case. Months of exposure and payments are to be totaled for each procedure/diagnosis. An insurer certification in accordance with Section 12(10) of this administrative regulation shall be filed with each annual report.

(3) For years subsequent to 1995, insurers shall file the annual summary reports described in subsection (2) of this section for high cost cases treated during the period of January 1 through December 31 each year. Such reports shall be due not later than March 1 immediately following the end of the calendar year for which the information is being reported.

(4) Health maintenance organizations shall impute costs based on a standard accounting methodology established by the administrator if such plans are unable to identify the cost of services for individuals with high cost case in a manner otherwise consistent with the requirements of this section.

**Section 12. Payment Adjustment for High Cost Cases.** (1) All insurers shall remit to the administrator on a quarterly basis an amount equal to one (1.00) percent of the total premium received during a calendar quarter for benefit plan subject to this administrative regulation. This payment must be received by the administrator not later than the 15th day of the month immediately following the end of the calendar quarter.

(2) Payments to insurers from the High Cost Case Fund shall be based on the amount that each insurer's per enrollee payments for high cost cases, adjusted for statewide average payments per month of exposure, exceeds the statewide average per enrollee payments for high cost cases, subject to subsection (9) of this section.

(3) Based on the high cost case information reported by insurers for the reporting period, the administrator shall compute the statewide average payment per month of exposure for each procedure/diagnosis described in Tables 2 and 2A. This set of calculations will determine the value for each procedure/diagnosis category that shall be used to calculate the statewide average high cost case score

described in subsection (4) of this section and each insurer-specific high cost case score described in subsection (5) of this section.

(4) The administrator shall calculate a "statewide average high cost case score" as follows:

(a) Multiply the statewide average payment per month of exposure derived in (3) for each procedure/diagnosis on the high cost case list by the total number of months of exposure reported for each respective procedure/diagnosis over the reporting period by all insurers;

(b) Divide the sum of the products generated in paragraph (a) of this subsection by the total number of member months of enrollment over the reporting period in all benefit plans subject to this administrative regulation.

(5) The administrator shall calculate an "insurer-specific high cost case score" for each insurer as follows:

(a) Multiply the statewide average cost per month of exposure derived in subsection (3) of this section for each procedure/diagnosis on the high cost case list by the number of months of exposure reported for each respective procedure/diagnosis by the insurer over the reporting period;

(b) Divide the sum of the products in paragraph (a) of this subsection by the number of member months of enrollment over the reporting period in all benefit plans in effect with the insurer. Each of these calculations is expressed below, where " $p_i$ "; represents medical procedure/diagnosis specific values and " $i$ " represents insurer-specific values:

Average Payment Per Month of Exposure $_p$  = Total High Cost Case Payments $_p$ /Months of Exposure $_p$

Statewide Average High Cost Case Score =  $\sum_p$  (Average Payment Per Month of Exposure $_p$  \* Months of Exposure $_p$ )/Total Member Months of Enrollment

Insurer-Specific High Cost Case Score $_i$  =  $\sum_p$  (Average Payment Per Month of Exposure $_p$  \* Months of Exposure $_p$ )/Member Months of Enrollment $_i$

(6) Insurers with high cost case scores in excess of the statewide average high cost case score shall be eligible for payment from the High Cost Case Fund, and shall be deemed "eligible insurers" for the purposes of this section.

(7) Each eligible insurer shall receive a payment from the High Cost Case Fund equal to the unadjusted payment amount described in subsection (8) of this section multiplied by the fund equalization factor described in subsection (9) of this section. Such amounts shall be calculated by the administrator and remitted to eligible insurers not later than May 1 of each year.

(8) The unadjusted payment amount for each eligible insurer is equal to the product of:

(a) The insurer-specific high cost case score described in subsection (5) of this section minus the statewide average high cost case score described in subsection (4) of this section;

(b) The insurer's total member months of enrollment over the reporting period; and

(c) .75;

(9) The fund equalization factor is equal to the lesser of "1" and the result of:

(a) The total amount of payments remitted to the High Cost Fund by insurers over the reporting period divided by;

(b) The sum of unadjusted payment amounts for the reporting period for all insurers.

The equations that will be used by the administrator to make the calculations described in this section are provided below, where " $i$ " designates eligible insurer-specific values:

Amount of Payment $_i$  = Unadjusted Payment Amount $_i$  \* Pool Equalization Factor

Unadjusted Payment Amount $_i$  = (High Cost Case Score $_i$  -

Statewide Average High Cost Case Score) \* Member Months of Enrollment $_i$  \* .75

Fund Equalization Factor = (High Cost Case Fund Contributions + Fund Interest)/ $\sum_i$  Unadjusted Payment Amounts

(10) In order to receive a payment, an insurer must certify that:

(a) All services for procedures/diagnoses reported under this section are services that are covered by the insurer in accordance with the coverage requirements of standardized benefit plans established by the board pursuant to KRS 304.17A-160;

(b) The patients for whom payment is being sought:

1. Are enrolled in an applicable benefits plans during the applicable reporting period;

2. Have received a primary diagnosis and/or procedure on the high cost case list, as reported by the insurer;

3. Are not covered by another insurer or third-party payor for the course of treatment related to the reported medical procedure/diagnosis for the episodes of illness periods reported.

(11) In the event that the High Cost Case Fund is in surplus because the fund equalization factor is determined to be "1" in accordance with subsection (9) of this section, the surplus shall be rebated to insurers proportionate to the amount of their contributions, and the board shall approve appropriate reductions in the contribution rate for subsequent quarters.

(12) The administrator shall notify each insurer of its estimated payment amount by May 1 of each year.

(13) In the event that the administrator disqualifies a high cost case claim, the insurer may appeal to the board.

Section 13. Administrator. (1) The board will contract with an administrator to manage the day-to-day operations of the risk adjustment system in accordance with this administrative regulation and policies established by the board. All insurer subject to this administrative regulation, and any parent company or subsidiary of any insurer, shall be disqualified from being selected as the administrator.

(2) The duties of the administrator shall include the following:

(a) Performing and publishing all calculations required under this administrative regulation except for calculations to be performed by insurers in accordance with the appropriate sections;

(b) Collecting data from insurers and other parties necessary to administer the risk adjustment system;

(c) Collecting payments from insurers for the Demographic Risk Adjustment Fund and the High Cost Case Fund and making risk adjustment payments to insurers eligible for such payments;

(d) Auditing insurers' submissions of high cost claim reports.

(e) Reporting to the board information regarding trends in enrollment and experience overall, in addition to experience regarding the Demographic Risk Adjustment Fund and the High Cost Case Fund, on a periodic basis, but not less frequently than annually. The first report is due by August 1, 1996.

(f) Other duties delegated to the Administrator under this administrative regulation or by the board subsequent to the issuance of this administrative regulation.

(3) The cost of administering the risk adjustment system, exclusive of the cost of making risk adjustment payments, shall be financed through a surcharge imposed on each benefit plan subject to this administrative regulation. The amount of the surcharge shall be determined by the board annually.

Section 14. Regulatory Authority for Issuance of Interpretative Guidance. The board shall retain the authority to issue guidance in the interpretation of this administrative regulation.

# ADMINISTRATIVE REGISTER - 163

TABLE 1  
DEMOGRAPHIC RISK ASSESSMENT CELL FACTOR MATRIX

Attained Age	SINGLE COVERAGE Active Policyholders		POLICYHOLDER AND SPOUSE COVERAGE Active Policyholders		SINGLE PARENT FAMILY COVERAGE Active Policyholders		TWO PARENT FAMILY COVERAGE Active Policyholders		Attained Age
	Male	Female	Male	Female	Male	Female	Male	Female	
0-1	1.292	1.292							0-1
2-17	0.367	0.367	1.029	0.961	0.658	1.164	1.020	0.964	2-17
18-29	0.549	1.449	1.029	0.961	0.658	1.164	1.020	0.964	18-29
30-39	0.629	1.374	1.024	0.967	0.715	1.154	1.023	0.949	30-39
40-44	0.683	1.238	1.022	0.971	0.808	1.095	1.028	0.934	40-44
45-49	0.726	1.179	1.010	0.987	0.853	1.124	1.017	0.949	45-49
50-54	0.862	1.084	1.002	0.994	0.933	1.048	1.008	0.963	50-54
55-59	0.927	1.042	1.001	0.998	0.961	1.029	1.005	0.974	55-59
60-64	1.084	0.952	1.000	0.999	1.072	0.941	1.000	0.998	60-64
65+	1.078	0.957	1.000	0.999	1.018	0.892	0.990	1.061	65+
	COBRA Policyholders		COBRA Policyholders		COBRA Policyholders		COBRA Policyholders		
	Male	Female	Male	Female	Male	Female	Male	Female	
Under 30	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	Under 30
30-39	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	30-39
40-44	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	40-44
45-49	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	45-49
50-54	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	50-54
55-59	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	55-59
60-64	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	60-64
65+	1.500	1.500	1.500	1.500	1.500	1.500	1.500	1.500	65+
	Early Retiree Policyholders		Early Retiree Policyholders		Early Retiree Policyholders		Early Retiree Policyholders		
	Male	Female	Male	Female	Male	Female	Male	Female	
Under 50	1.247	1.247	1.077	1.074	1.168	1.142	1.058	1.048	Under 50
50-54	0.991	1.247	1.077	1.069	1.017	1.142	1.058	1.011	50-54
55-59	1.066	1.198	1.076	1.073	1.047	1.122	1.055	1.023	55-59
60-64	1.247	1.095	1.075	1.074	1.168	1.026	1.050	1.048	60-64

TABLE 2: HIGH COST CASE LIST

Procedure/Diagnosis	Payment Conditions and Limitations
Liver transplantation	Payment limited to the cost of pre-operative care, transplantation and immediate follow-up care
Heart transplantation	
Bone marrow transplantation	
Kidney transplantation	
End Stage Renal Disease with dialysis	
Ventilator support for at least 30 days	
Neonates with a birth weight of less than 1,500 grams or respiratory distress syndrome requiring at least 30 days of ICU care	
HIV/AIDS	With specified opportunistic infections and diseases designated in Table 2A
Leukemia	

\* The administrator will identify code numbers annually

TABLE 2A: SPECIFIC OPPORTUNISTIC INFECTIONS  
AND OTHER DISEASES FOR HIV/AIDS

HIV/AIDS with the following specified conditions:

Candidiasis of lung; coccidiosis; cryptosporidiosis; isosporiasis; pneumocystosis; progressive multifocal leukoencephalopathy; toxoplasmosis; malignant neoplasms including only: Kaposi's sarcoma, lymphosarcoma and reticulosarcoma, primary lymphoma of the brain.

The following specified conditions when due to HIV/AIDS:

Specified infections including only: candidiasis: disseminated, of the mouth, of the skin and nails, other and unspecified sites; coccidioidomycosis; cytomegalic inclusion disease; acute or subacute endocarditis; herpes simplex; herpes zoster; histoplasmosis; microsporidiosis; mycobacteriosis, other and unspecified; acute or subacute myocarditis; Nocardia infection; opportunistic mycoses; pneumonia: NOS, other bacterial pneumonia, pneumococcal, viral NES and NOS; Salmonella infections; septicemia; strongyloidiasis; tuberculosis;

Specified diseases of the central nervous system including only: demyelinating disease NOS, disorders NOS, other and unspecified nonarthropod-borne viral disease, other and unspecified slow virus infections, dementia NOS, organic dementia, presenile dementia, encephalitis, encephalopathy, myelopathy, nonpsychotic or psychotic organic brain syndrome NOS;

Other specified conditions including only: abnormal weight loss; abnormality, respiratory; agranulocytosis, anemia: NOS, aplastic, other and unspecified, deficiency, hemolytic, acquired; arthritis, pyogenic, infective; blindness or low vision; blood and blood-forming organs, unspecified disease; cachexia; dermatomycosis, dermatophytosis; diarrhea (noninfectious), infectious; disease or disorder NOS: blood and blood-forming organs, salivary gland, skin and subcutaneous tissue; fever; gastroenteritis (infectious); hepatomegaly; hyperhidrosis; hypersplenism; infection: intestinal, ill-defined; lack of expected physiological development in infant; leukoplakia of oral mucosa (tongue); malabsorption, intestinal; malaise; nephritis & nephropathy; neuralgia NOS; neuritis NOS; pneumonitis, lymphoid, interstitial; polyneuropathy pyrexia; radiculitis NOS; retinal vascular changes; retinopathy, background; secondary cardiomyopathy; splenomegaly; thrombocytopenia, secondary and unspecified.

HIV/AIDS with other conditions which evidence severe immune system compromise subject to case-by-case review and approval.

JACK B. HALL, Chairman

APPROVED BY AGENCY: June 14, 1995

FILED WITH LRC: June 15, 1995 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on July 26, 1995, at 1:30 p.m. at the Kentucky Health Policy Board Hearing Room at 909 Leawood Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by July 21, 1995, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by this date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack B. Hall, Chairman, Kentucky Health Policy Board, 909 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-4040, (502) 564-5931 Fax.

## REGULATORY IMPACT ANALYSIS

Contact Person: Jack B. Hall

(1) Type and number of entities affected: Insurers who provide health care coverage to the citizens of the Commonwealth, employers and individuals who pay health insurance premiums and members of the Kentucky Health Purchasing Alliance.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: The risk adjustment process is intended to reduce the cost of living and employment throughout the state by stabilizing and reducing the rate of premium increase to individuals and employers.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Because health insurance costs are a growing proportion of workforce expense, stabilization and reduction in the rate of premium increase will decrease the cost of doing business.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Computations and assessments will be performed by the vendor administering the risk adjustment system. Insurance carriers will be required to submit specified data.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First Year: None; direct costs of developing and implementing the risk adjustment system are included in assessment premiums.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: Same

(b) Reporting and paperwork requirements: The reporting and paperwork will be performed by the vendor under contract.

(4) Assessment of anticipated effect on state and local revenue: The stabilization of insurance premiums and reduction in rates of increase will lower state and local governments' expenditures for health insurance.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Assessments on insurance plans.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: None; uniform implementation across Kentucky.

(b) Kentucky: The risk adjustment process will increase competition in the health insurance market by minimizing the ability of insurance carriers to profit from the exclusion of higher-risk citizens from their pool of insured persons.

(7) Assessment of alternative methods; reasons why alternatives were rejected: National experts in the field were consulted extensively to determine optimal strategies for implementation of the statutory mandate. Because this type of analysis is still in the developmental phase, no appropriate alternatives are available.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The objective of risk adjustment is improved access to health insurance at reduced cost.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: In the absence of a risk



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adjustment process, insurance carriers are likely to profit from inequities in risk.

(c) If detrimental effect would result, explain detrimental effect:

See above.

(9) 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: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: No conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because this regulation applies equally to all entities statewide.

## ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

### Minutes of the June 5, 1995

The June meeting of the Administrative Regulation Review Subcommittee was held on Monday, June 5, 1995, at 10 a.m. in Room 149 of the Capitol Annex. Representative Jesse Crenshaw, Chairman, called the meeting to order, and the secretary called the roll. The minutes of the May 1, 1995 meeting were approved.

**Present were:**

**Members:** Representative Jesse Crenshaw, Chairman; Senators John David Preston, Nick Kafoglis, Fred Bradley; Representatives Woody Allen, Jim Bruce and Tommy Lee.

**LRC Staff:** Greg Karambellas, O. Joseph Hood, Tom Troth, Patrice Carroll, Susan Wunderlich, Peggy Jones, Donna Valencia, Don Hines.

**Guests:** Lori Flanery, Jill LeMaster, Executive Branch Ethics Commission; Laura H. Hendrix, Jo Carole Ellis, Kentucky Higher Education Assistance Authority; Anita E. Stanley, Registry of Election; Gail Prewitt, Angela C. Robinson, Finance and Administration Cabinet; Daniel F. Egbers, Personnel; Reed Sanders, Don Walker, Donovan Smith, Department of Fish and Wildlife Resources; Wendell D. Bruce, Donna Dutton, Department of Agriculture; Steve Jones, David Bratcher, Larry Brown, Mike Herrington, Economic Development Cabinet; Stephen A. Coleman, Soil and Water Conservation Commission; Sarah Jackson, Division of Charitable Gaming; Jack Damron, Department of Corrections; Kevin Noland, Department of Education; Herman Harrod, Sue Harrod, Theresa Kidwell, Thomas J. Ryan, Col. Winford Simmons, Helen D. Simmons, James L. McGaughey, Bobbie Beth Scoggins, Joseph C. Mattingly, Mrs. Susan Zulauf, Heather Harker, Sylvia M. McGaughey, Kentucky Commission of the Deaf and Hard of Hearing; Marcy Deaton Ches, Joe Greathouse, Valerie Salven, Department of Workers' Claims; Carla H. Montgomery, Department of Insurance; Elizabeth Rehm Wachtel, Anne Hager, Cathy Mobley, Pat Patterson, Cookie Whitehouse, Tom Johnson, Karen Doyle, Anita Moore, Ked Fitzpatrick, Karan Sullivan, Michael Cheek, Cabinet for Human Resources; Jack Hall, Sherry M. Cooper, Jayne M. Arnold, Health Policy Board; Gene Campbell, KET; Martha C. Bruenderman, Law Offices of Marie Alagia Cull; Pat Carter, Department of Agriculture and KCDHH; Laura Knoth, Kentucky Farm Bureau Federation; Robert L. Barnett, Kentucky Pharmacists Association; Helen Barakauskas, Kentucky Health Purchasing Alliance; Sarah S. Nicholson, Brian Brezasky, Kentucky Hospital Association; D. Coal Zulauf, Kentucky Association of the Deaf; Kelly Ranvier Swartz, McBrayer, McGinnis, Leslie and Kirkland; Bill Doll, Kentucky Medical Association.

**The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:**

**Executive Branch Ethics Commission**

9 KAR 1:015. Adjudicatory proceedings.

9 KAR 1:030. Adjudicatory hearings.

9 KAR 1:035. Posthearing procedure.

In order to place the subject matter of these administrative regulations in a logical sequence, beginning with preadjudicatory proceedings and ending with post-adjudicatory proceedings, these administrative regulations were extensively amended. Each of these administrative regulations were reorganized. Subject matter was transferred to the more appropriate administrative regulation. The amendments included: (1) amendment of the STATUTORY AUTHORITY paragraphs to correct citations; (2) amendment of the NECESSITY AND FUNCTION paragraphs to more clearly state the necessity for the administrative regulation and its effect; (3) amend of titles to conform to the change in subject matter governed by the amended administrative regulations; (4) reformatting of sections,

pursuant to KRS 13A.220(4) and KRS 13A.222(4)(a),(b),(j); (5) deletion of language that summarized or repeated statutes, pursuant to KRS 13A.120(2)(e),(f); and (6) establishment of: (a) a uniform hearing procedure for hearings conducted by a board member or by a hearing officer, by providing for findings of fact and a recommended order to be submitted by a board member who conducted a hearing; (b) specific deadlines; (c) standards for the waiver of requirements.

Agency personnel agreed that 9 KAR 1:020, Complaints, would be deferred, because its provisions had been transferred to 9 KAR 1:015, re-titles "Preadjudicatory proceedings".

Subcommittee staff stated that: (1) an objection had been raised to the conduct of hearings by hearing officers; (2) hearings were often conducted by hearing officers who would submit findings of fact, conclusions of law, and a recommended order to a board, after which the board would review the record and make a decision or remand for further action; (3) several Attorney General opinions concluded that, without specific statutory authority for the conduct of hearings by hearing officers, permitting hearing officers to conduct a hearing was an impermissible delegation of authority; (4) it was unclear whether appropriations act appropriated funds for the hiring of hearing officers, and the effect of such appropriations on statutory authority; and (5) even without specific statutory authority, hearing officers were employed by a number of a number of administrative bodies; (6) KRS Chapter 13B, effective 1996, would permit the conduct of hearings by hearing officers; and (7) the General Assembly should determine whether specific authority was required, delegation was permissible, or whether amendments to existing statutes were required.

The Subcommittee approved a motion instructing staff to research the issue and report to the Subcommittee, after which the Subcommittee would request LRC to refer the issue to a legislative subcommittee for review and action.

**Kentucky Higher Education Assistance Authority: Kentucky Educational Savings Plan Trust**

11 KAR 12:060. Cancellation and payment of refund. Jo Carole Ellis and Laura Hendricks appeared before the Subcommittee representing the Kentucky Higher Education Assistance Authority.

Section 1, Definitions, was deleted because of the prior promulgation of 11 KAR 12:010, Definitions. Section 2 was renumbered as Section 1.

11 KAR 12:070. Benefits payable from the Kentucky educational savings plan trust program fund. Section 1, Definitions, was deleted because of the prior promulgation of 11 KAR 12:010, Definitions, and succeeding sections were renumbered. Other minor technical and clarification corrections were made.

**Finance and Administration Cabinet: Health Insurance Coverage for Nonstate Employees**

200 KAR 20:010. Health insurance coverage for nonstate employees. Subcommittee staff stated that: (1) language in Section 2(4) was vague and established discretionary authority in the Commissioner of Personnel without identifiable standards for such authority; and (2) while the agency's proposed amendment would permit a payor to make insurance premium payments by personal check "when, in the Commissioner of Personnel's judgment the payor is financially solvent", it was unclear from the language in the administrative regulation, how the Commissioner would make the determination of financial solvency.

Dan Egbers, Attorney with Department of Personnel, and Angela Robinson, Attorney with Finance and Administration Cabinet stated that: (1) the Commissioner's office: (a) would like to accept personal checks for payments as an accommodation to non-state employees who elect to pay for their insurance in this manner; (b) reserves the

right not to accept cold checks; and (2) a determination of financial solvency will simply be accomplished by a call to the payor's bank to verify available funds.

In response to a question by Chairman Crenshaw, Mr. Egbers: (1) stated that the Department is proposing language to permit persons to pay premiums by personal check if the individual payor's solvency can be determined; and (2) gave assurances that the singular standard for such discretionary determinations and approval by this payment method is payor solvency.

Senator Fred Bradley stated that: (1) a phone call to the payor's bank to determine financial solvency would appear to present an intolerable burden for the Commissioner's office each time a personal check is submitted; and (2) a determination of financial solvency would appear to be dynamic and changing, depending upon when a call is made to the drawer bank.

Senator Preston suggested that "financially solvent" either be defined or further described in Section 2(4) so that a standard is clearly set out in the administrative regulation.

Agency representatives agreed to amend Section 2(4) by deleting the words "the payor is financially solvent", and inserting "that the drawer bank will make final payment on the check", after the words "in the Commissioner of Personnel's judgment".

#### **Personnel Pilot Programs**

200 KAR 22:020 (& E). Guideline for comprehensive employment manuals required by pilot agencies under KRS 18A.430. This administrative regulation was amended to: (1) delete the citation of KRS 13A.100(1) in the STATUTORY AUTHORITY paragraph; (2) comply with the format requirements of KRS 13A.220(4) and 13A.222(4)(a); and (3) remove the definition of "Guideline" from the body of Section 1 and place it in a new Section 1, governing definitions, pursuant to KRS 13A.222(4)(e).

In response to a question by Senator Preston, Subcommittee staff stated that the administrative body had the authority to establish guidelines for Personnel Pilot Programs because: (1) KRS 18A.430 required approval of a comprehensive employment manual by the Personnel Steering Committee and promulgation by the Cabinet; (2) authority to approve included authority to establish guidelines that would assist agencies in meeting criteria established for approval; and (3) imposition of criteria without notice to the agencies in the program would be inefficient; and (4) KRS 13A.010(1) and KRS 13A.100(2), and 13A.120 required that the criteria be established by the promulgation of administrative regulations.

#### **Department of Agriculture: Fairs and Shows**

302 KAR 15:010. Administration; state aid to local fairs. Wendell Bruce and Donna Dutton appeared before the Subcommittee representing the Department of Agriculture. Ms. Dutton stated that the administrative regulation as proposed would increase funding to local fairs.

Representative Allen asked how the funds would be allocated. Wendell Bruce stated that it was a matching funds allocation program, and that no monies are distributed to any fair until that fair's catalog is approved.

This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A.

#### **Pesticides**

302 KAR 31:015. Certification. This administrative regulation was amended to comply with the drafting requirements of KRS Chapter 13A.

#### **Economic Development Cabinet: Kentucky Jobs Development Authority**

307 KAR 2:010. Kentucky Jobs Development Act Program. This administrative regulation was amended to: (1) correct the Summary of Incorporated Material to include incorporation of the Standard Industrial Classification Manual (1987 edition); (2) delete Section 3(1)(h) and (i) which repeat or summarize KRS 154.35-042(1) and (2),

in violation KRS 13A.120(2)(e); and (3) clarify that the Economic Development Incentive Disclosure Statement and the Benefit Analysis Data Form are incorporated by reference as a part of the application.

Subcommittee staff pointed out that: (1) Section 3(1)(g) requires companies seeking tax incentives to pay: (a) "an administrative fee of one-tenth (.1) of one (1) percent of the estimated approved costs for the entire period...[the tax incentive package is in effect], with a minimum administrative fee of \$1,000"; and (b) a \$500 application fee; (2) there is no specific statutory authority for the fees; (3) KRS 154.24-040(6) authorizes the Cabinet to recover "consultation, advisory, legal fees and other expenses..."; (4) KRS 154.24-070 authorizes the cabinet to "accept moneys which may be received from any...source..."; (4) the Subcommittee considered the statutory authorization for the collection of the fees set out in Section 3(1)(g) at its June, 1993 meeting and approved the administrative regulation which included these fees.

Representative Lee stated that the General Assembly should clarify the statute and specifically authorize the \$1,000 minimum administrative fee and the \$500 application fee.

A motion was approved to refer the issue of the statutory authorization for the administrative and application fee to the Legislative Research Commission for referral to the appropriate interim committee so that clarifying legislation could be drafted.

#### **Kentucky Industrial Revitalization Authority**

307 KAR 3:010. Kentucky Industrial Revitalization Act Tax Credit Program. This administrative regulation was amended to: (1) delete Section 3(1)(k) and (l) which repeat or summarize KRS 154.35-042(1) and (2) in violation KRS 13A.120(2)(e); and (2) clarify that the Economic Development Incentive Disclosure Statement and the Benefit Analysis Data Form are incorporated by reference as a part of the tax incentive application.

Subcommittee staff pointed out that: (1) Section 3(2)(j) requires companies seeking tax incentives to pay: (a) an "administrative fee of one-tenth (.1) of one (1) percent of the estimated approved costs for the entire period...[the tax incentive package is in effect], with a minimum administrative fee of \$1,000"; and (b) a \$500 application fee; (2) there is no specific statutory authority for the fees; (3) KRS 154.26-030(14) authorizes the Cabinet to recover "consultation, advisory, legal fees and other expenses..."; (4) KRS 154.26-060 authorizes the cabinet to "accept moneys which may be received from any...source..."; (4) the Subcommittee considered the statutory authorization for the collection of the fees set out in Section 3(2)(j) at its June, 1993 meeting, and approved the administrative regulation which included those fees.

A motion was approved to refer the issue of the statutory authorization for the administrative and application fee to the Legislative Research Commission for referral to the appropriate interim committee so that clarifying legislation could be drafted.

#### **Department of Corrections: Office of the Secretary**

501 KAR 6:120. Blackburn Correctional Complex. This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to insert "promulgate", the term established by KRS 13A.010(10) for the action described in the paragraph; (2) the incorporation by reference language in Section 1 was amended to insert the correct format for an incorporation by reference statement; and (3) incorporated material, BCC 08-05-01 was amended to comply with KRS 13A.222(4)(b), requiring "shall" to express a duty or obligation.

501 KAR 6:140. Bell County Forestry Camp. This administrative regulation was amended as follows: (1) the NECESSITY AND FUNCTION paragraph was amended to insert "promulgate", the term established by KRS 13A.010(10) for the action described in the paragraph; (2) the incorporation by reference language in Section 1 was amended to insert the correct format for an incorporation by reference statement; and (3) incorporated material, BCFC 02-06-01 was amended to delete the language in the Definitions paragraph and

to cross reference the definition of "surplus property" in KRS 45A.425, pursuant to KRS 13A.222(4)(d), requiring a cross reference to a statutory definition and prohibiting repetition or summary of a statutory definition.

**Department of Education: Office of District Support Services: General Administration**

702 KAR 1:140. Student records; hearing procedures. Kevin Noland, representing the Department of Education, appeared before the Subcommittee.

Representative Allen asked if the provisions of this administrative regulation, concerning student records, included Family Resource Center records. Mr. Noland replied that it did.

This administrative regulation was amended in Section 1 to add inappropriate information as information contained in a record that can be challenged.

Section 2(1) was amended to specify that a hearing be held within thirty days after the request of a hearing.

Section 2(6) was amended to specify that the hearing officer make a determination, rather than a recommendation, in writing within ten working days following the close of the hearing.

The Department requested the amendments to comply with statutory authority and the motion to amend was made by Representative Lee and seconded by Representative Bruce. The motion passed.

**School Terms, Attendance and Operation**

702 KAR 7:050. Attendance; resident, nonresident. Kevin Noland stated that this proposed change to the administrative regulation was for flexibility in keeping attendance. He requested that in Section 2(1) the sentence "This section does not apply to students enrolled in an entry level program" be deleted, and in Section 7(2) language be inserted incorporating the Growth Factor Report file layout. A motion was made and seconded. The motion passed.

**Commission of the Deaf and Hard of Hearing: Telecommunications Devices for the Deaf**

735 KAR 1:010 & E. Eligibility requirements, application and certification procedures to receive telecommunications devices for the deaf. Dr. Bobbie Beth Scoggins and Heather Harker appeared before the Subcommittee representing the Commission of the Deaf and Hard of Hearing (KCDHH). Tracy Kidwell appeared, representing several groups, including the hard of hearing.

Dr. Scoggins communicated that Telecommunication Devices for the Deaf (TDDs) serve the deaf, the hard of hearing, and the speech impaired. Heather Harker demonstrated a TDD and explained that TDDs use (1) typing and (2) amplification. Tracy Kidwell testified that she was in support of the administrative regulation.

Following a motion by Representative Bruce and seconded by Representative Lee the administrative regulation was amended to reorganize the definitions in Section 1 to be in alphabetical order, to insert the new address of the office of the KCDHH, to specify in Section 9 that information be kept confidential in compliance with the Open Records Law, and to make other corrections to comply with the drafting requirements of KRS Chapter 13A.

Senator Kafoglis asked for an explanation of the funding mechanism. Dr. Scoggins explained that funding is derived by receiving one cent from each telephone bill paid. Senator Kafoglis asked if the \$200,000 projected for this would be adequate. Dr. Scoggins stated that they don't know because they don't know how many people will apply and qualify for the devices and how quickly they will apply. Ms. Harker added that there are also ninety-eight identified deaf and blind persons in the Commonwealth and that there is a Braille system which connects with a telephone. Senator Kafoglis reflected that the \$200,000 was not going to be enough to serve all the needs.

735 KAR 1:020 & E. Processing system including vendor participation, security and maintenance and repair for specialized telecommunications equipment. On the motion of Representative

Bruce and seconded by Representative Lee, the administrative regulation was amended to reorganize the definitions in Section 1 to be in alphabetical order, to insert the new address of the office of the KCDHH and to amend the incorporated voucher form language to specify that the KCDHH TDD distribution program shall pay the contracted price.

**Labor Cabinet: Department of Workers' Claims**

803 KAR 25:021. Individual self-insurers. Valerie Salven, Marcy Ches, and Joe Greathouse appeared before the Subcommittee representing the Department. This administrative regulation was amended for grammatical corrections. Representative Bruce commended the Department for the better regulation of self-insurers.

803 KAR 25:026. Group self-insurers. This administrative regulation was amended for grammatical corrections.

**Department of Insurance: Agents, Consultants, Solicitors and Adjusters**

806 KAR 9:220. Agent continuing education. Subcommittee staff stated that: (1) the Department had agreed to amendments to correct KRS 13A.222 drafting errors. Subcommittee staff stated that: (2) the initial review had questioned whether Section 7, providing for cancellation of a license if the Department has not received proof of completion of continuing education credits by July 31, complied with KRS 304.2-100, 304.9-295, and 304.9-295(9), under which the continuing education biennium ended June 30; and (2) Section 7 indicates the Department will continue to monitor compliance with the statutory mandate that all continuing education requirements be met within the biennium, and is simply allowing a thirty day period for proof of such compliance.

In response to a question by Chairman Crenshaw, Carla Montgomery, Attorney, Department of Insurance, assured Subcommittee members that the Department proposed the amendment: (1) to encourage agents to report completion of continuing education requirements within 30 days following the statutory deadline for completion of such requirements; (2) to comply with the statutory period set for completion of requirements within the continuing education biennium; and (3) as a mechanism to prompt agent reporting as a result of a number of agents who fail to submit proof of compliance with continuing education requirements even after Department notification.

**Cabinet for Human Resources: Department for Social Insurance: Public Assistance**

904 KAR 2:035 & E. Right to apply and reapply. Section 6(10) of this administrative regulation was amended to correct a typographical error by deleting the word "is" and inserting "in" before the word "situation".

904 KAR 2:400. Establishment, review, and modification of child support. This administrative regulation was amended to delete the: (1) authorization for the use of an administrative subpoena; and (2) administrative subpoena form.

Subcommittee staff stated that: (1) use of an administrative subpoena was questioned in the initial staff review; (2) while the Cabinet has the authority to use administrative subpoenas, it must subpoena records to a hearing, not to the CHR office; (3) the child support guideline form has been incorporated by reference in this administrative regulation; (4) practicing attorneys use this form to determine child support in domestic relations cases; (5) the Regulatory Impact Analysis provided that this incorporated form would affect all child support cases as of July 15, 1994, thereby causing the form to have a retroactive effect; (6) the child support statute KRS 402.212 was amended and went into effect on July 15, 1994; (7) the child support guideline form is a vehicle for implementing the statute which neither repeats nor summarizes the statute; and (8) the form itself does not appear to have a retroactive effect.

Senator Preston asked Cabinet personnel to explain the: (1)

change in the child support guidelines as enacted in 1994; and (2) any retroactive impact the form might have.

Cabinet personnel responded that the form: (1) allows practitioners to see the changes in the statute a little more clearly; (2) collects financial information about a non-custodial parent; (3) is not signed; (4) reflects the information to be considered when determining the child support obligation of the non-custodial parent; (5) provides for: (a) imputed income; (b) deduction for the custodial and non-custodial parents when they figure the cost of rearing prior born children; and (c) health care insurance deductions.

In response to questions from Senator Preston Cabinet personnel stated that: (1) there is a deduction in income for any child support paid for prior born children; (2) there is a similar deduction for children born in a prior marriage; (3) child support for the first child is often calculated as if the non-custodial parent has only 1 child, even if there are subsequent children, which, arguably, should reduce the amount paid on the first child; (4) the children born after the first child might receive a greatly reduced amount of child support; and (5) judges are given discretion to adjust child support awards so they are more equitable.

In response to a question from Chairman Crenshaw, Cabinet personnel stated that the non-custodial parent receives no credit when determining child support, for any children of a subsequent marriage who currently live in the home of the non-custodial parent.

Representative Bruce asked the Cabinet to write a letter to the Circuit Judges reminding them that they have discretion to deviate from the child support guidelines when the situation warrants.

Senator Preston stated that: (1) the comprehensive revision of the child support statute in 1994 corrected many of the problems with the law as it existed; (2) the preferential treatment of first born children when determining a child support award needs to be corrected by the General Assembly; (3) first-born children are given the full benefit of the child support guidelines when determining support; (4) subsequently born children receive a disproportionately lower award because of payments then going to the first born child; (5) this preferential treatment of first-born children as a class, without a rational basis, may violate the equal protection clause of the United States Constitution and similar provisions of the Kentucky Constitution.

A motion was adopted asking the Legislative Research Commission to refer the issue of improper preferential treatment of first-born children under the child support guidelines to the appropriate legislative subcommittee for the drafting of clarifying legislation.

904 KAR 2:410. Child support collection and distribution. This administrative regulation was amended to: (1) correct typographical errors pursuant to KRS 13A.222(4)(a); and (2) clarify section 9(5)(d) relating to: (a) the informal resolution of a dispute; and (b) withdrawal of a request for hearing on denial or suspension of a drivers license for non-payment of child support.

#### Department for Social Services: Day Care

905 KAR 2:140 (& E). Child day care programs. This administrative regulation was amended as follows: (1) The Kentucky Child Care Maximum Payment Levels chart found within the body of the administrative regulation was corrected by changing the designation for fifteen clusters of counties from "urban" to "rural" status; and (2) the Federal Mandate Analysis Comparison form, which the Department had inadvertently failed to file, was added.

In response to questions by Senator Kafogils and Representative Lee, Mike Cheek, Department representative, stated that: (1) the rural and urban designations were made by the University of Kentucky in the Child Day Care Survey that was requested by the Department; (2) the survey established rural and urban rates for areas throughout Kentucky; and (3) "urban" status is given to an area that include a first class city in its district.

In response to Representative Allen's question concerning rate increases, Mr. Cheek stated: (1) the UK survey included an overview

examination of rates in 1,800 licensed homes, 386 certified homes, and a random sample of non-regulated care; (2) the child care market rates represent 75% of current charges from providers within their geographical area; (3) since the rates were implemented by emergency administrative regulation in January 1995, the Department has not yet seen a great increase in child care costs across the state because many providers are keeping their charges within the 75th percentile; (4) if provider charges are represented closer to the 75th percentile, the market rate, what people can afford to pay, may keep costs from soaring; and (5) the average costs for a child in day care is approximately \$15.00 per day as a full time service.

Representative Allen stated that any increase in day care costs will directly affect the single parent, or single mother, who has to seek employment to provide for her children while trying to stay ahead of the cost for such child care services.

#### Department for Medicaid Services

907 KAR 1:671 (& E). Conditions of Medicaid Provider Participation; enrollment, documentation of services, disclosure, claims processing, withholding overpayments, appeals process, and sanctions. Karen Sullivan, Deputy Commissioner, Department for Medicaid Services, stated that: (1) the Department had agreed to suggested language to address issues raised by KHA representatives: (a) an issue relating to provider notification, and the Department's intent to withhold payments during an investigation of fraud or willful misrepresentation, was addressed by inserting the following new language in Section 8(3)(b)9.: "9. For cost-based providers, payments withheld pursuant to this section shall be in proportion to the type of claim set forth under this administrative regulation to which withholding shall apply." (b) insert clarifying language in Section 8(3)(a) also relating to identification of types of payments and payment code section to which the alleged fraud or willful misrepresentation is alleged to have occurred; the amendment reads: inserting after the words "withholding action", insert the following "including the types of payments and payment code sections to which fraud or willful misrepresentation is alleged to have occurred"; and (c) amend Section (3)(a), line 2, relating to notification, by: 1. deleting the word "shall" and inserting "need"; 2. to clearly represent that the Department "shall give general allegations of the nature of the withholding action, but need not disclose any specific information concerning its investigation."

Deputy Commissioner Sullivan stated that : (1) the Department has proposed the same definition for a "managing employee" as found in federal law; (2) the disclosure includes information relating to a managing employee of the corporation or hospital or nursing facility such as the director or administrator of such a facility who conducts the day-to-day operations; this term is not intended to include branch or division levels.

Chairman Crenshaw: (1) stated that Representative Jack Coleman contacted him concerning the following issues: (a) the disclosure and reporting requirements for changes in a "managing employee" in a facility; and (b) imposition of sanctions, such as withholding of provider payments, based upon preliminary reliable evidence gathered by Department staff, without the due process protections envisioned in House Bill 127; and (2) asked if the Department's proposed amendments also address these issues.

Deputy Commissioner Sullivan responded that: (1) the Department has given Representative Coleman further assurances that this administrative regulation: (a) only requires facilities to report or disclose changes in a managing employee if that administrator-employee is: 1. one who holds a controlling interest in the facility; and 2. charged with responsibility for the day-to-day operations of the facility or hospital; and (b) implements the intent of House Bill 127 to: 1. monitor and require disclosure of those managing employees who have controlling interests in facilities; and 2. not impose reporting requirements which are too burdensome for providers and result in offsetting the purpose of such reporting; (2) the proposed amendments specifically address Representative Coleman's concerns

relating to due process protections before imposition of sanctions; and (a) federal regulations and this administrative regulation require the Department to provide due process protections before imposing an exclusion by giving the entity: 1. an opportunity to submit documents and provide written arguments against such exclusion; and, 2. additional appeals rights that would otherwise be available.

Sarah Smith Nicholson and Brian Brezasky, representatives of the Kentucky Hospital Association (KHA): (1) thanked the Department for stating for the record that language in Section 3(4) which requires a provider to file an amended disclosure form every time there is a change in a "managing employees", is not intended to include department and divisional heads; and (2) KHA agrees with the Department's proposed amendments that specifically address KHA concerns that: (a) a hospital's "total" Medicaid payments would not be withheld prior to notice of withholding; and (b) the Department will only withhold payments for a specific allegation of a specific complaint linked to an identifiable claim rather than a facility's total Medicaid payments.

Brian Brezasky stated that the amendments: (1) address issues relating to payment methodology to hospitals as opposed to other facilities, since reimbursements to hospitals are for a specified payment per patient day rather than pursuant to a particular payment code; and (2) include specific language to permit the Department to withhold Medicaid payments for specific payment codes as opposed to withholding for all procedures within a patient day.

#### **Kentucky Health Policy Board: Administration**

909 KAR 1:040. Certificate of Need process. Since the Board was exempted, pursuant to KRS 13B.020(3)(d), from the provisions of KRS Chapter 13B, the deadlines for: (1) mailing the Notice of Hearing [Section 6(1)] was decreased to 10 days; (2) requiring the submission of additional information was decreased to 5 days [Section 6(4)(f)]; (3) production of additional evidence or briefs of issues was decreased from 10 to 7 days [Section 6(7)(g)]; (4) submission of written exceptions to the recommended order was decreased from 15 to 10 days [Section 6(9)]; and (5) notification of intent to conduct a show cause hearing was set at a minimum of 20 days [Section 11(2)].

909 KAR 1:060. Licensure hearings. Since the Board was exempted, pursuant to KRS 13B.020(3)(d), from the provisions of KRS Chapter 13B, the deadline in Section 4(1)(h), for production of additional evidence or briefs of issues, was set at a maximum of 10 days.

Section 6 of this administrative regulation was amended to amend the title of the administrative regulation that was repealed, 902 KAR 20:126, from "Certificate of Need Process" to "Licensure Hearings".

**The Subcommittee determined that the following administrative regulations complied with statutory requirements:**

#### **Department of State: Registry of Election Finance: Reports and Forms**

32 KAR 1:150E. Maximum contributions to be received by gubernatorial slates. Anita Stanley, General Counsel for the Registry stated: (1)(a) this administrative regulation was promulgated as an emergency to address a question which arose during the primary election; and (b) the 1996 General Assembly may want to consider reform legislation to clarify partial public financing for gubernatorial campaigns under the Public Financing Campaign Act; (2) the Public Financing Campaign Act provided that a candidate could not receive transfers from the campaign finance fund if: (a) a candidate was part of a slate that had no opposition which reached the minimum threshold in the primary; or (b) if a candidate ran unopposed; (3) although the Act established a maximum threshold amount of \$600,000 for a candidate to qualify for matching funds, the statute is unclear whether a participating slate may raise more than the maximum threshold qualifying amount; (4) this emergency administrative regulation was necessary to require that all

contributions in excess of the maximum threshold limit to be returned to contributors instead of providing the campaign with an option to either return the contributions to contributors or deposit them into the Election Campaign Fund.

In response to a question by Senator John David Preston, Ms. Stanley stated that: (1) the Registry of Election Finance's position had initially been uncertain how to address this issue because: (a) one purpose of the campaign law was to reduce the amount of time a candidate has to spend raising money and once the \$600,000 threshold has been met, candidates may start taking transfers from the campaign fund; or (b) if a candidate abides by the limits, the candidate should be encouraged to personally raise as much of the \$1.8 million as possible to save the state money; (2) the Registry's formal position is that: (a) if a candidate's opposition has raised \$300,000, the candidate stops raising funds at 600,000; (b) however, if a candidate is unsure whether his opposition will meet the \$300,000 per candidate threshold, and less than 30 days remain until the election, during which time the candidate cannot raise more money, the candidate is essentially held in limbo and should be permitted to raise above the \$600,000; (3) if the time frame is closer to the primary and a candidate's opposition has raised \$300,000, this triggers the candidate's transfers from the Public Campaign Finance fund, and the candidate is required to return the excess to the contributors and take the state transfer; and (4) the Registry's position is that returning the excess and taking the state transfers from the fund is a mandatory requirement.

In response to a question by Senator Nick Kafoglis, Ms. Stanley stated that the emergency administrative regulation requires that excess campaign funds, those monies in excess of the \$600,000 dollars raised, must be refunded to contributors as a lump sum rather than on a prorated basis.

Ms. Stanley thanked the General Assembly for a tremendous piece of legislation and stated that the Registry was pleased that very few administrative regulations needed to be promulgated for the implementation of the new law during the recent primary.

#### **Department of Fish and Wildlife Resources: Game**

301 KAR 2:050. Land Between the Lakes hunting requirements.

301 KAR 2:125. Small game and furbearer hunting on federal areas. Don Walker appeared before the Subcommittee representing the Department. He stated that this subject matter was pulled out and put into a separate administrative regulation because hunting seasons on federal areas were determined separately.

Representative Bruce asked if the Department controlled federal areas, to which Mr. Walker said no.

Representative Allen asked if the Department patrolled the Land Between the Lakes. Mr. Walker said yes they did but only by request by the federal agency. With no further questions being asked, these two administrative regulations were approved.

#### **Water Patrol**

The subject matter of the following five emergency administrative regulations was transferred from the Natural Resources Cabinet to Fish and Wildlife. Donovan Smith and Captain Reed Sanders were present, representing the Cabinet.

Representative Bruce asked if there were any changes. It was stated that the only change was an addition to 301 KAR 6:040E to require idle speed from sunrise to sunset on the Ohio River at Cincinnati.

Although it was noted that both agencies concerned were already informed, Chairman Crenshaw directed that the Regulations Compiler inform in writing the Natural Resources and Environmental Protection Cabinet that 402 KAR 4:010 through 402 KAR 4:190 should be repealed since the Tourism Cabinet cannot repeal another agency's administrative regulations.

301 KAR 6:001E. Definitions for 301 KAR Chapter 6.

301 KAR 6:010E. Vessel numbering and registration.

301 KAR 6:020E. Boating safety equipment.

301 KAR 6:030E. Waterway safety requirements.  
301 KAR 6:040E. Zoning or marking of waterways.

**Soil and Water Conservation Commission**

416 KAR 1:010E. Administration of Kentucky Soil Erosion and Water Quality Cost-Share Fund. Cabinet personnel stated that this administrative regulation: (1) is required by House Bill 377 passed by the General Assembly at its 1994 Regular Session; (2) sets up guidelines for receiving reimbursement from the Kentucky Soil Erosion and Water Quality Cost-Share fund; and (3) the funds for this program will be transferred from the Kentucky Department of Agriculture.

In response to a question from Senator Preston, cabinet personnel responded that: (1) \$550,000 was intended to be transferred annually from the Department of Agriculture; (2) this year, there will be an additional \$100,000 available for the program; (3) the money comes from fees and registrations.

In response to questions from Representative Allen, Cabinet personnel stated that: (1) \$650,000 was not a lot of money to run a program of this type; (2) the United States Department of Agriculture also has a cost share program; (3) this administrative regulation implements a state program which is not a part of the federal cost share program; and (4) the cabinet has received 475 requests for over four million dollars for the state program.

Representative Allen asked why the Department of Agriculture was not operating this program.

Cabinet personnel stated that: (1) the Kentucky Soil and Water Conservation Commission was already established in the Natural Resources Cabinet; (2) the Commission has the statutory authority to assist farmers in developing plans to prevent soil erosion and to preserve water quality; and (3) House Bill 452 provides for the transfer of funds from the Department of Agriculture to the Natural Resources Cabinet.

Representative Allen: (1) stated that these administrative regulations apply only to those individuals who make application for the cost-share funds; and (2) asked if individuals who did not apply could receive cost share funds under the program.

Cabinet personnel stated that: (1) the cost-share program was advertised throughout the state in the local conservation district offices; (2) pursuant to Senate Bill 241, the Commission is required to assist land owners in carrying out the state wide agriculture water quality plan; (3) the Commission would assist all land owners in implementing the state wide plan; (4) if someone is found to be creating a water quality problem, funds have been set aside to assist in the clean up process.

In response to additional questions by Representative Allen, Cabinet personnel responded that: (1) Animal waste runoff results from extended confinement of animals to a given location; (2) the Cabinet is attempting to provide assistance to all farmers who are having a problem with water quality or soil erosion; (3) rotation grazing and limiting animal's access to streams and waterways will assist farmers in alleviating animal waste runoff; (4) these administrative regulations were developed in cooperation with the federal government and various interest groups including: (a) the Soil Conservation Service; and (b) the Department of Agriculture; and (5) although the federal government has a similar program, there is no federal mandate for this program.

Representative Allen stated that he is concerned about the farmer who is not participating in the program but who may be cited under the provisions of this administrative regulation.

Cabinet personnel stated that the program is: (1) voluntary; (2) available to help farmers who request assistance; (3) not designed to find violators and cite them for water quality problems; and (4) available to help farmers who have been cited.

In response to a question from Senator Preston, Cabinet personnel stated that there are no federal matching funds for the cost-share program.

Representative Bruce stated that: (1) this program is much better than the groundwater protection plan administrative regulation found deficient by this subcommittee; and (2) the general assembly passed a bill that exempted agriculture from the general groundwater protection plan administrative regulation.

Representative Allen stated that this administrative regulation: (1) allowed the farmer to control his own destiny; and (1) was much better than the groundwater protection plan administrative regulation promulgated by the Natural Resources Cabinet.

In response to a question by Representative Allen, Cabinet personnel stated that this administrative regulation was developed by: (1) the Soil and Water Conservation Commission appointed by the governor; (2) local district supervisors of the Commission created an advisory committee to help develop the administrative regulation; (3) the advisory group consisted of individuals from the: (a) Natural Resources Conservation Service; (b) United States Department of Agriculture; (c) Consolidated Farm Services; (d) Producers and (e) other interested individuals.

**Department of Education: Office of District Support Services: School Terms, Attendance and Operation**

702 KAR 7:020. Calendar.

702 KAR 7:031. Repeal of 702 KAR 7:030.

702 KAR 7:041. Repeal of 702 KAR 7:040, experimental schools.

**Labor Cabinet: Department of Workers' Claims**

803 KAR 25:010. Procedure for adjustments of claims.

**Cabinet for Human Resources: Department for Social Insurance: Public Assistance**

904 KAR 2:015 & E. Supplemental programs for persons who are aged, blind, or have a disability.

**Food Stamp Program**

904 KAR 3:025. Technical requirements.

904 KAR 3:030 & E. Application process.

904 KAR 3:035. Certification process.

**Department for Medicaid Services**

907 KAR 1:016 & E. Psychiatric hospital services. In response to a question by Representative Bruce, Ked Fitzpatrick stated that (1) this administrative regulation is being amended to provide that the chronically mentally ill will be able to receive services under Medicaid; and (2) the amendments affect coverage of approximately 25 to 30 individuals who were formerly receiving care under the Department for Mental Health and Mental Retardation Services.

907 KAR 1:600. Medicaid adverse action and conditions for recipients. In response to a question by Representative Bruce, Ked Fitzpatrick stated that this administrative regulation: (1) is being amended to transfer language and regulatory requirements formerly contained in a Department of Social Insurance administrative regulation to a Medicaid administrative regulation; and (2) provides conditions under which the Department of Medicaid would notify recipients that an adverse action would be taken in their case.

**Kentucky Health Policy Board: Administration**

909 KAR 1:050. Certificate of Need application fee schedule.

909 KAR 1:080E. Accountable health plan.

**The following administrative regulations were deferred to the next Subcommittee meeting, unless otherwise noted, upon agreement by the Subcommittee and the promulgating agency:**

**Finance and Administration Cabinet: Personnel Pilot Programs**

200 KAR 22:030E. Comprehensive Employment Manual of Department of Vocational Rehabilitation for Use in the Pilot Personnel Program.



## ADMINISTRATIVE REGISTER - 172

### **Kentucky Real Estate Appraisers Board**

- 201 KAR 30:050. Examination, education, and experience requirement.
- 201 KAR 30:120. Temporary appraisal licenses and certificates.
- 201 KAR 30:140. Transitional licensed real property appraiser.

### **Justice Cabinet: Charitable Gaming**

- 500 KAR 11:001E. Definitions.
- 500 KAR 11:030E. Charity game ticket standards.
- 500 KAR 11:040E. Bingo standards.
- 500 KAR 11:050E. Raffle standards.
- 500 KAR 11:060E. Tipping prohibited.
- 500 KAR 11:070E. Exempt activities.
- 500 KAR 11:080E. Special charity fundraising event.
- 500 KAR 11:090E. Special limited charitable games.
- 500 KAR 11:100E. Division employees prohibited from playing charitable games.

### **Cabinet for Human Resources: Department for Health Services: Emergency Medical Services and Ambulance Service Providers**

- 902 KAR 14:060E. Nonemergency health transportation services.
- 902 KAR 14:070E. License procedures and fee schedule for ambulance service providers and tiered response emergency medical services.

902 KAR 14:080E. Ground ambulance service providers.

902 KAR 14:090E. Air ambulance service providers.

### **Controlled Substances**

- 902 KAR 55:095. Prescription for Schedule II controlled substance facsimile transmission or partial filling.

### **Department for Employment Services: Unemployment Insurance**

- 903 KAR 5:290E. Employer contribution rates.

### **Department for Social Insurance: Public Assistance**

904 KAR 2:017 & E. Job opportunities and basic skills (JOBS) child care and supportive services. Anne Hager, representative from the Department for Social Insurance stated that: (1) the Department proposed an amendment to Section 16(2)(a) of this administrative regulation to permit the agency to recover provider overpayments.

In response to a question by Senator Kafoglis, Ms. Hager stated: (1) after payment is made following a provider request for payment for a list of days in which services were rendered, the Department may find the center was closed, for example, for snow days or inclement weather; (2) overpayments are sometimes recovered for the subsequent months payment to providers; (3) the administrative regulation does not include time frames which specify a time period of collection of overpayments; and (4) the Department attempts collection as soon as they become aware an overpayment, usually within 10 days of the reporting of such overpayment.

Chairman Crenshaw stated that he was concerned that the administrative regulation does not include time frames or number of years in which the Department might attempt to make retroactive collections, and asked if federal law provides a general time limit.

Ms. Hager stated that: (1) she was not aware of a federal time limit for collection of overpayments; and (2) federal matching monies come from the federal Department of Health and Human Services to which reports of expenditures are submitted monthly.

Senator Preston: (1) requested that the Subcommittee examine whether any federal law establishes or prohibits the imposition of time frames or limits on the number of retroactive years collections may be made by the State; and (2) stated that limits could not be imposed by administrative regulation if federal or state statutory authority does not exist for such limitations.

The Subcommittee approved a motion to defer consideration of this administrative regulation and proposed amendment until the July Subcommittee meeting to give Subcommittee staff and Department representatives an opportunity to determine if federal law requires a specified time within which to conduct collection of overpayments to providers.

### **Food Stamp Program**

- 904 KAR 3:050E. Claims and additional administrative provisions.
- 904 KAR 3:060E. Administrative disqualification hearings and penalties.

### **Department for Social Services: Children's Residential Services**

- 905 KAR 7:250E. Kentucky educational collaborative for state agency children.

### **Department for Medicaid Services**

- 907 KAR 1:560. Medicaid hearings and appeals for recipients.
- 907 KAR 1:585E. Estate recovery.
- 907 KAR 1:605. Medicaid procedures for determining initial and continuing eligibility.
- 907 KAR 1:610. Medicaid right to apply and reapply.
- 907 KAR 1:640. Income standards for Medicaid.
- 907 KAR 1:650. Trust and transferred resource requirements for Medicaid.
- 907 KAR 1:660. Relative responsibility requirements for Medicaid.

The following administrative regulations were withdrawn by the promulgating agency:

### **Executive Branch Ethics Commission**

- 9 KAR 1:020. Complaints.

The Subcommittee adjourned at 12:50 p.m. until July 10, 1995 at 10 a.m. in Room 149 of the State Capitol.

OTHER COMMITTEE REPORTS

**COMPILER'S NOTE:** In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**SPECIAL SUBCOMMITTEE ON ENERGY**  
**Meeting of May 19, 1995**

Additional committee findings, recommendations, or comments, if any, are attached hereto.

The following administrative regulation was available for consideration by the Special Subcommittee on Energy during its meeting of May 19, 1995, having been referred to the Committee on May 12, 1995, pursuant to KRS 13A.290(6): 904 KAR 2:116

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the May 19, 1995 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

**INTERIM JOINT COMMITTEE ON EDUCATION**  
**Meeting of June 1, 1995**

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of June 1, 1995, having been referred to the Committee in May 1995, pursuant to KRS 13A.290(6): 701 KAR 5:100, 702 KAR 3:120, 702 KAR 3:130, 703 KAR 4:010, 704 KAR 3:035.

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): none.

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: none.

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: none.

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the June 1, 1995 meeting, which are hereby incorporated by reference.



## ADMINISTRATIVE REGISTER - A1

### CUMULATIVE SUPPLEMENT

#### Locator Index - Effective Dates ..... A2

The Locator Index lists all administrative regulations published in VOLUME 22 of the Administrative Register from July, 1995 through June, 1996. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 21 are those administrative regulations that were originally published in the Volume 21 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1995 bound Volumes were published.

#### KRS Index ..... A6

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 22 of the Administrative Register.

#### Subject Index ..... A7

The Subject Index is a general index of administrative regulations published in VOLUME 22 of the Administrative Register, and is mainly broken down by agency.



# ADMINISTRATIVE REGISTER - A2

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
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### VOLUME 21

The administrative regulations listed under VOLUME 21 are those administrative regulations that were originally published in the Volume 21 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1995 bound Volumes were published.

**EMERGENCY ADMINISTRATIVE REGULATIONS:** (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

401 KAR 42:060E	2530	2-15-94
401 KAR 42:070E	2530	2-15-94
401 KAR 42:080E	2531	2-15-94
32 KAR 1:110E	1863	12-20-94
Expires		7-21-95
32 KAR 1:120E	1864	12-20-94
Expires		7-21-95
32 KAR 1:130E	1865	12-20-94
32 KAR 1:150E	2646	3-22-95
200 KAR 22:020E	2051	2-14-95
200 KAR 22:030E	2648	3-24-95
201 KAR 32:010E	2969	4-27-95
201 KAR 32:020E	2970	4-27-95
201 KAR 32:030E	2972	4-27-95
301 KAR 6:001E	2649	3-16-95
301 KAR 6:010E	2650	3-16-95
301 KAR 6:020E	2651	3-16-95
301 KAR 6:030E	2653	3-16-95
301 KAR 6:040E	2655	3-16-95
302 KAR 20:076E	2972	5-12-95
416 KAR 1:010E	2657	3-24-95
500 KAR 11:001E	2430	3-15-95
500 KAR 11:030E	2431	3-15-95
500 KAR 11:040E	2434	3-15-95
500 KAR 11:050E	2436	2-28-95
500 KAR 11:060E	2437	2-28-95
500 KAR 11:070E	2438	3-15-95
500 KAR 11:080E	2439	2-28-95
500 KAR 11:090E	2440	2-28-95
500 KAR 11:100E	2441	2-28-95
600 KAR 5:010E	2973	5-11-95
735 KAR 1:010E	2661	4-4-95
735 KAR 1:020E	2663	4-4-95
902 KAR 14:060E	2058	1-18-95
902 KAR 14:070E	2442	3-1-95
902 KAR 14:080E	2444	3-1-95
902 KAR 14:090E	2450	3-1-95
903 KAR 5:290E	2453	3-15-95
904 KAR 2:015E	2061	1-18-95
904 KAR 2:017E	2065	1-18-95
904 KAR 2:035E	2075	1-18-95
904 KAR 3:030E	2077	1-18-95
904 KAR 3:050E	2454	2-17-95
904 KAR 3:060E	2458	2-17-95
905 KAR 2:140E	2079	1-18-95
905 KAR 7:250E	2461	2-17-95
907 KAR 1:009E	1276	9-30-94
Replaced	1981	5-17-95
907 KAR 1:010E	1277	9-30-94
Replaced	1982	5-17-95
907 KAR 1:013E	2974	5-12-95

907 KAR 1:016E	1873	12-29-94
907 KAR 1:585E	2665	3-21-95
907 KAR 1:671E	1701	12-13-94
907 KAR 1:680E	2979	4-19-95
908 KAR 2:090E	1710	11-29-94
Replaced	2718	5-17-95
909 KAR 1:070E	1714	12-15-94
Replaced	3028	5-17-95
909 KAR 1:080E	2667	4-14-95
909 KAR 1:090E	2980	5-2-95

### ORDINARY ADMINISTRATIVE REGULATIONS:

9 KAR 1:010		
Amended	3059	
9 KAR 1:015	2566	(See Volume 22)
9 KAR 1:020		
Amended	2516	
Withdrawn		6-5-95
9 KAR 1:030		
Amended	2517	(See Volume 22)
9 KAR 1:035	2568	(See Volume 22)
9 KAR 1:040		
Amended	3060	
11 KAR 12:060		
Amended	2723	(See Volume 22)
11 KAR 12:070		
Amended	2724	(See Volume 22)
31 KAR 4:100	3086	
31 KAR 4:110	3087	
200 KAR 20:010		
Amended	2725	(See Volume 22)
200 KAR 22:020	2840	(See Volume 22)
201 KAR 1:064	3088	
201 KAR 1:300		
Amended	3061	
201 KAR 11:400	3089	
201 KAR 30:050		
Amended	2727	
201 KAR 30:120		
Amended	2729	
201 KAR 30:140		
Amended	2731	
301 KAR 2:050		
Amended	2732	
301 KAR 2:111		
Amended	3064	
301 KAR 2:125	2841	
301 KAR 2:171		
Repealed	2569	5-10-95
301 KAR 6:001	3091	
301 KAR 6:010	3092	
301 KAR 6:020	3093	
301 KAR 6:030	3095	
301 KAR 6:040	3097	
302 KAR 15:010		
Amended	2734	(See Volume 22)



# ADMINISTRATIVE REGISTER - A3

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
302 KAR 31:015			702 KAR 7:010		
Amended	2159	(See Volume 22)	Amended	2791	
307 KAR 2:010			702 KAR 7:020		
Amended	2737	(See Volume 22)	Amended	2793	
307 KAR 3:010			702 KAR 7:031	2865	
Amended	2739	(See Volume 22)	702 KAR 7:041	2866	
401 KAR 5:001			702 KAR 7:050		
Amended	2741		Amended	2794	(See Volume 22)
Withdrawn		6-15-95	703 KAR 4:010		
401 KAR 5:026			Amended	2245	
Amended	2753		As Amended	3027	6-1-95
Withdrawn		6-15-95	704 KAR 3:035		
401 KAR 5:029			Amended	2531	6-1-95
Amended	2771		704 KAR 20:020		
Withdrawn		6-15-95	Amended	3073	
401 KAR 5:030	2843	(See Volume 22)	704 KAR 20:021	3100	
401 KAR 5:031			704 KAR 20:305		
Amended	2777		Amended	3076	
Withdrawn		6-15-95	735 KAR 1:010	2866	(See Volume 22)
418 KAR 1:010	2845	(See Volume 22)	735 KAR 1:020	2870	(See Volume 22)
418 KAR 1:020	2847	(See Volume 22)	803 KAR 25:010	2576	
418 KAR 1:030	2849	(See Volume 22)	Amended	3032	
418 KAR 1:040	2852	(See Volume 22)	803 KAR 25:021	2581	
418 KAR 1:050	2854		Amended	3036	(See Volume 22)
418 KAR 1:060	2856		803 KAR 25:026	255	
418 KAR 1:070	2859	(See Volume 22)	Amended	3039	(See Volume 22)
501 KAR 6:020			803 KAR 25:190	3102	
Amended	3067		806 KAR 9:220		
501 KAR 6:050			Amended	2797	(See Volume 22)
Amended	2519	6-1-95	806 KAR 9:230	2872	
501 KAR 6:120			807 KAR 5:058		
Amended	2785	(See Volume 22)	Amended	2799	
501 KAR 6:130			815 KAR 20:070		
Amended	2520	6-1-95	Amended	2533	6-1-95
Amended	3069		902 KAR 14:060	3103	
501 KAR 6:140			902 KAR 55:095	2589	
Amended	2787	(See Volume 22)	902 KAR 115:020	3106	
600 KAR 4:010			904 KAR 2:001		
Amended	2521	6-1-95	Amended	2535	5-17-95
600 KAR 4:020			904 KAR 2:015		
Amended	2527	6-1-95	Amended	2804	
600 KAR 5:010	3098		904 KAR 2:016		
601 KAR 1:005			Amended	2537	5-17-95
Amended	3070		904 KAR 2:017		
603 KAR 5:190			Amended	2808	
Repealed	2342	6-1-95	904 KAR 2:020		
603 KAR 5:191	2342	6-1-95	Amended	2544	5-17-95
603 KAR 9:010			904 KAR 2:035		
Amended	2239		Amended	2817	
As Amended	3025	6-1-95	904 KAR 2:116		
603 KAR 9:020	2343		Amended	2545	5-19-95
Amended	2718	6-1-95	904 KAR 2:380		
701 KAR 5:100			Amended	2548	5-17-95
Amended	2241	6-1-95	904 KAR 2:390		
702 KAR 1:140	2861	(See Volume 22)	Amended	2552	5-17-95
702 KAR 3:120			904 KAR 2:400		
Amended	2243	6-1-95	Amended	2554	(See Volume 22)
702 KAR 3:130			904 KAR 2:410		
Amended	2244	6-1-95	Amended	2557	(See Volume 22)
702 KAR 3:245			904 KAR 2:440	2004	
Amended	2789		Amended	2511	5-17-95
702 KAR 3:246	2862		904 KAR 3:010		
702 KAR 3:280	2864		Amended	2561	5-17-95



# ADMINISTRATIVE REGISTER - A4

## LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	22 Ky.R Page No.	Effective Date	Regulation Number	22 Ky.R Page No.	Effective Date
904 KAR 3:025			907 KAR 1:610	2592	
Amended	2820		907 KAR 1:640	2879	
904 KAR 3:030			907 KAR 1:650	2882	
Amended	2822		907 KAR 1:660	2885	
904 KAR 3:035			907 KAR 1:671	2346	
Amended	2825		Amended	3043	(See Volume 22)
905 KAR 2:140			907 KAR 1:680	3107	
Amended	2829	(See Volume 22)	908 KAR 2:090	2008	
907 KAR 1:009			Amended	2718	5-17-95
Amended	1981	5-17-95	909 KAR 1:040	2594	
907 KAR 1:010			Amended	3051	(See Volume 22)
Amended	1982	5-17-95	909 KAR 1:050	2600	
907 KAR 1:016			909 KAR 1:060	2601	
Amended	2837		Amended	3057	(See Volume 22)
907 KAR 1:025			909 KAR 1:070	2356	
Amended	3079		Amended	2720	
907 KAR 1:560	2874		As Amended	3028	5-17-95
907 KAR 1:600	2878				
907 KAR 1:605	2590				

\*Statement of Consideration not filed by deadline (KRS 13A.280)

## VOLUME 22

**EMERGENCY ADMINISTRATIVE REGULATIONS:** (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

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909 KAR 1:021E	22	6-14-95
909 KAR 1:055E	23	6-14-95

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