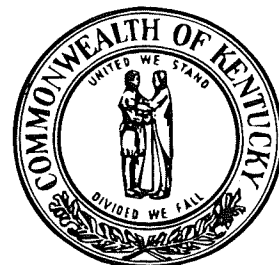


ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION FRANKFORT, KENTUCKY

VOLUME 23, NUMBER 9
SATURDAY, MARCH 1, 1997

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**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - March 11, 1997, 10:00 a.m.
Room 149, Capitol Annex**

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

LEGISLATIVE RESEARCH COMMISSION

Capital Planning Advisory Board

1 KAR 6:020. Policies and procedures. (Deferred from February)

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Authority

11 KAR 4:030. Student appeals process.

PERSONNEL BOARD

Board

101 KAR 1:325. Probationary periods.

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

Purchasing

200 KAR 5:021. Manual of policies and procedures.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy**

Board of Pharmacy

201 KAR 2:045. Technicians.

201 KAR 2:220. Collaborative care agreements.

Kentucky Board of Medical Licensure (Deferred from February)

201 KAR 9:021. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees.

201 KAR 9:041. Fee schedule.

201 KAR 9:141. Denial, probation, revocation and suspension of certificate.

201 KAR 9:310. Continuing medical education.

Board of Nursing

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

201 KAR 20:220. Provider approval.

201 KAR 20:230. Renewal of licenses.

201 KAR 20:370. Applications for licensure and registration.

DEPARTMENT OF AGRICULTURE

Linked Deposits

302 KAR 3:010 & E. Linked Deposit Investment Program. (Emergency Expired 1/18/97) (Public Hearing in January)

CABINET FOR ECONOMIC DEVELOPMENT

Linked Deposit Investment Program

307 KAR 5:010 & E. Linked Deposit Investment Program. (Emergency Expired 1/18/97) (Public Hearing in January)

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division of Water**

Water Quality (Deferred from January)

401 KAR 5:001. Definitions of terms used in 401 KAR Chapter 5. (Amended After Hearing)

401 KAR 5:005. Permits to construct, modify, or operate a facility. (Amended After Hearing)

401 KAR 5:006. Wastewater planning requirements for regional areas. (Amended After Hearing)

Public Water Supply (Deferred from January)

401 KAR 8:010. Definitions for 401 KAR Chapter 8.

401 KAR 8:030 & E. Water treatment plants; water distribution systems; certification of operators. (Deferred from December)

401 KAR 8:060. Variances and exemptions.

401 KAR 8:070. Public notification.

401 KAR 8:100. Design, construction and approval of facilities.

401 KAR 8:150. Disinfection and filtration.

401 KAR 8:200. Microbiological monitoring.

401 KAR 8:250. Inorganic chemical sampling, analytical techniques and maximum contaminant levels.

401 KAR 8:300. Lead and copper.

401 KAR 8:350. Corrosivity monitoring.

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Food Stamp Program

904 KAR 3:025E. Technical requirements. (Deferred from January)

Department for Social Services

Child Welfare

905 KAR 1:180E. DSS policy and procedures manual. (Deferred from November)

Day Care

905 KAR 2:140E. Child day care programs. (Deferred from January)

CABINET FOR HEALTH SERVICES

Department for Medicaid Services

Division of Administration and Development

Medicaid Services

907 KAR 1:013E. Payments for hospital inpatient services.

907 KAR 1:019E. Pharmacy services. (Deferred from January)

907 KAR 1:160. Home and community based waiver services. (Public Hearing in December)

907 KAR 1:170. Payments for home and community based waiver services. (Public Hearing in December)

907 KAR 1:450. Nurse aide training criteria and registry. (Public Hearing in January)

907 KAR 1:673E. Claims processing. (Deferred from January)

907 KAR 1:705. Demonstration project: services provided through regional managed care partnerships (1115 waiver). (Public Hearing in December)

Department for Mental Health and Mental Retardation Services

Division of Mental Retardation

908 KAR 2:100 & E. Kentucky Early Intervention Program definition

908 KAR 2:110 & E. Kentucky Early Intervention Program point of entry

908 KAR 2:120 & E. Kentucky Early Intervention Program evaluation and eligibility.

908 KAR 2:130 & E. Kentucky Early Intervention Program assessment and service planning.

908 KAR 2:140 & E. Kentucky Early Intervention Program primary service coordination and assistive technology.

908 KAR 2:150 & E. Kentucky Early Intervention Program personnel qualifications.

908 KAR 2:160 & E. Kentucky Early Intervention Program covered services.

908 KAR 2:170 & E. Notice of action and administrative appeal.

908 KAR 2:180 & E. Kentucky Early Intervention Program mediation.

Other Business

1. Commissioner Tom Bennett, Department of Fish and Wildlife Resources
Report on the Long-Term Funding Task Force (HCR 76)
2. Water Quality

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

COUNCIL ON HIGHER EDUCATION

January 30, 1997

Council on Higher Education

(1) The subject matter of the proposed administrative regulations is the State Autism Training Center established by the Kentucky General Assembly in KRS 164.020(8). The council will provide support services to eligible clients, parents of eligible clients and providers of services to eligible clients in relation to autism or autistic-like disorders. The title and number of the administrative regulation has been discussed with the Administrative Regulations Compiler and will be State Autism Training Center, **13 KAR 2:080**.

(2) The Council on Higher Education intends to promulgate an administrative regulation pursuant to KRS 164.020(8) for the operation of a state autism training center. The title, regulation number and chapter have been approved by the Administrative Regulations Compiler.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 1997, at 9:30 a.m., in the conference room, Kentucky Council on Higher Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601.

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

(c) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people by March 21, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should submit a written request, no later than March 21, 1997, to the following address: Kentucky Council on Higher Education; Attn: Dennis L. Taulbee, General Counsel at 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601. The phone number is (502) 573-1555; the fax number is (502) 573-1535.

(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 Council on Higher 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 the operation of a state autism training center is KRS 164.020(8).

(b) The administrative regulation to be promulgated by the council is a new administrative regulation.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.020(8) authorizes the Council on Higher Education to operate a state autism training center through a contract or memorandum of agreement with a public higher education institution. The University of Louisville has agreed to operate the State Autism Training Center on behalf of the council; a memorandum of agreement has been developed. The authorizing statute requires that the council implement the statute through promulgation of an administrative regulation.

(d) The benefits expected from the administrative regulations are: The Kentucky General Assembly has determined through legislation codified as KRS 164.020(8) that it is in the best interest of the state to provide support services to eligible clients, parents of eligible clients and providers of services to eligible clients in relation to autism or autistic like disorders. The University of Louisville, through a memorandum of agreement with the council, will provide technical assistance in training of personnel who deliver services and in determining the proper course of education and training for clients.

(e) This administrative regulation will be implemented by the Council on Higher Education with the assistance of the University of Louisville and the Advisory Board authorized by the enabling statute. The regulation sets forth guidance for the development of the memorandum of agreement, the establishment of operating parameters and performance assessment, and the role of the Advisory Board in policy development and evaluation.

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary

January 15, 1997

Finance and Administration Cabinet

Office of the Secretary

(1) **200 KAR 6:050**, Control of concealed deadly weapons on property owned or leased by the executive and judicial branches of state government.

(2) The Finance and Administration Cabinet 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 amendment has been scheduled for March 27, 1997 at 10 a.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601.

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

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or distributor of pharmaceuticals is licensed by the Board of Pharmacy and that there is a method whereby the public will know how to obtain their prescription drug information should a pharmacy be closed.

(e) The amendment to the administrative regulation will be implemented as follows: The board proposes to clarify the method of notification to the public of a closure of a pharmacy when the closure is voluntary or is the result of a merger and the relocation of the prescription records will be within a five mile radius.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than March 14, 1997.

KENTUCKY REAL ESTATE COMMISSION

January 16, 1997

Kentucky Real Estate Commission

(1) Regulation number and title; or subject matter if new: **201 KAR 11:400** - Amendment agency disclosure requirement.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 21, 1997 at 9 a.m., at 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 21, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jeffrey C. Blair, General Counsel, Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223.

(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 Real Estate Commission at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 324.160(1)(e), (j).

(b) The administrative regulation that the Kentucky Real Estate Commission intends to promulgate will amend 201 KAR 11:400, Agency disclosure requirements. It will exempt licensees involved in commercial transactions from the requirements that they deliver the forms required in 201 KAR 11:400.

(c) The necessity and function of the proposed administrative regulation is as follows: This amendment exempts licensees involved in commercial transactions from the requirement that they deliver the forms required in 201 KAR 11:400. This is necessary as the nature of commercial real estate makes these forms unnecessary and duplicative.

(d) The benefits expected from administrative regulation are: Promote commercial real estate activity by removing requirement of unnecessary forms.

(e) The administrative regulation will be implemented as follows: Amendment will be implemented immediately upon approval and will remove requirement of forms being utilized.

KENTUCKY BOARD OF OPHTHALMIC DISPENSERS

February 13, 1997

Kentucky Board of Ophthalmic Dispensers

(1) **201 KAR 13:080**. Inspection of establishments.

(2) The Kentucky Board of Ophthalmic Dispensers 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 March 24, 1997, at 11 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to March 24, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

(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.

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- (2) A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 21, 1997, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: John Grant, Assistant Attorney General, Capitol Building, 700 Capitol Avenue, Frankfort, Kentucky 40601-3449.
- (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 by writing to John Grant at the above address, or by calling (502) 564-7600 between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.
- (7) Information relating to the proposed administrative regulations.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter listed above is KRS 324A.035.
- (b) The administrative regulation that the Kentucky Real Estate Appraisers Board intends to promulgate will amend 201 KAR 30:070 and will repeal 201 KAR 30:080 to clarify prehearing procedures and to comply with statutory revisions that the Kentucky General Assembly made during the 1996 General Session to KRS Chapter 13B relating to administrative hearings. The Kentucky Real Estate Appraisers Board intends to repeal 201 KAR 30:140 because federal law no longer permits issuance of transitional licenses.
- (c) The Necessity, Function, and Conformity of the proposed administrative regulation is as follows: clarifies prehearing procedures and complies with 1996 statutory revisions to KRS Chapter 13B and to federal law.
- (d) The benefit expected from this administrative regulation is that the regulations will comply with state and federal law.
- (e) This administrative regulation will be implemented as follows: Certified, licensed, and trainee real property appraisers will be required to comply with the administrative regulation, and the Kentucky Real Estate Appraisers Board will enforce the administrative regulations.

KENTUCKY DEPARTMENT OF AGRICULTURE

February 5, 1997

Kentucky Department of Agriculture

- (1) Regulation number and title: **302 KAR 20:180**. Restrictions equine viral arteritis.
- (2) The Kentucky Department of Agriculture intends to promulgate an administrative regulation governing the above subject matter.
- (3) A public hearing to receive oral and written comments has been scheduled for March 21, 1997 at 1 p.m. at the Department of Agriculture's Conference Room, 7th Floor, Capital Plaza Tower, 500 Mero Street, 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 is not received from the required number of people at least ten days prior to March 21, 1997, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (b) On a request for a public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Department of Agriculture at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The authority for the promulgation of an administrative regulation relating to restrictive equine viral arteritis is KRS 257.030.
- (b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate is an amended administrative regulation. It sets forth the treatment and protection of the thoroughbred industry from the spread of equine viral arteritis within the borders of the Commonwealth of Kentucky and to control the disease in the Commonwealth.
- (c) The necessity and function of the proposed administrative regulation is as follows: Same as (b).
- (d) The benefits expected from the proposed administrative regulation are: To control the disease, EVA in the thoroughbred industry.
- (e) The administrative regulation will be implemented as follows: This regulation sets forth the definitions and procedures for protecting the thoroughbred industry from the spread of Equine Viral Arteritis and to control the disease in the Commonwealth.

January 23, 1997

Kentucky Department of Agriculture

- (1) Regulation number and title: **302 KAR 40:010**: Standard organic agricultural products requirements.
- (2) The Kentucky Department of Agriculture intends to promulgate an administrative regulation governing the above subject matter.
- (3) A public hearing to receive oral and written comments has been scheduled for March 21, 1997 at 10 a.m. at the Department of Agriculture's Conference Room, 7th Floor, Capital Plaza Tower, 500 Mero Street, 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.

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February 13, 1997

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 59:174**, Stage II for gasoline dispensing facilities. The subject matter of this new administrative regulation is the required installation of Stage II vapor recovery systems to control emissions from gasoline dispensing facilities in moderate ozone nonattainment areas.

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

(3) A public hearing to receive oral and written comments on the new administrative regulation has been scheduled for March 21, 1997, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 21, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division for Air Quality, Attention Millie Ellis, Supervisor, Regulation Development Section, Program Planning and Administration Branch, 803 Schenkel Lane, 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 Division for Air Quality at the address listed above.

(7) Information relating to the new administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 224.10-100, 224.20-100, 224.20-110, and 224.20-120.

(b) The administrative regulation that the Division for Air Quality intends to promulgate will not amend any existing administrative regulation.

(c) The necessity and function of the new administrative regulation is as follows: 42 USC 7511a(b)(3), 42 USC 7624, and 42 USC 7625 mandate each state to submit a revision to its state implementation plan (SIP) requiring owners or operators of designated gasoline dispensing facilities to install and operate vapor recovery systems to capture gasoline emissions from the fueling of motor vehicles. 42 USC 7521(a)(6) allows the Commonwealth to waive this requirement if the national ambient air quality standard (NAAQS) for ozone can be attained using other means. According to the U.S. EPA determination, the ozone standard was violated in the Greater Cincinnati air quality region during the summer of 1995. Therefore, extra programs for reducing volatile organic compound (VOC) emissions are required and this includes implementing a program for Stage II vapor recovery systems in gasoline dispensing facilities located in an area that is designated moderate nonattainment for ozone.

(d) The expected benefit from this administrative regulation is that counties that have not attained the ozone NAAQS will be able to do so. Also, as a result of the promulgation of this administrative regulation, these counties will not immediately be downgraded to the serious ozone nonattainment area designation pursuant to 42 USC 7511(b)(2), and Kentucky will not be subject to penalties such as a loss of federal highway funds pursuant to 42 USC 7509(b).

(e) The administrative regulation will be implemented as follows: Existing gasoline dispensing facilities, following the tiered timetable given in the administrative regulation, shall comply with the provisions of this administrative regulation, and all facilities shall comply within two years following the effective date. Gasoline dispensing facilities commencing construction on or after the effective date shall comply as soon as they start dispensing gasoline.

February 13, 1997

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection

Division for Air Quality

(1) **401 KAR 63:005**, Open burning, will upon adoption amend the existing regulation. The subject matter of this amendment is a revision to require a partial ban on open burning during the summer ozone season in all areas designated moderate ozone nonattainment in the Commonwealth of Kentucky.

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

(3) A public hearing to receive oral and written comments on the proposed amendment has been scheduled for March 21, 1997, at 10 a.m. (ET), in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 21, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Division for Air Quality, Attention Millie Ellis, Supervisor, Regulation Development Section, Program Planning and Administration Branch, 803 Schenkel Lane, 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

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do so. Also, as a result of the promulgation of this administrative regulation, these counties will not immediately be downgraded to the serious ozone nonattainment area designation pursuant to 42 USC 7511(b)(2), and Kentucky will not be subject to penalties such as a loss of federal highway funds pursuant to 42 USC 7509(b).

(e) The administrative regulation will be implemented as follows: A basic vehicle emission control inspection and maintenance program with biennial inspection shall be set up in counties in which the entire county is designated moderate ozone nonattainment.

JUSTICE CABINET Department of Corrections

February 12, 1997
Justice Cabinet
Department of Corrections

- (1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections.
- (2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 21, 1997, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 21, 1997, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, 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 above.
- (7) Information relating to the proposed administrative regulation:
 - (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 196.035 and 197.020.
 - (b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:020, as follows: Use of force (9.1) shall be amended to:
 1. Reflect the correct references;
 2. Clarify the inclusion of the use of mechanical restraints;
 3. Clarify the progressive levels of force; and
 4. Comply with drafting rules in KRS Chapter 13A.
 - (c) The necessity and function of the proposed administrative regulation is as follows:
 1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.
 2. This administrative regulation updates operating procedures at the Department of Corrections to comply with KRS Chapter 13A and to reflect current operating procedures.
 - (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.
 - (e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

February 12, 1997
Justice Cabinet
Department of Corrections

- (1) Regulation Number and Title: **501 KAR 6:120**, Blackburn Correctional Complex.
- (2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 21, 1997, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 21, 1997, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:

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to reflect current operating procedures.

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

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

JUSTICE CABINET Department of Juvenile Justice

February 10, 1997

Justice Cabinet

Department of Juvenile Justice

- (1) **505 KAR 1:020**, Internal grievance procedure.
- (2) The Department of Juvenile Justice 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 March 24, 1997 at 1 p.m. at the Health Services Auditorium in the Cabinet for Families and Children 275 E. Main Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 24, 1997 the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Micah G. Guilfoil, General Counsel, Juvenile Justice, 320 West Main Street, Frankfort, Kentucky 4601, (502) 564-2738, fax: (502) 564-0836.
- (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 of Juvenile Justice, 320 West Main Street, Frankfort, Kentucky 40601.
- (7) Information relating to the proposed administrative regulations.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to 505 KAR 1:020, Internal grievance procedure is KRS 15A.210, 15A.160, 13A.312 and the requirements of a consent decree entered December 4, 1995 in United States of America v. Commonwealth of Kentucky et al., Civil Action No. 3:95 CV-757-S (W. D. Ky. 1995).
 - (b) The administrative regulation that the Department of Juvenile Justice intends to promulgate will not amend an existing regulation. It establishes the current internal grievance procedures of the juvenile facilities operated by the Department of Juvenile Justice and will implement some of the provisions of the voluntary consent decree entered into with the Department of Justice to improve conditions of youth housed in 13 residential treatment facilities operated or contracted by the cabinet (now Department of Juvenile Justice).
 - (c) The necessity, function and conformity of the proposed administrative regulations is to establish an internal grievance procedure for use in the juvenile facilities. Additionally, it will comply with the juvenile services Consent Decree relating to juvenile rights.
 - (d) The benefits expected from this administrative regulation are that the Department of Juvenile Justice will establish regulatory authority for the current policies and procedures relating to internal grievance procedures in the juvenile facilities. Another benefit for the Department of Juvenile Justice is compliance with some provisions of the voluntary Consent Decree entered into with the United States Department of Justice in December 1995 to improve conditions for youth housed in the 13 residential treatment facilities operated or contracted by the cabinet (now Department of Juvenile Justice).
 - (e) The administrative regulation will be implemented as follows: for use initially only in the residential facilities currently operated by the Department of Juvenile Justice. Other facilities will be phased in.

TRANSPORTATION CABINET

March 1, 1997

Transportation Cabinet

- (1) **601 KAR 1:200**, Administration of taxes imposed in KRS 138.655 through 138.7291 and **601 KAR 1:201**. Recordkeeping and auditing requirements for taxes imposed in KRS 138.655 through 138.7291.
- (2) The Kentucky Transportation Cabinet intends to promulgate administrative regulations governing the taxes imposed in KRS 138.655 through 138.7291. Informally, these are called the IFTA fuel use taxes and weight distance tax.
- (3) A public comment hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 25, 1997, at 2:30 p.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room of the State Office Building, Frankfort, Kentucky 40622.
- (4)(a) The public hearing will be held if:
 1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 25, 1997, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 501

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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 teacher certification application, fees, and the 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 20:045, Testing prerequisites for teacher certification, certificate application, beginning teacher internship program, and certification fees.

(c) The necessity and function of the proposed administrative regulation is as follows: Amendments are intended to conform to statutory amendments.

(d) The benefits expected from the administrative regulation are: The collection of certification fees will offset a portion of the costs to issue, reissue, renew and revoke teaching certificates.

(e) The administrative regulation will be implemented as follows: The regulation will be communicated by the Education Professional Standards Board to colleges, universities, local school districts, and certificate holders.

January 1997

Education Professional Standards Board

(1) **704 KAR 20:060**, Renewals.

(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 March 21, 1997, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, 40601.

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

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be 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 March 21, 1997, 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. Betty Lindsey, Executive Secretary, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky, 40601, (502) 573-4606, fax (502) 573-1610.

(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 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 requirements for certificate renewal is KRS 161.028 and 161.030.

(b) The administrative regulation that the Education Professional Standards Board will amend is 704 KAR 20:060, Renewals.

(c) The necessity and function of the proposed administrative regulation is as follows: This regulation establishes certificate renewal provisions for certain unusual circumstances.

(d) The benefits expected from the administrative regulation are: Clarification of requirements for specific renewal provisions.

(e) The administrative regulation will be implemented as follows: The regulation will be communicated by the Education Professional Standards Board to local school districts and certificate holders. Renewal requirements will be identified on the back of the certificate.

January 1997

Education Professional Standards Board

(1) **704 KAR 20:070**, Certification for teaching in the secondary grades.

(2) The Education Professional Standards Board 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 March 21, 1997, at 10 a.m. in the First Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky.

(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 10 days prior to March 21, 1997, 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. Betty Lindsey, Executive Secretary, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky, 40601, (502) 573-4606, fax (502) 573-1610.

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

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

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

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public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, 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 Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:301, as follows: The revision to 29 CFR 1910.19, "Special Provisions For Air Contaminants," as published in the Federal Register, Volume 61, Number 214, November 4, 1996, is incorporated by reference. This revision describes the coverage of 1910.1051 as it relates to the construction and shipyard industries. It also revises the definition section to meet KRS Chapter 13A considerations.

(c) The necessity, function, and conformity of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirement.

(d) The benefits expected from the proposed administrative regulation are: This revision assures conformity with the Code of Federal Regulations. It also revises the definition section to meet KRS Chapter 13A considerations.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

February 6, 1997

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:306**. Occupational health and environmental control.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 1997, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to March 31, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, 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 Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:306, as follows: The revision to 29 CFR 1910.96, "Ionizing Radiation," as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference. This revision moves the regulation to a different subpart of the Code of Federal Regulations. It also revises the definition section to meet KRS Chapter 13A considerations.

(c) The necessity, function, and conformity of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirement.

(d) The benefits expected from the proposed administrative regulation are: This revision assures conformity with the Code of Federal Regulations. It also revises the definition section to meet KRS Chapter 13A considerations.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

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and 1,3-butadiene, revise the heading of 29 CFR 1910.1003 to read, "13 Carcinogens" (4-Nitrobiphenyl, etc.), renumber two federal regulations in accordance with the CFR, moves language relating to one of the renumbered federal standards from 803 KAR 2:302 to this regulation, and reformat a definition to meet KRS Chapter 13A considerations.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's Occupational Safety and Health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirement.

(d) The benefits expected from the proposed administrative regulation are: This revision assures conformity with the Code of Federal Regulations. It also revises the definition section to meet KRS Chapter 13A considerations.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

February 6, 1997

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:402**. General safety and health provisions.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 1997, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to March 31, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, 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 Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:402, as follows: This regulation incorporates, by reference, a publication in the Federal Register, dated June 20, 1996, which removes the text of the applicable standard from 29 CFR Part 1926 and directs those affected to the applicable standard in 29 CFR Part 1910.

(c) The necessity, function, and conformity of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirement.

(d) The benefits expected from the proposed administrative regulation are: This revision assures conformity with the Code of Federal Regulations.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

February 6, 1997

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:403**. Occupational health and environmental controls.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 1997, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to March 31, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, 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

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(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to March 31, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, 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 Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:405, as follows: This regulation incorporates, by reference, a publication in the Federal Register, dated June 20, 1996, which removes standards relating to fire protection that have been found not applicable to the construction industry (Section 1(1)(b) and (c)), updates the reference to the Code of Federal Regulations (Section 1(1)(a)), and reformats the regulation to meet KRS Chapter 13A considerations.

(c) The necessity, function, and conformity of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirement.

(d) The benefits expected from the proposed administrative regulation are: These revisions assure conformity with the Code of Federal Regulations.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

February 6, 1997

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:410. Electrical.**

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 1997, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to March 31, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, 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 Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:410, as follows: The amendment to 29 CFR 1926 Subpart K, "Electrical" as published in the Federal Register, Volume 61, Number 156, August 12, 1996 is incorporated by reference. This proposed amendment deletes certain paragraphs relating to "Electrical Safety-Related Work Practices" from the electrical requirements for the construction industry. These requirements had been incorrectly added previously. The amendment also updates the incorporation of the Code of Federal Regulations, published July 1, 1996.

(c) The necessity, function, and conformity of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirement.

(d) The benefits expected from the proposed administrative regulation are: The revisions as proposed in this amendment will correct an error, deleting certain provisions from the standards regulating the construction industry which, when adopted were clearly not intended to regulate the industry.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

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(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:424, as follows: This regulation incorporates, by reference, a publication in the Federal Register, dated June 20, 1996, which removes the text of the applicable standards from 29 CFR Part 1926 and directs those affected to the applicable standards in 29 CFR Part 1910 (Section 1(1)(b) through (q)), updates the reference to the Code of Federal Regulations (Section 1(1)(a)), and reformats the regulation to meet KRS Chapter 13A considerations.

(c) The necessity, function, and conformity of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirement.

(d) The benefits expected from the proposed administrative regulation are: These revisions assure conformity with the Code of Federal Regulations.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

February 6, 1997

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:425**. Toxic and hazardous substances.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 1997, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to March 31, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, 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 Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:425, as follows: This regulation incorporates, by reference, a publication in the Federal Register, dated June 20, 1996, which removes the text of the applicable standards from 29 CFR Part 1926 and directs those affected to the applicable standards in 29 CFR Part 1910. The regulation also incorporates, by reference, revisions to the construction asbestos standard, 29 CFR 1926.1101, which clarify and correct certain provisions of the existing standard. These revisions were published in the Federal Register, Volume 61, Number 165, August 23, 1996.

(c) The necessity, function, and conformity of the proposed administrative regulation is: Kentucky's Occupational Safety and Health Program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program, Kentucky must adopt the federal requirement.

(d) The benefits expected from the proposed administrative regulation are: This revision assures conformity with the Code of Federal Regulations.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

February 6, 1997

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation Number and Title: **803 KAR 2:500**. Maritime employment.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 31, 1997, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to March 31, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601.

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(e) The administrative regulation will be implemented as follows: The amended regulation is available to the public at the Department of Workers' Claims and will be distributed by the Department of Workers' Claims upon request. The procedures set forth in the regulation must be followed by all parties to a workers' compensation claim and by Department of Workers' Claims personnel in processing claims. New forms will be distributed to the public, and completed forms produced on word-processing equipment will be accepted if the approved format is used.

February 10, 1997

Labor Cabinet

Department of Workers' Claims

(1) **803 KAR 25:200**, Employers notice of workers' compensation insurance.

(2) The Commissioner of the Department of Workers' Claims intends to promulgate an administrative regulation governing 803 KAR 25:200.

(3) A public hearing to receive oral and written comments on the proposed amendments has been scheduled for March 24, 1997, at 10 a.m. at the Department of Workers' Claims, 1270 Louisville Road, Frankfort, Kentucky 40601.

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

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

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

(b) If 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 March 24, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Marcy D. Ches, Staff Attorney.

(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 Workers' Claims 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 an employer's notice to employees of workers' compensation insurance information is KRS 342.610(6) and 342.260.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing regulation. It will establish the content and format of the notice which employers are required to post informing employees of certain information relative to the employer's workers' compensation insurance.

(c) The administrative regulation is necessary to establish the format and content of the notice required by KRS 342.610(6).

(d) The benefits expected from administrative regulation are: To assure that employees are informed by employers as to the identity and other relevant information relative to the employer's workers' compensation insurance.

(e) The Kentucky Department of Insurance will mail the form for the notice to all insurance carriers, who will be responsible for distributing it to their clients (employers). The Department of Workers' Claims will distribute the form to self-insured employers throughout the state.

February 10, 1997

Labor Cabinet

Department of Workers' Claims

(1) **803 KAR 25:210**, Affidavit of exemption from the Kentucky Workers' Compensation Act.

(2) The Commissioner of the Department of Workers' Claims 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 amendments has been scheduled for March 24, 1997, at 10 a.m. at the Department of Workers' Claims, 1270 Louisville Road, Frankfort, Kentucky 40601.

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

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

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

(b) If 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 March 24, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a hearing should mail their written request to the following address: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Marcy D. Ches, Staff Attorney.

(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 Workers' Claims at the address listed above.

(7) Information relating to the proposed administrative regulation:

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Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Marcy D. Ches, Staff Attorney.

(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 Workers' Claims 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 House Bill 1, Section 36, effective December 12, 1997.

(b) The administrative regulation that the commissioner intends to promulgate will not amend an existing regulation. It will establish the procedure whereby employee leasing companies shall register themselves with the Commissioner of the Department of Workers' Claims.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: A new section of KRS Chapter 342 created by House Bill 1, Section 36, requires the commissioner to prescribe by regulation the manner in which an employee leasing company shall register with the commissioner. The function of this administrative regulation is to insure that all employee leasing companies operating in the Commonwealth are properly registered and that the employers which lease employees properly obtain workers' compensation insurance for the employees and that the premium paid is commensurate with exposure and anticipated claim experience.

(d) The benefits expected from administrative regulation are: To assure that employees are properly covered by workers' compensation insurance.

(e) The administrative regulation will be implemented as follows: Copies of the administrative regulation will be available upon request from the Department of Workers' Claims.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

February 14, 1997

Public Protection and Regulation Cabinet

Department of Insurance

(1) Regulation Number and Name: **806 KAR 4:010**, Fees to the Department of Insurance.

(2) The Department of Insurance 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 March 21, 1997, at 10 a.m., at the Department of Insurance, 215 West Main Street, 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 ten (10) days prior to March 21, 1997, 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 Department of Insurance, Attn: Patsey Yewell, P.O. Box 517, Frankfort, Kentucky 40602, (502) 564-6032, fax number (502) 564-1456.

(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 address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 304.2-110 and 304.4-010.

(b) The administrative regulation that the department intends to promulgate will amend an existing administrative regulation.

(c) The necessity and function of the proposed amended administrative regulation is as follows: KRS 304.4-010 requires the Commissioner of Insurance to prescribe those services for which fees shall be charged and the amount of the fees. This administrative regulation prescribes these services for which the Department of Insurance will charge fees and the amounts of those fees.

(d) The benefits expected from the administrative regulation are: It will set fees for services based on estimated actual costs to the Department of Insurance for these services.

(e) The administrative regulation will be implemented as follows: The Department of Insurance will collect the fee specified for initial, renewal, form and rate filings; certificates of authority and functions related to licensing; and computer diskettes and printouts.

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(e) This administrative regulation will be implemented by plan review and inspection by the Kentucky Division of Plumbing inspectors.

February 13, 1997

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 20:090**, Soil, waste and vent systems.

(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, March 27, 1997, 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 ten (10) days prior to March 27, 1997, the public hearing will be canceled.

(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 318.130.

(b) The department intends to amend Section 20 to allow telescoping vents in buildings with stacks less than 45' in height. This amendment has been approved by the Plumbing Code Committee and the Board of Housing, Buildings and Construction.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation identifies and publishes the manufacturer's specification number of the material accepted in the installation and design of soil, waste and vent systems in all types of plumbing systems.

(d) The benefits expected from this administrative regulation are: Allow the use of smaller vent stacks in public buildings up to 45' in height.

(e) This administrative regulation will be implemented by the department's plumbing inspectors.

February 14, 1997

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 35:015**, Certification of electrical inspectors.

(2) The Department of Housing, Buildings and Construction 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 10 a.m., local time, on Thursday, March 27, 1997, in the Department of Housing'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 ten (10) days prior to March 27, 1997, the public hearing will be canceled.

(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. 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 227.489 and 13A.100.

(b) The department intends to amend 815 KAR 35:015 to create a provision to assure that inspectors maintain continuing education and current certification by prompt renewals or that they pay fees for delinquency and retest.

(c) The necessity and function of the proposed administrative regulation is as follows: 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 and to encourage inspectors to pass the national examination sooner, but allowing flexibility for late renewals.

(d) The benefits expected from this administrative regulation are: Maintaining continuing education requirements will keep inspector's

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1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least five 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 public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 28, 1997 the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Administrative Specialist Principal, Cabinet for Health Services, Office of Counsel, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, FAX: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of these administrative regulations relating to 902 KAR 4:090 is KRS 211.900 to 211.905 and 211.994.

(b) The "new" administrative regulations that the Cabinet for Health Services, Department for Public Health, intends to promulgate, concerns changing the reporting location of lead poisoning and reflects the current Centers for Disease Control and Prevention's recommendations for lead poisoning identification and management.

(c) The necessity, function and conformity of the proposed administrative regulations are as follows: Establish the level at which a child is considered blood lead poisoned as well as the level as which a child is considered "at risk"; cleans up the language to reflect current program policies and shifts the location reporting requirement.

(d) The benefits expected from the administrative regulation are: Updates the regulation to reflect current statewide policies, identifies "at risk" levels of lead, reflects the new level considered "lead poisoned" as well as changes the location of lead poisoning and makes all lead sample analyses above 10ug/dL reportable.

(e) The administrative regulation will be implemented as follows: The Division of Maternal and Child Health, Department for Public Health will be responsible for the implementation of these new administrative regulations.

Office of Radiation Control

February 3, 1997

Cabinet for Health Services
Department for Public Health
Office of Radiation Control

(1) **902 KAR 100:040.** General provisions for specific licenses, which provides general provisions for the issuance of radioactive material licenses to possess, use and transfer radioactive material.

(2) The Cabinet for Health Services, Department for Public Health, Division of Environmental Health and Community Safety, intends to amend 902 KAR 100:040 governing the subject matter cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 28, 1997 at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 28, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Administrative Specialist Principal, Cabinet for Health Services, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, Fax: (502) 564-7573.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) KRS 211.844 provides the statutory authority for the promulgation of administrative regulations relating to ionizing radiation by the Cabinet for Health Services.

(b) The administrative regulation that the Cabinet for Health Services, Department for Public Health intends to amend, concerns the

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February 15, 1997

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:015**, Supplemental programs for persons who are aged, blind, or have a disability.

(2) Cabinet for Families and Children, Department for Social Insurance 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 March 28, 1997, 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 10 days prior to March 28, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy H. Trigg, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor-West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for 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 Families and Children's 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 State Supplementation Program is KRS 205.245. Since 1977, the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass along the cost of living supplemental security income benefit increases to state supplementation recipients.

(b) The administrative regulation the Department for Social Insurance intends to promulgate will amend 904 KAR 2:015. The amendment will revise the standard of need for all levels of care for the State Supplementation Program due to the pass along of the 1997 supplemental security income cost of living adjustment. In addition, citizenship requirements will be amended to reflect changes as a result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to implement the mandated increases in the standard of need of the State Supplementation Program due to the pass along of the supplemental security income 1997 cost of living adjustment.

(d) The benefits expected from administrative regulation are: This administrative regulation will increase the standard of need for all levels of care for the recipients of the State Supplementation Program due to the pass along of the supplemental security income cost of living increase. In addition, this administrative regulation will amend citizenship requirements pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(e) The administrative regulation will be implemented as follows: This administrative regulation will be implemented by the Department for Social Insurance.

February 15, 1997

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:016**, Standards for need and amount for Kentucky Transitional Assistance Program (K-TAP).

(2) Cabinet for Families and Children, Department for Social Insurance 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 March 28, 1997, 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 10 days prior to March 28, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

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

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

ADMINISTRATIVE REGISTER - 3203

January 28, 1997
Cabinet for Families and Children
Department for Social Insurance
Division of Management and Development

(1) **904 KAR 3:042**, Food Stamp Employment and Training Program.

(2) Cabinet for Families and Children, Department for Social Insurance 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 March 28, 1997 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 10 days prior to March 28, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (fax).

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for 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 Families and Children's 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 program is KRS 194.050 and Executive Order 96-862, which reorganizes the Cabinet for Human Resources and places the Department for Social Insurance and its programs under the Cabinet for Families and Children.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate is a proposed amendment to administrative regulation, 904 KAR 3:042. The proposed administrative regulation implements the Food Stamp Employment and Training Program requirements that are mandated by 7 USC 2015(d), as mandated by PL 104-193, sec. 815. The proposed administrative regulation also implements the Community Service Program that allows individuals who are subject to the work requirement pursuant to PL 104-193, sec. 824, to satisfy the work requirement by performing a minimum number of community service hours per month.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Employment and Training Program and the requirements of the Community Service Program.

(d) The benefits expected from administrative regulation are: This administrative regulation will prevent a loss of federal funds by timely implementing the requirements mandated 7 USC 2015(d), as amended by PL 104-193, sec. 815. The administrative regulation also prevents individuals who are subject to the work requirement pursuant to PL 104-193, sec. 824, and cannot find a job from being limited to three (3) months of food stamp eligibility out of a three (3) year period.

CABINET FOR FAMILIES AND CHILDREN Department for Medicaid Services Division of Administration and Development

January 16, 1997
Cabinet for Health Services
Department for Medicaid Services
Division of Administration and Development

(1) **907 KAR 1:022**, Nursing facility and intermediate care facility for the mentally retarded services.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for March 28, 1997 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 28, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Administrative Specialist Principal, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky

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administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payments for nursing facility and intermediate care facility for the mentally retarded services are KRS 194.050, 42 CFR 430, 435, 440, 441, 442, 447, 42 USC 1396a, b, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s, EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:025.

1. To delete, in this regulation and corresponding incorporative material, references to dual licensed beds which were to be converted to nursing facility beds by 12/31/96;

2. To consider revising the nursing facility rate setting methodology pursuant to KRS 205.6326;

3. To consider revising 907 KAR 1:025, and corresponding incorporate material, in accordance with provisions of KRS Chapter 13A. Revisions should provide for clarity, consistency, and nonduplication;

4. To incorporate revisions to comply with KRS 205.8151 through 205.8483 related to the control of fraud and abuse;

5. To consider revising ventilator case mix, patient status determination, and level of care methodology which may affect payments to nursing facilities;

6. To revise clarifying language in Section 4(2)(b)1; and

7. To incorporate technical or conforming changes as necessary to topical and incorporative material. This ordinary regulation will also contain policies previously implemented by emergency regulations as follows:

1. Ventilator payment provisions revised to comply with Franklin Circuit Court order; and

2. Distinct part requirement, twenty (20) bed nursing facility unit, and fifteen (15) bed census requirements for payment purposes for ventilator rate.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth service provisions and requirements for nursing facility services including distinct part high intensity ventilator services for the twenty (20) bed units.

(d) The benefits expected from administrative regulation are:

1. The revision to policy permits reimbursement at high intensity rate for individuals who require at least twelve (12) hour ventilator services and twenty-four (24) hour high intensity nursing services; or individuals who are under physician orders and management, and are in an active weaning program which requires twenty-four (24) hour high intensity nursing. The twelve (12) hour dependency requirements does not apply to active weaning.

2. Medicaid eligibles will benefit by being provided access to and payments for additional facility sites offering ventilator services.

February 1, 1997

Cabinet for Health Services

Department for Medicaid Services

Division of Administration and Development

(1) **907 KAR 1:038**, Hearing and Vision Program services; **907 KAR 1:631**, Reimbursement of Vision Program services.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for March 28, 1997 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to March 28, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Administrative Specialist Principal, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to the vision program are KRS 205.520, EO 96-862, KRS 194.050, 42 CFR 440.140, 441.30, and 42 USC 1396a, b, d.

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 6:050E

This emergency administrative regulation provides for the control of concealed deadly weapons on property owned or leased by the executive and judicial branches of state government. KRS 237.110, which became effective on October 1, 1996, authorizes the Department of State Police to issue licenses to carry concealed firearms or other deadly weapons to persons qualified as provided by statute. The first applicants are now being trained and licensed. Therefore, in order to have in place the necessary controls on carrying concealed deadly weapons on state property, it is necessary to promulgate this administrative regulation on an emergency basis. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation was filed with the Regulations Compiler on January 15, 1997.

PAUL E. PATTON, Governor
JOHN P. MCCARTY, Secretary

FINANCE AND ADMINISTRATION CABINET
Office of the Secretary

200 KAR 6:050E. Control of concealed deadly weapons on property owned or leased by the executive and judicial branches of state government.

RELATES TO: KRS 56.463, 237.115

STATUTORY AUTHORITY: KRS 56.463(4), (8), 237.115(1), (2)

EFFECTIVE: January 15, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 56.463 vests in the Finance and Administration Cabinet the power to control the use of any real property owned or otherwise held by the Commonwealth of Kentucky, or any state agency. KRS 56.463 authorizes the Finance and Administration Cabinet to adopt administrative regulations necessary to govern, among other things, the control of property to which KRS 56.463 is applicable. KRS 237.115(1) recognizes the right of a unit of state government to prohibit the carrying of concealed deadly weapons in that portion of a building owned, leased, or occupied by that unit of government. KRS 237.115(2) allows the prohibition to be established by statute or administrative regulation. The judicial branch has indicated its approval of this administrative regulation by the concurrence of the Chief Justice. This administrative regulation provides for: the prohibition against carrying concealed deadly weapons onto property owned or leased by the executive and judicial branches of state government, the posting of signs prohibiting the carrying of such weapons on all applicable property, and consequences of violating this prohibition.

Section 1. Pursuant to KRS 237.115(2), no persons shall be permitted to carry a concealed deadly weapon onto property owned or leased by the executive and judicial branches of state government, including constitutional officers. This administrative regulation shall not apply to property owned or controlled by the legislative branch of state government, or law enforcement officers authorized by state statute to carry concealed weapons.

Section 2. The prohibition against carrying concealed deadly weapons onto property owned or leased by the executive and judicial

branches of state government shall not apply to any building used for public housing by private persons, highway rest areas, firing ranges, wildlife management areas, or private dwellings owned, leased, or controlled by the state.

Section 3. Signs prohibiting the carrying of concealed deadly weapons shall be posted on all applicable property owned or leased by the executive and judicial branches of state government.

Section 4. Persons violating this administrative regulation may be denied entrance to the property and ordered to leave the building. If any person who violates this administrative regulation is an executive branch employee, such person may be subject to employee disciplinary measures for violation of the provisions of this administrative regulation.

JOHN P. MCCARTY, Secretary

APPROVED BY AGENCY: January 15, 1997

FILED WITH LRC: January 15, 1997 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Karen A. Powell, General Counsel

(1) Type and number of entities affected: This administrative regulation affects all agencies of the executive and judicial branches of state government.

(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 is no anticipated cost or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented. A public hearing on this administrative regulation has not yet taken place.

(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. This administrative regulation poses no anticipated cost on business in the geographical area in which it will be implemented. A public hearing on this administrative regulation has not yet taken place.

(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: There are no compliance, reporting, or paperwork requirements associated with this administrative regulation. Nor will there be any effect upon competition.

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: Expected cost will be the cost of posting signs on all applicable property.

2. Continuing costs or savings: None or minimal.

3. Additional factors increasing or decreasing costs: No other factors are known at this time.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.

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

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resident.

(f) If dissatisfied with the resolution presented by the designated hearing officer, the resident may within two (2) work days forward the grievance to the facility director or superintendent. The resident shall present all information previously provided.

(g) Within three (3) work days of receiving the grievance the director or superintendent shall meet with:

1. The designated hearing officer.
2. The resident.
3. The grievance aide.

(h) The director or superintendent shall receive all information deemed necessary to resolve the issue. The director or superintendent shall have up to five (5) work days to present a written final response to the resident.

(i) A copy of the director's or superintendent's final resolution along with the grievance and all information shall be forwarded to the regional director and department ombudsman at the same time the final resolution is given to the resident.

(j) A record including all information regarding the grievance, shall be kept on file in the office of the designated hearing officer.

(3) If time frames are not met by the resident the grievance is automatically dropped.

(4) If time frames are not met by staff, the grievance shall be resolved favorably.

(5) Due to the unavailability of an essential party the time frames may be extended with the written agreement of the resident and the hearing officer and the approval of the director or superintendent.

(6) In the absence of the hearing officer or the director or superintendent, the person covering that position shall be responsible for the handling of grievances.

(7) If the hearing officer or director or superintendent is directly involved in the grievance, the grievance shall be handled by the supervisor of the hearing officer or director or superintendent.

RALPH E. KELLY, Ed.D., Commissioner

APPROVED BY AGENCY: February 10, 1997

FILED WITH LRC: February 14, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Micah G. Guilfoil

(1) Type and number of entities affected: The type and number of entities affected are all families, children and adults who may be benefited by the implementation of a statewide juvenile service program through the current policies and procedures of the Department of Juvenile Justice. The implementation of the grievance procedure policies for compliance with the voluntary consent decree entered into with the Department of Juvenile Justice will initially affect the residential facilities.

(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 comment received. Implementation of these regulations will not affect the cost of living or employment in the areas served. A public hearing has been scheduled during which public comments may be 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. Implementation of this regulation will not affect the cost of doing business in the areas served. A public hearing has been scheduled during which public comments may be 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: The only change in compliance, reporting and paperwork requirements for the first year

is that facilities affected by the internal grievance policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the regulation.

2. Second and subsequent years: The only change in compliance, reporting and paperwork requirements for the second and subsequent years is that facilities affected by the policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will not be any first year direct or indirect costs to the Department of Juvenile Justice as the proposed regulations only set out a procedure for the juveniles to file a grievance and implements some provisions of the voluntary consent decree entered into with the Department of Justice.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department of Juvenile Justice as the proposed regulation only sets out a procedure for juveniles to file grievances and implements some provisions of the voluntary consent decree entered into with the Department of Justice.

3. Additional factors increasing or decreasing costs: The only other factor that may decrease costs is the decrease in liability from law suits related to youth's constitutional rights as a result of the implementation of some provisions of the voluntary consent decree entered into with the Department of Juvenile Justice.

(b) Reporting and paperwork requirements: The only change in reporting and paperwork requirements is that facilities affected by the policies and procedures will be required to maintain adequate records to document compliance and management staff will be required to monitor compliance and report back as related to meeting the terms of the regulation.

(4) Assessment of anticipated effect on state and local revenues: There will not be any anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Sources of revenue used to implement this administrative regulation include the Department of Juvenile Justice general funds.

(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: A public hearing has been scheduled during which public comments may be received.

(b) Kentucky: A public hearing has been scheduled during which public comments may be received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other alternative methods were consistent with the needed time frame for resolving grievances.

(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 are no effects on the public health and environmental welfare, but this regulation will improve conditions for youth housed in residential treatment facilities operator or contracted by the Department of Juvenile Justice.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There are no detrimental effects on the public health or environmental welfare, but this regulation will improve conditions for youth housed in residential treatment facilities operator or contracted by the Department of Juvenile Justice.

(c) If detrimental effect would result, explain detrimental effect: There would be no detrimental effect.

(9) Identify any statute, administrative regulation or government

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APPROVED BY AGENCY: January 14, 1997
FILED WITH LRC: February 6, 1997 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T.P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of this amendment.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(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: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would 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: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one

or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations and revise the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1910.19, "Special provisions for air contaminants," as published in the Federal Register, Volume 61, Number 214, November 4, 1996.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that have employees with occupational exposure to 1,3 Butadiene.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

STATEMENT OF EMERGENCY 803 KAR 2:306E

This emergency administrative regulation incorporates, by reference, in Section 3(1)(d) a publication in the Federal Register, dated June 20, 1996, which rennumbers 29 CFR 1910.96, "Ionizing Radiation," moving the administrative regulation to a different subpart of the Code of Federal Regulations. The revision to Section 1(8) changes the definition to meet KRS Chapter 13A considerations. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler on February

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the type of earphone, in the column entitled "sound level meter reading".

(b) Linearity check.

1. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

2. Measure the sound levels in the coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

3. For each ten (10) dB decrement on the audiometer the sound level meter should indicate a corresponding ten (10) dB decrease.

4. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

(c) Tolerances. When any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 plus or minus three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000 Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than ten (10) dB at any test frequency.

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR
TELEPHONICS-TDH-39 EARPONES

Frequency, Hz	Reference threshold level for TDH-39 earphones, dB	Sound level meter level meter reading dB
500	11.5	81.5
1000	7.07	7.0
2000	9.07	9.0
3000	10.0	80.0
4000	9.57	9.5
6000	15.5	85.5
8000	13.0	83.0

TABLE E-2 - REFERENCE THRESHOLD LEVELS FOR
TELEPHONICS-TDH-49 EARPONES

Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter level meter reading dB
500	13.5	83.5
1000	7.5	77.5
2000	11.0	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5
8000	13.0	83.0

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

(a) The material in paragraphs 1 through 7 of this subsection, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference:

1. 29 CFR 1910.94 through 1910.95(g)(10)(ii);
2. 29 CFR 1910.95(h)(2) through 29 CFR 1910.95(h)(3);
3. 29 CFR 1910.95(h)(5)(i) through 29 CFR 1910.95(h)(5)(ii);
4. 29 CFR 1910.95(i)(1) through 29 CFR 1910.95(k)(2)(iii);
5. 29 CFR 1910.95(l)(2) through 29 CFR 1910.95(n)(2);
6. 29 CFR 1910.95(q) through 29 CFR 1910.95 Appendix D;
7. 29 CFR 1910.95 Appendix F through 29 CFR 1910.100.

(b) The revisions to 29 CFR 1910.94, "Ventilation", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(c) The revisions to 29 CFR 1910.95, "Occupational Noise Exposure", as published in the Federal Register, Volume 61, Number

46, March 7, 1996, are incorporated by reference.

(d) The revision of 29 CFR 1910.96, "Ionizing Radiation", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(e) The revision to 29 CFR 1910.97, "Nonionizing Radiation", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(f) ~~(e)~~ The removal of 29 CFR 1910.99, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(g) ~~(f)~~ The removal of 29 CFR 1910.100, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) The language relating to audiometric testing in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(1).

(3) The language relating to audiometric testing in Section 2(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(4).

(4) The language relating to audiometric testing in Section 2(6) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(5)(ii).

(5) The language relating to audiometric testing in Section 2(8) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(5)(iii);

(6) The language relating to access to information and training materials requirements for occupational noise exposure in subsection (10) of this section shall apply in lieu of 29 CFR 1910.95(l)(1);

(7) 29 CFR 1910.95(o) is amended to read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(8) The language relating to acoustical calibration of audiometers for occupational noise exposure in subsection (14) of this section shall apply in lieu of 29 CFR 1910.95 Appendix E;

(9) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: January 14, 1997

FILED WITH LRC: February 6, 1997 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W.L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of this amendment.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promul-

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Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor. ~~[An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.]~~

Section 2. Respiratory Protection. (1) The language relating to guidance for physicians in determining medical conditions that would preclude the use of respirators by individuals in subsection (2) of this section shall apply in lieu of 29 CFR 1910.134(b)(10).

(2) 29 CFR 1910.134(b)(10) is amended to read: A physician shall determine whether or not an employee has any medical conditions that would preclude the use of respirators. The physician shall follow the guidance in ANSI Z88.6, "American National Standard for Respiratory Protection-Respirator Use-Physical Qualifications for Personnel" on the frequency and content of the examination.

(3) The language relating to selection of respirators in subsection (4) of this section shall apply in lieu of 29 CFR 1910.134(c).

(4) 29 CFR 1910.134(c) is amended to read: Proper selection of respirators shall be made according to the guidance of American National Standard Practices for Respiratory Protection Z88.2 - 1980.

(5) The language relating to specifications for breathing air in subsection (6) of this section shall apply in lieu of 29 CFR 1910.134(d)(1).

(6) 29 CFR 1910.134(d)(1) is amended to read: Compressed air, compressed oxygen, liquid air, and liquid oxygen used for respiration shall be of high purity. Oxygen shall meet the requirements of the United States Pharmacopoeia for medical or breathing oxygen. Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G-7.1 - 1973. Compressed oxygen shall not be used in supplied-air respirators or in open circuit self-contained breathing apparatus that have previously used compressed air. Oxygen must never be used with air line respirators.

(7) The language relating to identification of gas mask canisters in subsection (8) of this section shall apply in lieu of 29 CFR 1910.134(g).

(8) 29 CFR 1910.134(g) is amended to read: Identification of Air-purifying Respirator Canisters and Cartridges:

(a) The primary means of identifying an air-purifying respirator canister or cartridge shall be by means of properly worded labels. The secondary means of identifying an air-purifying respirator canister or cartridge shall be by an identifying color or colors.

(b) All who issue or use air-purifying respirators falling within the

scope of this standard shall ensure that all canisters and cartridges purchased or used by them are properly labeled and colored in accordance with this standard before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters and cartridges have completely served their purpose. The user shall refer to the label wording to determine the type and degree of protection the canister or cartridge will afford.

(c) On each air-purifying respirator canister and cartridge, the following shall appear in bold letters:

1. CANISTER FOR (Name of atmospheric contaminant); or CARTRIDGE FOR (Name of atmospheric contaminant).

2. In addition, either or both of subparagraphs 1 and 2 of this paragraph, information in clauses a, b, and c of this subparagraph, shall appear beneath the appropriate phrase on the canister or cartridge label.

a. For respiratory protection in atmospheres containing not more than (Concentration) by volume of (Name of atmospheric contaminant).

b. For respiratory protection in atmospheres containing (Type of particulate contaminant).

c. Do not use in atmospheres containing less than nineteen and five-tenths (19.5) percent oxygen by volume at sea level.

(d) Each respirator canister or cartridge, or canister or cartridge label, shall be a distinctive color as indicated in Table I-1. The color coating used shall offer a high degree of resistance to changes such as chipping, scaling, peeling, blistering, and fading, and to the effects of ordinary atmospheres to which they may be exposed under normal conditions of storage and use.

TABLE I-1
Color Assigned to Canister or Cartridge

Atmospheric Contaminant(s) to Be Protected Against	Color Assigned	ISCC-NBS Centroid Color Number	ISCC-NBS Centroid Color Name
Acid gases	White	263	White
Organic vapors	Black	267	Black
Ammonia gas	Green	139	Vivid green
Carbon monoxide gas	Blue	178	Strong blue
Acid gases and organic vapors	Yellow	82	Vivid yellow
Acid gases, ammonia, and organic vapors	Brown	75	Deep yellow brown
Acid gases, ammonia, carbon monoxide, and organic vapors	Red	11	Vivid red
Other vapors and gases not listed above	Olive	106	Light olive
Radioactive materials tritium and noble gases)	Purple	218	Strong (except purple
Dusts, fumes, and mists (other than radioactive materials)	Orange	48	Vivid orange

NOTES:

1) A purple (ISCC-NBS Centroid Number 218) stripe shall be used to identify radioactive materials in combination with any vapor or gas.

2) An orange (ISCC-NBS Centroid Number 48) stripe shall be used to identify dusts, fumes, and mists in combination with any vapor or gas.

3) Where labels only are colored to conform with this table, the canister or cartridge body shall be gray (ISCC-NBS Centroid Number 265), or a metal canister or cartridge body may be left in its natural

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2. State compliance standards. These amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1910, Subpart I, as published in the Federal Register, Volume 61, Number 86, May 2, 1996.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

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. These amendments affect local government entities that require the use of personal protective equipment for the employees.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who are required to use personal protective equipment.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

STATEMENT OF EMERGENCY 803 KAR 2:320E

This emergency administrative regulation incorporates, by reference, changes in the Code of Federal Regulations (CFR) relating to asbestos and 1,3-butadiene, revises the heading of 29 CFR 1910.1003 to read, "13 Carcinogens (4-Nitrobiphenyl, etc.)", renumbers two (2) federal regulations in accordance with the CFR, moves language relating to one (1) of the renumbered federal standards from 803 KAR 2:302 to this administrative regulation, and reformats a definition to meet KRS Chapter 13A considerations. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler on February 14, 1997.

PAUL E. PATTON, Governor
JOE NORSWORTHY, Chairman

LABOR CABINET

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

803 KAR 2:320E. Air contaminants.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910.1000-.1500
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910.1000-.1500

EFFECTIVE: February 14, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) Definitions applicable to this part:

(a) "Act" means KRS Chapter 338.

(b) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(c) "Employee" means any person employed except those employees excluded in KRS 338.021.

(d) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(e) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(f) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(g) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(h) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or U.S. Department of Labor. ~~[An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.]~~

(2) Definitions for Section 2 of this administrative regulation.

(a) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3) mu particles.

(b) "Authorized employee" means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(c) "Clean change room" means a room where employees put on clean clothing and/or protective equipment in an environment free of 4,4'-Methylene bis (2-chloroaniline). The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(d) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) where containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(e) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(f) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary

to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are release.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with, and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

b. Prior to each exit from a regulated area employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

d. Required to shower after the last exit of the day.

7. Employees, other than those engaged in animal support activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat.

b. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under paragraphs (e)2, 3, and 4 of this subsection.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding area. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated.

9. There shall be no connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. Where 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however,

1. Only authorized employees shall be permitted to handle such materials;

2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;

3. Employees shall be required to remove and leave protective clothing and equipment when leaving the work area at the end of the work day or at any time solution is spilled on such clothing or equipment. Used clothing and equipment shall be placed in impervious containers for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required

under paragraphs (e)2, 3, and 4 of this section.

4. Employees shall be required to wash hand and face after removing such clothing and equipment and before engaging in other activities.

5. Employees assigned to work covered by the subparagraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), (c)1 and 2, and (d)3 and 4, 5, 6, and 7 of this section;

6. Work areas where solution may be spilled shall be:

a. Covered daily or after any spill with a clean covering;

b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification. A daily roster of employees entering regulated areas shall be established and maintained. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years. The rosters and/or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director. In the event that the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures including, but not limited to the requirements of subparagraphs 1, 2, 3, 4, and 5 of this paragraph shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency has been determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (6)(b) of this section.

4. Where an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline) such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (6)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or application of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

2. Where employees are required by this section to wash, washing facilities shall be provided in accordance with 1910.141.

3. Where employees are required by this section to shower, facilities shall be provided in accordance with 1910.141(d)(3).

4. Where employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 1910.141(e), for the number of such employees required to change clothes.

5. Where toilets are in regulated areas, such toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment and the decontamination facility.

4. Dry sweeping and dry mopping are prohibited.

(4) Signs, information and training.

(b) Records.

1. Employers or employees examined pursuant to this paragraph shall cause to be maintained complete and accurate record of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided upon request to authorized representatives of the assistant secretary or the director: and upon request of an employee or former employee, to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employees' suitability for employment in the specific exposure.

Section 3. Laboratory Activities. (1) The requirements of this subsection shall apply to research and quality control activities involving the use of chemicals covered by 1910.1003-.1016.

(a) Mechanical pipetting aids shall be used for all pipetting procedures.

(b) Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(c) Surfaces on which chemicals covered by .1103-.1016 are handled shall be protected from contamination.

(d) Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are released.

(e) All other forms of chemicals covered by .1003-.1016 shall be inactivated prior to disposal.

(f) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(g) Employees engaged in animal support activities shall be:

1. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

2. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section.

3. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities; and

4. Required to shower after the last exit of the day.

(h) Employees, other than those engaged only in animal support activities, each day shall be:

1. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

2. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified under subsection (5)(b), (c), and (d) of this section.

3. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities.

(i) Air pressure in laboratory areas and animal rooms where

chemicals covered by .1003-.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated.

(j) There shall be no connection between regulated areas and any other areas through the ventilation system.

(k) A current inventory of chemicals covered by .1003-.1016 shall be maintained.

(l) Ventilated apparatus such as laboratory-type hoods, shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 CFR 1910.1020(e)(1)(i);

(2) 29 CFR 1910.1020(e)(1)(i) is amended to read: "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 CFR 1910.1020(e)(1)(iii);

(4) 29 CFR 1910.1020(e)(1)(iii) is amended to read: "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either:"

Section 5. The language relating to gloves in paragraph (2) of this subsection shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix);

(2) Gloves shall be worn when it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin when performing vascular access procedures and when handling or touching contaminated items or surfaces.

Section 6. [6-] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraph 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference:

1. 29 CFR 1910.1000 to 29 CFR 1910.1030(d)(3)(viii); and

2. 29 CFR 1910.1030(d)(3)(x) through 29 CFR 1910.1500.

(b) The revisions to 29 CFR 1910.1001, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 61, Number 165, August 23, 1996, are incorporated by reference.

(c) The revisions to 29 CFR 1910.1003, "13 Carcinogens", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revisions to 29 CFR 1910.1003, "13 Carcinogens (4-Nitrophenyl, etc.)", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

(e) ~~(e)~~ The revisions to 29 CFR 1910.1004, "alpha-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) ~~(f)~~ The revisions to 29 CFR 1910.1006, "Methyl chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(g) ~~(g)~~ The revisions to 29 CFR 1910.1007, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(h) ~~(h)~~ The revisions to 29 CFR 1910.1008, "bis-Chloromethyl

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these proposed amendments.

- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (10) Any additional information or comments:
- (11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).
2. State compliance standards. These amendments adopt federal regulations and revise the regulation to meet KRS Chapter 13A considerations.
3. Minimum or uniform standards contained in the federal mandate. The amendments to Section 6 incorporate revisions to the previously adopted regulations, 29 CFR 1910.1003, as published in the Federal Register, Volume 61, Number 120, June 20, 1996 and 29 CFR 1910.1001, as published in the Federal Register, Volume 61, Number 165, August 23, 1996, and revisions renumbering 29 CFR 1910.20 to 29 CFR 1910.1020 and 29 CFR 1910.96 to 29 CFR 1910.1096. The amendments also incorporate a new standard, 29 CFR 1910.1051, "Occupational Exposure to Butadiene", as published in the Federal Register, Volume 61, Number 214, November 4, 1996. Section 4 brings language previously in 803 KAR 2:302 relating to 29 CFR 1910.1020 to this regulation.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulation.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that work with the thirteen carcinogens included in the regulation and/or have employees with occupational exposure to asbestos or butadiene.
3. State the aspect or service of local government to which this administrative regulation relates. The proposed amendment to Section 6 affect the safety and health of employees of local government who work with the thirteen carcinogens covered by the regulation, ionizing radiation, keep medical and exposure records, and have employees with occupational exposure to asbestos or butadiene.
4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendment to Section 6 is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

STATEMENT OF EMERGENCY 803 KAR 2:402E

This emergency administrative regulation incorporates, by reference, a publication in the Federal Register, dated June 20, 1996, which removes the text of the applicable standards from 29 CFR Part 1926 and directs those affected to the applicable standards in 29 CFR Part 1910. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler on February 6, 1997.

PAUL E. PATTON, Governor
JOE NORSWORTHY, Chairman

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

803 KAR 2:402E. General safety and health provisions.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926
EFFECTIVE: February 6, 1997
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

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

- (a) 29 CFR 1926.20-.35 revised as of July 1, 1995 published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.
- (b) The amendment to 29 CFR 1926.30, "Shipbuilding and ship repairing", as published in the Federal Register, Volume 61, Number 46, March 7, 1996.
- (c) The amendment to 29 CFR 1926.31, "Incorporation by reference" as published in the Federal Register, Volume 61, Number 46, March 7, 1996.
- (d) The revision to 29 CFR 1926.33, "Access to Employee Exposure and Medical Records", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

JOE NORSWORTHY, Chairman
APPROVED BY AGENCY: January 14, 1997
FILED WITH LRC: February 6, 1997 at 2 p.m.

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state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler on February 6, 1997.

PAUL E. PATTON, Governor
JOE NORSWORTHY, Chairman

LABOR CABINET

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

803 KAR 2:403E. Occupational health and environmental controls.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926.50-.66

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926.50-.66

EFFECTIVE: February 6, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations and standards. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. As used in the material incorporated by reference in Section 2 of this administrative regulation:

- (1) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet;
- (2) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet;
- (3) "U.S. Department of Labor" means Kentucky Labor Cabinet.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR Part 1926.50-.66, Subpart D, "Environmental Controls", revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) Revisions to 29 CFR 1926.53, "Ionizing Radiation", as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

(c) Revisions to 29 CFR 1926.55, "Gases, Vapors, Fumes, Dusts, and Mists", as published in Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) Revisions to 29 CFR 1926.55, Appendix A, "1970 American Conference of Governmental Industrial Hygienists' Threshold Limit Values", as published in Federal Register, Volume 61, Number 214, November 4, 1996, are incorporated by reference.

(e) ~~(f)~~ Revisions to 29 CFR 1926.57, "Ventilation", as published in Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) Revisions to 29 CFR 1926.59, "Hazard Communication", as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

(g) 29 CFR 1926.60, "Methylenedianiline", is revised, as follows:

1. Revisions to Appendix A of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

2. Revisions to Appendix B of 29 CFR 1926.60, as published in

Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

3. Revisions to Appendix C of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

4. Revisions to Appendix D of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

5. Revisions to Appendix E of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

(h) Revisions to 29 CFR 1926.61, "Retention of DOT Markings, Placards and Labels", as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

(2) This material may be inspected, copied, or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: January 14, 1997

FILED WITH LRC: February 6, 1997 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T.P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry within the jurisdiction of the KYOSH Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of this amendment. This regulation incorporates, by reference, a publication in the Federal Register, dated June 20, 1996, which removes the text of the affected standards from 29 CFR Part 1926 and directs those affected to the applicable standards in 29 CFR Part 1910. The regulation also incorporates, by reference, a revision to 29 CFR 1926.55, Appendix A, "1970 American Conference of Governmental Industrial Hygienists' Threshold Limit Values". This revision refers affected persons in the construction industry to the new general industry standard, 29 CFR 1910.1051, "Occupational Exposure to 1,3-Butadiene".

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision. OSHA has made this general industry standard applicable to construction in order to avoid gaps in coverage and to protect workers in unusual circumstances. Only in very rare cases would there be minor impact on 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:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition. Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues:

ADMINISTRATIVE REGISTER - 3227

of Table E-4 found in 29 CFR 1926.103.

(2) Table E-4 Respiratory Protection Factors.

Type of Respirator	Respirator Protection Factors ^a			
	Permitted for Use in Oxygen-deficient Atmosphere	Permitted for Use in Immediately-dangerous- to-life-or-health Atmosphere ^f	Respirator Protection Factor	
			Qualitative Test	Quantitative Test
Particulate-filter, or half- mask face-piece ^{b,c}	No	No	10	As measured on each quarter-mask person with maximum of 100.
Vapor- or gas- removing, quarter- mask or half-mask facepiece ^c	No	No	10, or maximum use limit of cartridge or canister for vapor or gas, which- ever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas, ^{i,j} whichever is less.
Combination particu- late-filter and vapor- or gas- removing, quarter- mask or half-mask facepiece ^{b,c}	No	No	10, or maximum use limit or cartridge or canister for vapor or gas, which- ever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas, ^{i,j} whichever is less.
Particulate-filter, full facepiece ^b	No	No	100	As measured on each person with maximum of 100 if dust, fume or mist filter is used, or maximum of 1000 if high-efficiency filter is used.
Vapor- or gas- removing, full facepiece	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 1000, or maximum use limit of cartridge or canister for vapor or gas, ^{i,j} whichever is less.
Combination par- ticulate-filter and vapor- or gas-removing, full facepiece ^b	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100 if dust, fume or mist filter is used and maximum of 1000 if high- efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.
Powered particu- late-filter, any respiratory-inlet covering ^{b,c,d}	No	No (yes, if escape provi- sions are provided ^d)	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used.	N/A
Powered vapor- or gas-removing, any respiratory-inlet covering ^{c,d}	No	No (yes, if escape provi- sions are provided ^d)	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 3000, or maximum use limit of cartridge	N/A

demand-type open-circuit or negative-pressure-type closed-circuit, quarter-mask or half-mask face-piece^c

use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.

Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, full face-piece or mouth-piece/nose clamp^c

Yes^f
(Yes, if respirator is used for mine rescue and mine recovery operations.)

No
(yes, if respirator is used for mine rescue and mine recovery operations.)

100

As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values except when the respirator is used for mine rescue and mine recovery operations.

Self-contained breathing apparatus, pressure-demand-type open-circuit or positive-pressure-type closed-circuit, quarter-mask or half-mask facepiece, full facepiece, or mouth-piece/nose clamp^c

Yes^g

Yes

N/A

No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus.

N/A

Combination respirators not listed.

The type and mode of operation having the lowest respirator protection factor shall be applied to the combination respirator.

N/A means not applicable since a respirator-fitting test is not carried out.

^arespirator protection factor is a measure of the degree of protection provided by a respirator to a respirator wearer. Multiplying the permissible time-weighted average concentration or the permissible ceiling concentration, whichever is applicable, for a toxic substance, or the maximum permissible airborne concentration for a radionuclide, by a protection factor assigned to a respirator gives the maximum concentration of the hazardous substance for which the respirator can be used. Limitations of filters, cartridges, and canisters used in air-purifying respirators shall be considered in determining protection factors.

^bWhen the respirator is used for protection against airborne particulate matter having a permissible time-weighted average concentration less than 0.05 milligram particulate matter per cubic meter of air or less than 2 million particles per cubic foot of air, or for protection against airborne radionuclide particulate matter, the respirator shall be equipped with a high-efficiency filter(s).

^cIf the air contaminant causes eye irritation, the wearer of a respirator equipped with a quarter-mask or half-mask facepiece or mouthpiece and nose clamp shall be permitted to use a protective goggle or to use a respirator equipped with a full facepiece.

^dIf the powered air-purifying respirator is equipped with a facepiece, the escape provision means that the wearer is able to breathe through the filter, cartridge, or canister and through the pump. If the powered air-purifying respirator is equipped with a helmet, hood, or suit, the escape provision shall be an auxiliary self-contained supply of respirable air.

^eThe escape provision shall be an auxiliary self-contained supply of respirable air.

^f"Oxygen deficiency - not immediately dangerous to life or health" - an atmosphere having an oxygen concentration below the minimum legal requirement but above that which is immediately dangerous to life or health.

^g"Oxygen deficiency - immediately dangerous to life or health" -

an atmosphere which causes an oxygen partial pressure of 100 millimeters of mercury column or less in the freshly inspired air in the upper portion of the lungs which is saturated with water vapor.

^hThe protection factor measurement exceeds the limit of sensitivity of the test apparatus. Therefore, the respirator has been classified for use in atmospheres having unknown concentrations of contaminants.

ⁱThe service life of a vapor- or gas-removing cartridge or canister depends on the specific vapor or gas, the concentration of the vapor or gas in air, the temperature and humidity of the air, the type and quantity of the sorbent in the cartridge or canister, and the activity of the respirator wearer. Cartridges and canisters may provide only very short service lives for certain vapors and gases. Vapor/gas service life testing is recommended to ensure that cartridges and canisters provide adequate service lives. Reference should be made to published reports which give vapor/gas life data for cartridges and canisters.

^jVapor- and gas-removing respirators are not approved for contaminants that lack adequate warning properties of odor, irritation, or taste at concentrations in air at or above the permissible exposure limits.

NOTE: Respirator protection factors for air-purifying-type respirators equipped with a mouthpiece/nose clamp form of respiratory-inlet covering are not given, since such respirators are approved only for escape purposes.

Section 2. Incorporation by Reference. (1) The material in paragraphs (a) and (b) of this subsection, published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, revised as of July 1, 1995, is incorporated by reference.

(a) 29 CFR 1926.95 to 29 CFR 1926.103(b)(2), excluding Table E-4 - Selection of Respirators.

safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

STATEMENT OF EMERGENCY
803 KAR 2:405E

This emergency administrative regulation incorporates, by reference, a publication in the Federal Register, dated June 20, 1996, which removes standards relating to fire protection that have been found not applicable to the construction industry (Section 1(1)(b) and (c)), updates the reference to the Code of Federal Regulations (Section 1(1)(a)), and reformats the regulation to meet KRS Chapter 13A considerations. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler on February 6, 1997.

PAUL E. PATTON, Governor
JOE NORSWORTHY, Chairman

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

803 KAR 2:405E. Fire protection and prevention. [Adoption of 29 CFR Part 1926.150-.155.]

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910 [Chapter 338]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926 [Chapter 13A]

EFFECTIVE: February 6, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health ~~rules~~ administrative regulations ~~and standards~~. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. ~~[The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.]~~

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference: ~~[The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.150-.159 of the Code of Federal Regulations, revised as of June 30, 1993, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference with the following additions, exceptions, and deletions:]~~

(a) 29 CFR Part 1926.150-.159 of the Code of Federal Regulations, revised as of July 1, 1995, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The removal of the portions of 29 CFR 1926.150, "Fire Protection", as published in the Federal Register, Volume 61, Number

120, June 20, 1996, is incorporated by reference.

(c) The removal of the undesignated headings preceding 29 CFR 1926.156, 29 CFR 1926.158, and 29 CFR 1926.156 through 29 CFR 1926.159, as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

(1) The additions to 29 CFR 1926.150, "Fire Protection", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(2) Amendment to 29 CFR 1926.151(a)(1), as published in the Federal Register, Volume 51, Number 133, July 11, 1986 is incorporated by reference.

(3) Revision to 29 CFR 1926.152(b)(4)(v) as published in the Federal Register, Volume 51, Number 133, July 11, 1986 is incorporated by reference.

(4) The additions to 29 CFR 1926.152, "Flammable and Combustible Liquids", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(5) The additions to 29 CFR 1926.153, "Liquified Petroleum Gases", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(6) 29 CFR 1926.156, "Fixed Extinguishing Systems, General", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(7) 29 CFR 1926.157, "Fixed Extinguishing Systems, Gaseous Agent", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(8) 29 CFR 1926.158, "Fire Detection Systems", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(9) 29 CFR 1926.159, "Employee Alarm Systems", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

~~Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(e), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.~~

~~(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]~~

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: January 14, 1997

FILED WITH LRC: February 6, 1997 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W.L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry within the jurisdiction of the KYOSH Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of this amendment. This regulation incorporates, by reference, a publication in the Federal Register, dated June 20, 1996, which removes standards relating to fire protection that have been found not applicable to the construction industry (Section 1(1)(b) and (c)), updates the reference to the Code of Federal Regulations (Section 1(1)(a)), and reformats the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

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

803 KAR 2:410E. Electrical.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926
 STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926

EFFECTIVE: February 6, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

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

(a) 29 CFR 1926.400-.449 revised as of July 1, 1996 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is incorporated by reference.

(b) The amendment to 29 CFR 1926 Subpart K, "Electrical" as published in the Federal Register, Volume 61, Number 156, August 12, 1996 is incorporated by reference. [The amendment to 29 CFR 1926 Subpart K, "Electrical", as published in the Federal Register, Volume 61, Number 46, March 7, 1996 is incorporated by reference.]

~~(c) The amendment to 29 CFR 1926.416, "General requirements", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.~~

~~(d) The amendment to 29 CFR 1926.417, "Locking and tagging of circuits", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.]~~

(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: January 14, 1997

FILED WITH LRC: February 6, 1997 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W.L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: The Occupational Safety and Health Administration (OSHA) does not project any costs or savings to those affected by the proposed amendment. This proposed change corrects and amends the regulation whereby certain portions of the regulation relating to "Electrical Safety-Related Work Practices," previously had incorrectly been included in the regulation. This revision removes these requirements from this regulation. These provisions had been incorporated by reference from the Federal Register. It also updates the incorporation of the Code of Federal Regulations as published July 1, 1996.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be little cost

effect from this proposed amendment.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these amendments which will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these amendments.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed change.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(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: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would 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: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal

~~(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]~~

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: January 14, 1997

FILED WITH LRC: February 6, 1997 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W.L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: The Occupational Safety and Health Administration (OSHA) projects costs of 0.002 percent of construction revenue or around \$12,000,000 nationwide.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be little cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of this amendment.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of this proposed change.

(4) Assessment of anticipated effect on state and local revenues: This amendment will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(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: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky as this new rule updates the existing standard, covering types of scaffolding that are not now mentioned in the existing standard. It affords the employer greater flexibility in complying with the regulations by not restricting him to one method of compliance, and extends fall protection, to the extent feasible, to assemblers and dismantlers of scaffolding. The revision calls for training of personnel and simplifies the language of the regulation, eliminating duplicative and outdated provisions of the existing rule. It also updates the incorporation of the Code of Federal Regulations as published July 1,

1996.

(b) State whether detrimental effect on environment and public health would 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: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1926, Subpart L, as published in the Federal Register, Volume 61, Number 170, August 30, 1996.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that perform construction work, using scaffolding.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who perform construction work, using scaffolding.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

Register, dated June 20, 1996, which removes the text of the applicable standards from 29 CFR Part 1926 and directs those affected to the applicable standards in 29 CFR Part 1910 (Section 1(1)(b) through (q)), updates the reference to the Code of Federal Regulations (Section 1(1)(a)), and reformats the regulation to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no affect on competition. Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(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: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would 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: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations, (Section 1(1)(b) through (q)), update the reference to the Code of Federal Regulations (Section 1(1)(a)), and reformat the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The amendments incorporate revisions to the previously adopted regulations in 29 CFR 1926, as published in the Federal Register, Volume 61, Number 120, June 20, 1996.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These proposed amendments are identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This amendment affects local government entities who perform diving operations while engaged in construction work.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulation affects the safety and health of employees of local government who perform diving operations while engaged in construction activities.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of the amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

STATEMENT OF EMERGENCY 803 KAR 2:425E

This emergency administrative regulation incorporates, by reference, a publication in the Federal Register, dated June 20, 1996, which removes the text of the applicable standards from 29 CFR Part 1926 and directs those affected to the applicable standards in 29 CFR Part 1910. The administrative regulation also incorporates, by reference, revisions to the construction asbestos standard, 29 CFR 1926.1101, which clarify and correct certain provisions of the existing standard. These revisions were published in the Federal Register, Volume 61, number 165, August 23, 1996. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler on February 6, 1997.

azobenzene", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(p) 29 CFR 1926.1116, "N-Nitrosodimethylamine", is revised, as follows:

1. ~~(e)~~ The amendment to 29 CFR 1926.1116, "N-Nitrosodimethylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1116, "N-Nitrosodimethylamine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(q) The amendment to 29 CFR 1926.1117, "Vinyl Chloride", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(r) The amendment to 29 CFR 1926.1118, "Inorganic Arsenic", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(s) 29 CFR 1926.1127, "Cadmium", is revised, as follows:

1. The amendment to Appendix A to 1926.1127, as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

2. The amendment to Appendix B to 1926.1127, as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

3. The amendment to Appendix C to 1926.1127, as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

4. The amendment to Appendix D to 1926.1127, as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

5. The amendment to Appendix E to 1926.1127, as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

6. The amendment to Appendix F to 1926.1127, as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(t) The amendment to 29 CFR 1926.1128, "Benzene Arsenic", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(u) The amendment to 29 CFR 1926.1129, "Coke Oven Emissions", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(v) The amendment to 29 CFR 1926.1144, "1,2-dibromo-3-chloropropane", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(w) The amendment to 29 CFR 1926.1145, "Acrylonitrile", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(x) The amendment to 29 CFR 1926.1147, "Ethylene Oxide", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(y) The amendment to 29 CFR 1926.1148, "Formaldehyde", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(z) ~~(p)~~ The amendment to Appendix A to Part 1926, as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

JOE NORSWORTHY, Chairman

APPROVED BY AGENCY: January 14, 1997

FILED WITH LRC: February 6, 1997 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, W.L. Ralston

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry within the jurisdiction of the KYOSH Program.

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

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of this amendment. This regulation incorporates, by reference, a publication in the Federal Register, dated June 20, 1996, which removes the text of the affected standards from 29 CFR Part 1926 and directs those affected to the applicable standards in 29 CFR Part 1910. The regulation also incorporates, by reference, revisions to the construction asbestos standard, 29 CFR 1926.1101, which clarify and correct certain provisions of the existing standard. These revisions were published in the Federal Register, Volume 61, Number 165, August 23, 1996.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

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

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition. Reporting and paperwork requirements: This amendment will not entail any reporting or additional paperwork requirements.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

(1) First year:

(2) Continuing costs or savings:

(3) Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(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: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would 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: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

1996, is incorporated by reference.

3. The revision to 29 CFR 1915.33, "Chemical Paint and Preservative Removers", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

4. The revision to 29 CFR 1915.34, "Mechanical Paint Removers", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

5. The revision to 29 CFR 1915.35, "Painting", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

6. The revision to 29 CFR 1915.134, "Abrasive Wheels", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

7. The revision to 29 CFR 1915.135, "Powder Actuated Fastening Tools", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

8. The revision to 29 CFR 1915.152, "General Requirements", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

9. The revision to 29 CFR 1915.153, "Eye and Face Protection", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

10. The revision to 29 CFR 1915.154, "Respiratory Protection", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

11. The revision to 29 CFR 1915.155, "Head Protection", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

12. The revision to 29 CFR 1915.156, "Foot Protection", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

13. The revision to 29 CFR 1915.157, "Hand and Body Protection", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

14. The revision to 29 CFR 1915.158, "Lifesaving Equipment", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

15. The revision to 29 CFR 1915.159, "Personal Fall Arrest Systems", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

16. The revision to 29 CFR 1915.160, "Positioning Device Systems", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

17. 29 CFR 1915 Subpart I Appendix A, "Nonmandatory Guidelines for Hazard Assessment, Personal Protective Equipment (PPE) Selection, and PPE Training Program", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.

18. The revision to 29 CFR 1915.1000, "Air Contaminants", as published in the Federal Register, Volume 61, Number 214, November 4, 1996, is incorporated by reference.

19. The revision to 29 CFR 1915.1002, "Coal tar pitch volatiles: interpretation of term", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

20. 29 CFR 1915.1003, "13 Carcinogens", is revised, as follows:

a. [-] The revisions to 29 CFR 1915.1003, "13 Carcinogens", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revision to 29 CFR 1915.1003, "13 Carcinogens (4-Nitrobiphenyl, etc.)", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

21. 29 CFR 1915.1004, "alpha-Naphthylamine" is amended, as follows:

a. [2-] The revisions to 29 CFR 1915.1004, "alpha-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revision to 29 CFR 1915.1004, "alpha-Naphthylamine", as

published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

22. 29 CFR 1915.1006, "Methyl chloromethyl ether" is amended, as follows:

a. [2-] The revisions to 29 CFR 1915.1006, "Methyl chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revision to 29 CFR 1915.1006, "Methyl chloromethyl ether", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

23. 29 CFR 1915.1007, "3,3'-Dichlorobenzidine (and its salts)" is amended, as follows:

a. [4-] The revisions to 29 CFR 1915.1007, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revision to 29 CFR 1915.1007, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

24. 29 CFR 1915.1008, "bis-Chloromethyl ether" is amended, as follows:

a. [5-] The revisions to 29 CFR 1915.1008, "bis-Chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revision to 29 CFR 1915.1008, "bis-Chloromethyl ether", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

25. 29 CFR 1915.1009, "beta-Naphthylamine" is amended, as follows:

a. [6-] The revisions to 29 CFR 1915.1009, "beta-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revision to 29 CFR 1915.1009, "beta-Naphthylamine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

26. 29 CFR 1915.1010, "Benzidine" is amended, as follows:

a. [7-] The revisions to 29 CFR 1915.1010, "Benzidine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revisions to 29 CFR 1915.1010, "Benzidine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

27. 29 CFR 1915.1011, "4-Aminodiphenyl" is amended, as follows:

a. [8-] The revisions to 29 CFR 1915.1011, "4-Aminodiphenyl", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revisions to 29 CFR 1915.1011, "4-Aminodiphenyl", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

28. 29 CFR 1915.1012, "Ethyleneimine", is amended, as follows:

a. [9-] The revisions to 29 CFR 1915.1012, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revisions to 29 CFR 1915.1012, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

29. 29 CFR 1915.1013, "beta-Propiolactone" is amended, as follows:

a. [10-] The revisions to 29 CFR 1915.1013, "beta-Propiolactone", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revisions to 29 CFR 1915.1013, "beta-Propiolactone", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

30. 29 CFR 1915.1014, "2-Acetylaminofluorene" is amended, as follows:

a. [11-] The revisions to 29 CFR 1915.1014, "2-Acetylmino-

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- (a) Direct and indirect costs or savings:
 - (1) First year:
 - (2) Continuing costs or savings:
 - (3) Additional factors increasing or decreasing costs:
- (b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.
- (4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.
- (5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.
- (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: Undetermined; no public comments were received.
 - (b) Kentucky: Undetermined; no public comments were received.
- (7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations are adopted by reference from federal regulations published in the Federal Register.
- (8) Assessment of expected benefits:
 - (a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.
 - (b) State whether detrimental effect on environment and public health would 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: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.
- (a) Necessity of proposed regulation if in conflict:
- (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
- (10) Any additional information or comments:
- (11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).
2. State compliance standards. These amendments adopt federal regulations and correct and clarify a definition.
3. Minimum or uniform standards contained in the federal mandate. The amendments to Section 2 incorporate revisions to the previously adopted regulations, 29 CFR 1915, as published in the Federal Register, Volume 61, Number 120, June 20, 1996. The regulation also incorporates, by reference, revisions to 29 CFR 1915, "Personal Protective Equipment for Shipyard Employment", as published in the Federal Register, Volume 61, Number 102, May 24, 1996. This revision updates existing standards to reflect improvements in equipment design and allows employers greater flexibility in providing appropriate protective equipment to their employees. The regulation also incorporates, by reference, a revision to 29 CFR 1915.1000, as published in the Federal Register, Volume 61, Number 214, November 4, 1996. This revision refers affected persons in the

maritime industry to the new general industry standard, 29 CFR 1910.1051, "Occupational Exposure to 1, 3-Butadiene".

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amendment is identical to the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that conduct maritime operations.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations in Section 2 affect the safety and health of employees of local government who work in maritime operations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of the amendments to Section 2 is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

STATEMENT OF EMERGENCY 803 KAR 2:900E

This emergency administrative regulation repeals 803 KAR 2:302, as the federal standard incorporated therein has been renumbered and will be incorporated by 803 KAR 2:320. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program.

PAUL E. PATTON, Governor
JOE NORSWORTHY, Chairman

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

803 KAR 2:900E. Repeal of 803 KAR 2:302.

RELATES TO: KRS 338.051, 338.061, 29 CFR Part 1910
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR Part 1910

EFFECTIVE: February 14, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health rules, administrative regulations, and standards. It is necessary to repeal 803 KAR 2:302, as the federal standard incorporated therein has been renumbered and will be incorporated by 803 KAR 2:320.

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no increase or decrease in local government revenues or significant expenditures. The regulation will not affect the number of local government employees.

STATEMENT OF EMERGENCY 803 KAR 25:010E

This emergency administrative regulation provides the procedures for practice before arbitrators, administrative law judges, and the Workers' Compensation Board. An ordinary administrative regulation is insufficient because a state mandate requires immediate implementation. In a special session of the Kentucky General Assembly, KRS Chapter 342 was substantially revised, effective December 12, 1996. KRS 342.270(7), a new subsection, was created which requires "within 120 days of the effective date of this act, the Commissioner shall promulgate administrative regulations establishing procedures for the resolution of claims, which shall include benefit review. Administrative regulations promulgated pursuant to the provisions of this subsection shall be effective on an emergency basis and be applied to all pending claims." This emergency administrative regulation will be replaced by an ordinary administrative regulation. The notice of intent for 803 KAR 25:010 will be filed along with this emergency administrative regulation.

PAUL E. PATTON, Governor
WALTER W. TURNER, Commissioner

LABOR CABINET Department of Workers' Claims

803 KAR 25:010E. Procedure for adjustments of claims.

RELATES TO: KRS [Chapter] 342.270(7)

STATUTORY AUTHORITY: KRS [Chapter 13A,] 342.260, 342.270(7)

EFFECTIVE: February 11, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the commissioner to promulgate such rules and administrative regulations as are necessary to carry on the work of the department, administrative law judges, the Workers' Compensation Board and to implement the provisions of KRS Chapter 342. KRS 342.270(7) requires the commissioner to promulgate an emergency administrative regulation establishing procedures for the resolution of claims, which shall include benefit review. The emergency administrative regulations shall be promulgated within 120 days of the effective date of the revisions to KRS Chapter 342 which became effective December 12, 1996. The function of this administrative regulation is to regulate practice and procedure before the arbitrators, administrative law judges and the Workers' Compensation Board. [KRS 342.260 requires the commissioner to promulgate such rules and administrative regulations as are necessary to carry on the work of the department, the administrative law judges, the Workers' Compensation Board and to implement the provisions of KRS Chapter 342. The function of this administrative regulation is to regulate practice and procedure before the administrative law judges and the Workers' Compensation Board. This administrative regulation repeals and replaces 803 KAR 25:011.]

Section 1. Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Arbitrator" means an individual appointed pursuant to KRS 342.230(9).

(3) "Board" means the Workers' Compensation Board created pursuant to KRS 342.215(1).

(4) "Civil rule" means the Kentucky Rules of Civil Procedure.

(5) "Commissioner" means the commissioner of the Department

of Workers' Claims appointed pursuant to KRS 342.228.

(6) "Date of filing" means the date a pleading, motion, or other document is received by the commissioner at the Department of Workers' Claims in Frankfort, Kentucky, except final orders and opinions of arbitrators, administrative law judges, and the board, which shall be deemed "filed" three (3) days after the date set forth on the final order or opinion.

(7) "Employer" means and includes individuals, partnerships, voluntary associations and corporations.

(8) "An employer who has not secured payment of compensation" means any employer who employs covered employees as defined by KRS 342.640 but has not complied with KRS 342.340.

(9) "Special defenses" means defenses that shall be raised by "special answer" filed within forty-five (45) days of the notice of filing an application for resolution of claim, or within ten (10) days after discovery of facts supporting the defense if discovery could not have been had earlier in the exercise of due diligence. Special defenses are waived if not timely raised. Special defenses which shall be pleaded are defenses arising under:

(a) KRS 342.035(3) unreasonable failure to follow medical advice;

(b) KRS 342.165 failure to comply with safety regulation;

(c) KRS 342.316(6) and 342.335 false statement on employment application;

(d) KRS 342.395 voluntary rejection of KRS Chapter 342;

(e) KRS 342.310(3) voluntary intoxication and self-infliction of injury;

(f) KRS 342.710(5) refusal to accept rehabilitation services; and

(g) Running of periods of limitations or repose.

Section 2. Parties. (1) The party making the original application for resolution of claim pursuant to KRS 342.270 and KRS 342.316 shall be designated as "plaintiff" and adverse parties as "defendants".

(2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction and occurrence, is alleged to exist. If any person should refuse to join as a plaintiff, that person shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to any relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An arbitrator or administrative law judge may order, upon a proper showing, that a party be joined or dismissed.

(b) The Special Fund may be joined as a defendant in accordance with the appropriate statutory provisions for claims in which the injury date or date of last exposure occurred before December 12, 1996.

(c) Joinder shall be sought by motion as soon as practicable after legal grounds for joinder are known. Notice of joinder and a copy of the claim file shall be served in the manner ordered by the arbitrator or administrative law judge.

Section 3. Pleadings. (1) An application for resolution of claim and all other pleadings shall be typewritten and be submitted upon forms prescribed by the commissioner.

(2) An application for resolution of claim shall be filed with sufficient copies for service on all parties. The commissioner shall make service by first class mail. Incomplete applications may be rejected and returned to the applicant. If the application is resubmitted in proper form within twenty (20) days of the date it was returned, the filing shall relate back to the date the application was first received by the commissioner. Otherwise, the date of second receipt shall be the filing date.

(3) All pleadings shall be served upon the commissioner and shall be served upon all other parties by mailing a copy to the other parties or, if represented, to that representative, at the parties' or representatives' last known address. A certificate of service indicating the method and date of service and signed by the party shall appear on

the alleged date of last exposure; the names of any witnesses; and the name, address, and telephone number of the individual responsible for gathering this information for the employer and its insurer, if any. This requirement of filing a notice of admission or denial is in addition to the requirement to file a special answer in accordance with Section 1(9) "Special Defenses" although a denial may assert the special defenses set out above.

(3) For all occupational disease or hearing loss claims, the commissioner shall promptly schedule an examination pursuant to KRS 342.315 and 342.316.

(4) Proof taking and discovery for all parties may proceed for a period beginning with the date of issuance of notice that an application for resolution of claim has been filed to and including a date sixty (60) days from the date the claim is assigned to an arbitrator.

(5) During the pendency of a claim, any party obtaining a medical or vocational report or records shall serve a copy of the report and records upon all other parties within ten (10) days of the receipt.

Section 7. Application for Resolution of a Hearing Loss Claim. (1) Form 103 shall be filed with the following completed documents:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the last date of noise exposure;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for hearing loss or ear complaints;

(c) Medical release (Form 106);

(d) One (1) medical report describing the hearing loss which is the basis of the claim and, if a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder. Medical reports required under this paragraph may consist of legible, hand-written notes of a treating physician. Medical reports filed with an application shall be considered as evidence before the arbitrator;

(e) Social Security earnings record release form (Form 115).

(2) Defendant shall file a notice of claim denial or acceptance (Form 111) within forty-five (45) days after the date of issuance of notice that an application for resolution of claim has been filed. If none is filed, all allegations of the application shall be deemed admitted. The notice of claim denial or acceptance shall set forth all pertinent matters which are admitted and those which are denied. In the event a claim is denied in whole or in part, a defendant shall set forth a detailed summary of the basis for denial, and the name of an witnesses whose testimony may be relevant to that denial. This notice shall include a description of the physical requirements of plaintiff's job at the time of the alleged injury and the name, address and telephone number of the individual responsible for gathering this information for the employer and its insurer. This requirement of filing a notice of admission or denial is in addition to the requirement to file a special answer in accordance with Section 1(9) of this administrative regulation, "special defenses", although a denial may incorporate special defenses which have been timely raised.

(3) Proof taking and discovery for all parties may proceed for a period beginning with the date of issuance of notice that an application for resolution has been filed to and including a date sixty (60) days from the date the claim is assigned to an arbitrator.

(4) During the pendency of a claim, any party obtaining a medical or vocational report or records shall serve a copy of the report and records upon all other parties within ten (10) days following receipt.

Section 8. Benefit Review Before Arbitrator. (1) The arbitrator to whom the claim is assigned may discuss voluntary resolution of the claim with the parties by telephone conference or in a benefit review conference and may require the parties to submit written stipulations

of fact.

(2) When a claim is resolved, the parties shall complete an agreement as to compensation (Form 110) or prepare for entry an agreed resolution of the claim. The parties shall then tender the agreement as to compensation or agreed resolution to the arbitrator for approval.

(3) A benefit review conference, if held, shall be attended by the plaintiff and representative, if any, and by the defendant or its representative, if any. The benefit review conference shall be an informal proceeding and no transcript or recording of the conference shall be made. The parties shall, at the conference, dispose of controversies whenever possible and define disputed issues.

(4) Proof before an arbitrator shall be submitted by way of medical or vocational report and, for lay witnesses, by way of affidavit. Cross-examination may occur at the expense of the party seeking that cross-examination and may be had only upon motion to the arbitrator setting forth good cause for the need of cross-examination. A motion to permit cross-examination shall be made within ten (10) days following filing of the medical report or affidavit, or notice of assignment to an arbitrator, whichever last occurs. No more than two (2) medical reports may be placed in evidence by any party without prior approval of the arbitrator.

(5) If a claim is not voluntarily resolved, the arbitrator shall, within ninety (90) days of assignment of the claim, render a written benefit review determination setting forth matters stipulated, matters denied, findings of fact, and conclusions of law.

(6) At any time during the benefit review process, an arbitrator may determine that the pending claim presents factual issues best resolved through a hearing before an administrative law judge and enter an order transferring the claim to an administrative law judge for further proceedings.

Section 9. Medical Evaluations Pursuant to KRS 342.315. (1) All persons claiming benefits for coal workers' pneumoconiosis pursuant to KRS 342.732, hearing loss, or occupational disease shall be referred by the commissioner for a medical evaluation in accordance with the contract entered into between the commissioner and the University of Kentucky and University of Louisville medical schools.

(2) For all other claims, the commissioner, an arbitrator, or an administrative law judge, in their discretion, or upon motion by a party, may direct appointment by the commissioner of a medical evaluator in accordance with contracts with the University of Kentucky and University of Louisville medical schools.

(3) Upon the scheduling of an evaluation, the commissioner shall provide notice to all parties and the employer shall forward to the plaintiff necessary travel expenses. Upon completion of the evaluation the commissioner shall provide copies of the report to all parties and shall file the original report in the claim record to be considered as evidence.

(4) The administrative law judge shall allow timely cross-examination of a medical evaluator appointed by the commissioner at the expense of the moving party only upon motion showing cause.

(5) Unjustified failure by the plaintiff to attend the scheduled medical evaluation may be grounds for dismissal, payment of a no-show fee, sanctions, or all of the above.

(6) Failure by the employer or its insurance carrier to pay travel expenses within seven (7) days of notification of a scheduled medical evaluation may be grounds for imposition of sanctions.

Section 10. Medical Reports. (1) A party may introduce direct testimony from no more than two (2) physicians by medical report except upon a showing of good cause and prior approval by an arbitrator or administrative law judge.

(2) Medical reports shall be submitted on Form 107-I (injury), Form 107-P (psychological) or Form 108-OD (occupational disease), Form 108-CWP (coal workers' pneumoconiosis), or Form 108-HL (hearing loss), as appropriate, or on such other forms as the

producing evidence shall be granted only upon showing of circumstances preventing the party from timely introducing proof. Motions for extension of time shall be filed no later than five (5) days before the deadline sought to be extended. The motion or supporting affidavits shall set forth:

- (a) The efforts to produce the evidence in a timely manner;
- (b) Facts which prevented timely production; and
- (c) The date of availability of the evidence, the probability of its production, and the materiality of the evidence.

(2) In the absence of compelling circumstances, only one (1) thirty (30) day extension shall be granted to each side for completion of discovery or proof by deposition.

(3) The granting of an extension of time for completion of discovery or proof shall enlarge the time to all plaintiffs if the extension is granted to a plaintiff and to all defendants should an extension be granted to a defendant, and shall extend the time of the adverse party automatically except when the extension is for rebuttal proof.

Section 16. Stipulation of Facts. (1) Refusal to stipulate facts which are not genuinely in issue warrants imposition of sanctions as provided in Section 25 of this administrative regulation. Assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered "good cause" in the absence of due diligence.

(2) Upon cause shown, a party may be relieved of a stipulation provided that the motion for relief is filed at least ten (10) days prior to the date of the hearing, or as soon as practicable after discovery that the stipulation was erroneous. Upon granting relief from a stipulation, the administrative law judge may grant a continuance of the hearing and additional proof time.

Section 17. Discovery and Depositions. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Civil Rules 26 to 37, inclusive, except for Civil Rules 27, 33, and 36 which shall not apply to practice before the administrative law judges or the board.

(2) Depositions may be taken by telephone provided the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of a telephonic deposition must relate the following information:

- (a) That the deposition is to be taken by telephone;
- (b) The address and telephone number from which the call will be placed to the witness;

(c) The address and telephone number of the place where the witness will answer the deposition call; and

(d) That all opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party must contribute proportionate costs of the conference call.

(3) The commissioner shall establish a medical qualifications index. An index number will be assigned to a physician upon the filing of the physician's qualifications. Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications. Qualifications may be revised or updated by submitting revisions to the commissioner. Nothing in this rule shall preclude any party from inquiring further into the qualifications of a physician.

Section 18. Wage Certification. If at any time during the pendency of a claim wages are at issue, the employer shall promptly complete and serve a completed form AWW-1 on all other parties.

Section 19. Hearings. (1) At hearing, the parties shall present proof concerning contested issues. If plaintiff fails to appear, the administrative law judge may dismiss the case for want of prosecution, or if good cause is shown, the hearing may be continued.

(2) At the conclusion of the hearing, the claim may be taken under submission immediately or briefs may be ordered. Briefs shall not exceed fifteen (15) pages in length. Reply briefs are limited to five (5) pages. Permission to increase the length of a brief may be sought by motion. The administrative law judge may announce his decision at the conclusion of the hearing or defer decision until rendering a written opinion. In any event, a decision shall be rendered no later than sixty (60) days following hearing. The time of filing a petition for reconsideration or notice of appeal shall not begin to run until after the "date of filing" of the written opinion as set forth in Section 1 of this administrative regulation.

Section 20. Petitions for Reconsideration. (1) Within fourteen (14) days of the filing of a benefit review determination or a final order or award of an arbitrator or administrative law judge, a party may petition for reconsideration, clearly stating the patent error which the petitioner seeks to have corrected and setting forth the authorities upon which petitioner relies.

(2) A response shall be served within ten (10) days after the date of filing of the petition.

(3) The arbitrator or administrative law judge shall act upon the petition within ten (10) days after the response is due.

Section 21. Benefit Calculations for Settlements. (1) For computing lump sum settlements, the employer shall utilize the prescribed discount rate for its weeks of liability only, not for the entire award period. No discount shall be taken on past due benefits by the employer or Special Fund. Lump sum settlements should be calculated as follows:

(a) Compute the remaining weeks of liability in the award by subtracting the number of weeks past due from the entire number of weeks in the award.

(b) Discount the number of weeks remaining in the award at the prescribed discount rate.

(c) Multiply the weekly benefit rate by the discounted number of weeks remaining (paragraph (b) of this subsection) in award. This product equals the entire future lump sum liability for the award.

(d) Add the amount of past due benefits to the future lump sum liability award (paragraph (c) of this subsection). The sum represents the entire lump sum value of the award.

(e) Determine the employer's lump sum liability as follows:

1. The employer's future liability is computed by determining its total weeks of liability less the number of weeks of liability past due.

2. The number of weeks remaining shall be discounted at the prescribed discount rate and multiplied by the amount of the weekly benefit.

3. Multiply the number of past due weeks by the amount of the weekly benefit.

4. The employer's entire liability for lump sum payment is determined by adding the results of subparagraph 2 and 3 of this paragraph.

(f) Determine the Special Funds' portion of the lump sum liability by subtracting the value of the employer's liability in lump sum (paragraph (e) of this subsection) from the entire value of the lump sum settlement (paragraph (d) of this subsection). The remainder is the Special Fund's lump sum liability.

(2) In computing settlements involving periodic payments, the employer shall pay its liability over the initial portion of the award, based on the number of weeks its liability bears to the entire liability upon the claim. Thereafter, the Special Fund shall make all remaining payments for the balance of the compensable period.

(3) Pursuant to KRS 342.265, election by the Special Fund to settle on the "same terms" as the employer means the Special Fund agrees to settle in the same manner as the employer in either a discounted lump sum or in periodic payments based upon its proportionate share of the permanent disability percentage paid by the employer. For example, if the employer pays in a lump sum, the

(a) Thirty (30) days have expired since the finality of an award and a party in interest certifies the responsible employer has failed to initiate payments in accordance with that award; or

(b) Upon showing that the responsible employer has filed a petition under any section of the Federal Bankruptcy Code; or

(c) The plaintiff or any other party in interest has filed in the circuit court of the county where the injury occurred an action pursuant to KRS 342.305 to enforce payment of the award against the uninsured employer, and there has been default in payment of the judgment by the employer.

(2) The plaintiff may by motion and affidavit demonstrate compliance with this section and request an arbitrator or administrative law judge to order payment from the Uninsured Employers' Fund in accordance with KRS 342.760.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for payment thereof, who has failed to secure payment of compensation as provided by KRS Chapter 342, the compromise and settlement of a claim, or the payment of benefits by the Special Fund.

Section 27. Use of American Medical Association Guidelines in Coal Workers' Pneumoconiosis Cases. (1) Predicted normal values for FVC and FEV1 shall be determined in accordance with the latest edition of the American Medical Association Guideline. Age is to be determined as of the date of the evaluation. Height is to be measured while the plaintiff stands in his stocking feet and shall be rounded to the nearest centimeter. If the plaintiff's height is an odd number of centimeters, the next highest even height in centimeters shall be used.

(2) Formulas established by the guidelines for predicted normal FVC and FEV1, shall be applied and predicted values computed. For example, the formula applicable to men for FVC and FEV1 as set forth in the Fourth Edition of the guides are:

FVC in liters equals 0.06 times H minus 0.0244 times A minus 4.650.

FEV1 in liters equals 0.0414 times H minus 0.0244 times A minus 2.19.

H is height in centimeters.

A is age in years.

Section 28. Request for Participation by the Kentucky Coal Workers' Pneumoconiosis Fund. (1) Following a final award or order approving settlement of a claim for coal workers' pneumoconiosis benefits pursuant to KRS 342.732, the employer shall tender a written request for participation to the Kentucky coal workers' pneumoconiosis fund within thirty (30) days. This request shall be in writing and upon a form supplied by the Director of the Kentucky Coal Workers' Pneumoconiosis Fund and shall be accompanied by the following documents:

(a) Plaintiff's application for resolution of claim;

(b) Defendant's notice of resistance, notice of claim denial or acceptance, and any special answer;

(c) All medical evidence upon which the award or settlement was based;

(d) Final benefit review determination, opinion, or order of an arbitrator or administrative law judge determining liability for benefits, or order approving settlement agreement. If an administrative law judge's award was appealed, appellate opinions shall be attached;

(e) If the request for participation includes retraining incentive benefits under KRS 342.732, the employer shall certify that the plaintiff meets the relevant statutory criteria;

(f) If the request for participation is for settlement of a claim, the employer shall certify that the settlement agreement represents liability for benefits in the claim, and does not include any sums for claims which the plaintiff may have against the employer.

(2) Within thirty (30) days following receipt of a completed request for participation, the director shall notify the employer and all other

parties of acceptance or denial of the request.

(3) A denial may be made upon a finding by the director that the employer failed to defend the claim or entered into a settlement agreement not supported by the medical evidence or which was procured by fraud or mistake. Denial shall be in writing and shall state the specific reasons for the director's action.

(4) Denial of a request for participation may be appealed to an administrative law judge within thirty (30) days following receipt. The administrative law judge shall determine whether the denial was arbitrary, capricious, or in excess of the statutory authority of the director, but shall not reexamine the weight assigned to evidence by an arbitrator or administrative law judge in a benefit review determination or award.

(5) The employer shall promptly commence payment on all of the liability pursuant to the benefit review determination, award, or order and shall continue until the liability of the Kentucky Coal Workers' Pneumoconiosis Fund is established. This duty of prompt payment shall continue during pendency of an appeal from denial of a request for participation.

(6) Upon an appeal from the denial of a request for participation, if the Kentucky Coal Workers' Pneumoconiosis Fund does not prevail, it shall reimburse the employer for its proportionate share of the liability together with interest at the rate set forth in KRS 342.040.

Section 29. Assignment to Arbitrators. (1) The assignment of appropriate claims to arbitrators pursuant to KRS 342.270(2) shall begin March 15, 1997.

(2) Provisions in this regulation which apply solely to practice before an arbitrator shall apply only to claims which are assigned to an arbitrator pursuant to KRS 342.270(2) and Section 28(1) of this administrative regulation.

Section 30. Forms. (1) After March 15, 1997, the Department of Workers' Claims will no longer accept applications or forms in use prior to the forms adopted by this administrative regulation. Outdated applications or forms submitted after March 15, 1997 may be rejected and returned to the applicant or person submitting the form. If the application or form is resubmitted on the proper form within twenty (20) days of the date it was returned, the filing shall date back to the date the application or form was first received by the commissioner. Otherwise, the date of the second receipt shall be the filing date.

(2) The following material is incorporated by reference:

(a) Form 101, "Application for Resolution of Injury Claim", (January 1, 1997 Edition), Department of Workers' Claims;

(b) Form 102, "Application for Resolution of Occupational Disease Claim", (January 1, 1997 Edition), Department of Workers' Claims;

(c) Form 103, "Application for Resolution of Hearing Loss Claim", (January 1, 1997 Edition), Department of Workers' Claims;

(d) Form 104, "Plaintiff's Employment History", (January 1, 1997 Edition), Department of Workers' Claims;

(e) Form 105, "Plaintiff's Chronological Medical History", (January 1, 1997 Edition), Department of Workers' Claims;

(f) Form 106, "Medical Waiver and Consent", (January 1, 1997 Edition), Department of Workers' Claims;

(g) Form 107-I, "Medical Report - Injury", (January 1, 1997 Edition), Department of Workers' Claims;

(h) Form 107-P, "Medical Report - Psychological", (January 1, 1997 Edition), Department of Workers' Claims;

(i) Form 108-OD, "Medical Report - Occupational Disease", (January 1, 1997 Edition), Department of Workers' Claims;

(j) Form 108-CWP, "Medical Report - Coal Workers' Pneumoconiosis", (January 1, 1997 Edition), Department of Workers' Claims;

(k) Form 108-HL, "Medical Report - Hearing Loss", (January 1, 1997 Edition), Department of Workers' Claims;

(l) Form 109, "Attorney Fee Election", (March 15, 1995 Edition), Department of Workers' Claims;

(m) Form 110-I, "Agreement - Injury", (January 1, 1997 Edition),

by affidavit of counsel detailing the services rendered and the time expended, Form 109 as required by KRS 342.320(3), and a copy of the contingency fee contract.

Section 5. (1) Application for adjustment of an Injury Claim Form 101 shall be filed with the following completed documents:

- (a) Work history (Form 104);
- (b) Medical history (Form 105);
- (c) Medical release (Form 106); and
- (d) One (1) medical report describing the injury which is the basis of the claim; and, if a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder. Medical reports required under this paragraph may consist of the legible handwritten notes of a treating physician. Medical reports filed with an application shall not be considered as evidence unless notice is filed pursuant to Section 14 of this administrative regulation.

(2) Defendants may file answers to the application within twenty (20) days after the date of service. If none are filed, all allegations of the application will be deemed denied. If, however, an answer other than one (1) containing a special defense under Section 1(8) of this administrative regulation is filed, only those allegations which are specifically denied shall be deemed disputed.

(3) Proof taking and discovery shall proceed pursuant to the scheduling order issued by the commissioner, generally providing sixty (60) days for all parties; thirty (30) days thereafter for defendants only; and, plaintiffs fifteen (15) days thereafter for rebuttal only.

(4) During the pendency of a claim any party obtaining a medical examination or a vocational evaluation shall serve a copy of the report of the examiner or evaluator upon all other parties within thirty (30) days of receipt.

(5) Within thirty (30) days after an application has been filed, the commissioner shall assign the claim to an administrative law judge and schedule the time and place of the prehearing conference. The conference shall be scheduled no earlier than fifteen (15) days after the last day of discovery and proof time.

Section 6. Application for Adjustment of an Occupational Disease Claim. (1) Form 102 shall be filed with the following completed attachments:

- (a) Those items set forth in Section 5(1)(a) through (e) and, additionally;
- (b) Two (2) written medical reports supporting the claim in compliance with KRS 342.316(2)(b)1. These reports shall not be considered evidence unless notice is filed pursuant to Section 14 of this administrative regulation.

(2) Upon service of Form 102 and thereafter for sixty (60) days, defendants may depose witnesses and cause the plaintiff to be examined by medical experts. Reports shall be exchanged pursuant to Section 5(4) of this administrative regulation.

(3) Within sixty (60) days after the date of service of Form 102 each defendant shall file a notice of election to resist the application pursuant to KRS 342.316(2)(c)3, or eligibility of the plaintiff for benefits shall be deemed conceded. If a notice of election to resist an application has been timely filed, the commissioner shall assign the case to an administrative law judge and issue a scheduling order in the same manner as under Section 5 of this administrative regulation.

(4) Special defenses as described in Section 1(8) of this administrative regulation shall be pleaded within sixty (60) days after the date of service of Form 102 or within ten (10) days of discovery if discovery could not have been had earlier in the exercise of due diligence.

(5) If a medical report filed with the Form 102 application contains findings of separate physicians relative to x-ray examination, spirometric testing or clinical examination, it shall be considered a single medical report.

Section 7. Application for Retraining Incentive Benefits. (1) Form 103 shall be filed with the completed documents required by Section 5(1)(a) through (e) of this administrative regulation and additionally two (2) x-ray reports complying with KRS 342.316.

(2) Discovery and processing of retraining incentive benefit claims shall proceed as set forth in Section 5(2) through (5) of this administrative regulation.

Section 8. Prehearing Conference. (1) The prehearing conference is an informal procedure. No transcript or recordings of the proceedings shall be made. At the conference parties shall dispose of controversies when possible and define disputed issues. Witness lists, copies of known exhibits, and proposed stipulations shall be exchanged fifteen (15) days before the conference. Lists shall state the name of each proposed witness and summarize the testimony of the witness. Except for good cause shown, persons who were not listed as witnesses shall not present testimony. For medical witnesses, the summary shall include a diagnosis, the physical findings, the results of diagnostic studies supporting the diagnosis, any assessment of functional impairment and a discussion of any restrictions of work activities.

(2) At the prehearing conference, the administrative law judge may limit witnesses and exhibits to be presented at hearing.

(3) The plaintiff and counsel and all other parties, either personally or through counsel, shall attend the prehearing conference. Representatives shall hold authority to resolve issues and make offers of settlement. Under compelling circumstances, the administrative law judge may waive the requirement that the plaintiff personally attend.

(4) Rescheduling or postponement of a prehearing conference shall be sought by motion filed at least fifteen (15) days prior to the scheduled conference.

(5) At the conclusion of the conference, the administrative law judge shall prepare a summary of all contested issues and stipulated matters which shall be signed by parties or counsel. Only the listed contested issues shall be the subject of further proceedings.

(6) Upon motion, the administrative law judge may order additional discovery or proof to be taken between the prehearing conference and the hearing.

(7) The hearing shall be scheduled within sixty (60) days of the prehearing conference.

(8) If the parties agree upon a settlement, a settlement agreement (Form 110) shall be submitted for approval of the administrative law judge and acted upon within ten (10) days.

Section 9. Ombudsman Program. (1) The commissioner may direct on a pilot basis that a mediation conference be held before an ombudsman pursuant to KRS 342.329. Such conferences may be held in advance of, or by agreement of all parties in lieu of, the prehearing conference described above. The timing of discovery and proof may be varied upon "pilot claims" from those time frames otherwise prescribed in these rules. Scheduling orders upon "pilot claims" shall clearly set forth the purpose, time and place of proceedings before the ombudsman and subsequent proceedings before an administrative law judge.

(2) All parties shall promptly comply with information requests from an ombudsman and appear either personally or by counsel at conferences before the ombudsman.

Section 10. Interlocutory Relief. (1) During the pendency of a claim, a party may seek any or all of three (3) forms of interlocutory relief:

(a) Interim payment of income benefits for total disability pursuant to KRS 342.730(1)(b);

(b) Medical benefits pursuant to KRS 342.020;

(c) Rehabilitation services pursuant to KRS 342.710.

(2) Any response to a request for interlocutory relief shall be served within twenty (20) days from the date of the issuance of the

Section 14. Medical Reports. (1) A party may introduce direct testimony from a physician through medical report, subject to the limitations of KRS 342.033, Section 5(1)(d) of this administrative regulation, and the scheduling order issued pursuant to Section 5(3) of this administrative regulation.

(2) Medical reports shall be submitted on Form 107 (injury) or Form 108 (occupational disease) as appropriate, except that an administrative law judge may permit the introduction of other reports.

(3) Medical reports shall be signed by the physician making the report, or be accompanied by an affidavit from the physician or the submitting attorney verifying the authenticity of the report.

(4) Medical reports shall include within the body of the report or as an attachment, a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician assigned a medical qualifications index number, reference may be made to the physician's index number in lieu of attaching qualifications.

(5) Any narrative in a medical report on a Form 107 or Form 108 shall be typewritten. Other portions of a report, including spirometric tracings, shall be clearly legible.

(6) Upon notice a party may file the testimony of two (2) physicians, either by deposition or medical report, which shall be admitted into evidence without further order if there has been no objection filed. Objection to the filing of a medical report shall be filed within ten (10) days of the notice or the motion for admission. Grounds for the objection shall be stated with particularity. The administrative law judge shall rule on the matter within fifteen (15) days of the filing of a motion or objection, whichever is last filed.

(7) If a medical report is admitted as direct testimony, any adverse party may depose the reporting physician as if on cross-examination at its expense.

Section 15. Extensions of Proof Time. (1) Extensions of time for producing evidence shall not be granted except upon showing of circumstances preventing the party from timely introducing proof. Motion for extension of time shall be filed no later than five (5) days before the deadline sought to be extended. The motion or supporting affidavits shall set forth:

- (a) The efforts to produce the evidence in a timely manner;
- (b) Facts which prevented timely production; and
- (c) The date of availability of the evidence, the probability of its production, and the materiality of the evidence.

(2) In the absence of compelling circumstances, only one (1) thirty (30) day extension shall be granted to each side for completion of discovery or proof by deposition.

(3) The granting of an extension of time for completion of discovery or proof shall enlarge the time to all plaintiffs if the extension is granted to a plaintiff and to all defendants should an extension be granted to a defendant, and shall extend the time of the adverse party automatically except when the extension is for rebuttal proof.

Section 16. Stipulation of Facts and Judicial Notice. (1) Refusal to stipulate facts which are not genuinely in issue may warrant imposition of sanctions as provided in Section 23 of this administrative regulation. Assertion that a party has not had sufficient opportunity to ascertain relevant facts shall not be considered "good cause" in the absence of due diligence.

(2) Upon cause shown, a party may be relieved of a stipulation provided that the motion for relief is filed at least ten (10) days prior to the date of the hearing, or as soon as practicable after discovery that the stipulation was erroneous. Upon granting relief from a stipulation, the administrative law judge may grant a continuance of the hearing and additional proof time.

Section 17. Coverage—Insured Status. (1) The administrative law

judge shall take judicial notice that compliance with KRS Chapter 342 is mandatory except for those employers exempted by KRS 342.650 and those employees rejecting the provisions of KRS Chapter 342 pursuant to KRS 342.395 and 342.400.

(2) Upon the filing of a claim, the commissioner shall ascertain whether the employer or any other person against whom a claim is filed and who is not exempted by KRS 342.650 has secured payment of compensation by obtaining insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. Should an employer not have insurance coverage or qualify as a self-insurer, the commissioner shall notify the administrative law judge and all parties by service of a certification of no coverage.

Section 18. Evidence—Rules Applicable. (1) The rules of evidence prescribed by the Supreme Court apply in all proceedings before the administrative law judges, except as varied by specific statute and this administrative regulation.

(2) A nontreating physician is permitted to use the history and the subjective symptomatology related to him by the patient in arriving at and formulating opinions.

Section 19. Discovery and Depositions—Wage Certification. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Civil Rules 26 to 37, inclusive, except for Civil Rules 27, 33, and 36 which shall not apply to practice before the administrative law judges or the board.

(2) Depositions may be taken by telephone provided the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of telephonic deposition must relate the following information:

- (a) That the deposition is to be taken by telephone;
- (b) The address and telephone number from which the call will be placed to the witness;
- (c) The address and telephone number of the place where the witness will answer the deposition call; and
- (d) That all opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party must contribute proportionate costs of the conference call.

(3) The commissioner shall establish a medical qualifications index. An index number will be assigned to a physician upon the filing of the physician's qualifications. Any physician who has been assigned an index number may offer the assigned number in lieu of stating qualifications. Qualifications may be revised or updated by submitting revisions to the commissioner. Nothing in this rule shall preclude any party from inquiring further into the qualifications of a physician.

(4) At any time during the pendency of a claim the employee may serve a request upon the employer for verification of earnings during a period of fifty-two (52) weeks preceding a purported injury or at last exposure to occupational disease. Within thirty (30) days of service of a verification request, a representative of the employer shall complete and serve a completed Form AWW-1 on all other parties.

Section 20. Appearances. (1) Only attorneys duly licensed in Kentucky may practice before the administrative law judges or the board, except that any natural person who is a party to any proceeding may represent himself.

(2) Any party who elects to represent himself without the aid of counsel shall be held accountable in the same manner, and to the same degree, as an attorney.

Section 21. Withdrawal of Records. (1) No portion of any original record of the department shall be withdrawn except on order of the commissioner, an administrative law judge, or a member of the board.

(2) All physical exhibits, including x rays, shall be disposed of

Compensation Funding Commission pursuant to KRS 342.122.

(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: This administrative regulation will be implemented throughout the state of Kentucky, and is not expected to have an economic impact different from that of the present regulation.

(b) Kentucky: See response to (a) above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected. House Bill 1, enacted December 12, 1996, by the Kentucky General Assembly significantly revised KRS Chapter 342. This amended regulation is necessary to implement those revisions.

(8) Assessment of expected benefits:

(a) Effect on public health and environment: No effect.

(b) Detrimental effect on environment and public health if not implemented. No effect.

(c) 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: No conflict.

(b) If in conflict, was effort made to harmonize proposed administrative regulation with conflicting provisions: Not applicable.

(10) Additional information or comments: None

(11) Tiering: Is tiering applied? No. Tiering is not appropriate since multiple classes are not involved. This proposed amended regulation applies equally to all litigants before arbitrators, administrative law judges and the Workers' Compensation Board.

STATEMENT OF EMERGENCY 803 KAR 25:200E

Pursuant to an amendment to KRS 342.610(6), effective December 12, 1996, enacted by the Kentucky General Assembly, the Commissioner of the Department of Workers' Claims is required to establish the format and content of a notice which employers are required to post at specific locations at the employer's place of business. The notice must contain the name of the employer's workers' compensation insurance carrier and policy number, the means to assess medical care for injuries, the employee's obligation to give notice of accidents, and such other matters concerning the employee's rights under KRS Chapter 342 as may be required by the commissioner so as to afford every employee the opportunity to become informed about the employer's workers' compensation program. An ordinary administrative regulation is insufficient because a state mandate requires immediate implementation of House Bill 1, which revised KRS Chapter 342, effective December 12, 1996. The length of time required to promulgate administrative regulations through the ordinary process could have an adverse effect on the ultimate success and intent of the provisions of House Bill 1. The emergency administrative regulation will be replaced by an ordinary administrative regulation, notice of intent for 803 KAR 25:210 is being filed together with this emergency administrative regulation.

PAUL E. PATTON, Governor
WALTER W. TURNER, Commissioner

LABOR CABINET Department of Workers' Claims

803 KAR 25:200E. Workers' compensation notice.

RELATES TO: KRS 342.610(6)

STATUTORY AUTHORITY: KRS 342.260, 342.610(6)

EFFECTIVE: February 11, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260

requires the commissioner to promulgate such rules and administrative regulations as are necessary to carry on the work of the department, the administrative law judges, the Workers' Compensation Board and to implement the provisions of KRS Chapter 342, KRS 342.610(6) requires every employer subject to KRS Chapter 342 to post a notice stating the name of its workers' compensation insurance carrier and policy number, setting forth the means to access medical care for injuries, employee's obligation to give notice of accidents, and such other matters concerning the employee's rights under this chapter as may be required by the commissioner so as to afford every employee the opportunity to become informed about the employer's workers' compensation program. KRS 342.610(6) further requires the commissioner to establish the format and content of the notice through administrative regulation. The function of this administrative regulation is to establish the format and content of the notice required by KRS 342.610(6).

Section 1. Content and Format. The employer's notice to employees required by KRS 342.610(6) shall be conspicuously posted at the employer's principle office and such other locations where employees customarily report for payroll and personnel matters. The notice containing the information required by KRS 342.610(6) shall be in an identical format as the "Workers Compensation Notice" which is incorporated by reference.

Section 2. Size. The notice shall not be smaller than eight and one-half (8-1/2) by eleven (11) inches. The print shall not be smaller than twelve (12) point font.

Section 3. Incorporated by Reference. (1) "Workers Compensation Notice" (January 1, 1997 Edition) Department of Workers' Claims is incorporated by reference.

(2) Pursuant to KRS 342.610(6) copies of the "Workers Compensation Notice" shall be provided to the employer by its insurance carrier.

(3) The material may also be inspected, copied, or obtained at the Department of Workers' Claims Monday through Friday, 9 a.m. to 4 p.m. at the following locations:

(a) Frankfort - Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601.

(b) Paducah - 220B North 8th Street, Paducah, Kentucky 42001.

(c) Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: February 5, 1997

FILED WITH LRC: February 11, 1997 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Marcy D. Ches

(1) Type and number of entities affected: All employers in the Commonwealth of Kentucky are required to post the notice pursuant to KRS 342.620(6).

(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: Insurance carriers and group self-insurers will incur nominal costs for reproducing the notice and distributing it to employers.

2. Second and subsequent years: Minimal

(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: Local issuers of building permits are required to send the original affidavits to the Department of Workers' Claims and thereafter maintain a copy at the local office.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Nominal

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Same

(4) Assessment of anticipated effect on state and local revenues: A slight increase in funding commission assessment collections may occur.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Workers' Compensation Funding Commission.

(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: Applies to all of Kentucky, see (b).

(b) Kentucky: The Uninsured Employers' Fund may experience decreased liability.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives previously attempted have proven ineffective.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Not applicable.

(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: Not applicable.

(11) TIERING: Is tiering applied? No. All persons exempt from KRS Chapter 342 by KRS 342.620(5), and contractors otherwise exempt must submit the affidavit to the local issuer of building permits, in lieu of presenting proof of workers' compensation coverage, prior to obtaining a building permit.

STATEMENT OF EMERGENCY

803 KAR 25:220E

House Bill 1, Section 20 through 26, enacted by the Kentucky General Assembly, December 12, 1996, establishes self-insurance guaranty funds for workers' compensation for the continuation of workers' compensation benefits delayed or terminated due to the failure of a self-insured employer to meet its obligations under KRS Chapter 342. In House Bill 1, the General Assembly declared that the

establishment of self-insurance guaranty funds is a necessary component of a complete system of workers' compensation. An ordinary administrative regulation is insufficient because a state mandate requires immediate establishment of self-insurance guaranty funds. House Bill 1, which substantially revised KRS Chapter 342, became effective December 12, 1996. The emergency administrative regulation will be replaced by an ordinary administrative regulation. A notice of intent for 803 KAR 25:220 is being filed along with this emergency administrative regulation.

PAUL E. PATTON, Governor

WALTER W. TURNER, Commissioner

LABOR CABINET

Department of Workers Claims

803 KAR 25:220E. Guaranty funds.

RELATES TO: 1996 Extra. Sess. HB 1, secs. 20, 21, 22, 23, 24, 25, 26

STATUTORY AUTHORITY: KRS 342.260, 1996 Extra. Sess. HB 1, secs. 20, 21, 22, 23, 24, 25, 26

EFFECTIVE: February 11, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the commissioner to promulgate such rules and administrative regulations as are necessary to carry on the work of the department and to implement the provisions of KRS Chapter 342. House Bill 1, sections 20 to 26, requires the establishment of self-insurance guaranty funds for the continuation of workers' compensation benefits otherwise delayed or terminated due to the failure of a self-insured employer to meet its obligations under KRS Chapter 342. The function of this administrative regulation is to prescribe the requirements for a guaranty fund written "plan of operation" required by House Bill 1 and to regulate the powers and duties of the guaranty funds.

Section 1. Plan of Operation. (1) Each guaranty fund shall submit to the commissioner a plan of operation and any amendments necessary to assure the fair, reasonable, and equitable administration of the fund. The plan of operation and amendments shall become effective upon approval in writing by the commissioner.

(2) In the event a fund fails to submit an acceptable plan of operation by March 1, 1997, or failure at any time thereafter to submit suitable amendments to the plan, the commissioner may, after notice and hearing, adopt or amend a plan of operation for the guaranty fund. The plan adopted or amended by the commissioner shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(3) Members of a guaranty fund shall comply with the plan of operation.

(4) The plan of operation shall establish:

(a) Procedures whereby all the powers and duties of the fund established by KRS Chapter 342 will be performed;

(b) Procedures for the collection of assessments, the sound investment, and disbursement of assets of the fund;

(c) The amount and method of reimbursing members of the board of directors for attendance at board meetings and other reasonably necessary functions of the guaranty fund;

(d) Procedures by which claims may be filed with the guaranty fund and acceptable forms for proof of claims. Notice of claims against the insolvent self-insurer to a bankruptcy court or other court of competent jurisdiction shall be deemed notice to the fund;

(e) Regular places and times for meetings of the board of directors;

(f) Procedures for records to be kept of all financial transactions of the fund, its agents, and the board of directors;

STATEMENT OF EMERGENCY
803 KAR 25:230E

House Bill 1, Section 36, requires a corporation, partnership, sole proprietorship, or other business entity which acts as an employee leasing company to register with the commissioner in the manner prescribed by administrative regulation. This proposed administrative regulation establishes the procedure whereby employee leasing companies shall register with the commissioner. Additionally, House Bill 1 requires such a lessee to purchase and maintain a standard workers' compensation policy covering leased employees. An ordinary administrative regulation is insufficient because a state mandate requires immediate implementation of House Bill 1. The provisions of House Bill 1 requiring employee leasing became effective December 12, 1997. Employees of employee leasing companies are often not covered by a workers' compensation insurance policy when a work-related injury occurs. This creates a burden on the Commonwealth since these cases will ultimately be paid by the Uninsured Employers Fund. The emergency administrative regulation will be replaced by an ordinary administrative regulation. A notice of intent for 803 KAR 25:230 is being filed the same date as this emergency administrative regulation.

PAUL E. PATTON, Governor
WALTER W. TURNER, Commissioner

LABOR CABINET
Department of Workers' Claims

803 KAR 25:230E. Lessors of employees.

RELATES TO: 1996 Extra. Sess. HB 1, sec. 36

STATUTORY AUTHORITY: KRS 342.260, 1996 Extra. Sess. HB 1, sec. 36

EFFECTIVE: February 11, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 requires the commissioner to promulgate such rules and administrative regulations as are necessary to carry on the work of the department, administrative law judges, and the Workers' Compensation Board and to implement the provisions of KRS Chapter 342. A new section of KRS Chapter 342 created by House Bill 1, Section 36, requires the commissioner to prescribe by administrative regulation the manner in which an employee leasing company shall register with the commissioner. The function of this administrative regulation is to ensure that all employee leasing companies operating in the Commonwealth are properly registered and that an employer who leases some or all of its workers properly obtains workers' compensation insurance coverage for all of its employees, including those leased from another entity, and that the premium paid is commensurate with exposure and anticipated claim experience.

Section 1. Registration. (1) A corporation, partnership, sole proprietorship, or other business entity which provides staff, personnel or employees to be employed in this state to other businesses pursuant to a lease arrangement or agreement shall register with the commissioner before becoming eligible to be issued a policy of workers' compensation insurance. The registration shall include:

- (a) The name of the lessor;
- (b) The address of the principal place of business of the lessor and the address of each office it maintains within this state;
- (c) The lessor's taxpayer or employer identification number;
- (d) A list by jurisdiction of each and every name that the lessor has operated under in the preceding five (5) years including any alternative names and names of predecessors and, if known, successor business entities;
- (e) A list of each and every person or entity who owns a five (5) percent or greater interest in the employee leasing business at the

time of application and a list of each and every person who formerly owned a five (5) percent or greater interest in the employee leasing company or its predecessors, successors or alter egos in the preceding five (5) years; and

(f) A list of each and every cancellation or nonrenewal of workers' compensation insurance which has been issued to the lessor or any predecessor in the preceding five (5) years. The list shall include the policy or certificate number, name of insurer or other provider of coverage, date of cancellation and reason for cancellation. If coverage has not been cancelled or nonrenewed, the registration shall include a sworn affidavit signed by the chief executive officer of the lessor attesting to that fact.

(2) Persons filing registration statements pursuant to this section shall immediately notify the commissioner as to any changes in any information provided pursuant to this section.

(3) The commissioner shall maintain a list of those lessors of employees who are satisfactorily registered with the commissioner.

(4) Any lessor of employees which was doing business in this state prior to enactment of this section shall register with the commissioner within thirty (30) days of the effective date of this section.

Section 2. Advertising Prohibition. No organization registered under this act shall directly or indirectly reference such registration orally or in any advertisements, marketing material, or publications.

Section 3. Coverage. (1) Although a lessor is primarily responsible for securing benefits under this chapter for leased employees by purchasing and maintaining a standard workers' compensation insurance policy, such lessee may fulfill that responsibility by contracting with the employee leasing company to purchase and maintain the required insurance policy.

(2) In the event the employee leasing company applies for such coverage it shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each lessee. Such information shall include:

- (a) The lessee's corporate name;
- (b) The lessee's taxpayer or employer identification number;
- (c) The lessee's risk identification number;
- (d) A listing of all leased employees associated with each lessee, the applicable classification code and payroll; and
- (f) Claims information grouped by lessee, and any other information necessary to permit the calculation of an experience modification factor for each lessee.

Section 5. Experience Modification Factor Following Termination. (1) In the event that the employee leasing arrangement with the lessee is terminated and the experience of the lessee is commingled with that of other clients on the lessors master policy, then the experience of the lessee shall be developed and reported by the insurer for use in development of an experience modification for the lessee.

(2) The employee leasing company shall notify the insurer thirty (30) days prior to the effective date of termination or immediately upon notification of cancellation by the lessee of an employee leasing arrangement with a lessee in order to allow sufficient time to calculate an experience modification factor for the lessee.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: February 5, 1997

FILED WITH LRC: February 11, 1997 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Marcy D. Ches

(1) Type and number of entities affected: Corporations, partnerships, sole proprietorships, and other business entities which act as

ADMINISTRATIVE REGISTER - 3263

Transmittal No. ACF-AT-94-5 (February 28, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, 8 USC 1611-1645, 42 USC 601 et seq., 602, PL 1014-208

STATUTORY AUTHORITY: KRS 194.050, 205.010, 205.200(2), (3), 42 USC 601 et seq., EO 96-862

EFFECTIVE: January 31, 1997

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children [Human Resources] has the responsibility under the provisions of KRS Chapter 205 to administer the assistance program of Aid to Families with Dependent Children, now named the Kentucky Transitional Assistance Program, the block grant program funded under 42 USC 601 et seq. KRS 205.200(2) requires that the conditions of eligibility to receive money grants from Aid to Families with Dependent Children, now named the Kentucky Transitional Assistance Program, be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, work registration, cooperation in child support enforcement activities, strikers, minor teenage parent provisions, time limits and potential entitlement for other programs for eligibility for benefits from the Kentucky Transitional Assistance Program [Aid to Families with Dependent Children].

Section 1. Definitions. (1) "Battered or subjected to extreme cruelty" means an individual who has been subjected to:

(a) Physical acts that resulted in, or threatened to result in, physical injury to the individual;

(b) Sexual abuse;

(c) Sexual activity involving a dependent child;

(d) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;

(e) Threats of, or attempts at, physical or sexual abuse;

(f) Mental abuse; or

(g) Neglect or deprivation of medical care. ["Aid to Families with Dependent Children (AFDC)" means a money payment program for children who are deprived of parental support or care due to death, continued absence, physical or mental incapacity of a parent.

(2) "Aid to Families with Dependent Children Unemployed Parent (AFDC-UP)" means AFDC benefits are paid when both parents are in the home and at least one (1) parent is unemployed.]

(2) [(3)] "Child" means an individual age seventeen (17) or under or, if eighteen (18), in regular full-time attendance in high school or equivalent level of vocational or technical school and expected to complete a course of study before reaching age nineteen (19) or during the month of the 19th birthday.

(3) "Domestic violence" means "battered or subjected to extreme cruelty" as defined in subsection (1) of this section.

(4) ["Deprivation" means loss of parental support due to the unemployment, death, voluntary or involuntary absence, or incapacity of a child's natural or adoptive parent.

(5) "Job Opportunities and Basic Skills (JOBS)" means a program which assists recipients of K-TAP [AFDC] in obtaining [the necessary education and training that will lead to] gainful employment and becoming self-sufficient. [self-support.]

(5) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) Program, means a money payment program for children who are deprived of parental support or care due to:

(a) Death, continued voluntary or involuntary absence of a parent;

(b) Physical or mental incapacity of one (1) parent when both parents are in the home; or

(c) Unemployment of at least one (1) parent when both parents

are in the home.

(6) "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married; and

(c) Has a minor child in his care.

(7) [(6)] "Parent" means the natural, adoptive, or adjudicated (including administrative establishment of paternity) parent of the child.

(8) [(7)] "Principal wage earner (PWE)" means the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application for K-TAP [AFDC] benefits based on the deprivation of unemployment.

(9) [(8)] "Prior labor market attachment (PLMA)" means the parent has earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, with any thirteen (13) calendar quarter period ending within one (1) year of the application, for K-TAP [AFDC] benefits based on the deprivation of unemployment.

(10) "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:

(a) Lawfully admitted for permanent residence under 8 USC §1101 et seq.;

(b) Granted asylum under 8 USC §1158;

(c) A refugee who is admitted to the United States under 8 USC §1158;

(d) Paroled into the United States under 8 USC §1182(d)(5) for a period of at least one (1) year;

(e) An alien whose deportation is being withheld under 8 USC §1253(h);

(f) Granted conditional entry pursuant to 8 USC §1153(a)(7) as in effect prior to April 1, 1980; or

(g) Lawfully residing in any state and is:

1. A veteran as defined in 38 USC 101 with a discharge characterized as an honorable discharge and not on account of alienage;

2. On active duty other than active duty for training in the Armed Forces of the United States; or

3. The spouse or unmarried dependent child of an individual described in paragraph (g)1 or 2 of this subsection;

(h) Battered or subjected to extreme cruelty in the United States by:

1. A spouse or a parent; or

2. A member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, the battery or cruelty; or

(i) A child of an alien who has been battered or subjected to extreme cruelty in the United States by:

1. A spouse or a parent of the alien without the active participation of the alien in the battery or cruelty; or

2. A member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to the battery or cruelty.

(j) Provisions in paragraphs (h) and (i) of this subsection shall apply only if:

1. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

2. There is a substantial connection between the battery or cruelty and the need for the benefit; and

3. The alien has been approved or has a petition pending for:

a. Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 USC 1154(a)(1)(A);

b. Classification pursuant to clause (ii) or (iii) of 8 USC 1154(a)(1)(B); or

c. Suspension of deportation and adjustment of status pursuant to 8 USC 1254(a)(3).

(11) "Second chance home" means an entity that provides a minor teenage parent a supportive and supervised living arrangement in which a minor teenage parent is required to learn parenting skills,

(i) The child leaves the parent because the parent was requiring the child to live under circumstances hazardous to the health or morals of the child; or

(ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under circumstances hazardous to the health or morals of the child; or

(iii) The child is voluntarily placed with relatives following a finding by the Department for Social Services that the home is unsuitable; or

(iv) The child is placed by the court with a specified relative other than the parent; or

(v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or

(vi) Both parents are absent from the home;

5. Forced separation of seven (7) days or more; or

6. Birth out-of-wedlock.

(b) Involuntary absence includes:

1. Commitment to a penal institution for thirty (30) days or more;

2. Long-term hospitalization;

3. Deportation; or

4. Single parent adoption.

(3) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday shall be de considered absent from the home.

Section 8. Deprivation Due to Incapacity. (1) Each determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

(a) Medical;

(b) Social; and

(c) Economic.

(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.

(3) Incapacity exists in a case when the following criteria are met:

(a) It is medically determined that one (1) parent when both parents are in the home has a physical or mental disability, illness or impairment which was:

1. Present at the time of application; and

2. Which has continued or is expected to last for a period of at least thirty (30) calendar days.

(b) The thirty (30) day period may include a period in which the claimant is undergoing:

1. Planned diagnostic studies; or

2. Evaluation of rehabilitation potential; and

(c) It is determined by nonmedical evaluation that the disability, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(4) A determination regarding incapacity shall be made by:

a. Field staff if the following criteria are met:

1. The parent declares physical inability to work;

2. The worker observes some physical or mental limitation; and

3. The parent:

a. Is receiving SSI; or

b. Is age sixty-five (65) or over; or

c. Has been determined to meet the definition of blindness as contained in 42 USC 1382c or 42 USC 416 by the Social Security Administration; or

d. Has been determined to meet the definition of permanent and total disability as contained in 42 USC 1382c or 42 USC 416 by either:

(i) The Social Security Administration; or

(ii) The medical review team of the Department for Social

Insurance; or

e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition; or

f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter; or

g. Is receiving Veterans Administration benefits based on 100 percent disability, as verified by an award letter; or

h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, the physician is also requested to indicate if incapacity existed as of application date; or

(b) The medical review team, consisting of a licensed physician and a social worker employed by the agency, if a determination by field staff is precluded.

(5) Factors to be considered by the medical review team in making the medical determination shall include:

(a) The claimant's medical history and subjective complaints regarding an alleged physical or mental disability, illness or impairment; and

(b) Competent medical testimony relevant to:

1. Whether a physical or mental disability, illness or impairment exists;

2. Whether the disability, illness or impairment is sufficient to reduce the parent's ability to support or care for a child; and

3. Whether the disability, illness or impairment is likely to last thirty (30) days.

(6) Factors to be considered in making the nonmedical evaluation shall include:

(a) The claimant's:

1. Age;

2. Employment history;

3. Vocational training;

4. Educational background; and

5. Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

(b) The extent and accessibility of employment opportunities available in the claimant's area of residence.

(7) In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of individuals with a disability shall be taken into account; and

(a) Available printed materials that provide information regarding available employment opportunities shall be researched;

(b) The local Department for Employment Service office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and

(c) The claimant shall be referred, if necessary, for further appraisal of his abilities.

(8) A written report shall be made of the determination under this subsection.

(9) Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 904 KAR 2:055.

Section 9. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent when both parents are in the home shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a PLMA.

(2) The determination of the PWE shall include the following:

(a) If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

(b) [b-] If both parents earned identical amounts of income, or no

(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:

1. School records;
2. Bible records;
3. Immigration records;
4. Naturalization records;
5. Church documents, such as baptismal certificates;
6. Passport;
7. Military records;
8. U.S. Census records; or

9. Notarized [Sworn] statement or affidavit from an individual having specific knowledge about the relationship between the alleged parent and child.

(2) Rebuttal of administrative paternity may occur if:

(a) The parent or, in the absence of the parent, the caretaker relative alleges the evidence present in subsection (1)(a) or (b) of this section is erroneous and provides substantiation of the erroneous information; and

(b) The parent or caretaker relative provides a notarized [sworn] statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.

(3) Presence of the notarized [sworn] statement or affidavit specified in subsection (2)(b) of this section shall [will] serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of paternity shall [will] not be acknowledged.

Section 12. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for K-TAP [AFDC] if receiving SSI.

(2) If a child who receive SSI meets the K-TAP [AFDC] requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP [AFDC] if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the K-TAP [AFDC] requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP [AFDC] if all other eligibility factors are met.

Section 13. Strikers. (1) A family shall be ineligible for benefits for any month in which the parent, with whom the child is living is, on the last day of the month, participating in a strike; and

(2) A specified relative other than the parent shall be ineligible for benefits for any month if, on the last day of the month, the relative is participating in a strike.

Section 14. Work Registration. (1) Except for a teenager in full-time school attendance, as set forth in Section 1(11) of 904 KAR 2:016E, effective April 1, 1997, adult members in the assistance group [In a case based on the deprivation of unemployment, the PWE and the second parent] shall register for work [with the Department for Employment Services if:

(a) He resides in a non-JOBS county; or

(b) He resides in a JOBS county and is exempt from participation as specified in 904 KAR 2:370].

(2) Failure of the an adult member in the assistance group [PWE or the second parent] to register for work, and agree to complete a self-sufficiency plan, shall result in:

(a) For an applicant, denial of the application for the benefit group; or

(b) For a recipient, pro rata reduction of the grant [removal of the needs of the individual who fails to register].

Section 15. JOBS Training Program. The technical requirements for participation in the JOBS Program are specified in 904 KAR 2:370.

Section 16. Cooperation in Child Support Enforcement Activities.

(1) The Department for Social Insurance shall attempt to secure

parental support, and if necessary establish paternity, for children receiving K-TAP [AFDC] based on the following voluntary absence deprivation factors:

- (a) Divorce;
- (b) Desertion;
- (c) Birth out-of-wedlock;
- (d) Legal separation;
- (e) Forced separation; or
- (f) Marriage annulment.

(2) With the exception of good cause reasons, specified in subsection (4) of this section, inclusion of a specified relative in the K-TAP [AFDC] budget, on or after March 3, 1997, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in K-TAP benefits pursuant to subsection (8) of this section shall be [ie] dependent upon his cooperation in child support activities. This includes, but shall [ie] not be limited to:

(a) Identifying the absent parent;

(b) Providing information to assist in the location of the absent parent;

(c) Establishing paternity; and

(d) Forwarding child support payments received to the agency.

(3) The Cabinet for Families and Children [Human Resources] shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient shall be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

(a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(e) The applicant or recipient is being assisted by a public or licensed private social service agency:

1. To resolve whether to keep the child or release him for adoption; and

2. Discussion has not gone on for more than three (3) months; and

3. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim is filed to provide evidence to substantiate the claim.

(a) Evidence upon which a determination of good cause shall be made includes ~~[but is not limited to:]~~ the following:

1. Birth certificates, medical, or law enforcement records indicating that the child was conceived as a result of incest or forcible rape;

2. Court documents or other records indicating legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction;

3. Records (court, medical, criminal, child protective services, social services, psychological or law enforcement) indicating the absent or alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child

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2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the minor teenage parent and the minor child lived in the same residence with the minor teenage parent's own parent or legal guardian.

(4) The requirement in subsection (2) of this section shall be waived if:

(a) The cabinet determines living in the place of residence maintained by the parent, legal guardian, or adult relative as described in Section 10 of this administrative regulation is not in the best interest of the minor child taking in consideration the needs and concerns of the minor child; or

(b) The cabinet determines the minor teenage parent's current living arrangement is appropriate.

(5) If circumstances change and the current arrangement ceases to be appropriate based on the needs and concerns of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.

(6) The minor teenage parent shall complete a "Teen Parent Personal Responsibility Plan", form JOBS-202TP.

(7) If the minor teenage parent is determined to be ineligible for K-TAP as a result of not complying with provisions found in this section, payments to a protective payee shall continue for the eligible child of the minor teenage parent.

Section 19. Benefit Time Limits. (1) K-TAP shall not be provided to a benefit group, as defined by Section 1 of 904 KAR 2:016E, that includes an adult who has received assistance for sixty (60) months from a program funded under 42 USC 601 et seq., whether or not consecutive.

(a) An otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) month time limit during the period the individual:

1. Is battered or subjected to extreme cruelty;

2. Has a physical or mental disability prohibiting work as determined by the cabinet;

3. Is required to provide constant care of a household member who is a parent, spouse or child with a disability and no alternative care arrangement is available; or

4. Is a grandparent caring for an eligible child who would otherwise be placed in foster care.

(b) If otherwise eligible, a benefit group containing a member who has lost a job within thirty (30) days of reaching the sixty (60) month time limit shall receive a three (3) month extension of the time limitation.

(2) Within twenty-four (24) months of receiving K-TAP assistance, a parent or caretaker relative receiving assistance, shall work or participate in approved work activities as defined in Section 1(15) of this administrative regulation.

(3) Time limitations shall apply to a sanctioned individual as defined in 904 KAR 2:016E, Section 1(23).

Section 20. Receiving Assistance in Two (2) or More States. K-TAP assistance shall be denied for ten (10) years to a person who has:

(1) Been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states:

(a) Under a program funded under:

1. 42 USC 601 et seq.;

2. 42 USC 1396; or

3. 7 USC 2011 et seq.; or

(b) For benefits received under supplemental security income.

(2) The requirement in subsection (1) of this section shall not apply to a conviction for any months beginning after the granting of a pardon by the President of the United States with respect to the conduct which was the subject of the conviction.

Section 21. Fugitive Felons. (1) K-TAP assistance shall not be provided to:

(a) An individual fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, which is a felony; or

(b) Violating a condition of probation or parole imposed under federal or state law.

(2) Subsection (1) of this section shall not apply with respect to conduct of an individual for any month beginning after the President of the United States grants a pardon with respect to the conduct.

Section 22. Denial of Assistance for Drug Felons. (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use or distribution of a controlled substance as defined in 21 USC 802(6), shall not be eligible for K-TAP benefits.

(2) Each individual applying for K-TAP benefits shall be required to state in writing whether the individual or any member of the household has been convicted of a crime described in subsection (1) of this section.

Section 23. Domestic Violence. (1)(a) A K-TAP applicant or recipient shall be screened for a history of domestic violence.

(b) If the applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence and at risk of further domestic violence as determined by the cabinet, the individual shall be referred to counseling and supportive services.

(2) If compliance with the following K-TAP requirements would make it more difficult for an individual receiving K-TAP to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, or an individual who is at risk of further domestic violence, as determined by the cabinet, the individual shall not be required to meet:

(a) Residency requirements pursuant to Section 4 of this administrative regulation;

(b) Child support cooperation requirements pursuant to Section 16 of this administrative regulation;

(c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section 19 of this administrative regulation; or

(d) Work requirements pursuant to section 19 of this administrative regulation.

Section 24. Immunizations. Except as provided under KRS 214.036, a recipient of K-TAP shall maintain current immunization for an under-school-age child, pursuant to the Cabinet for Health Services, Department for Public Health Immunization Schedule in 902 KAR 2:060.

Section 25. Material Incorporated by Reference. (1) Forms necessary to establish technical eligibility requirements for the K-TAP [AFDC] Program, with the exception of JOBS participation, are being incorporated [effective December 1, 1993]. These forms include:

(a) PA-1C Supplement D, revised 2/97 [3/92];

(b) PA-14, revised 2/97 [11/94];

(c) PA-33D, revised 2/97 [4/92];

(d) PA-121, revised 2/97 [8/87];

(e) PA-219A, revised 2/97; [PA-125, revised 6/83;

(f) PA-125 Supplement A, revised 6/83;

(g) PA-125 Supplement B, revised 12/82;

(h) PA-125.1, revised 5/90;

(i) [(h)] PA-511, revised 10/92;

(j) [(h)] KA-125, revised 12/96 [7/92];

(k) [(k)] KA-125, Supplement A, revised 12/96 [4/93];

(l) [(h)] KA-125, Supplement B, revised 12/96 [7/92];

(m) [(m)] KA-125, Supplement C, revised 12/96 [7/92];

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imposed by the federal law. Therefore, in order to meet the deadline for implementation of the mandated requirements for our Title IV-A block grant program, this regulation must be placed in effect immediately in order to amend the technical program requirements in 904 KAR 2:006 to comply with the federal mandates contained in the Title IV-A State Plan.

(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: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 205.200

3. Minimum or uniform standards contained in the federal mandate. None

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

STATEMENT OF EMERGENCY

904 KAR 2:015E

The administrative regulation 904 KAR 2:015E, Supplemental programs for persons who are aged, blind or have a disability, changes the standards for all levels of care for the State Supplementation Program due to the pass along of the Supplemental Security Income 1997 cost of living increase. This administrative regulation is needed to comply with the agreement the Commonwealth of Kentucky has with the Department of Health and Human Services to pass along any cost of living increases in supplemental security income benefits to state supplementation recipients. In order to implement the mandated 1997 cost of living increases for eligibility determinations made on or after January 1, 1997, it is necessary to promulgate this emergency administrative regulation. The Social Security Administration notified this agency of the amount of the supplemental security income cost of living adjustment in October 1996. An ordinary administrative regulation would not allow the agency sufficient time to have a regulation in place in order to implement the change in the standards for all level of care for the state supplementation applicant or recipient for January 1997. In order to meet the January 1997 time frame to pass along the supplemental security income cost of living increase to the state supplementation recipient, as provided in an agreement with the Social Security Administration, this emergency regulation is needed. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management & Development

904 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

RELATES TO: KRS 205.245, 20 CFR 416.2095, 20 416.2096
STATUTORY AUTHORITY: KRS 194.050, 205.245, 42 USC 1382e-g, EO 96-862

EFFECTIVE: January 31, 1997

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is authorized to administer a state funded program of supplementation to all December, 1973, former recipients of aid to the aged, blind and disabled, disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 provides for the mandatory supplementation program and also for supplementation to other needy persons who are aged, blind, or have a disability. The cabinet shall operate a supplement program for certified personal care homes which accept state supplementation recipients and have a thirty-five (35) percent of the residents in the personal care home's occupied licensed personal care beds who have a diagnosis of mental illness or mental retardation. This administrative regulation sets forth the provisions of the supplementation program.

Section 1. Definitions. (1) "Aid to the Aged, Blind and Disabled Program" means the former state funded program for individuals who were aged, blind or had a disability.

(2) "Specialized personal care home" means a licensed personal care home which receives funding from the Department for Mental Health and Mental Retardation Services to employ mental health professionals who have specialized training in the care of residents with mental illness or mental retardation.

Section 2. Mandatory State Supplementation. (1) Mandatory state supplementation payments shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December, 1973, plus any other income available to the recipient as of that month; and

(b) The total of the Supplemental Security Income Program payment and other income for the current month.

(2) Recipients include former Aid to the Aged, Blind and Disabled Program recipients who became ineligible for the Supplemental Security Income Program due to income but whose special needs entitled them to an Aid to the Aged, Blind and Disabled Program payment as of December, 1973.

(3) Mandatory payments shall continue until:

(a) The needs of the recipient as recognized in December, 1973, have decreased; or

(b) Income has increased to the December, 1973 level.

(4) The mandatory payment is increased only:

(a) When income as recognized in December, 1973, decreases;

(b) The Supplemental Security Income Program payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(5) In cases of a husband and wife living together, income changes after September, 1974, will result in an increased mandatory payment only if total income of the couple is less than December, 1973, total income.

Section 3. Optional State Supplementation. (1) Optional state supplementation is available to a person who:

(a) Except as specified in Sections 5, 6, and 7 of this administrative regulation, meets technical requirements and resource limitations

(b) The recipient's physician shall certify that he expects the recipient to be medically confined for ninety (90) full consecutive days or less; and

(c) The state supplementation recipient receives benefits from the Supplemental Security Income Program.

(2) If discharged in the month following the last month of continued benefits, the temporary absence continues through the date of discharge.

Section 9. Citizenship requirements. An applicant or recipient shall be:

- (1) A citizen of the United States; or
- (2) An alien legally admitted to this country for permanent residence; or
- (3) An alien who is residing in this country under color of law.

Section 10. Residence Requirements. (1) The applicant or recipient shall be a resident of Kentucky.

(2) Supplemental payments may be made to Kentucky residents residing outside the state if:

- (a) The individual has been placed in the other state by this state.
- (b) Except with regard to the requirement shown in Section 8 of this administrative regulation, the other requirements for eligibility contained in this administrative regulation shall be applicable.
- (c) For out-of-state placements, the licensure shall be in accordance with a similar licensure act of the other state.
- (d) If there is no similar licensure act in the other state, the payment may be made only if this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131.

(e) To be eligible for a supplemental payment while placed out-of-state:

1. The individual shall require the level of care provided in the out-of-state placement;
2. There shall be no suitable placement available in Kentucky; and
3. The placement shall be preauthorized by staff of the Department for Social Insurance.

(3) Except as specified in subsection (9) of this section, an applicant placed in Kentucky by another state shall not be considered a resident of Kentucky.

(4) The state of residence shall be Kentucky for an applicant or recipient of state supplementation if the individual:

- (a) Is age twenty-one (21) and over;
- (b) Is residing in the state; and
1. Intends to remain permanently or for an indefinite period; or
2. Entered the state with a job commitment or to seek employment.

(5) The applicant or recipient residing in a personal care home is considered incapable of indicating intent to become a Kentucky resident if the individual:

- (a) Has an I.Q. of forty-nine (49) or less or has a mental age of seven (7) or less, based on tests acceptable to the department; or
- (b) Is judged legally incompetent; or
- (c) Is found incapable of indicating intent based on medical or other documentation acceptable to the state.

(6) For an applicant or recipient residing in a family care home or requiring caretaker services, the state of residence shall be Kentucky if the individual is:

- (a) Under age twenty-one (21);
- (b) Eligible for a supplemental payment based on blindness or disability; and
- (c) Residing in the state; or
- (d) An individual age twenty-one (21) or over and incapable of indicating intent, is simply residing in the state.

(7) For an applicant or recipient residing in a personal care home who is under age twenty-one (21) or who is age twenty-one (21) or

older and became incapable of indicating intent before age twenty-one (21), the state of residence shall be Kentucky if Kentucky is the state of residence of the individual's:

- (a) Parents; or
- (b) If one has been appointed, his legal guardian; or
- (c) Parent applying for the supplemental payment on behalf of the individual if:

1. The other parent lives in another state; and
2. There is no appointed legal guardian.

(8) For an applicant or recipient residing in a personal care home who became incapable of indicating intent at or after age twenty-one (21), the state of residence shall be Kentucky if:

(a) He was living in Kentucky when he became incapable of indicating intent; or

(b) If this cannot be determined, the state of residence shall be Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For an individual subject to a determination of residency according to subsections (7) and (8) of this section, the state of residence shall be Kentucky if Kentucky and the state that would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status.

(10) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky if he continues to reside in Kentucky.

(11) An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(12) A former Kentucky resident who becomes incapable of indicating intent while residing out of this state, may reestablish Kentucky residency if:

- (a) He returns to Kentucky; and
- (b) He has a guardian, parent or spouse residing in Kentucky.

Section 11. Persons with Mental Illness or Mental Retardation Supplement. A certified personal care home may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. The personal care home shall meet the following criteria to qualify for a supplementation payment:

(1) The personal care home shall be licensed in accordance with KRS 216B.010 to 216B.131; and

(2) The personal care home shall care for residents who have:

(a) A primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home; or

(b) A primary or secondary diagnosis of mental illness excluding such diagnoses as organic brain syndrome, senility, chronic brain syndrome, Alzheimer's; or

(c) A medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis.

(3) The personal care home shall care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds.

(4) The personal care home shall not be eligible for payments during the time it has a conditional rating by the Office of Inspector General. Rating requirements are specified in KRS 216.550 and 900 KAR 2:030.

(5) The personal care home shall have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day. The personal care home may not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement.

tation of attendance at the in-service training for all direct care staff.

(c) Activities are being regularly provided and meet the needs of the residents. When residents do not attend group activities, activities shall also be designed to meet the needs of individual residents, for example, reading or other activity that may be provided on an individual basis. Individualized care plans are not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or individual who has successfully completed certified medication technician training demonstrates a knowledge of psychotropic drug side effects.

(3) The Division of Licensing and Regulation shall review the personal care home copy of the training certification prior to performing their record review during the Persons with Mental Illness or Mental Retardation Supplement Program certification process.

(4) If thirty-five (35) percent mental illness or mental retardation population is met on the day of the visit, the personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. The personal care home is responsible for notifying the Department for Social Insurance, within ten (10) working days, if the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(5) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a form to the Department for Social Insurance monthly identifying certified personal care homes eligible for the Persons with Mental Illness or Mental Retardation Supplement Program. This information shall be provided by the fifth working day of each month for the prior month.

(6) The Office of Inspector General, Division of Licensing and Regulation, shall inform the Department for Social Insurance monthly of a personal care home which receive a conditional rating. This information shall be provided by the fifth working day of each month for the prior month.

Section 14. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: January 27, 1997

FILED WITH LRC: January 31, 1997 at noon

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: There are approximately 5,660 recipients of state supplementation benefits who will be affected by the increase in the state supplementation standards due to the mandated cost of living adjustment.

(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 comment received: To be determined after the publication of the Notice of Intent.

(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: To be determined after the publication of the Notice of Intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: For increases in the state supplementation standards:

1. First year following implementation:

a. The standards for state supplementation recipients increase by \$14 for recipients in personal care homes and family care homes.

b. The standards for state supplementation for recipients of caretaker services increase by: Single individual or individual with ineligible spouse - \$14. Couple (one or both requiring care) - \$21.

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

(3) Effects on the promulgating administrative body: For increases in the state supplementation standards:

(a) Direct and indirect costs or savings (costs to the agency):

1. First year (costs to agency in benefits): \$550,000, already anticipated in the state budget.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds.

(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: To be determined after the publication of the Notice of Intent.

(b) Kentucky: To be determined after the publication of the Notice of Intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since state supplementation pass along provisions are set forth through an agreement with the Department of Health and Human Services.

(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 amendment implements the mandated pass along of the 1997 Supplemental Security Income cost of living increases for eligibility determinations made on or after January 1, 1997, for state supplementation applicants and recipients. The state supplementation recipients residing in personal care or family care homes or receiving caretaker services will be assured of the ability to continue to purchase these services.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Since 1977, the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass along any supplemental security income benefit increases to state supplementation recipients. This amended administrative regulation includes the 1997 cost of living increases to place Kentucky in compliance with federal supplemental security income guideline. In order to be in compliance, we must assure that the state supplementation benefits are not reduced due to the cost of living increase granted by the Social Security Administration to its beneficiaries. This assures their continued ability to purchase the personal care they need in order to avoid costly institutional care under Title XIX (Medicaid).

(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: Since 1977 the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass along any cost of living supplemental security income benefit increases to state supplementation recipients.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all state supplementation recipients as set forth through an agreement with the Department of Health and Human Services.

an otherwise eligible child related by subsidized adoption to the other members, this child shall not be included in the benefit group.

(c) If the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(d) The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) ~~(3)~~ "Beyond the control" means:

(a) Loss or theft of the money;
(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible; or

(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the K-TAP [AFDC] Standard of Need.

(3) ~~(4)~~ "Burial space" means a space and certain related services used for the remains of a deceased person. This includes:

- (a) A grave site;
- (b) Costs to open and close the grave;
- (c) A crypt;
- (d) A mausoleum space;
- (e) A casket;
- (f) A vault;
- (g) An urn; and
- (h) A headstone.

(4) ~~(5)~~ "Change in circumstances" means a change in income and or dependent care expenses which affects the ongoing K-TAP [AFDC] payment. This shall include:

- (a) Beginning or ending employment;
- (b) Change in employers or obtaining additional employment;
- (c) Increase or decrease in the number of work hours;
- (d) Increase or decrease in the rate of pay;
- (e) Increase or decrease in the dependent care expense due to a change in provider, number of hours of care, number of individuals for whom care is given, or amount charged; or
- (f) Change in farm cropping arrangements or type of self-employment activities.

(5) ~~(6)~~ "Claimant" means the individual responsible for an overpayment.

(6) ~~(7)~~ "Countable income" means income which remains after excluded income and appropriate deductions are removed from gross income.

(7) ~~(8)~~ "Deduction" means an amount subtracted from gross income to determine countable income.

(8) ~~(9)~~ "Excluded income" means income that is received but not counted in the gross income test.

(9) "Family Alternatives Diversion (FAD) Program" means the Kentucky Transitional Assistance Program benefit paid to a FAD eligible family to meet a short term need.

(10) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(11) "Full-time school attendance" means a workload of at least:

- (a) The number of hours required by the individual program for participation in an adult basic education program, a general educational development program or a literacy program; or
- (b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school or [a] vocational school to fulfill their definition of full time.

(12) "Gross income limitation standard" means 185 percent of ~~the sum of~~ the assistance standard, as set forth in Section 8 of this administrative regulation.

(13) "Job opportunities and basic skills (JOBS)" means a program which assists recipients of K-TAP [AFDC] in obtaining ~~the necessary~~

~~education and training that will lead to~~ gainful employment and becoming self-sufficient ~~[self-support].~~

(14) "Job Training Partnership Act Program (JTPA)" means a program that prepares youth and unskilled adults for entry into the labor force. Only those individuals who are certified as eligible for the program can benefit from JTPA funds.

(15) "Kentucky Transitional Assistance Program (K-TAP), Kentucky's Temporary Assistance for Needy Families (TANF) Program, means a money payment program for children who are deprived of parental support or care due to:

- (a) Death, continued voluntary or involuntary absence of a parent;
- (b) Physical or mental incapacity of one (1) parent when both parents are in the home; or
- (c) Unemployment of at least one (1) parent when both parents are in the home.

(16) "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

(17) ~~(16)~~ "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 904 KAR 2:006E, Section 1(2) ~~[45 CFR 233.90(b)(3)].~~ EXCEPTION: For the purpose of deeming income, a minor parent is considered any person under the age of eighteen (18).

(18) ~~(17)~~ "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(19) ~~(18)~~ "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(20) ~~(19)~~ "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(21) ~~(20)~~ "Recoupment" means recovery of overpayments of assistance payments.

(22) "Relocation Assistance Program (RAP)" means the one (1) time only K-TAP benefit for a RAP eligible K-TAP recipient to meet moving related expenses when a specific job opportunity exists for the K-TAP recipient requiring the recipient to relocate in order to access the employment.

(23) ~~(21)~~ "Sanctioned individual" means any person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(24) ~~(22)~~ "Self-employment income" means income from a business enterprise from which no taxes are withheld prior to receipt of the income by the individual.

(25) ~~(23)~~ "Supplemental security income (SSI)" means monthly cash payments made under the authority of:

- (a) 42 USC 1381 to 1385 to the aged, blind and disabled;
- (b) 42 USC 1382e; or
- (c) 42 USC 1382.

(26) ~~(24)~~ "Unavailable" means that the income is not accessible to the K-TAP [AFDC] benefit group for use toward basic food, clothing, shelter, and utilities.

(27) ~~(25)~~ "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, tools and transportation.

Section 2. Resource Limitations. (1) Real and personal property shall be considered if:

- (a) Available to the benefit group; and
- (b) Owned in whole or in part by:
 - 1. An applicant or recipient;
 - 2. A sanctioned individual; or

3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.

(2) The amount that can be reserved by each benefit group shall not be in excess of \$1,000 equity value excluding those items

dependent child living in the home; and

7. An amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor.

(b) Excluded income types specified in Section 4(1) of this administrative regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the benefit group is ineligible.

(2) Applicant eligibility test.

(a) An applicant eligibility test shall be applied if:

1. The gross income is below the gross income limitation standard; and

2. The benefit group has not received assistance during the four (4) months prior to the month of application; or

3. The benefit group has a member added to the case and that member:

a. Has earned income; and

b. Has not received assistance during the four (4) months prior to being added to the case.

(b) The total gross income after application of excluded income and deduction policy set forth in Section 4(1) and (2) of this administrative regulation shall be compared to the assistance standard of need set forth in Section 8 of this administrative regulation.

(c) If income exceeds this standard, the benefit group is ineligible.

(d) For a benefit group which meets the gross income test but has received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation.

(a) If the benefit group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by subtracting excluded income and applicable deductions in Section 4(1), (2), and (3) of this administrative regulation.

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the payment maximum for the appropriate benefit group size as set forth in Section 8 of this administrative regulation ~~(benefit standard)~~, the benefit group is ineligible.

(c) Amount of assistance shall be determined prospectively.

(4) Ineligibility period.

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income.

(b) The ineligibility period shall be:

1. The number of months which equals the quotient of the division of total countable income by the standard of need as set forth in Section 8 of this administrative regulation for the appropriate benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount.

(c) The ineligibility period shall be recalculated if any of the following circumstances occur:

1. The standard of need set forth in Section 8 of this administrative regulation increases and the amount of grant the benefit group would have received also changes;

2. Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group;

3. The benefit group incurs and pays necessary medical expenses not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the K-TAP [AFDC] household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the agency determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 4. Excluded and Deductions Income. All gross non-K-TAP

[AFDC] income received or anticipated to be received by the benefit group, sanctioned individual, natural parent, spouse of a dependent child and parent of a minor parent living in the home with the benefit group and stepparent living in the home, shall be considered with the application of excluded income and deduction policy as set forth in the following subsections:

(1) Gross income test. Incomes listed in this subsection shall be excluded:

(a) Deductions applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, as set forth in Section 6 of this administrative regulation;

(b) Deductions applicable to alien sponsor's income, as set forth in Section 7 of this administrative regulation;

(c) Deductions applicable to self-employment income;

(d) Earnings received by a dependent child from participation in programs under the program for a period not to exceed six (6) months within a given calendar year;

(e) Unearned income received by a dependent child from participation in a JTPA program;

(f) The difference between the standard of need and the payment maximum for the benefit group, as specified in Section 8 of this administrative regulation, for households in which a member receives a JTPA stipend;

(g) Value of United States Department of Agriculture program benefits including:

1. Donated foods;

2. Supplemental food assistance received under 42 USC 1771;

3. Special food service program for children under 42 USC 1775;

4. Nutrition program for the elderly under 42 USC 3001; and

5. The monthly food stamp allotment;

(h) Reimbursement for transportation in performance of employment duties, if identifiable;

(i) The value of JOBS supportive services payments and self-initiated supportive services payments authorized under 904 KAR 2:017;

(j) Nonemergency medical transportation payments;

(k) Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the K-TAP [AFDC] program;

(l) Educational grants, loans, scholarships, including:

1. Payments obtained and used under conditions that preclude their use for current living costs; and

2. All education grants and loans to any undergraduate made or insured under any program administered by:

a. The United States Commissioner of Education; or

b. The Bureau of Indian Affairs.

(m) Highway relocation assistance;

(n) Urban renewal assistance;

(o) Federal disaster assistance and state disaster grants;

(p) Home produce utilized for household consumption;

(q) Housing subsidies received from federal, state or local governments;

(r) Receipts distributed to members of certain Indian tribes by the federal government under 25 USC 459, 1261 and 1401;

(s) Funds distributed per capita to or held in trust for members of any Indian tribe by the federal government under 25 USC 459, 1261 and 1401;

(t) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving under programs authorized by 42 USC 5001 and 42 USC 5011, including:

1. Foster grandparents;

2. Senior health aides;

3. Senior companions;

4. Service Corps of Retired Executives; and

5. Active Corps of Executives;

(u) Payments to "Volunteers in Service to America" (VISTA)

(1) Be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates in administrative regulation 904 KAR 2:017; and

(2) Be authorized upon the receipt of appropriate verification of the cost of care.

Section 6. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, as described in subsection (2) of this section:

- (a) A stepparent;
- (b) The spouse of a minor dependent child;
- (c) The spouse of a specified relative other than a parent;
- (d) A parent barred from receiving assistance due to failure to meet alien status; or
- (e) A parent of a minor parent.

(2) Income. The gross income of the individual is considered available to the benefit group, subject to the following deductions and with income types excluded:

- (a) The first ninety (90) dollars of the gross earned income;
- (b) An amount equal to the K-TAP [AFDC assistance] standard of need for the appropriate family size, as set forth in Section 8 of this administrative regulation, for:

- 1. The support of the individual; and
- 2. Any other person living in the home if:
 - a. His needs are not taken into consideration in the K-TAP [AFDC] eligibility determination; and
 - b. He is or may be claimed as a dependent for purposes of determining his federal personal income tax liability by the individual.
- (c) Any amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for purposes of determining his personal income tax liability by the individual;
- (d) Payments for alimony or child support to a person not living in the home by the individual;
- (e) Income of an SSI recipient who is listed in subsection (1) of this section; or
- (f) A retroactive SSI payment, which is counted in determining eligibility and the amount of payment to the K-TAP [AFDC] unit in the month received, in any subsequent month.

(3) Sanction exception. The income of any sanctioned individual is not eligible for the deductions listed in this section.

(4) Resources. Resources which belong solely to the stepparent, spouse of a minor dependent child, spouse of a specified relative other than a parent or parent of a minor parent are not considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group.

Section 7. Alien Income and Resources. (1) For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor.

(2) The gross non-K-TAP [AFDC] income and resources of an alien's sponsor shall be deemed available to the alien, subject to deductions set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

- (a) Is no longer in existence; or
 - (b) Does not have the financial ability to meet the alien's needs.
- (6) The provisions of this subsection shall not apply to those

aliens identified in subsection (5) of this section.

(a) Income. The gross income of the sponsor is considered available to the benefit group subject to the following deductions and with the following income excluded:

1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;

2. An amount equal to the K-TAP [AFDC assistance] standard of need for the appropriate family size as set forth in Section 8 of this administrative regulation of:

- a. The sponsor; and
- b. Other persons living in the household:
 - (i) Who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability; and
 - (ii) Whose needs are not considered in making a determination of eligibility for K-TAP [AFDC];

3. Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;

4. Actual payments of alimony or child support paid to nonhousehold members; and

5. Income of a sponsor receiving SSI or K-TAP [AFDC].

(b) Resources. Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were a K-TAP [an AFDC] applicant in this state, less \$1,500.

Section 8. Payment Maximum. (1) The K-TAP [AFDC] payment maximum includes amounts for food, clothing, shelter, and utilities.

(2)(a) Countable income, as determined by the provisions of Section 9 of this administrative regulation, is subtracted in determining eligibility for and the amount of the K-TAP [AFDC] assistance payment, as follows:

Effective December 1, 1995		
Number of Eligible Persons	Payment Maximum	Standard of Need
1 person	\$186	\$394
2 persons	\$225	\$460
3 persons	\$262	\$526
4 persons	\$328	\$592
5 persons	\$383	\$658
6 persons	\$432	\$724
7 or more persons	\$482	\$790

(b) The gross income limit is as follows for the appropriate family size:

Number of Eligible Persons	Maximum Gross Income Limits
1 Person	\$729
2 Persons	\$851
3 Persons	\$974
4 Persons	\$1096
5 Persons	\$1218
6 Persons	\$1340
7 or more persons	\$1462

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4)(a) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

(b) As a result of applying the forty-five (45) percent ratable reduction listed in subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated in accordance with KRS 205.200(2).

assistance group.

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in:

- (a) The month the payment is paid; or
- (b) The next following month.

Section 14. Family Alternatives Diversion. (1) Effective on or after February 3, 1997, the cabinet shall make available in limited areas family alternatives diversion assistance to eligible families to allow the family to maintain self-sufficiency. The cabinet shall expand the program into additional areas until statewide implementation is completed.

(2) To qualify for family alternatives diversion benefits, the K-TAP benefit group as defined in Section 1(1) of this administrative regulation shall:

- (a) Meet K-TAP income and resource requirements pursuant to Sections 2, 3(1), 4(1), and 6 of this administrative regulation;
- (b) Meet technical requirements of K-TAP pursuant to 904 KAR 2:006E;
- (c) Not be currently receiving on-going K-TAP benefits;
- (d) Have a verified short-term need to include a short-term family challenge with:
 - 1. Transportation;
 - 2. Child care;
 - 3. Child support;
 - 4. Housing; or
 - 5. Employment related problem.

(e) Be determined by the cabinet to be self-supporting or would be self-supporting if the short term need is met; and

(f) Not have received a FAD payment anytime during the previous twelve (12) months.

(3) The Transitional Assistance Self Assessment Survey Form, FA-1, shall be used to screen applicants for K-TAP to determine eligibility for FAD.

(4) The cabinet shall determine through the screening process if a potential K-TAP eligible benefit group may be an eligible family to receive FAD benefits. The K-TAP eligible benefit group shall have the choice to decline FAD benefits in lieu of applying for ongoing K-TAP benefits. FAD shall be utilized instead of K-TAP if requested by the benefit group and if the benefit group is deemed eligible for FAD.

(5)(a) The benefit group's countable gross income shall include the earned and unearned income listed in Sections 3 and 4 of this administrative regulation.

(b) The benefit group's gross income shall be computed using the best estimate of income pursuant to Section 9 of this administrative regulation.

(c) The benefit group's total gross earned and unearned income as determined in paragraph (b) of this subsection shall be compared to the maximum gross income scale for K-TAP pursuant to Section 8(2)(b) of this administrative regulation.

(d) If the benefit group's total gross earned and unearned income exceed the maximum gross income limit for the appropriate benefit group size, pursuant to Section 8(2) of this administrative regulation, the family shall not be eligible for a FAD payment.

(e) The total FAD payment for an eligible family shall be the amount necessary to resolve the emergency, not to exceed \$1,500 per application for FAD.

(f) The amount of the eligible FAD payment may be issued in one (1) or more checks or vouchers to the eligible FAD benefit group or to a vendor for payment of the short term need, as determined by the cabinet.

(g) As long as TANF funding is used, receipt of a FAD payment shall count as one (1) month of K-TAP assistance for purposes of the sixty (60) month time limit of assistance if all eligible payments are issued in one (1) month. If payments are issued in more than one (1) month, the corresponding number of months shall be counted toward

the sixty (60) month time limit for receipt of K-TAP.

(h) An eligible benefit group may only be approved for FAD once in a twelve (12) month period.

(6) Receipt of a FAD payment shall exclude the benefit group from receiving ongoing K-TAP benefits for twelve (12) months unless nonreceipt would result in:

- (a) Abuse or neglect of a child, as determined by the cabinet; or
- (b) The parent's inability to provide adequate care or supervision due to the loss of employment through no fault of the parent as determined by the cabinet.

(7) An application shall be taken for the following benefits as needed for a FAD eligible family:

- (a) Food stamps; and
 - (b) Medicaid.
- (8) For a FAD eligible benefit group, referrals for other services shall be made as needed to:

- (a) Other agencies including:
 - 1. The Division of Child Support Enforcement;
 - 2. The Department for Social Services;
 - 3. The Cabinet for Health Services; and
 - 4. The Department for Employment Services; or
- (b) Charitable organizations.

(9) Other services shall be offered as needed through the Department for Employment Services or other contractors to the FAD eligible benefit group to include the following services:

- (a) Job search;
- (b) Job readiness assessment; and
- (c) Life skills.

(10) Hearing rights for FAD shall be the same as hearing rights for a K-TAP recipient pursuant to 904 KAR 2:055.

Section 15. Relocation Assistance Program. (1) Effective on or after February 17, 1997, if a verified job opportunity exists for a K-TAP recipient, the K-TAP recipient may apply for a Relocation Assistance Program payment.

(a) The eligible payment shall be issued as a one (1) time only payment used to assist an eligible K-TAP recipient in meeting moving related expenses.

- (b) Moving related expenses shall be:
 - 1. Moving van rental to the area of the verified employment;
 - 2. Apartment or house rental for the first month's rent in the area of the verified employment; or
 - 3. Security deposit, utility hook-up fees, or other moving related fee approved by the cabinet for the apartment or house listed in subparagraph 2 of this paragraph.

(2) The Relocation Assistance Program payment amount shall be a one (1) time only payment of:

- (a) \$500; or
- (b) Up to \$900 based on the actual verified moving related expenses as listed in subsection (1) of this section.

(3) To qualify for a Relocation Assistance Program payment the applicant shall:

- (a) Be a current recipient of K-TAP;
- (b) Have a verified offer of employment with wages in an amount equal to thirty (30) hours or more per week at the minimum hourly wage rate;
- (c) Be required to move to access the verified offer of employment and have a new residence available; and
- (d) Have never previously received a Relocation Assistance Program payment.

(4) The cabinet shall assist the applicant for relocation assistance to determine if income received from employment from the new location is sufficient to cover living expenses at the new residence including the completion of a household budget with the applicant in order to make this determination.

(5) The offer of employment, including hourly wage and number of hours, and the availability of a new residence shall be verified by

health would result if not implemented: A detrimental effect on public health would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: It is necessary to promulgate this administrative regulation to meet the deadline imposed by federal law. In order for Kentucky to meet the requirements of federal law regarding our Title IV-A State Plan, effective October 18, 1996, it is necessary to promulgate this administrative regulation to meet his deadline imposed by the federal law. Therefore, in order to meet the deadline for implementation of the mandated requirements for our Title IV-A block grant program, this regulation must be placed in effect immediately in order to amend the financial program requirements to comply with the federal mandates contained in the Title IV-A State Plan.

(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: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 205.200

3. Minimum or uniform standards contained in the federal mandate: None

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

STATEMENT OF EMERGENCY

904 KAR 3:010E

The administrative regulation 904 KAR 3:010E, Definitions, implements the provision mandated by 7 USC 2012(i), as amended by PL 104-193, sec. 803, which is now in effect, relating to the food stamp household. Prior to the implementation of PL 104-193, children under the age of twenty-two (22) who reside with their parents could establish a separate food stamp case from their parents if the child was living with their spouse or children of their own. The revised definition prohibits children under the age of twenty-two (22) who are residing with their parents from being considered a separate household. The emergency administrative regulation also incorporates the definition of the Kentucky Transitional Assistance Program (K-TAP) and deletes the definition of the Aid to Families with Dependent Children (AFDC) Program. It is necessary to promulgate this emergency administrative regulation to implement a change in food stamp policy that was mandated by PL 104-193. The amendment to 7 USC 2012(i) became effective with the enactment of PL 104-193 which was signed into law and is now in effect. This emergency administrative regulation is necessary to comply with the deadline set by federal law and to prevent a loss of federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary administrative regulation will be filed with the Regulations Compiler by February 15, 1997.

PAUL E. PATTON, Governor
VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development

904 KAR 3:010E. Definitions.

RELATES TO: KRS 194.050, 7 CFR 217.2, 273.1, 273.4, 273.5, 273.6, 273.7, 273.11, 273.16, ~~PL 103-66, 7 USC 2012(g)~~

STATUTORY AUTHORITY: KRS 194.050, 7 CFR 271.4, EO 96-862

EFFECTIVE: January 31, 1997

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Insurance and its programs under the Cabinet for Families and Children. The Cabinet for Families and Children ~~[Human Resources]~~ shall to administer a Food Stamp Program. KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulations pertaining to the Food Stamp Program.

Section 1. Definition of terms utilized in administrative regulations relating to the Food Stamp Program are as follows:

(1) ~~["Aid to families with dependent children (AFDC)"] means a money payment program for children who are deprived of parental support or care due to death, continued absence, physical or mental incapacity or unemployment of a parent.~~

~~(2)]~~ "Application for participation" means the form to apply for food stamps ~~(designed or approved by Food and Consumer Service (FCS))~~ that is completed by:

(a) A household member; or

(b) An authorized representative.

~~(2)~~ ~~(3)]~~ "Authorization to participate card" (ATP) means the document that is issued by the state agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

~~(3)~~ ~~(4)]~~ "Authorized representative":

(a) Means an individual designated by a household member to act on behalf of the household in one (1) or all of the following capacities:

1. Making application for the program;

2. Obtaining the coupons; and

3. Using the coupons.

(b) An adult who is a nonhousehold member may be designated as the authorized representative for certification purposes if the authorized representative:

1. Has been designated in writing by:

a. The head of the household;

b. The spouse; or

c. Another responsible member of the household; and

2. Is an adult who is aware of relevant household circumstances.

(c) The following individuals shall not act as an authorized representative unless:

1. The specific written approval of the designated state agency official ~~[officials]~~ is obtained; and

2. That official determines that no one else is able to serve as the authorized representative:

a. A state agency employee who is involved in the certification or issuance processes;

b. A retailer that is authorized to accept food coupons; and

c. An individual disqualified for an intentional program violation.

(d) The cabinet shall disqualify an individual from participating as an authorized representative up to one (1) year if the cabinet obtains evidence that the individual has:

1. Misrepresented a household's circumstances;

3. Their children;

(f) Meals prepared and served by an authorized group living arrangement facility to residents who are blind or have a disability as defined in subsection (9) of this section.

(g) Meals prepared and served by an authorized shelter for battered women and children to its eligible residents;

(h) Meals prepared for and served by an approved authorized public or private nonprofit establishment (e.g., soup kitchen, temporary shelter) that feeds homeless persons, provided that the facility be approved by the cabinet; and

(i) Meals prepared by a private establishment that contracts with the cabinet to be sold to homeless individuals at concessional prices.

(13) ~~(14)~~ "Excluded household member" means an individual residing with a household but excluded when determining the household's size in accordance with the provisions of 904 KAR 3:035, Section 5(3) and (4).

(a) The income and resources of the excluded household member shall be treated the same as that of an ineligible household member in accordance with 904 KAR 3:035, Section 5(3) and (4).

(b) The following are excluded household members and shall not participate as a separate household:

1. An ineligible alien;
2. An individual disqualified for failure to provide a social security number;
3. An individual disqualified for intentional program violation; or
4. An individual disqualified for failure to comply with work or workforce requirements.

(14) ~~(15)~~ "Employment and training (ET) program" means a program consisting of one (1) or more of the following components:

- (a) Work;
- (b) Training;
- (c) Education; or
- (d) Job search.

(15) ~~(16)~~ "Federal fiscal year" means a period of twelve (12) calendar months beginning with each October 1 and ending with September 30 of the following calendar year.

(16) ~~(17)~~ "FCS" means the Food and Consumer Service of the United States Department of Agriculture.

(17) ~~(18)~~ "Group living arrangement":

(a) Means a public or private nonprofit residential setting that:

1. Serves no more than sixteen (16) residents; and
2. Is appropriately certified.

(b) To be eligible, a resident shall be blind or have a disability as defined in subsection (9) of this section.

(18) ~~(19)~~ "Head of household" means the person in whose name the application for participation is made as:

- (a) Having primary financial responsibility for the household;
- (b) Being an adult parent of a child of any age and living in the household; or

(c) An adult having parental control over a child under the age of eighteen (18) and living in the household.

(19) ~~(20)~~ "Household" means:

(a) An individual who:

1. Lives alone; or
2. While living with others, customarily purchases and prepares meals for home consumption separate from others; or

(b) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption;

(c) The following individuals shall be treated as a group of individuals who customarily purchase food and prepare meals together for home consumption even if they do not do so:

1. Spouses who live together;
2. A parent and his child twenty-one (21) years of age or younger who live together; ~~unless the child is:~~

~~a. Himself a parent and living with his child; or~~

~~b. Married and living with his spouse;~~

3. A child, excluding a foster child, under eighteen (18) years of

age who lives with and is under parental control of a person other than his parent, together with the person exercising parental control.

(d) Notwithstanding the preceding sentences, the following individual shall be considered, together with any of the others who is his spouse, an individual household, without regard to the purchase of food and preparation of meals, if the income as determined under 7 USC 2014(d) of the others, excluding the spouse, does not exceed the poverty line, as described in 7 USC 2014(c)(1) by more than sixty-five (65) per centum:

1. An individual who lives with others;
2. An individual who is sixty (60) years of age or older; and
3. An individual who is unable to purchase and prepare meals because he suffers, as certified by a licensed physician, from a:

a. Disability which would be considered a permanent disability under 42 USC 421(i); or

b. A severe, permanent and disabling physical or mental infirmity which is not symptomatic of a disease;

(e) In no event shall any:

1. Individual; or
2. Group of individuals;
3. Constitute a household if they reside in an:

a. Institution;

b. Boarding house; or

c. Live with others and pay compensation to the others for meals.

(f) The following shall not be considered a resident of an institution and shall be considered an individual household:

1. A resident of federally subsidized housing for the:

a. Elderly;

b. Persons with a disability or blind recipients of benefits as defined under subsection (9) of this section;

2. A resident in a public or private nonprofit group living arrangement that:

a. Serves no more than sixteen (16) residents; and

b. Is certified by the appropriate state agency or agencies under regulations under 42 USCA 1382e(e); or

c. Is certified under standards determined by the secretary to be comparable to standards implemented by appropriate state agencies under this section;

3. A temporary resident of a public or private nonprofit shelter for battered women and children;

4. A resident of a public or private nonprofit shelter for individuals who:

a. Do not reside in a permanent dwelling; or

b. Have no fixed mailing address; and

c. Are otherwise eligible for coupons; and

5. A narcotics addict or alcoholic who together with his child live under:

a. The supervision of a private nonprofit institution; or

b. A publicly operated community mental health center, for the purpose of regular participation in a drug or alcoholic treatment program.

(20) ~~(21)~~ "Identification (ID) card" means a card which identifies the bearer as eligible to receive and use food coupons.

(21) ~~(22)~~ "Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, United States Department of Justice.

(22) ~~(23)~~ "Institution of higher education" means any institution providing post high school education, which normally requires a high school diploma or equivalency certificate for a student to enroll, including but not limited to:

(a) College;

(b) University; and

(c) Vocational or technical school.

(23) ~~(24)~~ "Job opportunities and basic skills (JOBS)" means a program which assists recipients of the Kentucky Transitional Assistance Program (K-TAP) [AFDC] in obtaining the necessary education and training that will lead to gainful employment and self-

parents from being considered a separate household. The cabinet has no means to determine the number of households that will be adversely affected by the provision. However, the cabinet anticipates that this provision will have a minimal impact on the affected caseload. The emergency administrative regulation incorporates the definition of the Kentucky Transitional Assistance Program (K-TAP), as defined by 904 KAR 2:006, "Technical Requirements for the Kentucky Transitional Assistance Program (K-TAP)". As a corresponding change, the definition and all references to the Aid to Families with Dependent Children (AFDC) Program are deleted because the program is now obsolete.

(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 comment received: To be determined after the publication of the Notice of Intent.

(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: To be determined after the publication of the Notice of Intent.

(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:

No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state funds.

(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: To be determined upon the publication of the Notice of Intent.

(b) Kentucky: To be determined upon the publication of the Notice of Intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the methods which are incorporated into this emergency administrative regulation are specifically mandated by 7 USC 2012(i), as amended by PL 104-193, sec. 803.

(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 state is required to administer the program required under 7 USC 2011 et seq. for the determination of eligibility for food stamp benefits. Individuals who meet technical and financial eligibility criteria may participate in the Food Stamp Program and benefit by the opportunity for a nutritional diet. This administrative regulation is needed to comply with the federal mandate of 7 USC 2012(i), as amended by PL 104-193, sec. 803.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: It is necessary to promulgate this administrative regulation to prevent the possible loss of federal funding (100% of food stamp benefits, 50% of federal match for administrative funds, and 100% of federal enhanced funding) due to the failure to implement the federal mandate at 7 USC 2012(i), as amended by PL 104-193, sec. 803.

(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: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 USC 2012(i), as amended by PL 104-193, Sec. 803.

2. State compliance standards. This regulation pertains to technical eligibility requirements which are germane to the Food Stamp Program, as prescribed by 7 USC 2011 et seq., as amended. There are no separate state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated in accordance with 7 USC 2011 et seq., as amended, and applied in a like manner on a statewide basis.

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

STATEMENT OF EMERGENCY

904 KAR 3:042E

The administrative regulation 904 KAR 3:042E, Food Stamp Employment and Training Program, implements the provisions of 7 USC 2015(d), as amended by PL 104-193, sec. 815, which mandates the cabinet to revise the criteria for imposing sanctions and the length of sanction periods for noncompliance with the work requirements. The reduction of work effort to below thirty (30) hours per month is added as a criterion for noncompliance with work requirements. The penalty for noncompliance is changed to require the cabinet to sanction individuals, rather than the entire household, for the act of noncompliance. As a conformity change, the definition of "primary wage earner" is removed as it is no longer relevant to the sanctioning process. The emergency administrative regulation incorporates the Community Service Program (CSP). CSP has been approved by the Food and Consumer Service (FCS) as a type of workfare program. Participants can satisfy the work requirement pursuant to 904 KAR 3:025E, Section 3(8) by performing a minimum number of community service hours per month. It is necessary to promulgate this emergency administrative regulation to provide the affected population who cannot find a job with the opportunity to satisfy the work requirement and to continue to participate in the Food Stamp Program. Unless CSP is implemented, these individuals will be deprived of the opportunity for a nutritious diet, thereby having a negative impact on the public health. It is necessary to promulgate this emergency administrative regulation to implement changes in food stamp policy that were mandated by PL 104-193. The amendment to 7 USC 2015(d) became effective with the enactment of PL 104-193 which was signed into law and is now in effect. This emergency administrative regulation is necessary to comply with the deadline set by federal law and to prevent a loss of federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice Of Intent for the ordinary administrative regulation is being filed concurrently with the emergency administrative regulation.

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to the food stamp applicant:

- (a) The work requirements for each nonexempt household member;
 - (b) The rights and responsibilities of the work registered household members; and
 - (c) The consequences of failing to comply.
- (9) Each household member required to register shall be notified in writing of the requirements in subsection (6) of this section.

Section 3. Employment and Training Participation. (1) Work registrants who reside in a county which offers a Food Stamp Employment and Training Program shall be required to participate in the Food Stamp Employment and Training Program based on priority status.

- (2) Priority status shall be determined if the work registrant:
 - (a) Has no high school diploma or general equivalency diploma (GED);
 - (b) Has no employment in the last twelve (12) months; or
 - (c) Is a veteran.
- (3) Food stamp employment and training participants shall:
 - (a) Be placed in education, skills training or job search activities;
 - (b) Be reimbursed for miscellaneous and dependent care expenses, if otherwise eligible, up to:

1. The child care maximum payments as specified in 904 KAR 2:017 not to exceed \$200 per month per child under two (2) years of age or \$175 per month per child for all other eligible dependent children for child care expenses incurred on or after September 1, 1994; and

2. Twenty-five (25) dollars a month for miscellaneous expenses incurred while participating in the Food Stamp Employment and Training Program.

(4) Those participants who do not meet the criteria in subsection (2) of this section shall not be selected to participate in a Food Stamp Employment and Training component unless they are adamant about participating.

Section 4. Components. All counties offering the Employment and Training Program shall offer the following services and activities:

- (1) Educational components shall be:
 - (a) Literacy programs;
 - (b) Adult basic education (ABE);
 - (c) General equivalency diploma (GED); and
 - (d) Community college.
- (2) Skills training components shall be:
 - (a) Vocational school;
 - (b) On-the-job training; and
 - (c) Kentucky Domestic Violence Association (KDVA).
- (3) Job search components shall be:
 - (a) Job seeking skills training;
 - (b) Group job search; and
 - (c) Individual job search.

Section 5. Conciliation. (1) When a food stamp employment and training participant fails to comply with Food Stamp Employment and Training Program requirements, a conciliation period shall be initiated.

- (2) Conciliation shall be used to:
 - (a) Determine the reason for the noncompliance; and
 - (b) Allow the participant the opportunity to resolve the problem in order to continue participation.
- (3) Conciliation lasts for fifteen (15) days and in that time the food stamp employment and training worker shall:
 - (a) Determine good cause for noncompliance; or
 - (b) Encourage the participant to resume food stamp employment and training activity; or
 - (c) Recommend disqualification for failure to comply with program requirements.
- (4) If the participant resumes food stamp employment and training

activity, no further action is required toward applying a sanction.

(5) If conciliation is unsuccessful and the participant does not provide good cause or refuses to comply, a disqualification shall be imposed.

Section 6. Determining Good Cause. (1) Good cause shall be determined in instances where:

- (a) The work registrant has failed to comply with:
 - 1. ~~[(a)]~~ Work registration requirements pursuant to ~~[as specified in]~~ Section 2 ~~[4]~~ of this administrative regulation;
 - 2. ~~[(b)]~~ Employment and training requirements pursuant to ~~[as specified in]~~ Section 3 of this administrative regulation; or
 - (b) Pursuant to Sections 1 and 9 of this administrative regulation, the household member has voluntarily and without good cause:

- 1. Quit a job; or
 - 2. Reduced his work effort.~~[(c) Voluntary quit requirements as specified in Section 9 of this administrative regulation.]~~

(2) Good cause for an individual described in subsection (1) of this section ~~[failing to meet work registration and employment and training requirements]~~ shall take into consideration the ~~[include]~~ circumstances beyond the control of the individual, ~~[registrant]~~ including:

- (a) Illness;
- (b) Illness of another household member requiring the presence of the registrant;
- (c) A household emergency;
- (d) Unavailability of transportation; and
- (e) Inadequate child care for children who have reached age six (6) but are under age twelve (12).

Section 7. Sanctions ~~[in the Food Stamp Employment and Training Program]~~. (1) Disqualifications shall be imposed on a household member who is ~~[as follows]~~:

(a) A mandatory participant who ~~[if the nonprimary wage earner]~~ fails to comply with the food stamp employment and training requirements; or

(b) Is determined to have voluntarily and without good cause quit a job or reduced the work effort pursuant to Sections 1 and 9 of this administrative regulation.

(c) Fails to comply with the program requirements of a workfare program pursuant to 7 USC 2029, or a similar workfare program that is approved by the Food and Consumer Service, including the Community Service Program.

(2) An individual who is determined to be disqualified from participation in the Food Stamp Program pursuant to subsection (1) of this section ~~[the individual]~~ shall be ineligible to receive food stamp benefits until the latter of the date the individual complies; or

- (a) ~~[(a)]~~ Two (2) months for the first violation;
- (b) Four (4) months for the second violation; and
- (c) Six months for the third or any subsequent violation. ~~[If the primary wage earner fails to comply with food stamp employment and training requirements, the entire household shall be ineligible to receive food stamp benefits for two (2) months.]~~

(3) ~~[(2)]~~ If a disqualification is imposed, the disqualified member shall make reapplication for food stamps or request that the member be added to an active food stamp case to initiate a cure for noncompliance following the minimum period of ineligibility pursuant to subsection (2) of this section.

(4) ~~[(3)]~~ Ineligibility pursuant to subsection ~~[as outlined in subsections (1) and]~~ (2) of this section continues until the ineligible member:

- (a) Serves the disqualification period pursuant to subsection (2) of this section; and ~~[Leaves the household;]~~
- (b) Becomes exempt from work registration;
- ~~[(c)]~~ Complies with the requirements of:
 - 1. Work registration ~~[requirements];~~
 - 2. The Employment and Training Program; or

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stringent than the components of the Food Stamp Employment and Training Program; or

3. The noncompliant Job Opportunities and Basic Skills Program participant is otherwise exempt from work registration in the Food Stamp Employment and Training Program.

(c) An individual who is not sanctioned in the Food Stamp Program as meeting the criteria in paragraph (b)2 of this subsection shall be work registered in the Food Stamp Employment and Training Program unless otherwise exempt by Section 2(4) of this administrative regulation [subsection 2 of this section].

Section 11. Hearing Process. Work registrants shall have the same opportunity to request a hearing as specified in 904 KAR 3:070.

Section 12. Replacements for employment and training reimbursement checks that are lost or stolen shall be made by completing appropriate forms.

Section 13. The Community Service Program (CSP). (1) An individual who participates in CSP shall be considered to have satisfied the work requirement pursuant to 904 KAR 3:025E, Section 3(8), by:

(a) Establishing a work placement with a public or private nonprofit community service agency;

(b) Working, at a minimum, for the community service agency the required number of hours pursuant to subsection (2) or (3) of this section;

(c) Providing verification from the community service provider of:
1. The number of hours of community service that the individual intends to perform each month; and

2. At each subsequent recertification, the number of community service hours that the individual actually performed during the certification period.

(2) The number of hours of community service that an individual shall perform each month to satisfy the work requirement pursuant to 904 KAR 3:025E, Section 3(8), shall be determined by comparing the monthly food stamp allotment to the Community Service Program Table that is incorporated into this administrative regulation by reference.

(3) If the food stamp household's active members include more than one (1) individual who wants to satisfy the work requirement pursuant to 904 KAR 3:025E, Section 3(8), through CSP, the monthly number of community service hours that each individual shall perform shall be determined by:

(a) Dividing the food stamp allotment by the number of individuals who are subject to the work requirement; and

(b) Comparing the individual pro rata share of the food stamp allotment to the community service chart.

(4) Participation in CSP is:

(a) Voluntary; and

(b) Self-initiated.

(5) An individual who volunteers to participate in CSP but fails to complete the required number of community service hours pursuant to subsections (2) and (3) of this section shall be sanctioned pursuant to Section 7 of this administrative regulation.

Section 14. Material Incorporated by Reference. (1) Forms necessary for participation in the Food Stamp Employment and Training Program are being incorporated. These forms include:

(a) ET-101, revised 7/93;

(b) ET-102, revised 8/93;

(c) ET-102 Supplement A, revised 7/95 [42/04];

(d) J/ET-108, revised 7/95 [0/04];

(e) ET-111, revised 7/93;

(f) ET-112, revised 10/90;

(g) ET-114, revised 7/95 [42/04];

(h) ET-116, revised 7/95;

(i) The Community Service Program Table, issued 2/97, [42/03-]

(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

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: January 30, 1997

FILED WITH LRC: January 31, 1997 at noon

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are individuals between ages 16 and 60 and are not exempt from the work registration or work requirements or individuals who quit a job or reduce their work effort without good cause, pursuant 7 USC 2011 et seq. 7 USC 2015(d), as amended by PL 104-193, sec. 815, mandates that the cabinet to revise the criteria for imposing sanctions and the length of sanction periods for noncompliance with the work requirements. The reduction of work effort to below 30 hours per month is added a criterion for noncompliance with work requirements. Section 815 also requires the cabinet to increase the sanctioning periods for noncompliance. The penalty for noncompliance is changed to require the cabinet to sanction individuals, rather than the entire household, for the act of noncompliance. As a conformity change, the definition of "primary wage earner" is removed as it is no longer relevant to the sanctioning process. The emergency administrative regulation incorporates The Community Service Program (CSP). CSP has been approved by the Food and Consumer Service (FCS) as a type of workfare program. Participants can satisfy the work requirement pursuant to 904 KAR 3:025E, Section 3(8) by performing a minimum number of community service hours per month.

(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 comment received: To be determined after the publication of the Notice of Intent.

(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: To be determined after the publication of the Notice of Intent.

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

1. First year following implementation: This administrative regulation will not create any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 1997 - None.

2. Continuing costs or savings: 1998 - 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: No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds.

(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: To be determined after the publication of the Notice of Intent.

(b) Kentucky: To be determined after the publication of the Notice of Intent.

criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid Program with the care provided in beds also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(3) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(4) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid Program.

(5) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.

(6) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid Program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(7) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 1396l shall also be considered nursing facilities if the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations.

(8) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency. Some nursing facilities with waiver do not meet Medicare participation requirements.

(9) "Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in the institutional setting.

(10) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen. ["Patient status" means that the individual has care needs meeting the criteria set forth in this administrative regulation for treatment in the institutional setting.

(2) "Intermittent high intensity services" means the individual requires high intensity nursing services at regular or irregular intervals, but not on a twenty-four (24) hour per day basis.

(3) "Stable medical condition" means one which is capable of being maintained in accordance with a planned treatment regimen requiring a minimum amount of medical supervision without significant change or fluctuation in the patient's condition or treatment regimen.

(4) "Nursing facility" (NF) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting nursing facility standards. A facility which is certified to the department as meeting skilled nursing facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility until the first survey agency survey of the facility which occurs on or after October 1, 1990. Hospital swing beds providing services in accordance with 42 USC 1395tt and 42 USC 1396l shall also be considered nursing facilities if the swing beds are certified to the department as meeting requirements for the provision of swing bed services under federal laws and regulations. Each nursing facility shall have Medicare

participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds); if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).

(5) "Nursing facility with waiver" (NF-W) means a facility which has a license as a nursing facility and which is certified to the Department for Medicaid Services by the state survey agency as meeting all nursing facility requirements except for the nurse staffing requirement for which a Medicaid waiver has been granted by the survey agency; some nursing facilities with waiver do not meet Medicare participation requirements. A facility which is certified to the department as meeting intermediate care facility standards based on a survey agency survey made prior to October 1, 1990 shall be deemed to meet the requirements for participation as a nursing facility with waiver until the first survey agency survey of the facility which occurs on or after October 1, 1990. If a facility which has a Medicaid waiver chooses to participate in the Medicare Program, the facility shall be required to have Medicare participatory status in at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds; if the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program).

(6) "Intermediate care facility for the mentally retarded" (ICF-MR) means a licensed intermediate care facility for the mentally retarded certified to the Department for Medicaid Services as meeting all standards for intermediate care facilities for the mentally retarded.

(7) "High intensity nursing care services" means care provided to Medicaid eligible individuals who meet high intensity patient status criteria by nursing facilities (NFs) and nursing facilities with waiver participating in the Medicaid Program with the care provided in beds also participating in the Medicare Program. High intensity nursing care patient status criteria shall be equivalent to skilled nursing care standards under Medicare.

(8) "Low intensity nursing care services" means care provided to Medicaid eligible individuals who meet low intensity patient status criteria by nursing facilities (NFs) or nursing facilities with waiver (NFs-W) participating in the Medicaid Program. Low intensity nursing care patient status criteria shall be equivalent to the former intermediate care patient status standards.

(9) "Intermediate care for the mentally retarded and persons with related conditions services" means care provided to Medicaid eligible individuals who meet ICF-MR patient status criteria by ICF-MRs participating in the Medicaid Program.]

Section 2. Participation Requirements. Each facility desiring to participate as a nursing facility, nursing facility with waiver, or ICF-MR shall meet the following requirements:

(1) An application for participation shall be made [to the cabinet] using the procedures specified by the [Commissioner] Department for Medicaid Services[, Cabinet for Human Resources]. A vendor number shall be assigned to the facility by the department [cabinet] when enrollment is completed [participation status is achieved].

(2) Each nursing facility shall be required to have participatory status in the program of health care known as Medicare in at least twenty (20) percent of the facility's Medicaid participating beds [;] but not less than ten (10) beds. [;] If the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program [;] before the conditions of participation for Medicaid shall be deemed met].

(3) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall meet Medicare participation requirements in at least twenty (20) percent of the facility's Medicaid participating beds [;] but not less than ten (10) beds. [;] If the facility has less than ten (10) Medicaid participating beds, all participating beds shall participate in the Medicare Program. [;]

(4) Each nursing facility and nursing facility with waiver shall be required to comply with the preadmission screening and annual

staff determines that the combination of needs can be met satisfactorily only by provision of intermittent high intensity nursing care, continuous personal care or supervision in an institutional setting:

1. Assistance with wheelchair;
2. Physical or environmental management for confusion and mild agitation;
3. Must be fed;
4. Assistance with going to bathroom or using bedpan for elimination;
5. Old colostomy care;
6. In-dwelling catheter for dry care;
7. Changes in bed position;
8. Administration of stabilized dosages of medication;
9. Restorative and supportive nursing care to maintain the individual ~~[patient]~~ and prevent deterioration of his condition;
10. Administration of injections during time licensed personnel is available;
11. Services that could ordinarily be provided or administered by the individual but due to physical or mental condition is not capable of self-care; or
12. Routine administration of medical gases after a regimen of therapy has been established.

(d) An individual shall not generally be considered to meet patient status criteria if ~~[when]~~ care needs are limited to the following:

1. Minimal assistance with activities of daily living;
2. Independent use of mechanical devices, for example, assistance in mobility by means of a wheelchair, walker, crutch(es) or cane;
3. Limited diets such as low salt, low residue, reducing and other minor restrictive diets;
4. Medications that can be self-administered or the individual requires minimal supervision.

(4) ~~An individual [Evaluation of patient status for persons with mental disorders or mental retardation. A person]~~ with a mental disorder or mental retardation meeting the health status and care needs specified in subsections (2) and (3) of this section shall generally be considered to meet patient status. However, these individuals shall be specifically excluded from coverage in the following situations:

(a) If ~~[When]~~ the department ~~[cabinet]~~ determines that in the individual case the combination of care needs are beyond the capability of the facility, and that placement in the facility is inappropriate due to potential danger to the health and welfare of the individual ~~[patient]~~, other patients in the facility, or staff of the facility; and

(b) If ~~[When]~~ the nursing care needs result directly and specifically from a mental disorder; i.e., are essentially symptoms of the mental disorder; and

(c) If ~~[When]~~ the individual ~~[patient]~~ does not meet the preadmission screening and annual resident review criteria specified in 42 USC 1396r for entering or remaining in a facility.

(5) An individual shall be determined to meet patient status for an intermediate care facility for the mentally retarded and individuals ~~[persons]~~ with related conditions when the individual requires physical or environmental management or rehabilitation for moderate to severe retardation. In making the decision as to patient status the following criteria shall be applicable:

(a) An individual with significant developmental disabilities and significantly subaverage intellectual functioning who requires a planned program of active treatment to attain or maintain the individual's optimal level of functioning, but does not necessarily require nursing facility or nursing facility with waiver services, shall be considered to meet patient status.

(b) An individual requiring a protected environment while overcoming the effects of developmental disabilities and subaverage intellectual functioning shall be considered to meet patient status while:

1. Learning fundamental living skills;

2. Learning to live happily and safely within his own limitations;
3. Obtaining educational experiences that will be useful in self-supporting activities; or

4. Increasing his awareness of his environment.

(c) An individual with a psychiatric primary diagnosis or needs shall be considered to meet patient status criteria only if:

1. ~~[when]~~ The individual also has care needs as shown in paragraph (a) or (b) of this subsection;

2. The mental care needs are adequately handled in a supportive environment (i.e., the intermediate care facility for the mentally retarded); and

3. The individual does not require psychiatric inpatient treatment.

(d) An individual that does not require a planned program of active treatment to attain or maintain the individual's optimal level of functioning shall not be considered to meet patient status.

(e) ~~An [it shall be the policy of the cabinet that no]~~ individual shall not be denied patient status solely due to advanced age, or length of stay in an institution, or history of previous institutionalization, if the individual qualifies for patient status on the basis of all other factors.

(f) With regard to an individual with a "related condition" (not mental retardation) the illness or ailment shall have manifested itself prior to the individual's 22nd birthday.

Section 5. Reevaluation of Need for Service. Nursing facility, nursing facility with waiver, and ICF-MR services shall be provided if the health status and care needs are within the scope of program benefits as described in Sections 3 and 4 of this administrative regulation. Patient status shall be reevaluated at least once every six (6) months. If a reevaluation of care needs reveals that the individual ~~[patient]~~ no longer requires high intensity, low intensity, or intermediate care for the mentally retarded services and payment is no longer appropriate in the facility, payment shall continue for ten (10) days to permit orderly discharge or transfer to an appropriate level of care.

Section 6. Preauthorization of Provision of Specialized Rehabilitation Services for Individuals ~~[Persons]~~ with Brain Injuries. Individuals ~~[Patients]~~ who are brain injured and meet usual high intensity nursing facility patient status criteria or as qualified under subsection (5) of this section may be provided care in a certified unit providing specialized rehabilitation services for persons with brain injuries (i.e., brain injury unit) if ~~[when]~~ the care is preauthorized by ~~[staff of]~~ the department ~~[for Medicaid Services]~~ using criteria specified in this section. For coverage to occur, authorization of coverage shall be granted prior to admission of the individual with the head injury into the certified head injury unit, or if previously admitted to the unit with other third party coverage, authorization shall be granted prior to exhaustion of those benefits.

(1) Injuries within the scope of benefits shall be:

- (a) Central nervous system injury from physical trauma;
- (b) Central nervous system damage from anoxia or hypoxic episodes; and
- (c) Central nervous system damage from allergic conditions, toxic substances and other acute medical/clinical incidents.

(2) The following is a list of indicators for admission and continued stay:

- (a) The individual sustained a traumatic brain injury with structural, nondegenerative brain damage and is medically stable;
- (b) The individual shall not be in a persistent vegetative state;
- (c) The individual demonstrates physical, behavioral, and cognitive rehabilitation potential;
- (d) The individual requires coma management; and
- (e) The individual has sustained diffuse brain damage caused by anoxia, toxic poisoning, or encephalitis.

(3) The determination as to whether preauthorization is appropriate shall be made taking into consideration the following:

- (a) The presenting problem;
- (b) The goals and expected benefits of the admission;

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(b) The individual may [person can] be reasonably expected to return to the same level of care;

(c) Due to demand at the facility for beds at that level, there is a likelihood that the bed would be occupied by some other patient were it not reserved;

(d) The hospitalization shall be for treatment of an acute condition, and not for testing, brace-fitting, etc.; and

(e) For leaves of absence other than for hospitalization, the individual's [patient's] physician orders and plan of care provide for such leaves. Leaves of absence include visits with relatives and friends, and leaves to participate in state-approved therapeutic or rehabilitative programs.

~~[Section 8. The provisions of this administrative regulation shall apply to covered services provided on or after July 15, 1994.]~~

Section 9. Material Incorporated by Reference. (1) The "Medicaid Nursing Facility Services Manual", dated January 17, 1997 is incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday from 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating provider shall be provided one (1) copy of the manual. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

JOHN H. MORSE, Commissioner and Secretary
APPROVED BY AGENCY: January 16, 1997
FILED WITH LRC: January 17, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick, Trish Howard, or Anita Moore

(1) Type and number of entities affected: Nursing facilities participating in the Medicaid Program and approximately 20 Medicaid recipients who are ventilator dependent.

(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: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(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: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(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: See companion regulation 907 KAR 1:025E.

2. Continuing costs or savings: See companion regulation 907 KAR 1:025E.

3. Additional factors increasing or decreasing costs: See companion regulation 907 KAR 1:025E.

(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: Federal and state matching funds.

(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: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

(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 assure adequate access to medically necessary ventilator nursing facility beds for Medicaid recipients.

(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: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

(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: *See companion regulation 907 KAR 1:025E.

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

STATEMENT OF EMERGENCY 907 KAR 1:025E

This administrative regulation is promulgated as an emergency in order to: implement policy changes to comply with a Franklin Circuit Court Order regarding high intensity ventilator services; include

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(18) ~~(17)~~ "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified the prospective rate shall not be retroactively adjusted, either in favor of the facility or the department ~~(cabinet)~~.

(19) ~~(18)~~ "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services shall include the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services;

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouthwashes shall be allowable as routine services if generally furnished to all patients;

(c) Items stocked at nursing stations or on the floor in gross supply and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors;

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a nursing facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs; and

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(20) ~~(19)~~ "Upper limit" means the maximum level at which the department ~~(cabinet)~~ shall reimburse, on a facility by facility basis, for routine services.

Section 2. Reimbursement for Nursing Facilities, ~~(NFs)~~ (Including Nursing Facilities with Waiver~~(s)~~) and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). (1) All nursing facilities, ~~(NFs)~~ (including nursing facilities with waiver~~(s)~~) or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation.

(2) Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022~~(Nursing facility and intermediate care facility for the mentally retarded services)~~.

(3)(a) A nursing facility desiring to participate in Medicaid shall be required to have at least twenty (20) percent of its Medicaid participating beds ~~(b) but not less than ten (10) beds.~~ ~~(c) A facility with less than ten (10) beds, shall have all beds)~~ participate in the Medicare Program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, cannot participate in Medicare.

(b) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least twenty (20) percent of its Medicaid participating beds ~~(b) but not less than ten (10) beds.~~ ~~(c) If the facility has less than ten (10) beds, all beds shall (b) participate in the Medicare Program.~~

(4) The Medicaid Program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which have been determined by the depart-

ment ~~(cabinet)~~ to be reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards, in accordance with the requirements set forth in 42 USC 1396(a)(13)(A).

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the department ~~(cabinet)~~ and contained in the ~~(Kentucky Medicaid Program)~~ Nursing Facility Reimbursement Manual~~(, revised July 1, 1995 which is incorporated by reference in this administrative regulation and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medicaid Program Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of the appropriate fee allowed by 200 KAR 1:020).~~

Section 4. Implementation of the Payment System. The department's ~~(cabinet's)~~ reimbursement system shall be supported by the Medicare Principles of Reimbursement, with the system utilizing the principles as guidelines in unaddressed policy areas. The ~~(cabinet's)~~ reimbursement system shall include the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the department ~~(cabinet)~~ on a facility by facility basis, and shall not be subject to retroactive adjustment except as specified in this section of the administrative regulation, including the provisions contained in subsections (13) and (14) of this section.

(a) Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the department ~~(cabinet)~~.

(b) An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons:

1. Governmentally imposed minimum wage increases;
2. The direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in administrative regulation or written policy which affects all facilities within the class; or
3. Other governmental actions that result in an unforeseen cost increase.

(c) 1. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into two (2) general areas, salaries and other.

2. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit).

(b) 1. The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available cost data which are ~~(is)~~ available as of May 16 of each year and trending the facility costs to July 1 of the rate year. If the latest available cost report period cost data have not been audited or desk reviewed prior to rate setting for the universal year beginning July 1, the [with] prospective rates based on cost reports which are not audited or desk reviewed shall be subject to adjustment when the audit or desk review is completed.

2. ~~[Appropriate cost report adjustments shall be made for the~~

al facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relate to providing patient care. The form of the indebtedness may include notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function.

(a) Compensation shall include the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator.

(b) Payment for services requiring a licensed or certified professional performed on an intermittent basis shall not be considered a part of compensation. Reasonableness of compensation shall be based on total licensed beds (all levels).

(c) Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except if ~~when~~ it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship shall be considered to exist if ~~when~~ an individual (or individuals) possesses five (5) percent or more of ownership or equity in the facility and the supplying business. However, an exception to the relationship shall be determined to exist if ~~when~~ fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for nursing facilities entering into lease/rent arrangements as intermediate care facilities prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and nursing facilities entering into lease/rent arrangements as skilled nursing facilities prior to December 1, 1979, the department ~~(cabinet)~~ shall determine the allowable costs of these arrangements based on the general reasonableness of the costs.

(8) Certain costs not directly associated with patient care shall not be considered allowable costs. Costs which shall not be allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the ~~[Kentucky Medicaid Program]~~ Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against

the department ~~(cabinet)~~. However, costs (excluding transportation costs) for training or educational purposes outside the state shall be ~~(are)~~ allowable costs unless the costs are incurred by administrators or owners.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain shall be defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale shall be any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which shall usually be fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner shall not be considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(10) Valuation of capital assets.

(a) ~~[No]~~ Increase in valuation in relation to depreciation and interest costs shall not be allowed for changes of ownership occurring after July 18, 1984 and before October 1, 1985 except as shown in subsection (9)(e) of this section with regard to enforceable agreements for a change of ownership entered into prior to July 1, 1984.

(b) For bona fide changes of ownership entered into on or after October 1, 1985 the depreciation and interest costs shall be increased in valuation in accordance with 42 USC 1396a(a) (13)(C) and the Reimbursement Manual at pages 350.03 - 350.10 and 352.08-352.09 effective for services provided on or after July 1, 1995.

1. The payment increases resulting from the increases in valuation shall be limited to a projected annual amount of \$3,000,000, taking into account Medicaid occupancy from the prior year Medicaid cost report, with the payments made as an add-on to the usual payment rates and not subject to the usual upper limits. If projected add-on payments would otherwise exceed \$3,000,000 on an annual basis the add-on amounts shall be reduced proportionately for each facility, i.e., the same percentage reduction shall be applied to all facilities qualifying for the rate add-on.

2. Facilities qualifying for the rate add-on shall be those facilities with a bona fide change of ownership on or after October 1, 1985 and before the beginning of the rate year for which the add-on is applicable. For the rate year beginning July 1, 1995, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by not later than September 30, 1995. For subsequent rate years, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by July 31 of the affected rate year.

(11) Each facility shall maintain and make available any records (in a form acceptable to the department ~~(cabinet)~~) which the department ~~(cabinet)~~ may require to justify and document all costs to and services performed by the facility. The department ~~(cabinet)~~ shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates

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by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost.

~~(a) [1. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high intensity, low intensity, or neither. For patients meeting patient status (high or low intensity), the PRO will then determine the case weight).~~

2.] The average case weight [thereafter] shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available).

(b) The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the cost savings incentive adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs.

(a) Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs.

1. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost.

2. Upon authorization by the Medicaid agency, the cost shall be allowable.

3. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred.

4. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the cost savings incentive factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost).

(b) Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment.

(c) Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform.

(d) Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs.

(e) The special nursing home reform rate adjustment shall be requested using forms and methods specified by the department [agency].

(f) A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed.

(g) Interim rate adjustments for nursing home reform shall not be allowed for periods after June 30, 1993.

(24) The provider tax on nursing facilities shall be considered allowable cost; for the period of July 1, 1993 through June 30, 1994 appropriate rate adjustment shall be made as a rate add-on, with no

offset against the inflation allowance. For subsequent rate periods, the cost basis shall be adjusted as appropriate to reflect the cost of the provider tax.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this administrative regulation and the case mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

(1) The adjusted allowable cost for the facility;

(2) Adjustments to allowable cost related to occupancy;

(3) Adjustments to allowable cost related to application of upper limits;

(4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and investment schedule;

(5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual. ~~[; however,]~~ The cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;

(6) Adjustments as appropriate for costs shifted from ancillary to routine;

(7) Nursing home reform adjustments; and

(8) Hold harmless adjustments.

Section 6. Material Incorporated by Reference. (1) The "Nursing Facility Reimbursement Manual", dated January 17, 1997, shall be incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky, 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating provider shall be provided one (1) copy of the manual and appropriate manual updates. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee which approximates cost in accordance with KRS 61.872.

Section 7. Reimbursement Review and Appeal. Participating facilities may appeal department [cabinet] decisions as to application of the general policies and procedures in accordance with 907 KAR 1:671~~[- Conditions of Medicaid provider participation; enrollment; documentation of services; disclosure; claims processing; withholding overpayments; appeals process; and sanctions]~~.

~~[Section 7. Implementation Date. The provisions of this administrative regulation shall be effective with regard to payments for services provided on or after July 1, 1996.]~~

JOHN H. MORSE, Commissioner and Secretary
APPROVED BY AGENCY: January 16, 1997
FILED WITH LRC: January 17, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick, Trish Howard, or Karen Doyle

(1) Type and number of entities affected: Nursing facilities participating in the Medicaid Program and approximately 20 Medicaid recipients who are ventilator dependent.

(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: To be determined after

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to be related to the proper fit and adjustment of that hearing aid;

(d) One (1) follow-up visit six (6) months following fitting of a hearing aid, to assure patient's successful use of the aid.

(2) Hearing aid benefits. Coverage shall be provided to children under age twenty-one (21) ~~[on a preauthorized basis]~~ for any monaural hearing aid model recommended by a certified audiologist if the model is available through a participating hearing aid dealer. Binaural hearing aids shall not be covered.

Section 2. Vision Program [Care] Services. Coverage for all age groups shall be limited to prescription services, repair services made to frames and lenses, and diagnostic services provided by ophthalmologists and optometrists, to the extent the optometrist is licensed to perform the services and to the extent the services are covered in the ophthalmologist portion of the physician's program. Medicaid shall use the current procedural terminology codes as referenced in 907 KAR 3:005. Eyeglasses shall be provided to children under age twenty-one (21), only, on a preauthorized basis. Coverage for eyeglasses shall be limited to two (2) pairs of eyeglasses per year per person. This limitation includes the initial eyeglasses and one (1) replacement per year or two (2) replacements per year.

Section 3. Material Incorporated by Reference. (1) ~~[Vision Services Manual. The vision services manual specifies the conditions for participation, services covered, and limitations for the vision services component of the Medicaid Program.]~~ The Vision Program [services] Manual, dated February 1, 1997, shall be ~~[October 1, 1993]~~ incorporated by reference in this administrative regulation, ~~[may be reviewed during regular working hours (8 a.m. to 4:30 p.m. EST)]~~

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services ~~[Copies may also be obtained from that office]~~ upon payment of an appropriate fee which ~~[shall not exceed]~~ approximates cost in accordance with KRS 61.872.

JOHN H. MORSE, Commissioner and Secretary

APPROVED BY AGENCY: January 14, 1997

FILED WITH LRC: January 17, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Karen Doyle

(1) Type and number of entities affected: Providers who are enrolled in Kentucky Medicaid as optometrists or opticians.

(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: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(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: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(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: Budget neutral

2. Continuing costs or savings: Budget neutral

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: Federal and state matching funds.

(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: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: to assure access to vision care services.

(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: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

(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: *Cost associated with the new reimbursement system has been shown in comparison regulation 907 KAR 1:631E.

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional

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[cabinet] or the recipient for these items.

Section 5. Limitations. (1) Program reimbursement for eyeglasses shall be inclusive. The cost of both laboratory materials and dispensing fees shall be billed to either the program or the recipient. If any portion of the amount is billed to or paid by the recipient, the department shall not be responsible for payment of the bill. [no responsibility for reimbursement shall attach to the cabinet and no bill for the service shall be paid by the cabinet.] This limitation shall not, ~~however,~~ preclude the provider from billing [issuance of billings for the purpose of establishing the liability of, or collecting from,] liable third parties.

(2) Telephone consultations ~~[contacts]~~ shall be excluded from payment.

(3) Contact lenses shall be excluded from payment.

(4) Safety glasses shall be subject to prior authorization if proof of medical necessity is documented. [covered when medically necessary, subject to prior authorization.]

(5) Prisms if medically necessary shall be added within the cost of the lenses.

(6) Low-vision services shall be excluded from payment.

(7) Press on prisms shall be excluded from payment.

Section 6. Third Party Liability. Medicaid shall be the payor of last resort. Policy related to nonduplication of payments and third-party liability is shown in 907 KAR 1:005, Nonduplication of payments.

Section 7. Implementation Date. The provisions of this administrative regulation shall be applicable for services provided on or after February 1, 1997. [June 1, 1994.]

JOHN H. MORSE, Commissioner and Secretary
APPROVED BY AGENCY: January 14, 1997
FILED WITH LRC: January 17, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Karen Doyle

(1) Type and number of entities affected: All providers of Vision Program Services who participate in the Kentucky Medicaid 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: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(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: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS 13A requirement.

(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: \$1,050,000 (cost)*

2. Continuing costs or savings: \$1,050,000 (cost)*

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: Federal matching funds of 70.09% equaling \$735,945 and state matching funds of 29.91%

equaling \$314,055. State revenues will come from collections of Medicaid paid claims from third parties in excess of the budgeted amount. This funding is needed due to a court order requirement.

(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: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To improve access for Medicaid recipients to Vision Program Services.

(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: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients.

(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: *Source of revenue to be used are federal matching funds of 70.09% equaling \$735,945 and state matching funds of 29.91% equaling \$314,055 totaling \$1,050,000. The state revenues will come from collections of Medicaid paid claims from third parties in excess of budgeted amount. This funding is needed due to a court order requirement.

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

ADMINISTRATIVE REGISTER - 3311

FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems (As Amended)

105 KAR 1:200. Retirement procedures and forms.

RELATES TO: KRS 16.576, 16.577, 16.645(18), 61.590, 61.702, 61.705, 78.454 [~~16.605 to 16.652, 61.610 to 61.705, 78.610 to 78.852~~]

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

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

Section 1. The member shall submit a Notification of Retirement, Form 6000, [~~dated January 1997~~] [~~1994~~], to the retirement systems prior to his desired effective retirement date. The member shall designate the beneficiary of his retirement allowance on the form. The form shall be dated and the employee's signature shall be witnessed.

Section 2. The retirement system shall estimate the member's retirement allowance based on the salary reported to the system and information that may be supplied by the member or his employer. The payment options and amounts available to the member shall be printed on the Estimated Retirement Allowance, Form 6010 [~~6A~~] [~~dated January 1977~~] [~~July 1994~~], and provided to the member with a place to designate his choice of payment options.

Section 3. The member shall designate a desired payment option and sign and date the form. The member's signature shall be witnessed and the form returned to the retirement office. If the member is retiring under early retirement provisions, the member shall [~~may~~] return the form within six (6) months of his retirement date to [~~and~~] retain the effective date of retirement shown on the form. If the member fails to return the form within six (6) months of his retirement date, the member's notification of retirement shall be considered void and he shall be required to submit a new notification of retirement.

Section 4. The member shall provide the retirement system a copy of his birth certificate or hospital record and, if a survivorship payment option is selected, a copy of the birth certificate or hospital record of the beneficiary named on his notification of retirement. If a birth certificate or hospital record is not available, the retirement system may accept other proof of age accompanied by a letter from the office responsible for birth records in the state of the individual's birth stating that a birth certificate is not available. The retirement system may accept one (1) or more of the following as proof of age of the member or his beneficiary: age record of the Social Security Administration, immigration and naturalization service records, [~~hospital record~~], baptismal record, marriage license, school record, birth certificate of child or military discharge.

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

(2) Except as provided by subsection (1) of this section, [Except as provided in this section,] a recipient who begins receiving a retirement allowance after the effective date of this administrative regulation [April 1, 1997, or later] from the Kentucky Employees Retirement System, County Employees Retirement System or State

Police Retirement System shall have the retirement allowance paid by electronic fund transfer to a financial institution designated by the recipient.

(3) [(4)] When an individual becomes eligible to receive a monthly retirement allowance, the retirement system shall provide an Authorization for Deposit of Retirement Payment [Form], Form 6130 [(47)] [~~dated January 1997~~] [~~December 1993~~], to the recipient [member] to have the [his] monthly retirement allowance deposited to an [his] account in a financial institution.

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

(5) [(3)] At any time while receiving a retirement allowance, the recipient may change the designated institution by completing a new Authorization for Deposit of Retirement Payment and filing the form at the retirement office in Frankfort. The last Authorization for Deposit of Retirement Payment on file at the retirement office shall control the electronic transfer of the recipient's retirement allowance.

(6) [(4)](a) A recipient may request to be paid by check issued by the State Treasurer instead of by electronic transfer by completing and filing at the retirement office a Request for Payment by Check, Form 6135, effective January 1997.

(b) The request shall [only] be approved if:

1. The recipient certifies that he does not currently have an account with a financial institution;

2. The recipient's bank certifies that it does not participate in the electronic funds transfer program; or

3. The recipient shows [ear-chew] that the requirement would create an undue hardship.

(c) The retirement office shall annually [periodically] require the recipient to certify that the original conditions under which he requested a check continue. If the original conditions do not exist, the recipient shall [or to] complete an Authorization for Direct Deposit of Retirement Payment.

Section 6. The retirement office shall provide a Certification of Service, Form 6120 [~~103~~] [~~dated January 1997~~] [~~July 1994~~], to the member to certify service with another agency participating in the Kentucky Retirement Systems for which he may be eligible to purchase credit prior to retirement. The retirement office shall, upon request, provide the member with the cost of purchasing the service and an estimate of the benefits attributable to the additional service credit. [The member shall have the right to purchase the service credit within thirty (30) days following his retirement date.]

Section 7. (1) The retirement office shall provide forms for the selection or waiver of medical insurance coverage for the member, his spouse and dependents under the group insurance plan [~~or to waive the right to insurance coverage~~] at the time of retirement. The forms shall be [~~provided are~~] [~~the Kentucky Retirement Systems Health Insurance Coverage Form, dated July 1994,~~] the Kentucky Retirement Systems High and Low Option Coverage, Form 6200, [~~dated January 1997~~] [~~June 1994~~] and the Waiver of Insurance Coverage, Form 6210, [~~dated January 1997~~]. [For individuals who are not eligible for Medicare coverage, the form shall be provided by the Health Purchasing Alliance.] [~~July 1994~~]

(2) If the insurance form is received prior to the date the initial retirement allowance [~~check~~] is processed, the insurance coverage shall be effective the first day of the month in which the initial allowance [~~check~~] is processed. If the form is received after the date the initial retirement allowance [~~check~~] is processed, coverage shall be effective the first day of the month following the month in which the initial retirement allowance [~~check~~] is processed.

(3) A recipient who fails [Members who fail] to submit a form selecting medical insurance coverage within thirty (30) days following the first day of the month in which the [their] initial retirement

(b) The North American Energy Measurement and Verification Protocol, United States Department of Energy (March 1996 edition);

(2) Copies of the documents incorporated by reference in this section [in subsection (1)(a) and (b) of this section] may be inspected, copied or obtained at the Offices of the Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

BOB ARNOLD, Commissioner

APPROVED BY AGENCY: January 3, 1997

FILED WITH LRC: January 6, 1997 at 4 p.m.

COMPILER'S NOTE: Section 1(7) of the following administrative regulation, 401 KAR 50:035, was amended by the promulgating agency and the Interim Joint Committee on Agriculture and Natural Resources on February 12, 1997. This administrative regulation became effective on February 12, 1997.

**NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
Department for Environmental Protection
Division for Air Quality
(As Amended)**

401 KAR 50:035. Permits.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 401 KAR Chapters 50 through 65, 40 CFR Parts 51, 52, 60, 61, 63, 70, 72, 73, 74, 75, 76, 77, 78, 42 USC 7401-7671q, July 21, 1992 Federal Register (57 FR 32250)

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation ~~combines construction and operating permits into one (1) permit and~~ provides for the issuance of permits in the Commonwealth of Kentucky.

Section 1. Definitions. Except as provided in this section, terms used in this administrative regulation shall have the meaning given in 401 KAR 50:010, unless the context clearly indicates otherwise.

(1) "Acid Rain Program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established pursuant to 42 USC 7651 through 7651o (Title IV of the Act) and 40 CFR Parts 72, 73, 74, 75, 76, 77, and 78. 40 CFR Parts 72 through 78 are incorporated by reference in Section 24 of this administrative regulation.

(2) "Act" means the Clean Air Act promulgated at 42 USC 7401 through 7671q, as amended by PL 101-549 (November 15, 1990) and PL 102-187 (December 4, 1991).

(3) "Administrative permit amendment" means a revision to a permit that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of a person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source, pursuant to Section 13(2) of this administrative regulation; ~~[Allows for the relocation of a minor source within the Commonwealth of Kentucky, or a change in ownership or operational control of a source pursuant to Section 13(2) of this administrative regulation if no other change in the permit is necessary; or]~~

(e) Allows for the relocation of a minor source within the Commonwealth of Kentucky, pursuant to Section 13(3) of this administrative regulation;

(f) Allows for the addition (to a permit) of an insignificant activity after a permit has been issued;

(g) Allows for the modification or replacement of existing control equipment that is required to comply with an applicable requirement with equivalent or more efficient equipment, except at a Part 70 source after the initial draft permit has been issued, or a major source subject to 401 KAR 51:017 or 51:052; and

(h) ~~(e)~~ Incorporates into the permit the requirements from preconstruction review permits, if the preconstruction review meets procedural requirements equivalent to those in this administrative regulation that would be applicable to the change if it were subject to review as a permit revision, and compliance requirements equivalent to those contained in Section 7(2) of this administrative regulation.

(4) "Affected source" means a source that includes one (1) or more affected units.

(5) "Affected states" means those states:

(a) That border Kentucky and whose air quality may be affected by the proposed issuance, revision, or renewal of a permit subject to the federally enforceable requirements of this administrative regulation; or

(b) That are within fifty (50) miles of the proposed permitted source.

(6) "Affected unit" means a unit subject to the Acid Rain Program.

(7) "Applicable requirement" means a federally enforceable requirement or a state-origin requirement or standard **except that, for a Part 70 permit issued pursuant to an application required to be submitted by December 14, 1996:**

(a) 401 KAR 63:021 and 401 KAR 63:022 are not considered applicable requirements; and

(b) Compliance with 401 KAR 63:020 is demonstrated if the source is in compliance with the applicable requirements of the federal HAP Program (42 USC 7412) and the source certifies that any control equipment or procedures previously used to achieve compliance with 401 KAR 63:021 or 401 KAR 63:022 will not be removed or altered unless prior approval is obtained from the cabinet.

(8) "Complete application" means an application for a permit or permit revision that meets the requirements of Sections 4 and 5 of this administrative regulation.

(9) "Conditional major permit" means a permit issued to the owner or operator of a source that limits the source's potential to emit below the major source thresholds specified in subsection (23) ~~(24)~~ of this section.

(10) "Designated representative" means a person authorized by the owners or operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the Acid Rain Program. For matters related to the acid rain portion of a permit, the term "responsible official," as used in this administrative regulation, means the "designated representative."

(11) "Draft permit" means the version of a permit which the cabinet offers for public participation and affected state review, if applicable, as prescribed in Sections 19 and 20 of this administrative regulation.

(12) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source which requires immediate corrective action to restore normal operation and which causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or

9. Hydrofluoric, sulfuric, or nitric acid plants;
 10. Petroleum refineries;
 11. Lime plants;
 12. Phosphate rock processing plants;
 13. Coke oven batteries;
 14. Sulfur recovery plants;
 15. Carbon black plants (furnace process);
 16. Primary lead smelters;
 17. Fuel conversion plants;
 18. Sintering plants;
 19. Secondary metal production plants;
 20. Chemical process plants;
 21. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;
 22. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;
 23. Taconite ore processing plants;
 24. Glass fiber processing plants;
 25. Charcoal production plants;
 26. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or
 27. All other stationary source categories subject to a standard promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or 42 USC 7412 (Section 112 of the Act) and for which the U.S. EPA has made an affirmative determination pursuant to 42 USC 7602(j) (Section 302(j) of the Act).
 (c) A major stationary source defined to be a major source in 42 USC 7501 through 7515 (Part D of the Act) including:
 1. For ozone nonattainment areas, sources that emit or have the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," fifty (50) tons per year or more in areas classified as "serious," twenty-five (25) tons per year or more in areas classified as "severe," and ten (10) tons per year or more in areas classified as "extreme;"
 2. For carbon monoxide nonattainment areas that are classified as "serious," and in which stationary sources contribute significantly to carbon monoxide levels, sources that emit or have the potential to emit fifty (50) tons per year or more of carbon monoxide; and
 3. For particulate matter (PM₁₀) nonattainment areas classified as "serious," sources that emit or have the potential to emit seventy (70) tons per year or more of PM₁₀.
 (24) "Minor source" means a stationary source that emits and has the potential to emit less than the thresholds for a major source in subsection (23) ~~{24}~~ of this section.
 (25) "Part 70 permit" means a permit issued to the owner or operator of a source pursuant to 40 CFR Part 70 and Kentucky's Part 70 Operating Permit Program approved by the U.S. EPA on November 14, 1995 (60 FR 57186) and made effective on December 14, 1995.
 (26) "Permit revision" means:
 (a) An administrative permit amendment required to be processed pursuant to Section 14 of this administrative regulation;
 (b) A minor permit revision required to be processed pursuant to Section 15 of this administrative regulation; ~~or~~
 (c) A significant permit revision required to be processed pursuant to Sections 16 and 22 of this administrative regulation;
 (d) A state origin permit revision required to be processed pursuant to Section 22(4) of this administrative regulation; or
 (e) An interim permit revision required to be processed pursuant to Section 22(6) of this administrative regulation.
 (27) "Phase II" means the Acid Rain Program period beginning January 1, 2000, and continuing thereafter.
 (28) "Potential to emit" means the maximum capacity of a stationary source to emit a regulated air pollutant given its physical and operational design. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution

control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable as a practical matter. This definition does not alter or affect the use of this term for other purposes in the Act, or the term "capacity factor" as used in the Acid Rain Program.

(29) "Proposed permit" means the version of a permit that the cabinet proposes to issue and submit to the U.S. EPA for review pursuant to Section 21 of this administrative regulation.

(30) "Regulated air pollutant" means the pollutants listed in this subsection.

(a) Nitrogen oxides;

(b) Volatile organic compounds;

(c) A pollutant for which a national ambient air quality standard has been promulgated pursuant to 42 USC 7409 (Section 109 of the Act);

(d) A Class I or Class II substance subject to a standard promulgated or established pursuant to 42 USC 7671 through 7671q (Title VI of the Act); ~~and~~

(e) A pollutant, other than total suspended particulates (TSP), subject to a standard promulgated pursuant to 42 USC 7411 (Section 111 of the Act);

(f) A pollutant subject to a standard or other requirement established pursuant to 42 USC 7412 (Section 112 of the Act) as specified in this paragraph:

1. A HAP subject to a standard or other requirement promulgated by the U.S. EPA pursuant to 42 USC 7412(d) (Section 112(d) of the Act) or adopted by the cabinet pursuant to 42 USC 7412(g) and (j) (Section 112(g) and (j) of the Act) shall be considered regulated for all sources or categories of sources upon promulgation of the standard or requirement, or eighteen (18) months after the standard or requirement was scheduled to be promulgated pursuant to 42 USC 7412(e)(3) (Section 112(e)(3) of the Act), whichever date is sooner; and

2. A HAP for which the cabinet has made a case-by-case emission limitation determination pursuant to 42 USC 7412(g)(2) (Section 112(g)(2) of the Act) shall be considered regulated, but only for the source for which the determination was made.

~~{(g) Other pollutants that are regulated in the Commonwealth of Kentucky but whose emissions standards are not federally enforceable-}~~

(31) "Renewal" means the process by which a permit is reissued at the end of its term pursuant to Section 12 of this administrative regulation.

(32) "Responsible official" means:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25,000,000 (in second quarter 1980 dollars), or

2. The delegation of authority to the representative is approved in advance by the cabinet;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively; or

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the U.S. EPA);

(d) For the acid rain portion of a permit for an affected source, the designated representative.

(a) Major sources;
(b) Conditional major and synthetic minor sources;
(c) Minor sources that are required by the U.S. EPA to obtain a permit;

(d) Minor sources that are subject to a regulatory requirement that does not contain a specific method for achieving compliance and that emit or have the potential to emit twenty-five (25) tons per year or more of a regulated pollutant that is subject to an applicable requirement;

(e) Minor sources that are subject to a reasonably available control technology (RACT) requirement pursuant to 401 KAR 63:021, or a best available control technology (BACT) requirement pursuant to 401 KAR 63:022; and

(f) Except as provided in subsection (2)(c) of this section, incinerators that are subject to an applicable requirement promulgated in 401 KAR Chapters 59 or 61, or in 40 CFR Parts 60 or 63, or in any federal regulation promulgated pursuant to 42 USC 7429 (Section 129 of the Act);

(2) Source exemptions. Sources specified in this subsection are exempt from the obligation to obtain a permit pursuant to this administrative regulation, unless required to obtain a permit by the U.S. EPA:

(a) A source that is subject to only the requirements of 40 CFR 61, Subpart AAA, Standards of Performance for New Residential Wood Heaters; and

(b) A sawmill which produces only rough cut or dimensional lumber from logs and which has a rated capacity of 5,000 board feet per hour or less, if the source does not include an indirect heat exchanger or waste wood burner subject to a requirement in 401 Chapter 59, 60, or 61;

(c) Incinerators with a unit capacity of less than 500 pounds per hour that are subject only to a provision in 401 KAR 59:020, 59:021, 61:010, or 61:011;

(3) Permitted activities. All activities that emit a regulated air pollutant shall be included in the permit except the activities listed in this subsection:

(a) An asbestos demolition or renovation operation subject only to the provisions of 40 CFR 61, Subpart M;

(b) An activity that emits only nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement;

(c) Open burning pursuant to 401 KAR 63:005, made effective March 1, 1984;

(d) Vehicles used for the transport of passengers or freight;

(e) Publicly owned roads;

(f) The installation and use of air pollution control equipment that is not required to meet an applicable requirement, if it does not cause an increase in the potential to emit of a regulated air pollutant;

(g) An activity or emission unit contained in the "List of Trivial Activities" which is incorporated by reference in Section 24 of this administrative regulation, including activities or emission units which the cabinet later determines should be added to this list;

(h) Two (2) ton construction exemption. The construction, reconstruction, alteration or modification of an affected facility at a source shall be exempt from the permitting requirements of this administrative regulation if it meets the conditions of this paragraph. This exemption shall not apply to sources required to obtain a Part 70 permit after the initial draft permit has been issued.

1. The total increase in potential to emit resulting from the change shall not exceed two (2) tons per year of any regulated air pollutant, regardless of any emission decreases that result from the change;

2. The increase in potential to emit shall not subject the source to a RACT requirement pursuant to 401 KAR 63:021, or a BACT requirement pursuant to 401 KAR 63:022; and

3. The increase in potential to emit shall not cause the source to exceed a major source threshold, or subject the source to PSD review pursuant to 401 KAR 51:017, or NSR review pursuant to 401

KAR 51:052.

(4) A source, emissions unit, or activity that is not required to be permitted pursuant to subsections (1) through (3) of this section shall comply with all applicable requirements to which the source, emissions unit, or activity is otherwise subject. The cabinet may require the owner or operator to demonstrate compliance with the applicable requirement.

(5) A minor source that is subject to an applicable requirement but is not required to be permitted shall submit Form DEP 7030, Minor Source Registration, prior to any construction, reconstruction, alteration, or modification. Form DEP 7030 is incorporated by reference in Section 24 of this administrative regulation.

Section 3. Submittal of Permit Applications. Owners or operators of sources required to obtain or revise a permit issued by the cabinet shall submit a timely and complete application pursuant to subsections (1) through (7) of this section, using Form DEP 7007, which is incorporated by reference in 401 KAR 50:034. All applications shall be submitted in triplicate, and the cabinet may request as many as seven (7) additional copies if the draft permit or permit revision is subject to public review.

(1) Sources required to obtain a Part 70 permit.

(a) Major sources.

1. An existing major source that was authorized by the cabinet to operate on or before December 14, 1995, shall file a complete application by December 14, 1996.

2. A major source commencing construction after December 14, 1996, or a minor source that becomes major through a reconstruction commenced after December 14, 1996, shall file a complete application prior to commencing construction or reconstruction.

3. All other major sources shall file a complete application within twelve (12) months after the requirement to obtain a Part 70 permit becomes applicable to the source.

(b) Minor sources. Minor sources that are subject to a federally enforceable requirement shall file a complete application within twelve (12) months after the date the U.S. EPA requires the source to obtain a Part 70 permit or by December 14, 2000, whichever date is earlier.

(2) Minor sources created by emission limits.

(a) Conditional major sources. A source that proposes to accept permit conditions to limit its potential to emit below the major source threshold shall file a complete application to obtain a conditional major permit. A source that would otherwise be required to file an application pursuant to subsection (1)(a)1 of this section shall be exempt from that requirement if it obtains a conditional major permit prior to December 14, 1996.

(b) Sources that elect to apply for a deferral pursuant to 401 KAR 50:031 shall submit an application, using Form DEP 7008, which is incorporated by reference in Section 24 of this administrative regulation. A source that would otherwise be required to file an application pursuant to subsection (1)(a)1 of this section shall be exempt from that requirement if it obtains a deferral prior to December 14, 1996.

(3) Sources required to obtain state-origin permits. Minor sources that are required to obtain a state-origin permit pursuant to Section 2(1) of this administrative regulation shall file a complete application to obtain a new permit by December 14, 2000, or within five (5) years after the most recent permit issuance, whichever occurs later.

(4) Sources that are constructing, reconstructing, [altering] or modifying. A source that proposes to construct, reconstruct, [alter] or modify shall file an application to obtain a permit prior to commencing construction or making the operational change, except as provided in Sections 2(3), 14 and 15(6) of this administrative regulation.

(5) Permit reopenings. A source that is required to open an existing permit pursuant to the requirements of Section 18 of this administrative regulation shall file a complete application to obtain a permit revision within six (6) months after a notification by the cabinet that the permit shall be reopened.

requirements at the time of permit issuance, the schedule shall include remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with all applicable requirements for which the source will be in noncompliance at the time of permit issuance. The compliance schedule shall resemble and be at least as stringent as that contained in a judicial consent decree or an order issued by the cabinet to which the source is subject. The schedule of compliance shall be supplemental to, and shall not condone noncompliance with, the applicable requirements on which it is based.

3. A schedule for submission of certified progress reports, pursuant to Section 7(2)(a)2 of this administrative regulation, no less frequent than every six (6) months for sources required to have a schedule of compliance to remedy a violation or noncompliance.

4. In Phase II of the Acid Rain Program, the compliance plan content requirements specified in this paragraph shall be included in the acid rain portion of a compliance plan for an affected source, except as provided in the Acid Rain Program.

(i) The application shall identify requirements for compliance certification as specified in this paragraph.

1. A certification of compliance with all applicable requirements by a responsible official pursuant to Section 6 of this administrative regulation;

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

3. A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement or by the cabinet; and

4. A statement indicating the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements.

(3) ~~(2)~~ An existing major source applying for a Part 70 permit that was authorized to operate on or before December 14, 1995, and that is notified by the cabinet that its permit is scheduled to be issued on or after December 14, 1998, shall submit an application containing the information specified in this subsection by December 14, 1996. This application shall be updated and expanded to include any additional information required in subsection (1) of this section and submitted to the cabinet at least one (1) year but not more than fourteen (14) months prior to the date its permit is scheduled to be issued.

(a) The company name and address and, if different, the plant name and address; owner's and agent's names and addresses; name, address, and telephone number of the plant site manager or contact; and the appropriate SIC code.

(b) The citation and description of all applicable requirements for each emission unit, and reference to the applicable test method for determining compliance with each applicable requirement.

(c) An identification and description of compliance monitoring devices or activities.

~~(d) [A description of any alternate operating scenarios which the source may implement prior to the time this application is updated and submitted pursuant to paragraph (a) of this subsection.]~~

~~(e) A compliance plan containing the information specified in this paragraph.~~

1. A description of the compliance status of the source for all applicable requirements as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with those requirements.

b. For applicable requirements with which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with those requirements.

2. A compliance schedule as follows:

a. For applicable requirements that will become effective during

the permit term, a statement that the source will meet the requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this condition, unless a more detailed schedule is expressly required by the applicable requirement.

b. For sources that are not in compliance with all applicable requirements at the time of permit issuance, the schedule shall include remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with all applicable requirements for which the source will be in noncompliance at the time of permit issuance.

c. The compliance schedule shall resemble and be at least as stringent as that contained in a judicial consent decree or an order issued by the cabinet to which the source is subject. The schedule of compliance shall be supplemental to, and shall not condone noncompliance with, the applicable requirements on which it is based.

3. A schedule for submission of certified progress reports, pursuant to Section 7(2)(a)2 of this administrative regulation, no less frequent than every six (6) months for sources required to have a schedule of compliance to remedy a violation or noncompliance.

~~(e) [(f)]~~ Requirements for compliance certification as specified in this paragraph.

1. A certification of compliance with all applicable requirements by a responsible official pursuant to Section 6 of this administrative regulation;

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

3. A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement or by the cabinet; and

4. A statement indicating the source's compliance status with applicable monitoring and compliance certification requirements.

(4) ~~(3)~~ Insignificant activities. A source shall not be required to provide detailed descriptions or estimates of emissions for insignificant activities if the emissions meet the conditions specified in this subsection. The cabinet shall maintain a list of typical ~~[subject to approval by the U.S. EPA, or approved]~~ insignificant activities and shall make this list available upon request to the public.

(a) The emissions shall not cause a source to exceed a major source threshold;

(b) The emissions shall not be subject to a federally enforceable requirement other than generally applicable requirements that apply to all activities and affected facilities, including the requirements contained in 401 KAR 59:010, 61:020, 63:010, and others deemed generally applicable by the cabinet;

(c) The potential to emit a regulated air pollutant from the activity shall not exceed five (5) tons per year;

(d) The potential to emit of a HAP from the activity or affected facility shall not exceed 1000 pounds per year or the de minimis level established under 42 USC 7412(g) Section 112(g) of the Act, whichever is less;

(e) The potential to emit of all insignificant activities and affected facilities shall not subject the source to a ~~[reasonably available control technology (RACT) pursuant to 401 KAR 63:021, or a]~~ best available control technology (BACT) requirement pursuant to 401 KAR 63:022, or to an emission limit pursuant to 401 KAR 63:020; and

(f) The activity or affected facility shall be listed in the permit application together with all generally applicable and state origin requirements that apply. An insignificant activity proposed by a source after a permit is issued may be added to the permit as an administrative amendment.

(5) ~~(4)~~ Duty to supplement or correct application.

(a) An applicant who fails to submit relevant facts or who has submitted incorrect information in a permit application shall, upon discovery of the occurrence, promptly submit the supplementary facts

provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The terms and conditions shall:

1. Include all terms required in this subsection and subsection (2) of this section to determine compliance;

2. Extend the permit shield described in Section 8 of this administrative regulation to all terms and conditions that allow increases and decreases in emissions;

3. Meet all applicable requirements and the requirements of this administrative regulation;

4. Require written notification to the cabinet and the U.S. EPA seven (7) days in advance of the proposed change. The source, cabinet and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(2) Compliance requirements. All permits shall contain the elements for compliance, including but not limited to, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.

(a) Compliance schedule. The permit shall contain:

1. The schedule of compliance required in the permit application pursuant to Section 5(1)(h)2 of this administrative regulation; and

2. A requirement for progress reports consistent with the schedule of compliance submitted pursuant to subparagraph 1 of this paragraph. The progress reports shall be submitted semiannually or more frequently if specified in an applicable requirement or by the cabinet, and shall include:

a. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when these activities, milestones, or compliance requirements were achieved; and

b. An explanation of why dates in the schedule of compliance were not or will not be met, and preventive or corrective measures adopted.

(b) Compliance certification. The permit shall require that all submitted documents, including reports, shall be certified by a responsible official pursuant to Section 6 of this administrative regulation. The permit shall contain requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices, as applicable. The permit shall establish:

1. Compliance certifications shall be required to be submitted annually or more frequently as specified in an applicable requirement or by the cabinet.

2. In accordance with subsection (1)(c) of this section, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices.

3. A requirement that the compliance certification include:

a. The identification of each term or condition of the permit that is the basis of the certification;

b. The compliance status;

c. If compliance was continuous or intermittent;

d. The method used for determining the compliance status of the source, currently and over the reporting period pursuant to subsection (1)(e) of this section; and

e. Other facts the cabinet may require to determine the compliance status of the source.

4. A requirement that all compliance certifications be submitted to the U.S. EPA for sources required to obtain a Part 70 permit, in addition to the cabinet.

5. Additional requirements for monitoring and compliance certification, consistent with 42 USC 7414(a)(3) and 42 USC 7661c(b) (Sections 114(a)(3) and 504(b) of the Act).

(c) Inspection and entry requirements. All permits shall contain a requirement that the permittee shall allow the cabinet or an authorized

representative to perform the functions specified in this paragraph.

1. To enter upon the premises where a source is located or emissions-related activity is conducted, or where records are kept;

2. To have access to and copy, at reasonable times, any records required by the permit;

a. During normal office hours; and

b. During periods of emergency when prompt access to records is essential to proper assessment by the cabinet.

3. Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations required by the permit. Reasonable times shall include, but not be limited to:

a. During all hours of operation at the source;

b. For sources operated intermittently, during all hours of operation at the source and the hours between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays; and

c. During an emergency.

4. Sample or monitor, at reasonable times, substances or parameters to assure compliance with the permit or any applicable requirements. Reasonable times shall include, but not be limited to:

a. During all hours of operation at the source;

b. For sources operated intermittently, during all hours of operation at the source and the hours between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays; and

c. During an emergency.

(d) The permit shall contain other provisions which the cabinet deems necessary to ensure compliance with applicable requirements. ~~[Other provisions required by the cabinet.]~~

(3) General provisions. The permit shall contain terms and conditions ~~[statements]~~ consistent with the general provisions specified in this paragraph.

(a) ~~[4-]~~ For major sources, all applicable requirements for emissions units;

(b) ~~[2-]~~ For minor sources, all applicable requirements for emissions units that cause the source to be subject to this administrative regulation;

(c) ~~[3-]~~ Fugitive emissions from a source applying for a Part 70 permit shall be included in the permit in the same manner as stack emissions, even if the source category is not included in the list of sources in Section 1(23) ~~[(24)]~~(b) of this administrative regulation.

(d) ~~[4-]~~ The permittee shall comply with all conditions of the permit. Noncompliance shall be a violation of this administrative regulation and, for federally enforceable permits, shall also be a violation of the Act and shall be grounds for an enforcement action, including but not limited to the termination, revocation and reissuance, or revision of a permit, or denial of a permit application.

(e) ~~[5-]~~ It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance.

(f) ~~[6-]~~ The permit may be revised, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay a permit condition.

(g) ~~[7-]~~ The permit shall not convey property rights or exclusive privileges.

(h) ~~[8-]~~ Emission fees. The permit shall contain a provision to ensure that the source shall pay emission fees pursuant to the approved fee schedule in 401 KAR 50:038.

(i) ~~[9-]~~ Emissions trading. The permit shall contain a provision stating that a permit revision shall not be required in approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit.

(j) ~~[10-]~~ The permittee shall furnish to the cabinet information that the cabinet may request to determine if cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine

previous permit, including any permit shield that is issued pursuant to Section 8 of this administrative regulation, shall remain in effect until the renewal permit has been issued or denied.

(d) If the cabinet fails to act promptly on a federally enforceable permit renewal, the U.S. EPA may invoke its authority, pursuant to 42 USC 7661d(e) (Section 505(e) of the Act), to terminate or revoke and reissue the permit.

Section 13. General Requirements. (1) For a source that is constructing, reconstructing, ~~[altering,]~~ or modifying, a permit shall become invalid if construction is not commenced within eighteen (18) months after the permit is issued, if construction begins but is discontinued for a period of eighteen (18) months or more, or if construction is not completed within eighteen (18) months of the scheduled completion date. The cabinet may extend these time periods upon a satisfactory showing that an extension is justified. This provision shall not apply to the time period between construction of the approved phases of a phased construction project. For a phased construction project, each phase shall commence construction within eighteen (18) months of the projected and approved commencement date.

(2) Permits issued by the cabinet shall not be transferred by the permittee. If a source changes ownership, the new owners or operators shall obtain a revised permit from the cabinet. A written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee shall be submitted to the cabinet prior to the transfer. If proper notice is given and no other change is required in the permit, the revised permit shall be processed as an administrative amendment pursuant to Section 14 of this administrative regulation.

(3) A source that moves to a new location within the Commonwealth of Kentucky shall notify the cabinet prior to the relocation, and shall obtain a new or revised permit prior to commencing construction or operation at the new location. If the source is minor and its current permit did not require public review, and if no other change in the permit is required, the revised permit shall be processed as an administrative amendment pursuant to Section 14 of this administrative regulation.

(4) Compliance demonstration.

(a) A source that is constructing, reconstructing, ~~[altering,]~~ or modifying shall not commence operation until compliance with the applicable requirements is demonstrated, pursuant to 401 KAR 50:055, except as provided in Sections 14 through 16 of this administrative regulation.

(b) ~~[(a)]~~ A source which is operating to demonstrate compliance shall not be considered to have commenced operation.

(c) ~~[(b)]~~ If the source does not successfully demonstrate compliance, the permit shall be amended as necessary and the compliance plan shall be revised or added, as appropriate, pursuant to Section 7(4) of this administrative regulation.

Section 14. Administrative Permit Amendments. The procedures in this section shall be available to all sources, and shall be used to process only those changes described in Section 1(3) of this administrative regulation. ~~[Administrative permit amendments shall be made by the cabinet pursuant to this section.]~~

(1) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(2) Within sixty (60) days of a request for an administrative permit amendment, the cabinet shall take final action.

(3) The cabinet may incorporate an administrative permit amendment into the permit without providing notice to the public or affected states.

(4) For federally enforceable permits, the cabinet shall submit a copy of the revised permit to the U.S. EPA.

(5) For Part 70 permits, the cabinet may, upon taking final action

granting a request for an administrative permit amendment, allow coverage by the permit shield for an administrative permit amendment, if the amendment meets the relevant requirements of this administrative regulation for significant permit revisions.

(6) Administrative permit amendments for the acid rain portion of a Part 70 ~~[the]~~ permit shall be governed by regulations promulgated pursuant to 42 USC 7651 through 7651o (Title IV of the Act).

Section 15. Minor Permit Revisions. ~~[Except as provided in the Acid Rain Program,]~~ The procedures in this section shall be used to process the revisions specified in subsections (1) and (2) of this section at Part 70 sources after the initial draft permit has been issued for the entire source, except as provided in the Acid Rain Program. ~~[for minor permit revisions are specified in this section.]~~

(1) Minor permit revision procedures shall be used for permit revisions that:

(a) Do not violate an applicable requirement;

(b) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(c) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(d) Do not seek to establish or change a permit term or condition for which there is no corresponding applicable requirement but which the source has assumed to avoid an applicable requirement. These terms and conditions include:

1. A federally enforceable emissions cap assumed to avoid classification as a modification in a provision of 42 USC 7401 through 7515 (Title I of the Act); and

2. An alternative emissions limit approved pursuant to 42 USC 7412(i)(5) (Section 112(i)(5) of the Act);

(e) Are not modifications in a provision of 42 USC 7401 through 7515 (Title I of the Act) or of an administrative regulation promulgated in 401 KAR Chapters 50 through 63; and

(f) Are not required to be processed as a significant permit revision.

(2) Minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that these minor permit revision procedures are explicitly provided for in the SIP or in applicable requirements and meet the relevant requirements of this section.

(3) Application. An application requesting the use of minor permit revision procedures shall meet the requirements of Section 3 of this administrative regulation and shall include the items specified in paragraphs (a) through (d) of this subsection.

(a) A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs;

(b) The source's suggested draft permit;

(c) Certification by a responsible official, pursuant to Section 6 of this administrative regulation, that the proposed permit revision meets the criteria for use of minor permit revision procedures and a request that these procedures be used; and

(d) For federally enforceable permits, completed forms for the cabinet to use to notify affected states and the U.S. EPA, as required in Sections 20 and 21 of this administrative regulation.

(4) U.S. EPA and affected state notification. Within five (5) working days of receipt of a complete application for a federally enforceable permit revision, the cabinet shall provide notice to the U.S. EPA and affected states, pursuant to Sections 20 and 21 of this administrative regulation, of the requested minor permit revision.

(5) Timetable for issuance. ~~[(a)]~~ The cabinet shall not issue a final minor permit revision to a federally enforceable permit until after the U.S. EPA's forty-five (45) day review period or until the U.S. EPA has notified the cabinet that it will not object to issuance of the minor

days before the change is made. The source, cabinet, and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The written notification shall include:

1. A brief description of the change within the permitted facility;
2. The date on which the change will occur;
3. Any change in emissions; and
4. Any permit term or condition that is no longer applicable as a result of the change.

(4) The permit shield described in Section 8 of this administrative regulation shall not apply to any change made pursuant to this section.

(5) The change shall be incorporated into the permit at renewal.

Section 18. Reopening for Cause. (1) Each issued permit shall include provisions specifying the conditions for which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under the circumstances specified in this section.

(a) Additional applicable requirements become applicable to a source with a remaining permit term of three (3) or more years. A reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. A reopening shall not be required if compliance with the applicable requirement is not required until after the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to Section 12(2)(c) of this administrative regulation.

(b) Additional applicable requirements, including excess emissions requirements, become applicable to an affected source in the Acid Rain Program. Upon approval by the U.S. EPA and the cabinet, excess emissions offset plans shall be incorporated into the permit.

(c) The cabinet or the U.S. EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) For federally enforceable permits, the cabinet or the U.S. EPA determines that the permit shall be revised or revoked to assure compliance with the applicable requirements or, for state-origin permits, the cabinet makes a similar determination.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Reopenings shall be made as expeditiously as practicable.

(3) Reopenings in subsection (1) of this section shall not be initiated before a notice of intent to reopen is provided to the source by the cabinet at least thirty (30) days in advance of the date that the permit is to be reopened, except that the cabinet may provide a shorter time period in the case of an emergency.

(4) Reopenings for cause by the U.S. EPA.

(a) If the U.S. EPA finds that cause exists to terminate, modify, or revoke and reissue a federally enforceable permit pursuant to subsection (1)(d) of this section, the U.S. EPA shall notify the cabinet and the permittee of this finding in writing.

(b) The cabinet shall, within ninety (90) days after receipt of notification, forward to the U.S. EPA a proposed determination of termination, revision, or revocation and reissuance of the permit, as appropriate. The U.S. EPA may extend this ninety (90) day period for an additional ninety (90) days if it finds that a new or revised permit application is necessary or that the cabinet has required the permittee to submit additional information.

(c) The U.S. EPA shall review the proposed determination from the cabinet within ninety (90) days of receipt.

(d) The cabinet shall have ninety (90) days from receipt of an objection by the U.S. EPA to resolve the objection and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

(e) If the cabinet fails to submit a proposed determination

pursuant to paragraph (b) of this subsection or fails to resolve an objection pursuant to paragraph (d) of this subsection, the U.S. EPA shall terminate, modify, or revoke and reissue the permit after the permittee is notified of the reasons for the action, in writing. The permittee shall be given thirty (30) days from the date of the notice to comment on the U.S. EPA's proposed action and to request a hearing. This notice may be given during the procedures in paragraphs (a) through (d) of this subsection.

Section 19. Procedures for Public Participation. These procedures shall apply to federally enforceable permits, to state origin permits that become federally enforceable as a result of the permit action to be taken, and to conditional major and synthetic minor permits containing limits that equal or exceed fifty (50) percent of a major source threshold. ~~[only to federally enforceable permits, and to state origin permits that become federally enforceable as a result of the permit action to be taken.]~~

(1) The cabinet shall provide public notice of the opportunity to comment for the permit actions listed in this subsection:

- (a) Issuance of a draft permit;
- (b) Intended denial of a permit application;
- (c) Issuance of a draft significant permit revision;
- (d) Issuance of a draft general permit;
- (e) Issuance of a permit renewal; and
- (f) Scheduling of a public hearing pursuant to subsection (8) ~~[(7)]~~

of this section.

(2) The cabinet shall provide public notice by prominent advertisement in the newspaper having the largest general circulation in the area of the facility applying for the permit. Publication shall include paid advertisement, legal notice, or other appropriate format, as determined by the cabinet. The cabinet may provide additional notice to the public through other methods, including but not limited to newsletters and press releases.

(3) A copy of the notice required in subsection (2) of this section shall be sent to the persons listed in this subsection, pursuant to the requirements in subsection (4) of this section:

- (a) The applicant;
- (b) The Administrator of the U.S. EPA through the appropriate regional office;

(c) For sources subject to 401 KAR 51:017 or 401 KAR 51:052, officials and agencies having authority over the locations where the source will be located as specified in this paragraph:

1. Local air pollution control agencies;
2. The chief executive of the city and county;
3. Any comprehensive regional land use planning agency; and
4. Any federal land manager or Indian governing body whose land

may be affected by the emissions from the proposed source;

(d) Affected states; and

(e) Persons on a mailing list which is maintained and compiled by the cabinet. This mailing list shall include persons requesting to be on the list, and persons solicited from participants in past permit proceedings in the affected area. The cabinet may notify the public of the opportunity to be on the list through periodic publication in the public press and in such publications as state-founded newsletters, environmental bulletins, or state law journals. The cabinet may delete from the list persons who fail to respond to an inquiry of continued interest in receiving notice.

(4)(a) Notice shall be sent to all the persons listed in subsection (3) of this section for permits and permit revisions that are subject to 401 KAR 51:017 or 51:052.

(b) Notice shall be sent to the persons listed in subsection (3)(a), (b), (d), and (e) of this section for Part 70 permits and permit revisions that are not subject to 401 KAR 51:017 or 51:052.

(c) Notice shall be sent to the persons listed in subsection (3)(a) and (e) of this section for conditional major and synthetic minor permits containing limits that equal or exceed fifty (50) percent of a major source threshold.

action on the application pursuant to subsection (3) of this section, unless the U.S. EPA has waived the review for the U.S. EPA and affected states.

(2) Transmission of information to the U.S. EPA.

(a) The cabinet shall provide to the U.S. EPA a copy of each federally enforceable permit application, permit revision application, proposed permit, and final permit. Information that is submitted with a claim of confidentiality shall be submitted pursuant to Section 5(6) [(42)] of this administrative regulation.

(b) On a case-by-case basis, and with U.S. EPA approval, the cabinet may submit, for a federally enforceable permit, a permit application summary form and a relevant portion of the permit application and compliance plan in place of the complete application and compliance plan. If possible, this information shall be provided in computer-readable format compatible with the U.S. EPA's national database management system.

(3) U.S. EPA objection.

(a) The U.S. EPA may object to the issuance of any proposed permit determined by the U.S. EPA not to meet applicable requirements. The U.S. EPA shall file an objection in writing within forty-five (45) days of receipt of the proposed permit and the necessary supporting information.

(b) The U.S. EPA objection shall include a statement of the reasons for objection and a description of the terms and conditions that the permit shall include to respond to the objections. The U.S. EPA shall provide the permit applicant a copy of the objection.

(c) The cabinet shall not issue a federally enforceable permit if the U.S. EPA files an objection pursuant to the requirements in subsection (1) of this section.

(d) If the cabinet fails, within ninety (90) days after the date of a U.S. EPA objection, to revise and submit a proposed permit in response to the objection, the U.S. EPA shall issue or deny the permit pursuant to the requirements of 42 USC 7661 through 7661f (Title V of the Act).

(e) If the U.S. EPA does not object, in writing, pursuant to this section, a person may petition the U.S. EPA within sixty (60) days after the expiration of the U.S. EPA's forty-five (45) day review period to make an objection. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period pursuant to Section 19 of this administrative regulation, unless the petitioner demonstrates that it was impracticable to raise the objections within the comment period, or unless the grounds for the objection arose after the comment period. If the U.S. EPA objects to the proposed permit as a result of a petition filed pursuant to this subsection, the cabinet shall not issue the permit until the U.S. EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five (45) day review period and prior to a U.S. EPA objection.

(f) If the cabinet has issued a permit prior to receipt of a U.S. EPA objection pursuant to this section, the U.S. EPA may modify, terminate, or revoke the permit and the cabinet shall thereafter issue a revised permit that satisfies the U.S. EPA objection. The source shall not be in violation of the requirement to have submitted a timely and complete application.

(4) Recordkeeping and sharing of information. The cabinet shall keep records of the information required in subsection (2) of this section for at least five (5) years. The cabinet shall submit, upon request from the U.S. EPA and in a form specified by the U.S. EPA, including computer-readable files to the extent practicable, information which may reasonably be required to determine if the permitting program complies with the requirements of the Act or 40 CFR Part 70. If the information has been submitted to the cabinet under a claim of confidentiality, the cabinet may require the source to submit this information to the U.S. EPA directly. If the cabinet is authorized by a source to submit information to the U.S. EPA under a claim of confidentiality, the cabinet shall submit the confidentiality claim to the

U.S. EPA together with the information to which it applies.

Section 22. Permit Issuance Procedures. Permits issued by the cabinet shall be processed pursuant to this section.

(1) Part 70 permits and significant revisions.

(a) The cabinet shall evaluate the completeness of the application pursuant to Section 4 of this administrative regulation.

(b) The cabinet shall issue a draft permit within sixty (60) days after the permit application is deemed complete. For sources subject to 401 KAR 51:052, Review of new sources in or impacting upon nonattainment areas (NSR) or 401 KAR 51:017, Prevention of significant deterioration or air quality (PSD), the draft permit shall be the preliminary determination.

1. The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 19 and 20 of this administrative regulation.

2. If the draft permit also is the preliminary determination for a PSD or NSR source, the cabinet shall submit it to the U.S. EPA pursuant to Section 21 of this administrative regulation.

(c) The cabinet shall issue or deny a proposed permit within sixty (60) days after the public and affected state review is complete, and shall respond to public comments. The proposed permit is the final determination for a PSD or NSR source.

1. The cabinet shall notify the applicant in writing of its action regarding the proposed permit.

2. If the proposed permit also is the final determination, the cabinet shall make the notification and public comments available for public inspection at the same location where the draft permit was made available.

3. The cabinet shall submit the proposed permit to the U.S. EPA.

4. The source shall construct and operate in compliance with the proposed permit until a final permit is issued or denied.

(d) The cabinet shall issue or deny a final permit according to the following schedule:

1. For initial round Part 70 permits, by December 14, 1998, for sixty (60) percent of the initial round of applications from existing sources that emit at least eighty (80) percent of the emissions as reported in the Kentucky Emissions Inventory System (KyEIS), and for one-half (½) of the remaining forty (40) percent of initial round applications each year for two (2) years after December 14, 1998. Draft and proposed permits shall be issued on a schedule consistent with the final permit.

2. For all other sources, within eighteen (18) months after the application is deemed complete.

(e) If a source is subject to an existing permit, authorization to operate, or order of the cabinet, it shall operate in compliance with its terms and conditions until a final permit is issued.

(2) Conditional major permits.

(a) The cabinet shall evaluate the completeness of the application pursuant to Section 4 of this administrative regulation.

(b) If the source requests an emission limit that equals or exceeds fifty (50) percent of a major source threshold, the cabinet shall issue or deny a draft permit within sixty (60) days after the application is deemed complete. If a draft permit is issued, the cabinet shall submit it for public review pursuant to Section 19 of this administrative regulation. The cabinet shall issue or deny a final permit within sixty (60) days after the public review is completed.

(c) If the emission limits requested by the source do not equal or exceed fifty (50) percent of a major source threshold, the cabinet shall issue or deny a final permit within sixty (60) days after the application is deemed complete. [The cabinet shall issue or deny a final permit within nine (9) months after the application is deemed complete.]

(d) The source shall construct and operate in compliance with the final permit.

(e) If the source is subject to an existing permit, authorization to operate, or order of the cabinet, it shall operate in compliance with its terms and conditions until a final permit is issued.

were subject to review as a permit revision, and compliance requirements substantially equivalent to those contained in Section 4(3) of this administrative regulation.

(4) "Affected source" means a source that includes one (1) or more affected units.

(5) "Affected states" means those states:

(a) That border Kentucky and whose air quality may be affected by the proposed issuance, revision, or renewal of a permit subject to the federally enforceable requirements of this administrative regulation; or

(b) That are within fifty (50) miles of the proposed permitted source.

(6) "Affected unit" means a unit that is subject to the Acid Rain Program.

(7) "Applicable requirement" means a federally enforceable requirement or a state origin requirement or standard.

(8) "Classification date" means the date on which the U.S. EPA publishes a final rule granting full or interim approval to Kentucky's Permit Program submitted pursuant to 42 USC 7661 through 7661f (Title V of the Act).

(9) "Complete application" means an application for a permit or permit revision that meets the requirements of Section 3(1)(b) of this administrative regulation.

(10) "Conditional major source" means a source that accepts a limit made federally enforceable as a permit condition which prevents it from being classified as a major source as defined in this administrative regulation, if the limit is not a federally enforceable requirement.

(11) "Designated representative" means a responsible person authorized by the owners or operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted to the U.S. EPA pursuant to 40 CFR 72.20(b), to represent and legally bind each owner and operator, as a matter of federal law, in all matters pertaining to the Acid Rain Program. For matters related to the acid rain portion of a permit, the term "responsible official," as used in this administrative regulation or in administrative regulations implementing the Acid Rain Program, means the "designated representative."

(12) "Draft permit" means the version of a permit which the cabinet offers for the applicable public participation and affected state review as prescribed in Sections 7 and 8 of this administrative regulation.

(13) "Emergency" means a situation arising from a sudden and reasonably unforeseeable event beyond the control of the source, which requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation in the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(14) "Emissions fee" means the fee assessed to an air pollution source pursuant to 401 KAR 50:038, made effective November 20, 1993.

(15) "Emissions unit" means a part or activity of a stationary source that emits or has the potential to emit a regulated air pollutant. This term does not alter or affect the definition of the term "unit" as used in the Acid Rain Program.

(16) "Existing source" means a source which has submitted a permit application that the cabinet has deemed complete prior to November 20, 1993 or source that is authorized by the cabinet to operate on or before the effective date of this administrative regulation.

(17) "Federally enforceable permit" means a permit that contains a federally enforceable permit condition or provision and is required by the U.S. EPA to be federally enforceable.

(18) "Federally enforceable requirement" means all of the

following as they apply to emissions units at a source which is subject to 40 CFR Part 70, including requirements that have been promulgated or approved by the U.S. EPA at the time of permit issuance but which have future effective compliance dates:

(a) Standards or requirements in the State Implementation Plan (SIP) that implement the relevant requirements of the Act, including revisions to that plan promulgated at 40 CFR Part 52;

(b) Terms or conditions of preconstruction permits issued pursuant to administrative regulations approved or promulgated pursuant to 42 USC 7401 through 7516 (Title I of the Act);

(c) A standard or other requirement promulgated pursuant to 42 USC 7411 (Section 111 of the Act) or 42 USC 7420 (Section 120 of the Act) governing solid waste incineration;

(d) A standard or other requirement promulgated pursuant to 42 USC 7412 (Section 112 of the Act);

(e) Standards or requirements of the Acid Rain Program;

(f) Requirements established pursuant to 42 USC 7661e(b) (Section 504(b) of the Act) and 42 USC 7414(a)(3) (Section 114(a)(3) of the Act) for monitoring and compliance certification;

(g) A national ambient air quality standard or increment or visibility requirement pursuant to 42 USC 7470 (Part C of Title I of the Act) for temporary sources permitted pursuant to 42 USC 7661e(e) (Section 504(e) of the Act);

(h) A standard or other requirement for consumer and commercial products adopted pursuant to 42 USC 7511b(e) (Section 183(e) of the Act);

(i) A standard or other requirement for tank vessels adopted pursuant to 42 USC 7511b(f) (Section 183(f) of the Act);

(j) A standard or other requirement to protect stratospheric ozone adopted pursuant to 42 USC 7671 through 7671q (Title VI of the Act), unless the U.S. EPA determines that these requirements need not be contained in the permit.

(19) "Final permit" means:

(a) For a federally enforceable permit, the version of a permit issued by the cabinet that has completed all the review procedures required in Sections 7 through 9 of this administrative regulation and for which a final determination has been made;

(b) For a state origin permit, the version of a permit which meets the applicable provisions of this administrative regulation and for which a final determination has been made.

(20) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(21) "General permit" means a permit that meets the requirements of Section 4(4) of this administrative regulation.

(22) "Major source" means a stationary source, or a group of stationary sources, that are located on one (1) property or two (2) or more contiguous or adjacent properties under common control of the same person, or persons under common control, and that belong to a single major industrial grouping (i.e., all have the same two (2) digit code as described in the 1987 Standard Industrial Classification Manual, which is incorporated by reference in 401 KAR 51:017, Section 21) which emits a regulated air pollutant and which is described in paragraphs (a), (b), or (c) of this subsection.

(a) On or after the classification date, a stationary or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of a hazardous air pollutant listed in 401 KAR 57:061, made effective November 20, 1993, or twenty-five (25) tons per year or more of a combination of hazardous air pollutants listed in 401 KAR 57:061, or a lesser quantity established by the U.S. EPA and promulgated in an administrative regulation in 401 KAR Chapter 57. Emissions from an oil or gas exploration or production well, with its associated equipment, and emissions from a pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine

ments but is not required by the U.S. EPA to be a federally enforceable permit.

(35) "State origin requirement" means an applicable requirement that is not mandated by 42 USC 7401 through 7671q (the Act) or any of the Act's applicable requirements, and that is not federally enforceable.

(36) "Stationary source" means a building, structure, facility, or installation that emits or may emit a regulated air pollutant.

(37) "Synthetic minor source" means a source that accepts a limit made federally enforceable as a permit condition which prevents it from being classified as a major source as defined in either 401 KAR 51:017 or 401 KAR 51:052, if the limit is not a federally enforceable requirement.

(38) "Timely application" means an application that meets the requirements of Section 3(1)(a) of this administrative regulation.

Section 2. Applicability. This administrative regulation shall apply to owners and operators of all air pollution sources, except as follows:

(1) A source shall be exempt from this administrative regulation if:

(a) The source is a minor source pursuant to 40 CFR Part 70 and is not subject to an applicable requirement; or

(b) The source is a minor source that:

1. Emits or has the potential to emit less than twenty-five (25) tons per year of a regulated air pollutant, except as provided in subparagraphs 2 and 3 of this paragraph, or a lesser amount if specified in an applicable requirement; and

2. Has potential emissions of less than two (2) tons per year of a single hazardous air pollutant and less than five (5) tons per year of any combination of hazardous air pollutants listed in 401 KAR 57:061 or a lesser amount specified in an applicable requirement; and

3. Is not subject to a requirement in 40 CFR Parts 60, 61, or 63; 401 KAR 63:021; or 401 KAR 63:022; and

4. Is not required by the U.S. EPA to obtain a permit.

(2) The following activities and affected facilities shall be exempt from the requirement to obtain a permit pursuant to this administrative regulation. These exemptions shall not relieve a source from the requirements of any other applicable requirement. The cabinet may require the owner or operator to demonstrate compliance with all applicable requirements.

(a) an asbestos demolition or renovation operation subject only to the provisions of 40 CFR Part 61, Subpart M or 401 KAR 63:042, made effective November 6, 1987;

(b) An activity subject only to the provisions of 40 CFR Part 60, Subpart AAA;

(c) An activity that emits only nonprocess fugitive emissions that are not part of a source that is otherwise subject to an applicable requirement;

(d) Open burning pursuant to 401 KAR 63:005, made effective March 1, 1984;

(e) Vehicles used for the transport of passengers or freight; and

(f) Publicly owned roads.

(3) Insignificant activities shall be exempt from permitting requirements pursuant to the following criteria:

(a) The activity shall be included in the permit application with a request that the activity be exempt from permitting;

(b) The activity shall not be subject to an applicable requirement;

(c) The potential or actual emissions from the activity shall not cause the source to be subject to an applicable requirement to which the source would not otherwise be subject;

(d) The activity shall have a potential to emit of less than five (5) tpy of any regulated air pollutant, not including a hazardous air pollutant listed pursuant to 42 USC 7412(b) (Section 112(b) of the Act) or a toxic pollutant listed in 401 KAR 63:021 or 401 KAR 63:022.

(e) The potential to emit of all activities exempted pursuant to this subsection shall be less than two (2) tpy of any hazardous air pollutant and less than five (5) tpy of any combination of hazardous

air pollutants, or a lesser amount if specified by the U.S. EPA;

(f) The potential to emit of all activities exempted pursuant to this subsection shall be less than the significance level of any toxic air pollutant listed in 401 KAR 63:021 or 401 KAR 63:022.

(g) The activity shall not be the incineration of medical waste.

(4) The cabinet shall maintain an updated list of these activities submitted and approved pursuant to subsection (3) of this section and shall provide this list to any person upon request.

(5) The following de minimis changes shall be exempted from the requirement to obtain a permit or permit revision:

(a) Affected facilities which are part of a construction project where the total increase in the potential to emit from all affected facilities in the construction project is less than or equal to two (2) tons per year of a pollutant for which an ambient air quality standard has been promulgated in 401 KAR 53:010, if the increase does not subject the source to an applicable requirement.

1. The owner or operator shall notify the cabinet in writing of the increases and construction projects thirty (30) days prior to commencing construction.

2. This exemption shall not apply to affected facilities which are subject to a regulation promulgated pursuant to 40 CFR Parts 60, 61, or 63; 401 KAR 63:021 or 401 KAR 63:022; to sources of pollutants located in areas designated as nonattainment for the pollutants in 401 KAR 51:010; or to incinerators.

(b) After the issuance of a draft permit, the exemption in paragraph (a) of this subsection shall not apply to sources that are required to obtain a federally enforceable permit pursuant to 40 CFR Part 70.

Section 3. Permit Applications. (1) Duty to apply. Owners and operators of sources subject to this administrative regulation shall submit a timely and complete permit application pursuant to this section using Form DEP 7007, which is incorporated by reference in 401 KAR 50:034. The cabinet may provide methods for electronic transmission of the completed application.

(a) Timely applications.

1. Existing major sources.

a. Sources proposing to accept permit limitations to become synthetic minor or conditional major sources shall file a complete application to obtain a permit. The cabinet shall process these applications as federally enforceable permits pursuant to Section 5 of this administrative regulation.

b. All other existing major sources shall file a complete application for a permit within twelve (12) months after the classification date or within twelve (12) months after the source is required to obtain a federally enforceable permit pursuant to 40 CFR Part 70, whichever date is earlier. The cabinet shall process these applications as federally enforceable permits pursuant to Section 5(1)(b) of this administrative regulation.

2. Existing minor sources required to obtain a federally enforceable permit pursuant to 40 CFR Part 70. An existing minor source shall file a complete application for a permit within twelve (12) months after the date of publication by the U.S. EPA of a final rule which requires the minor source to obtain a permit or within five (5) years after the classification date, whichever date is earlier. These applications shall be processed as federally enforceable permits pursuant to Section 5(1)(b) and (2)(b) of this administrative regulation.

3. Existing minor sources required to have a state origin permit. An existing source that is required to have a state origin permit shall file a complete application for a permit within twelve (12) months after becoming subject to an applicable requirement promulgated after the effective date of this administrative regulation, or by November 15, 2000, whichever date is earlier. The cabinet shall process these applications as state origin permits pursuant to Section 5(1)(e) of this administrative regulation.

4. An existing source that constructs, reconstructs an affected facility, alters, or modifies prior to the date the source receives a

the source pursuant to Section 4(1)(i) of this administrative regulation, or to define permit terms and conditions implementing Section 4(1)(i) of this administrative regulation.

(i) The application shall provide a compliance plan containing the following:

1. A description of the compliance status of the source for all applicable requirements as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with these requirements.

b. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with these requirements.

2. A compliance schedule as follows:

a. For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this condition, unless a more detailed schedule is expressly required by the applicable requirement.

b. For sources that are not in compliance with all applicable requirements at the time of permit issuance, the schedule shall include remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with all applicable requirements for which the source will be in noncompliance at the time of permit issuance. The compliance schedule shall resemble and be at least as stringent as that contained in a judicial consent decree or an order issued by the cabinet to which the source is subject. The schedule of compliance shall be supplemental to, and shall not condone noncompliance with, the applicable requirements on which it is based.

3. A schedule for submission of certified progress reports, pursuant to Section 4(3)(d) of this administrative regulation, no less frequently than every six (6) months for sources required to have a schedule of compliance to remedy a violation or noncompliance.

4. In Phase II of the Acid Rain Program, the compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as provided in the Acid Rain Program for the schedule and method the source will use to achieve compliance with the acid rain emissions limitations.

(i) The application shall identify requirements for compliance certification, including the following:

1. A certification of compliance with all applicable requirements by a responsible official pursuant to subsection (4) of this section;

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the cabinet; and

4. A statement indicating the source's compliance status with applicable monitoring, including enhanced monitoring, and compliance certification requirements.

(4) Certification by responsible official. Application forms, reports, and compliance certifications submitted pursuant to this administrative regulation shall contain a certification by a responsible official, as defined in Section 1(28) of this administrative regulation, of truth, accuracy, and completeness. The certifications required in this administrative regulation shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

Section 4. Permit Content. (1) Standard permit requirements. A permit issued pursuant to this administrative regulation shall include the following elements:

(a) Emission limitations and standards, including operational requirements and limitations that assure compliance with applicable requirements at the time of permit issuance. This shall include:

1. The origin of and authority for each term or condition, and any variation from the applicable requirement upon which the term or condition is based;

2. A statement that the source shall comply with all applicable requirements;

3. If the state implementation plan (SIP) allows the determination of an alternative emission limit that is equivalent to the limit contained in the plan to be made in the permit issuance, renewal, or significant permit revision process, then a permit containing the equivalency determination shall contain conditions to ensure that the resulting emissions limit has been demonstrated to be permanent, quantifiable, accountable, enforceable, and based on replicable procedures. The cabinet shall not issue permits that waive, or make less stringent, any limitation or requirements contained in or issued pursuant to the SIP or that are otherwise federally enforceable;

4. For major sources, all applicable requirements for emissions units;

5. For minor sources, all applicable requirements for emissions units that cause the source to be subject to this administrative regulation; and

6. Fugitive emissions from a source subject to 40 CFR part 70 shall be included in the permit in the same manner as stack emissions, even if the source category is not included in the list of sources in Section 1(22)(b) of this administrative regulation.

7. The permit shall state that if an applicable requirement of 42 USC 7401 through 7671q is more stringent than an applicable requirement promulgated pursuant to 42 USC 7661 through 7661e, both provisions shall be placed in the permit and shall be federally enforceable.

(b) Permit duration and renewal. A statement shall be included which provides that the permit shall expire and shall be renewed pursuant to Section 5(7) of this administrative regulation.

(c) Monitoring and related recordkeeping and reporting requirements.

1. Each permit shall contain the following monitoring requirements:

a. All emissions monitoring and analysis procedures or test methods required in the applicable requirements including those specified in 42 USC 7414(a)(3) or 7661e(b) (Sections 114(a)(3) or 504(b) of the Act);

b. If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period representative of the source's compliance with the permit, as reported pursuant to subparagraph 3 of this paragraph. Monitoring requirements shall assure the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this sentence; and

c. Requirements covering the use, maintenance, and installation of monitoring equipment or methods, as necessary and appropriate.

2. Each permit shall incorporate the following recordkeeping requirements, if applicable:

a. Records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements;

(ii) The dates analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of analyses; and

(vi) The operating conditions at the time of sampling or measurement;

the following:

- a. During all hours of operation at the source;
- b. For sources operated intermittently, during all hours of operation at the source and the hours between 8 a.m. and 4:30 p.m., Monday through Friday, excluding holidays; and
- c. During an emergency.

(c) A schedule of compliance as required in Section 3(3)(i)2 of this administrative regulation.

(d) Progress reports on the schedule of compliance required in paragraph (c) of this subsection to be submitted at least semiannually, or at a more frequent period if specified in an applicable requirement or by the cabinet. Progress reports shall contain the following:

1. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when these activities, milestones, or compliance were achieved; and

2. An explanation of why dates in the schedule of compliance were not or will not be met, and preventive or corrective measures adopted.

(e) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

1. The frequency, as specified in an applicable requirement or by the cabinet, of submissions of compliance certifications (must be at least annually);

2. In accordance with subsection (1)(c) of this section, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

3. A requirement that the compliance certification include the following:

a. The identification of each term or condition of the permit that is the basis of the certification;

b. The compliance status;

c. Whether compliance was continuous or intermittent;

d. The method used for determining the compliance status of the source, currently and over the reporting period pursuant to subsection (1)(c) of this section; and

e. Other facts as the cabinet may require to determine the compliance status of the source;

4. A requirement that all compliance certifications be submitted to the U.S. EPA for sources required to obtain permits pursuant to 40 CFR Part 70, as well as to the cabinet; and

5. Additional requirements for monitoring and compliance certification, consistent with 42 USC 7414(a)(3) and 7504(b) (Sections 114(a)(3) and 504(b) of the Act).

(f) A specific condition, for a constructing, reconstructing, altering, or modifying source, that the source shall not be allowed to commence operation until it has demonstrated compliance, pursuant to 401 KAR 50:055 and Section 5(4) of this administrative regulation, or the permit has been revised to contain a compliance plan. For a federally enforceable permit, the compliance plan shall meet the applicable review requirements in Sections 7 through 9 of this administrative regulation.

(g) Other provisions required by the cabinet.

(4) General permits.

(a) The cabinet may, after notice and opportunity for public participation provided in Section 7 of this administrative regulation, issue a general permit covering numerous similar sources. A general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the cabinet shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions in subsection (6) of this section, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources except as provided in the Acid Rain Program.

(b) Sources that qualify for a general permit shall apply to the cabinet for coverage under the terms of the general permit or shall apply for a permit pursuant to Section 3 of this administrative regulation. The general permit application shall meet the requirements of this administrative regulation and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The cabinet may grant a source's request for a general permit without repeating the public participation procedures required in Section 7 of this administrative regulation. If the cabinet determines that the source does not meet the criteria for a general permit, the cabinet's denial of the general permit shall not constitute a final action and the permit application shall be processed pursuant to the requirements of Section 3 of this administrative regulation.

(5) Temporary sources. The cabinet may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one (1) change of location during the term of the permit. An affected source shall not be permitted as a temporary source. Permits for temporary sources shall include the following:

(a) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(b) Requirements that the owner or operator notify the cabinet at least ten (10) days in advance of each change in location; and

(c) Conditions that assure compliance with all other provisions of this administrative regulation.

(6) Permit shield.

(a) Except as provided in this administrative regulation, compliance with the conditions of the permit shall be deemed compliance with the applicable requirements as of the date of permit issuance, if:

1. The applicable requirements are included and are specifically identified in the permit; or

2. The cabinet, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(b) A permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.

(c) Nothing in this subsection or in a permit shall alter or affect the following:

1. 42 USC 7603 (emergency orders, Section 303 of the Act), including the authority of the U.S. EPA in that section;

2. The liability of an owner or operator of a source for violation of applicable requirements prior to or at the time of permit issuance;

3. The applicable requirements of the Acid Rain Program; or

4. The ability of the U.S. EPA to obtain information from a source pursuant to 42 USC 7414 (Section 114 of the Act).

(7) Emergency provision.

(a) Effect of an emergency. An emergency shall constitute an affirmative defense to an action brought for noncompliance with the technology-based emission limitations if the conditions in paragraph (b) of this subsection are met.

(b) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An emergency occurred and the permittee can identify the cause of the emergency;

2. The permitted facility was at the time being properly operated;

3. During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

4. The permittee notified the cabinet as promptly as possible and submitted written notice of the emergency to the cabinet within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice shall fulfill the requirement of subsection (1)(c)3b of this section, and shall contain a description of the emergency, steps taken to mitigate emissions, and corrective

a. The cabinet shall continue to process the application for the entire source independently from the application for the proposed change.

b. The application for the proposed change shall be processed pursuant subparagraph 1 of this paragraph.

(b) Sources proposing changes that are not subject to new source review for major sources or prevention of significant deterioration requirements.

1. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility prior to the date the source submits an application for a permit covering the entire source shall be processed as follows:

a. The cabinet shall issue or deny a state origin permit within sixty (60) days after the application is deemed complete. If the source proposes to except permit limitations to make the change a synthetic minor change, the permit shall be processed pursuant to the applicable provisions of subsection (1)(a) of this section.

b. The source shall construct and operate in compliance with the permit issued pursuant to this subparagraph until a permit for the entire source is issued or denied.

c. A permit issued pursuant to this subparagraph shall be incorporated into the source's application for a permit for the entire source.

2. Applications received from existing sources proposing to construct, reconstruct, alter, or modify an affected facility after the source submits an application for a permit covering the entire source shall be processed as follows:

a. The cabinet shall continue to process the application for the entire source independent of the application for the proposed change.

b. Draft permit. The cabinet shall issue or deny a draft permit for the proposed change within sixty (60) days after the application for the change is deemed complete. The source shall construct in compliance with the draft permit. If the source proposes to accept permit limitations to make the change a synthetic minor change, the permit shall be processed pursuant to the applicable provisions of subsection (1)(a) of this section.

c. The cabinet shall process a draft permit issued pursuant to subparagraph 2b of this paragraph and revise the permit for the entire source pursuant to the applicable provisions of Section 6 of this administrative regulation.

(3) Processing applications for the proposed construction of new sources, reconstruction of existing sources, and alteration or modification of sources with a permit for the entire source. Applications received after November 29, 1993, pursuant to Section 3(1)(a)5 of this administrative regulation shall be processed as follows:

(a) Applications for the proposed construction of new sources or reconstruction of existing sources shall be processed as follows:

1. Constructing or reconstructing sources that are subject to new source review for major sources or prevention of significant deterioration requirements or who propose to accept permit limitations which cause the source to be a synthetic minor source. Applications received for the proposed construction or reconstruction of a source that is subject to, or would otherwise be subject to, 40 CFR 51.165, 40 CFR 51.166, 401 KAR 51:052, or 401 KAR 51:017 source shall be processed as follows:

a. Preliminary determination/draft permit. The cabinet shall make a preliminary determination if the source should be approved, approved with conditions or disapproved, and issue or deny a draft permit within sixty (60) days after the application is deemed complete.

b. Public and affected state review. The cabinet shall submit the draft permit to the U.S. EPA and shall provide notice for public review pursuant to Section 7 of this administrative regulation. The cabinet shall also provide the draft permit for affected state review pursuant to Section 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.

c. Final determination/proposed permit. The cabinet shall respond to comments and shall take final action on the application within sixty

(60) days after the U.S. EPA and public review is completed. The cabinet shall notify the applicant in writing of the final determination, issue or deny a proposed permit, and make the notification and public comments available for public inspection at the same location where the preconstruction information was made available.

d. If the source is not required to obtain a permit pursuant to 40 CFR Part 70, the source shall construct and operate in compliance with the proposed permit. The proposed permit shall be submitted to the U.S. EPA and shall become the final permit for the source. For all other sources subject to this subparagraph and to 40 CFR Part 70:

(i) The source shall construct and operate in compliance with the proposed permit until a final permit for the entire source is issued or denied, except that the owner or operator of a source that is subject to 40 CFR 51.166 and 401 KAR 51:017 shall not construct until thirty (30) days after receiving notice of the final determination.

(ii) The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation; and

(iii) The cabinet shall issue or deny a final permit within eighteen (18) months after the application is deemed complete.

2. Applications received for the proposed construction or reconstruction of all other sources required to have a permit pursuant to 40 CFR Part 70 or who propose to accept permit limitations which cause the source to be a conditional major source, shall be processed as follows:

a. Draft permit. The cabinet shall issue or deny a draft permit within sixty (60) days after the application is deemed complete. The source shall construct and operate in compliance with the draft permit until a final permit is issued or denied.

b. Public, EPA, and affected state review.

(i) The cabinet shall provide notice of the draft permit for public and affected state review pursuant to Sections 7 and 8 of this administrative regulation, if the source is required to obtain a permit pursuant to 40 CFR Part 70.

(ii) The cabinet shall submit the draft permit to the U.S. EPA and shall provide notice of the draft permit for public review pursuant to Section 7 of this administrative regulation, if the source is not required to obtain a permit pursuant to 40 CFR Part 70.

c. Proposed permit. The cabinet shall issue or deny a proposed permit within sixty (60) days after the applicable public, U.S. EPA, and affected state review required in Sections 7 and 8 of this administrative regulation is completed.

d. If the source is not required to have a permit pursuant to 40 CFR Part 70, the proposed permit shall be submitted to the U.S. EPA and the proposed permit shall become the final permit for the source. For all other sources subject to this subparagraph and to 40 CFR Part 70:

(i) The cabinet shall submit the proposed permit to the U.S. EPA for review pursuant to Section 9 of this administrative regulation.

(ii) Final permit. The cabinet shall issue or deny a final permit within eighteen (18) months after the application is deemed complete.

3. Processing applications for the proposed construction, reconstruction, alteration, or modification of sources required to have a state origin permit. The cabinet shall issue or deny a final permit or permit revision within sixty (60) days after the application is deemed complete. The cabinet may extend this time period with the consent of the applicant.

(b) Applications for the proposed construction, reconstruction, alteration, or modification at a source after a permit for the entire source has been issued. The cabinet shall follow the applicable preconstruction review procedures of paragraph (a) of this subsection and the applicable permit revision procedures in Section 6 of this administrative regulation for sources who have been issued a permit for the entire source.

(4) Compliance demonstration. A source that is constructing, reconstructing, or modifying shall not commence operation until compliance with the applicable requirements is demonstrated, pursuant to 401 KAR 50:055, except as provided in Section 6 of this

it will not object to issuance of the minor permit revision, whichever is sooner, pursuant to Section 9(3) of this administrative regulation. Within ninety (90) days of the cabinet's receipt of an application for a minor permit revision or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later, the cabinet shall:

- (i) Issue the minor permit revision as proposed;
- (ii) Deny the minor permit revision application;
- (iii) Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures; or
- (iv) Revise the draft permit revision and transmit to the U.S. EPA a new proposed permit revision pursuant to Section 9(2) of this administrative regulation.

b. For state origin permits, the cabinet shall, within ninety (90) days of receipt of an application for a minor permit revision:

- (i) Issue the minor permit revision as proposed;
- (ii) Deny the minor permit revision application; or
- (iii) Determine that the requested permit revision does not meet the minor permit revision criteria and shall be reviewed under the significant permit revision procedures.

6. The source's ability to make a change. The source may make the change proposed in its minor permit revision application immediately after it files the application. After the source makes the change, and until the cabinet takes any of the actions specified in subparagraph 5a through e of this paragraph, the source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source shall not be required to comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it. If the minor permit revision is denied, the source shall comply with the existing permit terms and conditions.

7. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to minor permit revisions.

(b) Group processing of minor permit revisions. Pursuant to this paragraph, the cabinet may modify the procedure outlined in paragraph (a) of this subsection to process groups of a source's applications for certain permit revisions eligible for minor permit revision processing.

1. Criteria. Group processing shall be used only for permit revisions that:

- a. Meet the criteria for minor permit revision procedures in paragraph (a) of this subsection; and
- b. Are collectively below the threshold emissions level. The threshold emissions level shall be ten (10) percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty (20) percent of the applicable emissions provided in the definition of "major source" in Section 1(22) of this administrative regulation, or five (5) tons per year, whichever is least.

2. Application. An application requesting the use of group processing procedures shall meet the requirements of Section 3(3) of this administrative regulation and shall include the following:

- a. A description of the change, the emissions resulting from the change, and new applicable requirements that will apply if the change occurs.
- b. The source's suggested draft permit revision.
- c. Certification by a responsible official, pursuant to Section 3(4) of this administrative regulation, that the proposed permit revision meets the criteria for use of group processing procedures and a request that these procedures be used.
- d. A list of the source's other pending applications awaiting group processing, and a determination of whether the requested permit revision, aggregated with these other applications, equals or exceeds the threshold prescribed in subparagraph 1b of this paragraph.

e. Certification, for federally enforceable permits, pursuant to Section 3(4) of this administrative regulation, that the source has notified the U.S. EPA of the proposed permit revision. The notification shall contain a brief description of the requested permit revision.

f. For federally enforceable permits, completed forms for the cabinet to use to notify the U.S. EPA and affected states pursuant to Sections 8 and 9 of this administrative regulation.

3. U.S. EPA and affected state notification for federally enforceable permit revisions. On a quarterly basis or within five (5) business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set in subparagraph 1b of this paragraph, whichever is earlier, the cabinet shall promptly notify the U.S. EPA and affected states of the requested permit revisions pursuant to Sections 8 and 9(2) of this administrative regulation.

4. Timetable for issuance for federally enforceable permits. Subsection (2)(a)6 of this section shall apply to permit revisions eligible for group processing, except that the cabinet shall take one (1) of the actions specified in subsection (2)(a)5a through d of this section within 180 days of receipt of the application or fifteen (15) days after the end of the U.S. EPA's forty-five (45) day review period as prescribed in Section 9(3) of this administrative regulation, whichever is later.

5. The source's ability to make a change. Subsection (2)(a)6 of this section shall apply to permit revisions eligible for group processing.

6. Permit shield. The permit shield described in Section 4(6) of this administrative regulation shall not extend to permit revisions eligible for group processing.

(c) Significant permit revision procedures. These procedures shall become effective after the classification date for sources that have filed an application for a permit pursuant to 40 CFR Part 70 or that have permits issued pursuant to 40 CFR Part 70. Revisions that do not cause the source to have a federally enforceable permit shall be processed as minor permit revisions pursuant to paragraphs (a) and (b) of this subsection.

1. Criteria. Significant permit revision procedures shall be used for applications requesting permit revisions that do not qualify as minor permit revisions or as administrative permit amendments. Changes in existing monitoring permit terms or conditions, and relaxation of reporting or recordkeeping permit terms or conditions, shall be considered significant changes. The permittee may, however, make changes pursuant to this administrative regulation that would render existing permit compliance terms and conditions not applicable.

2. Significant permit revisions shall meet all the requirements of this administrative regulation for permit issuance and renewal, including provisions for applications, public participation, review by affected states, and review by the U.S. EPA.

(d) A permit revision shall not be required for a change at a permitted source if the change is neither addressed nor prohibited by the permit, unless the change would result in a change in method of operation or a change in emissions. A change may also be made without a permit revision if it is authorized by the permit or is a Section 502(b)(10) change. A source may make the changes described in this paragraph if:

- 1. The changes are not modifications pursuant to any provision of 42 USC 7401-7415 (Title I of the Act) or subject to 42 USC 7651 through 7651e (Title IV of the Act);
- 2. The changes do not result in emissions which exceed the emissions allowed by the permit, whether expressed as a rate of emissions or in terms of total emissions;
- 3. For each change, the owner or operator notifies the cabinet and the U.S. EPA, in writing, of the change at least seven (7) working days before the change is made. The source, cabinet, and U.S. EPA shall attach a copy of each notice to their copy of the relevant permit. The written notification shall include the following:
 - a. A brief description of the change within the permitted facility;

scheduled for the permit; and

(f) A description of the emission change involved in any permit revision, and for sources subject to 401 KAR 51:017, the degree of increment consumption that is expected from the source or modification, if applicable.

(6) The cabinet shall make available for public inspection, in at least one (1) location in each region in which the source is located or would be constructed, reconstructed, or modified, all nonproprietary information contained in the permit application, draft permit, and supporting materials. Public inspection of materials for temporary sources or general permits may be located at the discretion of the cabinet.

(6) Public comment.

(a) Except for permit revisions qualifying for administrative permit amendments and minor permit revision procedures, the cabinet shall provide a minimum of thirty (30) days for public comment on all permit proceedings, including initial permit issuance, draft permits, significant permit revisions, and permit renewals. The comment period shall begin on the date of publication of notice in the newspaper.

(b) The cabinet shall provide notice and opportunity for participation by affected states pursuant to Section 8 of this administrative regulation.

(c) A proposed permit shall not be issued until the public comment period has ended and the cabinet has prepared a response to the comments received. Public comments submitted in writing during the public comment period shall be considered by the cabinet in its decision on the application. No later than ten (10) days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The cabinet shall consider the applicant's response in making its final decision. Comments may be submitted in alternate format to accommodate individuals with disabilities.

(7) Public hearings.

(a) The cabinet shall provide a public hearing if, on the basis of written requests received within the public comment period, the cabinet determines that material issues have been raised concerning the terms and conditions of a permit. A request shall not require the extension of the comment period associated with the notice.

(b) The cabinet may also elect to hold a public hearing if the cabinet determines that the permit action is of significant public interest. In these cases, public notice of the hearing may be combined with the public notice of the draft permit.

(c) The cabinet shall give notice of a public hearing at least thirty (30) days in advance of the hearing. In addition to the information required in subsection (4) of this section, the notice of public hearing shall contain the following information:

1. Reference to the dates of previous public notices relating to the permit;

2. Date, time, and place of the hearing; and

3. A brief description of applicable rules and procedures for the hearing.

(d) When a public hearing is to be held, the cabinet shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(e) Any person may submit oral or written statements and data concerning a draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period required in subsection (6) of this section shall automatically be extended to the close of a public hearing held pursuant to this subsection. The hearing officer may also extend the comment period by so stating at the hearing.

(f) A tape recording or written transcript of the hearing shall be made available to the public at a reasonable reproduction cost. Transcripts are also available, upon request, in large type or in braille.

(8) Public record. The cabinet shall keep a record of the comments and of the issues raised during the public participation

process. These records shall be made available to the public and to the U.S. EPA.

(9) Petition for EPA objection. A person may petition the U.S. EPA to make an objection to a proposed permit pursuant to Section 9(3)(f) of this administrative regulation.

(10) The following actions shall be exempt from this section:

(a) Permit revisions qualifying for minor permit revision procedures, including group processing;

(b) Administrative permit amendments.

Section 8. Notice to Affected States. The provisions of this section shall apply only to federally enforceable permits, and to state origin permits that will become federally enforceable as a result of the action to be taken.

(1) The cabinet shall give notice of draft permits to affected states on or before the time that the cabinet provides the draft permit or draft permit revision notice to the public pursuant to Section 7 of this administrative regulation, unless Section 6(2)(a) or (b) requires the timing of the notice to be different.

(2) Cabinet response. The cabinet, as part of the submittal of the proposed permit to the U.S. EPA (or for a minor permit revision, as soon as possible after the submittal), pursuant to Section 9 of this administrative regulation, shall notify the U.S. EPA and affected states in writing of refusal by the cabinet to accept a recommendation for the proposed permit that an affected state submitted during the public review period. The notice shall include the cabinet's reasons for not accepting the recommendation.

(3) The cabinet is not required to accept recommendations based on requirements that are not applicable to the proposed permit, or that are not based on requirements of this administrative regulation.

Section 9. U.S. EPA Review. (1) Prohibition on default issuance of permits.

(a) The cabinet shall not issue a federally enforceable permit, permit revision, or permit renewal until the affected states and the U.S. EPA have had an opportunity to review the proposed permit action pursuant to this section and Section 8 of this administrative regulation; and

(b) The cabinet shall not issue a federally enforceable permit, permit revision, or permit renewal if it has failed to take action on the application pursuant to subsection (3) of this section, unless the U.S. EPA has waived the review for the U.S. EPA and affected states.

(2) Transmission of information to the U.S. EPA.

(a) The cabinet shall provide to the U.S. EPA a copy of each federally enforceable permit application, permit revision application, proposed permit, and final permit. Information that is submitted with a claim of confidentiality shall be submitted pursuant to Section 3(1)(c) of this administrative regulation.

(b) On a case-by-case basis, and with U.S. EPA approval, the cabinet may submit, for a federally enforceable permit, a permit application summary form and a relevant portion of the permit application and compliance plan in place of the complete application and compliance plan. If possible, this information shall be provided in computer readable format compatible with the U.S. EPA's national database management system.

(3) U.S. EPA objection.

(a) The U.S. EPA will object to the issuance of any proposed permit determined by the U.S. EPA not to meet applicable requirements. The U.S. EPA shall file an objection in writing within forty-five (45) days of receipt of the proposed permit and the necessary supporting information.

(b) The cabinet shall not issue a federally enforceable permit if the U.S. EPA files an objection pursuant to the requirements in subsection (1) of this section.

(c) The U.S. EPA objection shall include a statement of the reasons for objection and a description of the terms and conditions that the permit shall include to respond to the objections. The U.S.

(c) Local fire department;
(d) Local police department;
(e) A funeral establishment licensed by the State Board of Embalmers and Funeral Directors, in accordance with KRS 316.125;

(f) The Kentucky Transportation Cabinet; and

(g) The Kentucky National Guard.

(2) The nonpaying toll road identification card shall be used for official business.

(3) The identification card may be presented in lieu of toll payment at a toll collection station.

Section 2. Application for Nonpaying Toll Road Identification Card. (1) The agencies listed in Section 1(1) of this administrative regulation shall submit to the cabinet the following completed forms:

(a) Ambulance service. Form TC 34-121, "Application for Nonpaying Identification Card Account for Ambulance Services".

(b) Kentucky State Police. Form TC 34-125, "Updated State Police Application".

(c) Local fire and police departments. TC 34-120, "Application for Nonpaying Identification Card Account, Local Police and Fire Departments", signed by the responsible mayor or county judge executive.

(d) Funeral establishments. TC 34-124, "Application for Nonpaying Identification Card Account for Funeral Processions".

(e) Kentucky National Guard. TC 34-127, "Updated National Guard Application".

(2) The agency applying for a nonpaying toll road identification card shall identify each vehicle for which a card is requested.

(3) The agency shall pay a five (5) dollar fee for each card requested, pursuant to KRS 175.525(1).

(4) In addition to TC 34-124, "Application for Nonpaying Identification Card Account for Funeral Processions", a funeral establishment shall provide proof of current licensure by the State Board of Embalmers and Funeral Directors.

Section 3. Renewal of Nonpaying Toll Road Identification Card Accounts. (1) By November 1st, the Transportation Cabinet shall notify an agency with an account that existing identification cards shall expire on the following February 1st.

(2) A current account holder shall, by January 1st, apply for that year's identification cards.

Section 4. Emergency Trips. (1) During an emergency trip on a toll road, if the emergency lights of an ambulance, fire department vehicle, police vehicle, or other emergency vehicle are flashing, the toll collector shall pass the vehicle through the least congested lane of a toll collection station without attempting to stop or process the vehicle.

(2) On the return trip, if the vehicle is no longer in an emergency status, the operator of the emergency vehicle shall:

(a) Present an identification card for processing;

(b) Pay the toll; or

(c) If originally summoned by an employee of the Division of Toll Facilities and if he does not have an identification card, be waived through without charge by the toll collector.

Section 5. Funeral Processions. (1) If a lead hearse in a funeral procession has a nonpaying toll road identification card, every vehicle following the hearse as a part of the procession may proceed through the toll collection booth using the same identification card.

(2) The funeral establishment shall be responsible for retrieving the identification card after the last motor vehicle in the procession has passed the toll collection booth.

(3) On a return trip, a motor vehicle immediately accompanying the hearse shall be permitted to proceed through the toll collection booth using the funeral establishment's identification card.

(4) The identification card shall not be valid for a purpose other than a funeral procession.

Section 6. Transportation Cabinet. (1) A Transportation Cabinet employee may be issued a nonpaying identification card to be used on a toll road, if:

(a) Operating a state-owned motor vehicle; and

(b) Operating the vehicle in the discharge of official duty.

(2) The identification card shall not be used except for official business.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form TC-34-121, "Application for Nonpaying Identification Card Account for Ambulance Service", October 1996 edition, Transportation Cabinet;

(b) Form TC 34-125, "Updated State Police Application", October 1996 edition, Transportation Cabinet;

(c) Form TC 34-120, "Application for Nonpaying Identification Card Account, Local Police and Fire Departments", October 1996 edition, Transportation Cabinet;

(d) Form TC 34-124, "Application for Nonpaying Identification Card Account for Funeral Processions", October 1996 edition, Transportation Cabinet; and

(e) Form TC 34-127, "Updated National Guard Application", October 1996 edition, Transportation Cabinet.

(2) This material may be inspected, copied, or obtained at Transportation Cabinet, Division of Toll Facilities, 643 Teton Trail, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. The office telephone number is (502) 564-4628. [The Department of Highways is authorized to charge and collect toll for transit over each turnpike project. KRS 175.525 requires the issuance of nonpaying toll road identification cards for emergency vehicles. 175.520 specifically exempts emergency vehicles from the payment of tolls under certain circumstances.] Further, the department has determined that Transportation Cabinet employees while on official business and in a state-owned motor vehicle and Kentucky National Guard personnel when on official business [vehicles] should not pay the toll and are exempted by the provisions of this administrative regulation. This administrative regulation sets forth the application process for a nonpaying toll road identification card. This [The] administrative regulation also sets forth the manner in which emergency vehicles and vehicles in processions may be processed through a toll collection station.

Section 1. Ambulance Transportation Services. (1) The Transportation Cabinet shall establish a nonpaying toll road identification card account for each ambulance transportation service licensed by the Cabinet for Health Services [Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board] in accordance with 002 KAR Chapter 14 [20:115] which applies for an account on Form TC 34-121, "Application for Nonpaying Identification Card Account for Ambulance Services". [Application shall be on forms prescribed and furnished by the Transportation Cabinet.]

(2)(a) By November 1 of each year, the Transportation Cabinet shall notify each ambulance service with a nonpaying toll road identification card account that the existing nonpaying toll road identification cards shall expire February 1.

(b) By January 1 of each year, each nonpaying toll road identification account card holder shall apply for that year's identification cards.

(c) The application shall:

1. Be made on form TC 34-121;

2. Identify each licensed ambulance for which a nonpaying toll

~~the Division of Toll Facilities is (502) 564-4628.~~

~~(2) The convey or procession may request a special procession credit card from the Division of Toll Facilities.~~

~~Section 6. Transportation Cabinet Personnel. (1) [5.] The Transportation Cabinet shall establish a nonpaying toll road identification card account for the Kentucky Transportation Cabinet.~~

~~(2) A Transportation Cabinet employee if [while] in the discharge of his official duties on the toll roads and if operating a state-owned motor vehicle may be issued a nonpaying identification card to be used on the toll road [during trips not involving an emergency].~~

~~(3) The identification card may be presented in lieu of toll payment at a toll collection station.~~

~~(4) The identification card shall not be used except for official business.~~

~~Section 7. Kentucky National Guard. (1) [6.] The Transportation Cabinet shall establish a nonpaying toll road identification card account(s) for the Kentucky National Guard.~~

~~(2) The Kentucky National Guard shall [may] be issued nonpaying identification cards for use by their employees on the toll roads during official trips [not involving an emergency].~~

~~(3) The identification card may be presented in lieu of toll payment at a toll collection station.~~

~~(4) The identification card shall not be used except for official business of the Kentucky National Guard.~~

~~(5)(a) By November 1 of each year, the Transportation Cabinet shall notify the Kentucky National Guard that the existing nonpaying identification cards shall expire February 1.~~

~~(b) By January 1 of each year, the Kentucky National Guard shall apply for that year's identification cards.~~

~~(c) The application shall:~~

~~1. Be made on form TC 34-127, "Updated National Guard Application";~~

~~2. Be accompanied by the five (5) dollar fee required by KRS 175.525 for each of the nonpaying toll road identification cards requested.~~

~~Section 8. Material Incorporated by Reference. (1) The Transportation Cabinet form TC 34-121, "Application for Nonpaying Identification Card Account for Ambulance Service", October 1996 edition, is incorporated by reference in this administrative regulation.~~

~~(2) The Transportation Cabinet form TC 34-125, "Updated State Police Application", October 1996 edition, is incorporated by reference in this administrative regulation.~~

~~(3) The Transportation Cabinet form TC 34-120, "Application for Nonpaying Identification Card Account, Local Police and Fire Departments", October 1996 edition, is incorporated by reference in this administrative regulation.~~

~~(4) The Transportation Cabinet form TC 34-124, "Application for Nonpaying Identification Card Account for Funeral Processions", October 1996 edition, is incorporated by reference in this administrative regulation.~~

~~(5) The Transportation Cabinet form TC 34-127, "Updated National Guard Application", October 1996 edition, is incorporated by reference in this administrative regulation.~~

~~(6) Copies of the material incorporated by reference may be inspected, copied, or obtained from the Transportation Cabinet, Division of Toll Facilities, 643 Teton Trail, Frankfort, Kentucky 40622. The office hours are 8 a.m. to 4:30 p.m. on weekdays. The office telephone number is (502) 564-4628.]~~

J.M. YOWELL, P.E., State Highway Engineer

GLENN MITCHELL, Commissioner

JAMES C. CODELL III, Secretary

APPROVED BY AGENCY: November 20, 1996

FILED WITH LRC: December 12, 1996 at 2 p.m.

TRANSPORTATION CABINET
Department of Fiscal Management
Division of Toll Facilities
(As Amended)

600 KAR 2:030. Toll road credit cards.

RELATES TO: KRS 175.450(4), 175.470, 175.520, 175.525(1)
STATUTORY AUTHORITY: KRS 175.525(1) [474.080, 175.470, 175.520]

NECESSITY, FUNCTION, AND CONFORMITY: Tolls are charged on Kentucky's turnpike or toll road system in accordance with 600 KAR 2:010. KRS 175.525(1) requires either the Turnpike Authority or the Transportation Cabinet to issue a toll road identification card to paying credit card account holders. The [Some companies and individuals make extensive use of the toll roads. To simplify payment for such companies or individuals, the] Transportation Cabinet has promulgated this administrative regulation to establish eligibility criteria for a toll road credit card account, the application, the billing procedures, and the account termination.

Section 1. Application for a Commercial Toll Road Credit Card.

(1) A nongovernmental agency or business [Except for other state agencies as set forth in Section 7 of this administrative regulation, each] applicant [Applicants] for a commercial toll road credit card account shall [must] submit a completed form TC 34-39, "Application for Commercial Credit Card Account" to the Transportation Cabinet.

(2) An [Each] applicant for an individual toll road credit card account shall submit a completed form TC 34-40, "Individual Application for Credit Card Account" to the Transportation Cabinet. [Forms are available from and must be submitted to the Transportation Cabinet, Division of Toll Facilities, 9th Floor, State Office Building, Frankfort, Kentucky 40622. (Phone No. 502/564-4644)]

Section 2. Credit References. (1) An applicant for a toll road credit card account shall list the following credit references on the application:

(a) Three (3) or more businesses; and

(b) One (1) or more banks.

(2) Upon receipt of the completed application, the Transportation Cabinet shall request a credit status from each company and bank cited as a reference.

(3) A positive credit status shall be required from a minimum of:

(a) Three (3) businesses; and

(b) One (1) bank.

(4) If a negative report is received, the cabinet may deny a credit card account although the requirements of subsection (3) of this section are met.

(5) If an applicant is a trucking company, in addition to references, it shall:

(a) Submit its:

1. U.S. Department of Transportation number; or

2. Kentucky intrastate identifier number;

(b) Have a satisfactory safety rating; and

(c) Not be delinquent in payment of its highway use taxes.

[(1) On the "Application for Commercial Credit Card Account" form or the "Application for Individual Credit Card Account" form, the applicant for a toll road credit card account shall [must] list at least three (3) companies as credit references including at least one (1) bank. Upon receipt of the completed application, the Transportation Cabinet shall request a credit status from each company cited as a credit reference. A positive credit status is required [must be received] from three (3) companies including at least one (1) bank or the credit card account shall be denied.

(2) If in addition to the three (3) positive credit status reports a negative report is received, the Transportation Cabinet may deny the

Account", (October 1996 edition), Transportation Cabinet;

(b) Form TC 34-40, "Application for Individual Credit Card Account", (October 1996 edition), Transportation Cabinet; and

(c) Form TC 34-123, "Application for State Agency or Local Government Credit Card Account", (October 1996 edition), Transportation Cabinet.

(2) This material may be inspected, copied, or obtained from the Transportation Cabinet, Division of Toll Facilities, 643 Teton Trail, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m. [Material Incorporated by Reference. (1) The Transportation Cabinet form TC34-39, "Application for Commercial Credit Card Account," October 1996 edition, is incorporated by reference in this administrative regulation.

(2) The Transportation Cabinet form TC 34-40, "Application for Individual Credit Card Account," October 1996 edition, is incorporated by reference in this administrative regulation.

(3) The Transportation Cabinet form TC 34-123, "Application for State Agency or Local Government Credit Card Account," October 1996 edition, is incorporated by reference in this administrative regulation.

(4) Copies of the material incorporated by reference may be inspected, copied, or obtained from the Transportation Cabinet, Division of Toll Facilities, 643 Teton Trail, Frankfort, Kentucky 40622. The office hours are 8 a.m. to 4:30 p.m. on weekdays. The office telephone number is (502) 564 4628.]

J.M. YOWELL, P.E., State Highway Engineer

GLENN MITCHELL, Commissioner

JAMES C. CODELL III, Secretary

APPROVED BY AGENCY: November 20, 1996

FILED WITH LRC: December 12, 1996 at 2 p.m.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(As Amended)**

601 KAR 13:070. KRS 159.051, Compliance Verification for a Minor. [Applicant for an operator's license who is under the age of eighteen (18), notification.] [School attendance and academic sufficiency verification.]

RELATES TO: KRS 159.051, 186.440, 186.450, [186.450, 186.470], 186.560

STATUTORY AUTHORITY: KRS 186.400(1)

NECESSITY AND FUNCTION: KRS 186.400(1) authorizes the Transportation Cabinet to promulgate administrative regulations for the enforcement of driver licensing laws. This administrative regulation establishes the requirements of the notification to be submitted by a minor driver licensing applicant to the Circuit Court Clerk and the notification to be sent by a school superintendent to the cabinet if a minor withdraws from school or is academically deficient. This administrative regulation is necessary to enforce KRS 159.051 and 186.560(7). [KRS 159.051 and 186.560 require that the driving privilege of a student be withdrawn by the Transportation Cabinet if a school district superintendent notifies the Transportation Cabinet that the student is not in compliance with KRS 159.051. KRS 186.440] [HB 43 passed in the Regular Session of the 1990 General Assembly is applicable only in those counties of Kentucky served by a school district which has an alternative education program approved by the Department of Education. The bill] [requires anyone under the age of eighteen (18) years who is applying for the privilege of operating a motor vehicle (either a learner's permit or operator's license) and who has not graduated from high school to present notification from his school district (verification issued by his school within the preceding thirty

(30) days] that he is enrolled in school and has not been found (academically) deficient pursuant to KRS 159.051. [Further, KRS 186.560 requires the Transportation Cabinet as soon as notified to revoke the license of a person under the age of eighteen (18) years who has dropped out of school or is academically deficient.] This administrative regulation establishes [sets forth] the information which is to be submitted to the Transportation Cabinet and the circuit court clerk in order for them to meet their statutory duties. It further establishes [sets forth] the times within the driver licensing process when a school attendance form is to be presented to the circuit court clerk and the steps to be followed [by a youth] in restoring the driving privilege of a person whose driving privilege was withdrawn because of noncompliance with KRS 159.051.] [having his driving privilege restored.]

Section 1. Definitions. (1) "Minor" means a person under the age of eighteen (18) years.

(2) "Participating school district" means a school district which the Department of Education has reported to the Transportation Cabinet as having an alternative education program which complies with 704 KAR 7:100. [Driver Licensing Process. Since the first step in obtaining the privilege to operate a motor vehicle is the application for a learner's permit, an applicant for a learner's permit shall submit to the Circuit Court Clerk the notification of compliance with KRS 159.051, as required by KRS 186.440(2).] [No person shall be declared to be academically deficient for any school semester prior to the fall semester of 1990.]

Section 2. Minor's Application for Driving Privilege. (1) A minor residing within the boundaries of a participating school district who is applying for an original learner's permit, a transfer learner's permit, or a transfer operator's license shall submit to the circuit court clerk:

(a) Proof of graduation from high school;

(b) Proof of having received his General Equivalency Diploma;

(c) A school enrollment verification form, executed within the preceding sixty (60) days, which contains the following:

1. Applicant's full name;

2. Social Security or driver's license number;

3. Name and address of school attended;

4. Name and address of the school district;

5. Signature and title of the school official completing the form;

6. Statement that the minor is attending and successfully participating in school as defined in KRS 159.051;

7. Embossed seal of the school district; and

8. Date of execution of the form; or

(d) A statement from his parent or guardian that the minor is being schooled at home. The statement shall contain the following:

1. Applicant's full name;

2. Social Security or driver's license number;

3. Parent or guardian's full name, address, and signature;

4. Statement executed within the preceding sixty (60) days that the minor is successfully participating in home school as defined in KRS 159.051; and

5. Date the statement was executed.

(2) The statements required by subsection (1)(c) or (d) of this section may be submitted to the circuit court clerk on the Department of Education form entitled "Driver Licensing School Enrollment Verification or Reinstatement, KRS 159.051 (No Pass/No Drive Statute)". [Notification by School Enrollment Form (Verification). An applicant under the age of eighteen (18) years seeking either an original learner's permit (operator's license) or a transfer learner's permit or transfer operator's license because of moving from one (1) county to another within Kentucky or because of

[a return to school or achieving academic sufficiency] shall submit a notice [verification] of this to the Division of Driver Licensing, 501 High Street, State Office Building, Second Floor, Frankfort, Kentucky 40622.

(2) The student may submit a copy of the notice from his school district to the circuit court clerk in his county of residence.

(3) The notice [verification] shall contain at least the following information:

- (a) [(1)] Applicant's full name;
- (b) [(2)] Applicant's address;
- (3) Applicant's Social Security, learner's permit, or operator's license number;
- [(4)] Applicant's date of birth;
- (c) [(5)] Name and address of the school district;
- (d) [(6)] Name and address of the school;
- (e) [(7)] Signature and title of the school district official executing the notice [verification] form;
- [(f)] Notice [(8)] Certification of applicant's compliance with KRS 159.051 [reenrollment in school in accordance with KRS Chapter 159];
- (9) Certification that the applicant is not academically deficient in accordance with KRS Chapter 159; and
- (g) [(10)] Date of the notice [verification].

Section 5. Counties with Multiple School Districts. (1) In a county with multiple school districts, if at least one (1) is a participating school district, then each minor driver licensing applicant shall:

(a) Comply with Section 2 of this administrative regulation; or

(b) Provide to the circuit court clerk a notice that he resides in a district which does not have an approved alternative education program. The notice shall contain the following:

- 1. Full name of minor;
- 2. Social Security or driver's license number of the minor;
- 3. Name and address of the school district;
- 4. Statement that the school district is not a participating school district;
- 5. Name and title of school district official completing the statement;
- 6. Embossed seal of the school district; and
- 7. Date of completion of the statement.

(2) The statement referred to in subsection (1)(b) of this section may be submitted on the Department of Education form entitled "School Districts Not Participating, KRS 159.051 (No Pass/No Drive Statute)".

Section 6. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Driver Licensing School Enrollment Verification or Reinstatement, KRS 159.051 (No Pass/No Drive Statute)" form, (October 1996), Department of Education;

(b) "School Districts Not Participating, KRS 159.051 (No Pass/No Drive Statute)", (March 1995), Department of Education; and

(c) "Driver Licensing Suspension Form, KRS 159.051 (No Pass/No Drive Statute)" (October 1996), Department of Education.

(2) This material may be inspected, copied, or obtained at the Department of Education, Student/Family Support Services, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

[Section 6. Driving Privilege Restoration. Any person who is eligible to have his driving privilege restored only because he has reached his 18th birthday, that is, he neither has been certified by his school district as once again being in compliance with KRS 159.051 [a student in good standing] nor has a court ordered the restoration of his driving privilege, shall again be examined by the Kentucky

State Police.

Section 7. Court Petition. Any person denied an instruction permit or operator's license because he was not eligible for a school enrollment or home schooling notice [verification] form may, for the reasons set forth in KRS 159.051 [Chapter 159], petition the jurisdictional court for an operator's license eligibility order so that he might apply for an instruction permit or operator's license.

Section 8. Counties with Multiple School Districts. In a county with multiple school districts, if at least one (1) but not all have an alternative education program approved by the Department of Education, then each applicant [all applicants] for an instruction permit or operator's license under the age of eighteen (18) years shall present to the circuit clerk's office either a school enrollment or home schooling notice [verification] form as described in Sections 2 and 3 of this administrative regulation, proof of high school graduation or proof from his school on a form approved by Department of Vehicle Regulation that he resides in a district which does not have an approved alternative education program.]

ED LOGSDON, Commissioner
JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: October 14, 1996
FILED WITH LRC: October 15, 1996 at 11 a.m.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(As Amended)

601 KAR 13:110. Driver education programs.

RELATES TO: KRS 186.018, 186.410, 186.535, 186.574

STATUTORY AUTHORITY: KRS 186.400(1) [-186.410]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 186.400(1) authorizes the Transportation Cabinet to promulgate administrative regulations regarding the licensing of a motor vehicle operator. This administrative regulation establishes the minimum standards for a new driver state traffic school. This administrative regulation also designates those who will attend this new driver education program, application and approval procedures to teach the program for private driving schools licensed pursuant to KRS 332.030, and the method of notification to the cabinet of completion of the program. [KRS 186.410 requires each motor vehicle operator who obtains an operator's license prior to his 18th birthday to attend a driver education course. This course can be a driver's education course administered by a school district, state traffic school, or a course offered at a driver training school licensed pursuant to KRS Chapter 332 if the course meets or exceeds the minimum standards established by the Transportation Cabinet. KRS 186.574 requires the Transportation Cabinet to establish a state traffic school for new drivers and traffic offenders. This administrative regulation establishes the minimum standards for the approved driver training schools licensed pursuant to KRS Chapter 332. It establishes how the Transportation Cabinet is to be notified of completion of any of the three (3) types of courses allowed by KRS 186.410. It further clarifies who is required by KRS 186.410 to attend the driver education course.]

Section 1. State Traffic School. (1) The Transportation Cabinet shall establish a separate curriculum and class [separate curriculums and classes] for the new driver state traffic school (graduated driver licensing education) and the traffic offender state traffic school.

(2) The Transportation Cabinet [or its contractor] shall secure instructors and classroom locations for both of the state traffic

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4. Number of fatalities and injuries in crashes from not wearing seatbelts; and

5. Seatbelt usage.

(d) Driver ~~[attitude and]~~ behavior which shall last for a minimum of forty-five (45) minutes and include:

1. Driving requires physical, social, and mental skills;

2. Personality changes which occur while driving;

3. How driving behaviors and reaction are related to attitude;

4. Need for and importance of self-control while driving; and

5. National, state, and local statistics on vehicle crashes. ~~[-and]~~

(e) Rules of the road which shall last for a minimum of thirty (30) minutes and include:

1. Purpose and significance of the Graduated Driver Licensing Program;

2. The role of the Division of Driver Licensing in maintaining driving records;

3. Content of driving records available to insurance companies;

4. Recognition of the need for and purpose of traffic laws;

5. The most commonly violated traffic laws;

6. Speeding as a major contributing factor in vehicle crashes; and

7. Sanctions or penalties assessed for violating traffic laws.

Section 5. Instructor Requirements. (1) An instructor employed to teach the KRS 186.410 course by a school approved pursuant to the requirements of Section 3 of this administrative regulation ~~[Each instructor shall be approved by the Transportation Cabinet prior to teaching the class authorized by KRS 186.410(4)(b) or (e). To be approved each instructor]~~ shall meet the following requirements:

(a) Be at least twenty-one (21) years of age;

(b) Have a four (4) year college degree. Experience as a professional driver education instructor may substitute year for year for the college education;

(c) Never have been convicted of a felony;

(d) Never have been convicted of a violation of KRS 189A.010 or its equivalent from another jurisdiction;

(e) Never have been convicted or administratively found guilty of refusing to submit to a test to determine blood alcohol content or drugs in system;

(f) Have fewer than six (6) points assigned pursuant to 601 KAR 13:025 on his driving history record;

(g) Not have had his driving privilege withdrawn for any reason in the past five (5) years;

(h) Successfully enroll in, pay the \$100 fee for, and complete the instructor training course offered by the Transportation Cabinet~~[-s contractor];~~

(i) Have good communication skills as indicated during an interview; and

(j) Be of good moral character.

(2) The approved school shall review the driving history record of an instructor annually. ~~[Each approved instructor shall annually successfully enroll in, pay the \$100 fee for, and complete the instructor refresher course offered by the Transportation Cabinet[-s contractor].~~

~~(3) An instructor shall be removed from the approved list if:~~

~~(a) He fails to continue to comply with the provisions of subsection (1) of this section; or~~

~~(b) The evaluation of an instructor's preclass and postclass tests do not show significant improvement in his students' understanding of highway safety.]~~

Section 6. Evaluations. (1) The Transportation Cabinet ~~[or its contractor]~~ shall perform a ~~[both]~~ random ~~or [and]~~ routine performance audit of an approved school or its instructor ~~[audits of the approved schools and all instructors].~~

(2) A school shall be notified in writing of a ~~[any]~~ deficiency discovered in an audit. The deficiency shall be ~~[immediately]~~ corrected prior to its next scheduled class or the school's approval

shall be withdrawn by the Transportation Cabinet.

(3) The Kentucky State Police shall be provided a copy of each performance evaluation of a school licensed pursuant to KRS Chapter 332 [322].

(4) A representative from the Transportation Cabinet shall be allowed free of any charge to monitor a class taught by the school pursuant to the provisions of this administrative regulation.

ED LOGSDON, Commissioner

JAMES C. CODELL III, Secretary

APPROVED BY AGENCY: January 2, 1997

FILED WITH LRC: January 7, 1997 at 10 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (As Amended)

704 KAR 20:305. Written examination prerequisites for teacher certification.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030 requires that all new teachers, including out-of-state teachers with less than two (2) years' experience, successfully complete appropriate written tests prior to initial certification in Kentucky. The tests are required to measure communication skills, general knowledge, professional education concepts, and knowledge in the specific teaching field of the applicant. The Education Professional Standards Board is required to select the tests; determine the minimum acceptable level ~~[charged with selecting the tests; determining minimum acceptable levels]~~ of achievement on each test; establish~~[ing]~~ a reasonable fee related to the cost of administration of the tests, with the [such] fees to be paid by the teacher applicants; and establish~~[ing]~~ procedures for persons having less than minimum levels of performance on a [any] test to repeat that test and be informed of strengths and weaknesses in performance areas. This administrative regulation implements these [such] duties relative to teacher testing.

Section 1. A ~~[All]~~ new teacher applicant and an out-of-state applicant for certification with less than two (2) years of teaching experience as defined in 704 KAR 20:045 shall successfully complete the appropriate written tests identified in this administrative regulation prior to initial Kentucky certification. Scores on tests completed five (5) or more years prior to application for certification shall not be acceptable.

Section 2. The following NTE Core Battery Tests and passing scores shall be required of each applicant:

(1) Communication skills - 646;

(2) General knowledge - 643;

(3) Professional knowledge - 644.

Section 3. Specialty tests and passing scores shall be required of each applicant as identified in this section.

(1) An applicant for interdisciplinary early childhood education, birth to primary, certification shall take an Education Professional Standards Board test for interdisciplinary early childhood, with a passing score of 150. ~~[no passing score established.]~~

(2) An applicant for elementary certification shall take the NTE Early Childhood Education Test (10020) with a passing score of 480 through September 30, 1997. After this date, an applicant for elementary certification shall take Elementary Education: Curriculum and Instruction (10011) with a passing score of 143.

(3) An ~~[-a]~~ applicant for middle school certification shall take Education in the Elementary School Test (20010) with a passing

(q) ~~Mathematics—Mathematics Test (10060)—500;~~
 (r) ~~Mathematics—Physical Science (area)—Select from either Mathematics Test (10060)—500; or Chemistry, Physics and General Science Test (10070)—510;~~
 (s) ~~Music (vocal and instrumental)—Music Education Test (10110)—510;~~
 (t) ~~Physical Education—Physical Education Test (10090)—540;~~
 (u) ~~Physics—Chemistry, Physics, and General Science Test (10070)—510;~~
 (v) ~~Political Science—Social Studies Test (10080)—500;~~
 (w) ~~Science (area)—Select from either Biology and General Science Test (10030)—550; or Chemistry, Physics and General Science Test (10070)—510;~~
 (x) ~~Social Studies (area)—Social Studies Test (10080)—500;~~
 (y) ~~Spanish—Spanish Test (10190)—490;~~
 (z) ~~Speech—Speech Communication Test (10220)—540;~~
 (aa) ~~Vocational Agriculture—Education Professional Standards Board test for vocational agriculture (10700)—530; and~~
 (bb) ~~Vocational Home Economics—Home Economics Education Test (10120)—540.]~~

(6) [(7)] Effective October 1, 1997, tests designated with no passing scores in subsection (5) of this section shall have the following passing scores: [September 1, 1996, applicants for certification at the secondary level shall take the specialty test(s) with the passing score as identified in this subsection.]

(a) English Language, Literature, and Composition: Essays (20042) with a passing score of 135;
 (b) Biology: Content Essays (30233) with a passing score of 139;
 (c) Mathematics Proofs, Models and Problems, Part I (20063) with a passing score of 141;
 (d) Social Studies: Interpretation of Materials (20083) with a passing score of 150. [English—English Language, Literature, and Composition: Content Knowledge (10041) with a passing score of 138; and English Language, Literature, and Composition: Essays (20042) with no passing score established, shall be required for applicants for secondary certification with teaching area in English and majors in dramatics, dramatics-speech, English, journalism, and speech.

(b) Biological Science—Biology: Content Knowledge, Part I (20231) with a passing score of 139 and Biology: Content Essays (30233) with no passing score established, shall be required for applicants for secondary certification with a teaching major in biology.

(c) Physical Science—General Science: Content Knowledge, Part 2, (10432) with a passing score of 150 and either Chemistry: Content Knowledge (20241) with a passing score of 144 or Physics: Content Knowledge (10261) with a passing score of 141 shall be required for applicants for secondary certification with a major in chemistry, earth science and physics.

(d) Mathematics—Mathematics: Content Knowledge (10061) with a passing score of 141 and Mathematics Proofs, Models and Problems, Part I (20063) with no passing score established shall be required for applicants for secondary certification with a major in mathematics.

(e) Social Studies—Social Studies: Content Knowledge (10081) with a passing score of 146 and Social Studies: Interpretation of Materials (20083) with no passing score established shall be required of applicants for secondary certification with an area in social studies or a major in economics, economics-sociology, geography, history, history-political science, political science, or psychology.]

(7) An applicant [(8) Effective September 1, 1996, applicants] for certification in all grades shall take the specialty test(s) with the passing score as identified in this subsection.

(a) Art - Art Education Test (10130) - 510;
 (b) French - French (10170) - 510;
 (c) German - German (20180) - 490;
 (d) Health - Educational Professional Standards Board Test for Health Education - 67;

(e) Music (Vocal and Instrumental) Music Education (10110) - 510;
 (f) Physical education:
 1. Physical Education: Content Knowledge (10091) - [with a passing score of] 152; and
 2. Physical Education: Movement Forms-Analysis and Design (30092) - [with] no passing score [established];
 (g) [(b)] Spanish:
 1. Spanish Content Knowledge (10191) - [with a passing score of] 145; and
 2. Spanish: Productive Language Skills (20192) - [with] no passing score [established];
 (h) School Media Librarian: Library Media Specialist (10310) - 590.
 (8) Effective October 1, 1997, an applicant for certification in all grades in the following specialty areas shall take the specialty test(s) with the passing score as identified in this subsection.

(a) Art:
 1. Content Knowledge (10133) - 139; and
 2. Art Making (20131) - no passing score;
 (b) French:
 1. French: Content Knowledge (10173) - 144;
 2. French: Productive Language Skills (20171) - no passing score;
 (c) German: German: Content Knowledge (20181) - 143;
 (d) Health: Health Education (10550) - 550;
 (e) Music:
 1. Music: Content Knowledge (10113) - 137; and
 2. Music: Concepts and Processes (30111) - 140.
 (9) Effective October 1, 1997 tests designated with no passing scores in subsection (7) of this section shall have the following passing scores:
 (a) Physical Education: Movement Forms - Analysis and Design (30092) - 135;
 (b) Spanish: Productive Language Skills (20192) - 156.
 (10) An applicant for certification to teach in grades five (5) through twelve (12) with one (1) or more of the following specializations shall take the specialty tests with the passing scores as identified in this subsection:
 (a) Agriculture: Agriculture (10700) - 530;
 (b) Business and Marketing Education - Business Education (10100) - 540;
 (c) Comprehensive Business - Business Education (10100) - 540;
 (d) Distributive Education - Business Education - 540;
 (e) Home Economics - Home Economics Education (10120) - 540;
 (f) Industrial Education - Technology Education (10050) - 550.
 (11) Effective October 1, 1997, an applicant for certification to teach in grades five (5) through twelve (12) with one (1) or more of the following specializations shall take the specialty test[(s)] with passing score as identified in this subsection:
 (a) Business and Marketing Education - Business Education (10100) - 570;
 (b) Comprehensive Business - Business Education (10100) - 570;
 (c) Distributive Education - Business Education (10100) - 570;
 (d) Industrial Education - Technology Education (10050) - 570.
 (12) [(9)] Specialty tests for an applicant [applicants] who successfully completes the new test(s) identified in subsections (2), (4), and (9) [(3)(b), (7), and (8)] of this section [administrative regulation] prior to October 1, 1997 [September 1, 1996], shall be accepted for the issuance of the corresponding certification.

Section 4. (1) An applicant [Applicants] for initial certification may take the NTE Core Battery Tests and Prax II: Subject Assessments and Specialty Area Tests on any of the dates established by the Educational Testing Service for national administration or on any date [such dates as may be] established by the Education Professional

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WORKFORCE DEVELOPMENT CABINET Department for Employment Services Division of Unemployment Insurance (As Amended)

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

RELATES TO: KRS 341.395, PL 103-465, Sec. 702(b) [341.394]
STATUTORY AUTHORITY: KRS 151B.020(8), 341.115,

341.395(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.395(4) [341.394(4)] provides that amounts shall be deducted and withheld from unemployment benefit payments in accordance with priorities established in administrative regulation by the secretary. PL 103-465, Sec. 702(b) requires that federal individual income tax from unemployment compensation be deducted and withheld if an individual receiving this compensation voluntarily requests the deduction and withholding. This administrative regulation establishes the priority of deductions from benefits.

Section 1. If deductions and withholding from benefit payments are required under more than one (1) statute or for more than one (1) purpose, the priority for deduction shall be as follows:

- (1) Deduction of wages, remuneration in lieu of notice, and pension compensation as required under KRS 341.390.
- (2) Deduction for recoupment of a previous overpayment as required under KRS 341.415.
- (3) Child support obligations as required under KRS 341.392.
- (4) Any other mandatory deduction imposed under a [any] federal or Kentucky statute or administrative regulation; and
- (5) Voluntary withholding of income tax requested by a claimant as provided under KRS 341.395 [341.394].

RODNEY S. CAIN, Secretary

RHONDA K. RICHARDSON, Commissioner

APPROVED BY AGENCY: November 18, 1996

FILED WITH LRC: November 20, 1996 at 10 a.m.

LABOR CABINET Department of Workers' Claims (As Amended)

803 KAR 25:036. Computation of life expectancies for purposes including apportionment and attorney's fees.

RELATES TO: KRS 342.120, 342.260(2), 342.320 [Chapter 342]
STATUTORY AUTHORITY: KRS 342.260(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(2) requires the commissioner to develop or adopt life expectancy tables for use in making computations for the apportionment of benefits under KRS 342.120, computation of attorneys' fees under KRS 342.320, and for use in other situations arising under KRS Chapter 342 in which the calculation of a life expectancy is necessary or desirable, including the computation of assessments or reserves for self-insurers. This administrative regulation establishes guidelines for an administrative law judge to use in computing attorneys' fees and the apportionment of benefits between an employer and the Special Fund and it establishes the life expectancy table to be used in those computations. [The purpose of this administrative regulation is to give the administrative law judges of the Department of Workers' Claims guidance with respect to the computation of attorneys' fees and the apportionment of benefits between the employers and the Special Fund, pursuant to the commissioner's authority under KRS 342.260(2).]

Section 1. Computation of the Apportionment of Benefits Between

the Employer and the Special Fund. If [Whenever] an administrative law judge is required to compute the apportionment of benefits between the employer and the Special Fund pursuant to KRS 342.120(3) [(4)], the portions shall be based on the life expectancies contained in the male or female mortality tables in Appendix A of this administrative regulation. If a claim is reopened, the table in effect on the date of the original opinion, award or order approving the settlement agreement shall continue to be utilized.

Section 2. Computation of Attorneys' Fees. If [Whenever] an attorney's fee is being computed by an administrative law judge pursuant to KRS 342.320, the award on which the attorney's fee shall be based shall be as actuarially determined on past and future benefits according to the life expectancies contained in the male or female mortality tables in Appendix A of this administrative regulation.

Section 3. Other Computations. If [When] calculation of a life expectancy is necessary for another [any other] purpose, including computation of an assessment or reserve for a self-insured employer [assessments or reserves for self-insured employers], the male or female mortality tables in Appendix A shall be utilized.

APPENDIX A

AGES	BOTH SEXES	MALES	FEMALES
0	75.8	72.3	79.1
1	75.4	72.0	78.7
2	74.5	71.1	77.8
3	73.5	70.1	76.8
4	72.5	69.1	75.8
5	71.6	68.1	74.8
6	70.6	67.2	73.9
7	69.6	66.2	72.9
8	68.6	65.2	71.9
9	67.6	64.2	70.9
10	66.6	63.2	69.9
11	65.6	62.2	68.9
12	64.6	61.2	67.9
13	63.7	60.3	66.9
14	62.7	59.3	65.9
15	61.7	58.3	65.0
16	60.7	57.4	64.0
17	59.8	56.4	63.0
18	58.8	55.5	62.0
19	57.9	54.6	61.1
20	56.9	53.7	60.1
21	56.0	52.7	59.1
22	55.1	51.8	58.2
23	54.1	50.9	57.2
24	53.2	50.0	56.2
25	52.2	49.1	55.2
26	51.3	48.2	54.3
27	50.4	47.2	53.3
28	49.4	46.3	52.3
29	48.5	45.4	51.4
30	47.5	44.5	50.4
31	46.6	43.6	49.4
32	45.7	42.7	48.5
33	44.7	41.8	47.5
34	43.8	40.9	46.6
35	42.9	40.0	45.6
36	42.0	39.1	44.7
37	41.0	38.2	43.7
38	40.1	37.3	42.8
39	39.2	36.4	41.8
40	38.3	35.5	40.9
41	37.4	34.6	39.9

Section 4. Special Provisions for Modified Community Rate Filings. (1) Modified community rate filings shall be submitted separately for each combination of the following:

- (a) Alliance or nonalliance;
- (b) Individual or group.

(2) Modified community rate filings may be combined for FFS/PPO and POS/HMO product types or may be submitted separately for FFS, PPO, POS, and HMO.

(3) Premium parameter worksheet diskette (labeled to identify the company, the product type, line, and marketing name) shall be submitted in the format prescribed on the diskette.

(4) Printouts of the premium parameter worksheet shall be submitted.

(5) Modified community rate diskettes (labeled to identify the company, the product type, line, and marketing name) and printouts of base coverage rates and supplemental benefit rider rates shall be submitted.

Section 5. Special Provisions for Filings Not Subject to Modified Community Rating. (1) Rate filings for prestandard plans shall be separate for each combination of the following:

- (a) Individual and group;
- (b) Product type (indemnity or managed care).

(2) A large group rate filing shall include all product types offered (HMO, POS, PPO, and FFS).

Section 6. (1) The actuarial memorandum shall be prepared in accordance with the American Academy of Actuaries Actuarial Standard of Practice No. 8 for Regulatory Filings for Rates and Financial Projections for Health Plans and Interpretative Opinion 3, Professional Communications of Actuaries.

(2) The actuarial memorandum for modified community rate filings shall include each of the following:

(a) Qualifications and health plan pricing experience of signing actuary;

(b) Detailed statement of rate development which shall include detailed explanations of:

- 1. Claim cost development:
 - a. Methodology;
 - b. Assumptions as follows:
 - (i) Trend;
 - (ii) Benefit changes;
 - (iii) Utilization and cost per service changes;
 - (iv) Issue basis;
 - (v) Demographic changes;
 - (vi) Changes in medical management;
 - (vii) Changes in provider contracts;
 - (viii) Any other assumptions used; and
- c. Experience including earned premium, paid claims, incurred claims, and incurred loss ratio for the last three (3) years for this product (or similar product if this filing is for a new product.)

2. Development of the base rate including all adjustments made to claim cost for age, gender, family composition, plan benefits, industry, and healthy lifestyle (if applicable).

3. Trend factor and justification of the trend factor proposed to be effective for the second six (6) month period of the rating period.

4. Anticipated pricing loss ratio.

(c) Detailed explanation, with example, of how small group composite rate is determined and groups to which composite rates shall apply. Identify group size which is eligible for compositing and when composite rates are recalculated for a group;

(d) Comparison of rates shall be done as follows to determine if the filing is greater than, less than, or equal to the change in Medical CPI plus three (3) percent:

1. Comparison of proposed rates to existing rates shall be determined on a composite basis for the product. The change shall be expressed as a percentage increase or decrease.

2. The change in Medical CPI plus three (3) percent is calculated as follows for the proposed rates and the trend factor rates. The results shall be expressed as a percentage change:

$$\text{Proposed rate change} = \frac{x/y}{(b/a)^{-1+(1.03)^{-1}}} - 1$$

$$\text{Trend factor rate change} = \frac{z/y}{[(b/a)^{-1+(1.03)^{-1}}]^{x/12}} - 1$$

Where: a = index value on effective date of existing rates;
b = most recent index value available at time of filing;
x = number of months from effective date of existing rates to effective date of proposed rates;
y = number of months from effective date of existing rates to date of "b".

z = number of months from effective date of existing rates to effective date of trend factor rates.

(e) Complete listing of Standard Industry Codes (SIC) with respective industry rate modifiers, based on code 5300 (general retail sales) as the standard factor of one (1.0), as applied to the filing;

(f) Explanation of the determination for healthy lifestyle discount and discount percentage;

(g) The following load factors shall be discussed:

1. Administrative expense, with an explanation for any change from the factor used for existing rates. Discuss how these costs are allocated among plans and attach necessary documentation as exhibits.

2. Commission assumption with an explanation for any change from the factor used for existing rates.

3. Tax (including federal, state and local government) assumption with an explanation for any change from the factor used for existing rates.

4. Investment income assumption with an explanation for any change from the factor used for existing rates.

5. Profit and contingency assumptions with an explanation for any change from the factor used for existing rates.

6. Any other factors.

(h) Information regarding how fees are paid to providers as follows:

1. Justification of fees paid to providers in relation to rate requested;

2. Average discount to providers during experience period and average discount for physician payments, hospital payments, laboratory payments, pharmacy payments, mental health payments and other payments for rate filing period;

3. Assumptions made about discounts in this rate filing:

(i) Explanation of the anticipated effect of the requested rates on the policyholders, subscribers, or enrollees.

(3) The actuarial memorandum for filings other than modified community rate filings shall include the following:

(a) The information prescribed in subsection (2)(a), (b), (d), (g) and (h) of this section;

(b) Under prestandard plan filings, the information provided in subsection (2)(b)1 and 4 of this section.

(c) Under large group filings, the following information shall be filed:

1. The information provided in subsection (2)(b)1, 2, and 4 of this section;

2. Formulas for new and renewing business and definitions of terms used in formulas;

3. Credibility criteria used in conjunction with experience rating;

4. Any change in the manual rating formula or experience rating formula shall be identified with detailed explanation;

5. Any change in factors which would be used in any formula shall be identified with detailed explanation;

ambulatory encounters, as incorporated by reference in Section 9 of this administrative regulation.

(5) ~~(6)~~ "HCFA-1500" means the uniform billing form identified by the federal Health Care Financing Administration as HCFA Form 1500, approved by the American Medical Association Council on Medical Service and commonly used to bill for ambulatory patient encounters, as incorporated by reference in Section 9 of this administrative regulation.

(6) ~~(7)~~ "Coding and transmission specifications" means the technical directives the cabinet issues concerning technical and technological matters subject to frequent change, including codes and data for uniform provider entry into particular character positions and fields of the UB-92 and HCFA-1500 and uniform provider formatting of fields and character positions for purposes of electronic data transmissions.

(7) ~~(8)~~ "Record" means the documentation of a hospitalization or major ambulatory procedure in the format of a UB-92 or HCFA-1500 regardless whether constituted as a paper form or on a computer readable electronic medium.

(8) ~~(9)~~ "Agent" means any entity with which the cabinet may contract pursuant to carrying out its statutory mandates and may designate to act on behalf of the cabinet to collect, edit or analyze data from providers.

(9) ~~(10)~~ "Provider" means a hospital, ambulatory facility, physician office, clinic or other entity of any nature providing hospitalizations or major ambulatory procedures as defined in this administrative regulation.

Section 2. Data Collection. (1) Hospitalization records. Beginning January 1, 1995, hospitals shall document on a UB-92 record each hospitalization they provide, and shall from every record copy and provide to the cabinet or its agent not less than the data specified in Section 7 of this administrative regulation.

(2) ~~Major~~ Ambulatory surgeries ~~procedure~~ and mammography records.

(a) Beginning January 1, 1995, ambulatory facilities and hospitals providing ~~major~~ ambulatory surgeries ~~procedures~~ or mammograms shall document on a UB-92 or HCFA-1500 record, as designated by the cabinet, every ~~major~~ ambulatory surgery ~~procedure~~ and mammogram they provide, and shall from every record copy and provide to the cabinet or its agent not less than the data specified in Section 7 of this administrative regulation.

(b) Beginning July 1, 1995, physician offices, clinics and other entities of any nature providing major ambulatory surgeries ~~procedures~~ or mammograms shall document on a UB-92 or HCFA-1500 record, as designated by the cabinet, the major ambulatory procedures and mammograms they provide, except that reporting of surgeries shall be limited to selected ambulatory surgeries as defined in this administrative regulation, and shall from every record copy and provide to the cabinet or its agent not less than the data specified in Section 7 of this administrative regulation.

(3) Data collection on all patients. Providers shall submit all required data on every patient as provided in this administrative regulation, regardless whether a bill is to be generated or the services are to remain unbilled.

Section 3. Data Finalization and Submission. (1) Submission of final data. Data shall be deemed final for purposes of submission to the cabinet or its agent as soon as a record is sufficiently final that the provider could submit it to a payor for billing purposes, regardless whether the record has actually been submitted to a payor.

(a) Finalized data shall not be withheld from submission to the cabinet on grounds that it remains subject to adjudication by a payor.

(b) Data on hospitalizations shall not be submitted to the cabinet or its agent before a patient is discharged or before the record is sufficiently final that it could be used for billing.

(2) Submission responsibility.

(a) When a patient is served by a mobile health service, specialized medical technology service, or other situations where one provider provides services under contract or other arrangement with another provider, responsibility for providing the specified data to the cabinet or its agent shall reside with the entity that bills for the service or otherwise would do so in the event a service is unbilled.

(b) All charges for physician services occurring within a hospital shall be reported to the cabinet. Responsibility for reporting the physician charge data shall rest with the hospital only when the physician is an employee of the hospital. Any physician charge(s) contained within a record generated by a hospital shall be clearly identified in a separate field within the record so that the cabinet may ensure comparability when aggregating them with other hospital records that do not contain any physician charges.

(3) Transmission of records.

(a) Data submitted to the cabinet or its agent shall be uniformly completed and formatted according to coding and transmission specifications issued by the cabinet.

(b) Hospitals shall submit data on computer-readable electronic media, and all other providers with capability to submit records on computer-readable electronic media shall do so.

(c) All providers shall provide back-up security against accidental erasure or loss of the data until incomplete or inaccurate records identified by the cabinet, if any, have been corrected and resubmitted.

(d) ~~Any data submitted by mail shall be by registered mail.~~

(e) Any provider who submits records in the form of paper copies shall either deliver the copies to the cabinet or its agent, or send them in secure packaging by mail postmarked no later than the due date.

(f) Personal identification fields including the patient's name, Social Security number, street address and four (4) digit zip code suffix if any (but not city or five (5) digit zip code) shall be rendered unreadable on paper copies before the copies are submitted to the cabinet, and shall not be included with electronically submitted data.

~~((f) Personal identification fields including the patient's name, Social Security number, street address and four (4) digit Zip code suffix if any (but not city or five (5) digit Zip code) shall be rendered unreadable on paper copies before the copies are submitted to the cabinet, and shall not be included with electronically submitted data.)~~

(4) Verification and audit trail for electronic data submissions.

(a) Each provider shall maintain a date log of all data submissions and the number of records contained in each submission, and shall make the log available for inspection upon request by the cabinet.

(b) The cabinet or its agent shall periodically, by electronic message or mail, verify to each provider the receipt of the provider's data transmissions and the number of records in each transmission.

(c) A provider shall immediately notify the cabinet of any discrepancy between the provider's date log and a verification notice.

Section 4. Data Submission Timetable. (1) Quarterly submissions. Providers shall submit data at least once for each calendar quarter. A quarterly submission shall contain data, from all records of patients admitted on or after January 1, 1995, which during that quarter became final as specified in Section 3(1) of this administrative regulation, and shall be submitted to the cabinet not later than forty-five (45) days after the last day of the quarter.

(a) If the 45th day falls on a weekend or holiday the submission due date shall become the next following working day.

(b) Calendar quarters shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(c) The date for the first required data submission under this administrative regulation shall be, for quarterly data collected after January 1, 1995, sixty (60) days following official release of the cabinet's coding and transmission specifications.

(2) Submissions more frequent than quarterly. Providers may submit data at any time after records become final as specified in

ADMINISTRATIVE REGISTER - 3361

3	* Patient Birth date and Patient Sex
5	* Patient City and Zip Code
8	Patient Marital Status
10a	Patient Condition Related to Employment
10b	Patient Condition Related to Auto Accident
10c	Patient Condition Related to Other Accident
14	* Date of Current Illness, Injury, or Pregnancy
15	First Date of Previous Same/Similar Illness
17a	* Referring/Ordering Physician UPIN or alternate number
18	Hospitalization Dates Related to Current Services
19	* Ethnicity
20	Outside Lab Use & Charges
21	* Diagnosis or Nature of Illness or Injury
24a	* Date(s) of Each Procedure/Service/Supply
24b	* Place of Service Code
24d	* CPT/HCPCS Code for Each Procedure/Service/Supply
24e	Diagnosis Code
24f	* Dollar Charges for Each Procedure/Service/Supply
24g	* Number of Days or Units
25	* Provider's (Physician/Supplier) Federal Tax Identification Number (EIN)
26	* Provider (Physician/Supplier)-assigned Patient Account Number
28	* Total Charges for Services

Section 8. Incorporations by Reference. (1) As defined in Section 1 of this administrative regulation, Form UB-92 and Form HCFA-1500 are incorporated by reference.

(2) These forms may be inspected or copied at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky, 40601, from 8 a.m. to 4:30 p.m., Monday through Friday except holidays.

RICE C. LEACH, Commissioner

JOHN MORSE, Secretary

APPROVED BY AGENCY: January 3, 1997

FILED WITH LRC: January 3, 1997 at 10 a.m.

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development (As Amended)

904 KAR 2:001. Definitions.

RELATES TO: KRS 205.710-205.800, 403.210-403.240, 405.520, 407.010-407.480, 45 CFR 302.31, 302.33-302.38, 302.50-302.54, 302.56, 302.60, 302.80, 303.2-303.4, 303.6, 303.8, 303.15, 303.30-303.31, 303.70, 303.100-303.102, 406.021, 406.025, 15 USC 1673(b), 31 USC 7502, EO 96-862, PL 104-193

STATUTORY AUTHORITY: KRS 194.050, 205.710-205.800, 213.046, 405.430, 405.520, 406.021, 406.025, EO 96-862, PL 104-193

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children ~~[Human Resources]~~ is required to administer the Child Support Enforcement Program (CSEP). KRS 194.050 provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Insurance and the Division of Child Support Enforcement under the Cabinet for Families and Children. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulations pertaining to the Child Support

Enforcement Program.

Section 1. Definitions of terms utilized in administrative regulations relating to the Child Support Enforcement Program are as follows:

(1) ~~["Absent parent" means either a mother or father of a dependent child who is not living in the home with the child. This term may also be used to describe the alleged father in a paternity case.~~

(2) ~~"AFDC" means aid to families with dependent children.~~

(3) ~~"Any other person or entity that may have standing to request a modification" means a nonparental client.~~

(4) ~~["Arrearage" means the total unpaid support obligation established by judicial or administrative order owed by a noncustodial [an absent] parent.~~

(2) ~~[(5)]~~ "Assignment of rights" means the written transfer of rights to any child support, any medical support, or maintenance obligation to the state.

(3) ~~[(6)]~~ "Assigned support obligation" means any child support or medical support obligation assigned to the state.

(4) ~~[(7)]~~ "Authority to collect" means the nonpublic assistance custodial parent's ~~[client's]~~ authorization for the Cabinet for Families and Children ~~[Human Resources]~~ to collect child support or maintenance owed on behalf of the family for whom the cabinet is providing child support services.

(5) ~~[(8)]~~ "Central registry" means a centralized office within the state agency responsible for:

(a) Receiving and distributing an incoming interstate request; and

(b) Responding to an inquiry received from another state regarding an interstate case.

(6) ~~[(9)]~~ "CSEP" means the Child Support Enforcement Program.

(7) "Custodial parent" means either a mother or father of a dependent child who is living in the home with the child.

(8) ~~[(10)]~~ "Default" means the noncustodial ~~[absent]~~ parent's failure to return a financial statement or to keep an appointment, and the noncustodial ~~[absent]~~ parent's income and assets cannot be obtained and verified from another source to determine a support obligation based on the Kentucky child support guidelines.

(9) ~~[(11)]~~ "Dispute hearing" means the process whereby a ~~[an absent]~~ parent's objections to administrative determinations of the cabinet are heard by an impartial hearing officer upon a timely request.

(10) ~~[(12)]~~ "Distribution" means either a disbursement of a collection to the family or an allotment of various portions of the collection ~~[collections]~~ to the state and federal government for the reimbursement of the share of the K-TAP ~~[AFDC]~~ assistance payment to the family or money expended for a child in foster care.

(11) "Escrow" means the difference between the amount of the assistance payment for the month in which the amount of the collection is used to redetermine eligibility and either the monthly obligation or the amount collected, whichever is less.

(12) ~~[(14)]~~ "Excess collections" means the amount of the collection which exceeds the monthly obligation amount. ~~[difference between the amount of the assistance payment for the month in which the amount of the collection is used to redetermine eligibility and either the monthly obligation or the amount collected, whichever is less.]~~

(13) "Initiating state" means the state that initiates child support activity on behalf of a child whose parent resides outside the child's state of residence.

(14) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) Program means a money payment program for children who are deprived of parent support or care due to:

(a) Death, continued voluntary or involuntary absence, physical or mental incapacity of a parent; or

(b) Unemployment of at least one (1) parent when both parents are in the home.

specified by state and local government laws and regulations.

(d) The agency shall provide to the cabinet written documentation to show that it has professional liability insurance in the minimum amount of \$100,000 per occurrence;

(e) The cabinet shall within thirty (30) days from the date of an inspection notify the agency in writing of any violation of licensure standards identified during the inspection;

(f) The agency shall submit to the cabinet a written plan of correction within ten (10) days of receipt of the notice of violation. The plan of correction shall specify the corrective action to be taken and the date when each violation shall be corrected; and

(g) The cabinet, when corrections are determined to have been completed [upon approval] shall issue a license to operate to the agency named in the application. The license shall be effective on the last day of the month in which approval was granted by the cabinet and shall not be transferable to any other entity.

(7) Changes in agency status.

(a) Name change.

1. The agency shall notify the cabinet in writing within ten (10) calendar days of the effective date of change.

2. The cabinet shall automatically issue a new license for the remainder of the licensure period.

3. The agency shall submit a processing fee of twenty-five (25) dollars to the cabinet.

(b) Change of location.

1. The agency shall not deliver services at a new location until an application for licensure accompanied by a fee of eighty (80) dollars is approved by the cabinet.

2. The cabinet shall approve the application and reissue the license for the remainder of the licensure period when the cabinet receives a written report from the state fire marshal stating the new facility is in compliance with building, fire, safety, and health standards specified by state and local laws and regulations.

(c) Establishing permanent satellite offices.

1. Thirty (30) days prior to establishing a permanent satellite office, a licensed prevention agency shall submit to the department a notice of intent which contains a description of the proposed site, the target audience, and a brief description of the services to be provided.

2. The satellite office shall adhere to all requirements of this administrative regulation.

3. The department shall submit a written response to the request for establishing a permanent satellite office within thirty (30) days of receipt of the notice of intent.

(d) Change of ownership.

1. The new owner of the agency shall submit to the cabinet an application for licensure accompanied by a fee of eighty (80) dollars for each facility within ten (10) calendar days of the effective date of change.

2. The cabinet shall process the application in accordance with Section 2 of this administrative regulation.

(e) ~~[(d)]~~ Discontinuing a program.

1. The agency shall notify the cabinet in writing within ten (10) calendar days of the effective date of discontinuance.

2. The agency shall ~~transfer or~~ refer all consumers to another licensed agency providing services appropriate to the needs of the consumer.

~~[3. The agency shall submit to the cabinet the name and address of each agency receiving the referral and the number of clients referred to each agency.]~~

(8) An agency may receive additional certificates of licensure upon payment to the cabinet for the cost of reproduction. The certificate of licensure shall be the property of the cabinet and shall be returned by the agency to the cabinet when any negative action is taken on the license.

(9) The cabinet shall publish annually and make available to the public a list of all licensed alcohol and other drug prevention agencies

identifying each separate facility operated by the agency. The cabinet may issue revisions and corrections to this list as changes occur.

Section 3. Physical Plant. There shall be written housekeeping, sanitation and maintenance procedures which shall be followed at all times to ensure that the facility shall be clean and in good repair.

Section 4. Organization and Administration. (1) Governing body.

(a) An agency shall have a governing body with overall authority and responsibility for the agency's operation.

~~(b) [Where programs are provided in the context of a general mental health, social services or health agency, it shall be documented that within the governing body there are members whose primary interest is the prevention of alcohol and other drug abuse.]~~

~~(c)~~ The governing body shall have written documentation to show the agency is a legal entity in the Commonwealth of Kentucky by means of a partnership agreement, articles of incorporation, legislative act or executive order.

~~(c)~~ ~~[(d)]~~ The responsibilities of the governing body shall be specified in writing and shall include:

1. Adopting a mission statement that outlines the agency's purpose;

2. Adopting a conflict of interest policy to govern participation by a governing body member in decisions which may be influenced by a member's business interest;

3. Appointing an executive director who shall be principally responsible for the day-to-day operation of the agency;

4. Adopting an administrative structure and establishing lines of authority for all prevention programs operated by the agency;

5. Documenting administrative structure and lines of authority on an organizational chart, including names of current governing board members;

6. Adopting written policies and procedures to direct administrative and program functions of the agency to ensure that sufficient staff and resources are available for the successful delivery of programs;

7. Reviewing ~~[and revising]~~ written prevention policies and procedures at least every two (2) years making needed revisions and incorporating relevant findings of the agency's quality assurance system;

8. Overseeing a system of financial management and accountability;

9. Obtaining agency professional liability insurance in the amount of \$100,000 per occurrence at a minimum;

10. Completing [Offering to its members] [Completing] a minimum of two (2) hours of annual training on alcohol and other drug prevention for prevention agencies, and in multiservice agencies for that particular component of the board that provides oversight to the prevention program; and

11. Meeting as a whole at least quarterly and keeping written records demonstrating the on-going discharge of its responsibilities.

(2) Staffing and staff qualifications.

(a) A preventionist who is actively involved in the development and implementation of prevention programs shall be certified by the Kentucky Chemical Dependency Professional Board as a prevention professional or become a Kentucky certified prevention professional within thirty (30) [twenty-four (24)] months of the effective date of this administrative regulation or within thirty (30) [twenty-four (24)] months of employment whichever is longer.

(b) The agency shall designate one (1) or more individuals as prevention supervisor.

(c) A prevention supervisor shall meet at least one (1) of the following sets of qualifications:

1. A bachelors degree plus five (5) years of work experience in prevention or the related fields of health, social science, marketing, communications or education. Two (2) years of the work experience shall be in administration; or

2. A masters degree, with two (2) years of work experience in

behavior of the target audience;

(f) Methods for soliciting input and involving the community or identified target audience in planning;

(g) Methods for making or receiving prevention consumer referrals within or outside the agency;

(h) Methods for referring or delivering services to consumers having special speech, language, visual or hearing needs;

(i) Methods for determining an individual's or agency's suitability for participation in the prevention program; and

(j) Policies and procedures for setting and collecting fees.

(2) The prevention agency shall maintain reports and records documenting the following:

(a) Results of needs assessments;

(b) Any collaboration with community or other agencies;

(c) Material and curricula reviewed;

(d) Program activities and services delivered;

(e) Background checks conducted on volunteers working with minors to assure that there is no previous record of conviction related to the abuse or molestation of minors.

(f) Identification of which of the following prevention strategies was employed:

1. Alternatives which provide for the participation of target populations in activities that exclude alcohol and other drug use. Methods shall include involving agency and community members in the design and provision of constructive and healthy activities that offset the attraction to or otherwise meets the needs usually filled by alcohol and other drugs;

2. Community-based process which aims to enhance the ability of community members to identify problems and resources and to appropriately select the prevention strategies that will more effectively impact behaviors relating to alcohol and other drug use. Methods shall include involving communities in planning, organizing, and implementing prevention programs through interagency collaboration, coalition building, and networking;

3. Consultation which involves an interaction and contractual relationship between two (2) or more people wherein one (1) who has special skills or expertise in accomplishing a specific goal provides one (1) who does not have the same skills or expertise, guidance in the mutual accomplishment of that goal;

4. Education which involves two (2) way communication and interaction between the educator or facilitator and the participants. Methods shall include direct training, training of trainers and training of impactors. This strategy consists of a well-defined, structured learning process which involves both knowledge and skill development. Educational programs seek to accomplish the following:

a. Motivate individuals to make healthy choices about alcohol and other drug use;

b. Help them develop the competencies needed to make those choices;

c. Prepare them to develop and implement prevention programs in particular settings.

5. Public and social policy change which establishes or changes written or unwritten community standards, codes, and attitudes, thereby influencing incidence and prevalence of alcohol and other drug use problems in the general population and creating an environment more conducive to prevention. Methods shall include changing laws and community standards to restrict availability and access, price increases and community wide actions;

6. Information dissemination which is characterized by one-way communication of information from the source to the audience, with limited contact between the two (2). Methods shall include identification, collection and dissemination of resource materials, media communication, public speaking and networking activities Information dissemination programs provide the following:

a. Awareness and knowledge of the nature and extent of alcohol and other drug use, abuse and addiction;

b. The effect of alcohol or other drugs on individuals, families and

communities;

c. Information to increase perceptions of risk; and

d. Identification of available prevention programs and services.

7. Problem identification and referral which is designed to identify persons who are beginning to experience alcohol and other drug problems or those for whom the risk of developing problems is particularly high. Methods shall include screening, intensive preventive education, or referral for a clinical assessment;

(g) ~~[(f)]~~ Documentation of consumer referrals made and sources used within or outside the agency;

(h) ~~[(g)]~~ Process and outcome evaluation results;

(i) ~~[(h)]~~ Follow-up plans; and

(j) ~~[(i)]~~ Fees assessment and collection.

Section 8. Consumer Rights. An agency licensed to provide alcohol and other drug prevention programs shall have written policies and procedures for ensuring the rights of the consumer which shall include:

(1) Assurances that there shall be no unlawful discrimination in determining eligibility for admission to a prevention program;

(2) A statement of consumer rights posted in the facility with the name, address and telephone number of the agency's ombudsperson;

(3) Assurances of the confidentiality of consumer's alcohol, tobacco, and other drug issues; and

(4) Grievance procedures posted in the facility which shall include at a minimum:

(a) Time frames for reviewing and responding to consumer complaints;

(b) Requirements for the documentation of grievances in each consumer record and in a central agency incident file; and

(c) Requirements for referring to the appropriate authority any allegations of abuse or neglect in accordance with:

1. KRS 209.030 regarding the abuse or neglect of adults; and

2. KRS 620.030 regarding the abuse or neglect of minors.

Section 9. Complaints. (1) A suspected violation of a licensure standard shall be reported to the cabinet.

(2) The complainant and information related to a suspected violation shall be kept confidential and shall not be disclosed publicly during an investigation. Once the investigation is complete, disclosure of the information shall be subject to the provision in KRS 61.870 - 61.884.

(3) A complaint received by the cabinet shall be processed according to the following procedures:

(a) The cabinet shall conduct an unannounced on-site inspection in accordance with Section 2(6)(b), (e) and (f) of this administrative regulation to determine if a violation of a licensure standard has occurred; and

(b) The cabinet may conduct an audit of the agency's financial records in accordance with generally accepted government auditing standards.

Section 10. Revocation and Suspension. Conditions which may result in the suspension or revocation of a license in addition to violations of licensure standards shall include the following:

(1) Any violation creating an immediate danger to the consumer;

(2) Fraud in obtaining a license or in connection with services provided;

(3) Gross negligence, misconduct or violation of the ethics code of the Kentucky chemical dependency certification board which results in revocation of the prevention professional credential;

(4) Any conviction of an agency preventionist~~[-employee]~~ or volunteer of a crime related to ~~[the following:~~

~~(a) The unlawful manufacture, distribution, possession or use of any controlled substance; or~~

~~(b)] the abuse, neglect or exploitation of a child or an adult.~~

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

DEPARTMENT OF AGRICULTURE
(Amended After Hearing)

302 KAR 3:010. Linked Deposit Investment Program.

RELATES TO: KRS 41.600-41.620

STATUTORY AUTHORITY: KRS Chapter 13A, 41.606

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the conditions for which agribusinesses are eligible for loans made available through the Linked Deposit Investment Program and provides for agency review of the information provided by the lending institution as part of the loan package. The Linked Deposit Investment Program, as it pertains to agribusiness, will be monitored by the Department of Agriculture. This administrative regulation also incorporates the form that must be completed and submitted to the department for an agribusiness to apply for a Linked Deposit Investment Program loan. The department has consulted with the State Investment Commission in preparing this administrative regulation as required by KRS 41.606 and this administrative regulation is in conformity with KRS 41.600 to 41.620 and Chapter 13A.

Section 1. Definitions. (1) "Applicant" is an agribusiness which has completed a loan package in conjunction with an eligible lending institution for a linked deposit investment program loan.

(2) "Department" is defined as the Department of Agriculture.

(3) "Eligible lending institution" is defined in KRS 41.600.

(4) "Eligible agribusiness" is defined in KRS 41.600.

(5) "Linked deposit investment" is defined in KRS 41.600

(6) "Linked Deposit Investment Program loan" is a loan approved by the Department of Agriculture, which is eligible for funding out of the unclaimed and abandoned property program administered by the Department of Treasury, and for which the State Investment Commission has accepted a linked deposit investment with an eligible lending institution.

(7) "Loan package" is defined as the "Agribusiness Linked Deposit Loan Application (7/96)" and the lending institution's application for the loans.

Section 2. Loan Package Approval Standards. (1) The eligible lending institution shall submit the original and two (2) copies of the loan package to the Department of Agriculture at Capital Plaza Tower, 7th floor, 500 Mero Street, Frankfort, Kentucky 40601.

(2) The department shall review the information provided by the applicant in the Agribusiness Linked Deposit Loan Application to determine whether each characteristic required by KRS 41.600 has been met to qualify the applicant as an eligible agribusiness for a linked deposit investment program loan submitted through an eligible lending institution.

~~[(2) The eligible lending institution shall submit the original and two (2) copies of the loan package to the Department of Agriculture at Capital Plaza Tower, 7th floor, 500 Mero Street, Frankfort, Kentucky 40601.]~~

(3) The department shall return any incomplete loan package to the eligible lending institution which ~~[who]~~ submitted the application on behalf of the applicant. The completed loan package may be resubmitted to the department for approval.

Section 3. Loan and Investment Approval Process. (1) After the department has determined that the loan package is complete in accordance with this administrative regulation it shall forward the

loan package to the State Investment Commission for funding as required by KRS 41.610(5). ~~[request the Treasury Department to verify the projected availability of funds in the state's unclaimed and abandoned property program for the purpose of determining whether adequate funds exist for each loan to be made from the linked deposit investment program.]~~

(2) Funds for linked deposit investment program loans are derived from the Department of Treasury's unclaimed and abandoned property fund as required by KRS 41.606(1). The availability of funds for linked deposit investment program loans shall be based on the recommendation contained in the Department of Treasury's annual report detailing the amount of money in the unclaimed and abandoned property fund, but shall not exceed the limits established by the State Investment Commission. The Department of Treasury shall submit its annual report to the State Investment Commission and the Department of Agriculture no later than March 31 of each year. ~~[Upon determination by the Department of Treasury that adequate funds exist for a loan to be made from the linked deposit investment program, the department shall forward or cause to be forwarded to the State Investment Commission a copy of the Treasurer's certification that adequate funds exist in the unclaimed and abandoned property account to fund the linked deposit investment program for the period of time contemplated by the loan agreement between the eligible lending institution and the borrower. The department shall also forward a copy of the completed Agribusiness Linked Deposit Loan Application to the State Investment Commission for funding as required by KRS 41.610(5).]~~

(3) ~~[An application for a linked deposit investment program loan shall be denied upon certification from the Treasury Department that sufficient funds do not exist in the state's unclaimed and abandoned property program to make the loan.]~~

~~[(4)]~~ Approval for a new application for a linked deposit investment may be denied or an existing investment revoked by the State Investment Commission for failure of the financial institution to meet and maintain the eligibility requirements prescribed in KRS 42.500 and 200 KAR Chapter 14 for each investment type.

Section 4. Repayments. The eligible lending institution shall remit to the State Investment Commission by June 30 of each year all loan principal repayments for the preceding year beginning June 1 and ending May 31.

Section 5. Reporting Requirements. (1) Within thirty (30) days from the date ~~[When]~~ a linked deposit investment has been funded approved by the State Investment Commission, the eligible lending institution shall submit ~~[appropriate]~~ written documentation to the department describing with particularity the actual terms of the loan agreement between the applicant and the eligible lending institution, including the loan amount, the interest rate charged to the applicant, the length of time permitted for repayment of the loan and any other terms or documents required by the eligible lending institution to execute the loan.

(2) The State Investment Commission shall submit to the Department of Agriculture a copy of the letter confirming each approved linked deposit investment with the eligible lending institution no later than thirty (30) days after the date the Linked Deposit Investment Program loan has been funded.

(3) ~~[(2)]~~ The eligible lending institution shall submit to the Department ~~of Agriculture~~ on or before August ~~[by September]~~ 1 of each year a report summarizing the status and total of each Linked Deposit Investment Program loan outstanding with the

administrative regulation as required by KRS 41.606 and this administrative regulation is in conformity with KRS 41.600 to 41.620 and Chapter 13A.

Section 1. Definitions. (1) "Applicant" is a small business which has completed a loan package in conjunction with an eligible lending institution for a linked deposit investment program loan.

(2) "Cabinet" is defined as the Cabinet for Economic Development.

(3) "Eligible lending institution" is defined in KRS 41.600.

(4) "Eligible small business" is defined in KRS 41.600.

(5) "Linked deposit investment" is defined in KRS 41.600.

(6) "Linked Deposit Investment Program loan" is a loan approved by the Cabinet for Economic Development, which is eligible for funding out of the unclaimed and abandoned property program administered by the Department of Treasury, and for which the State Investment Commission has accepted a linked deposit investment with an eligible lending institution.

(7) "Loan package" is defined as the "Small Business Linked Deposit Loan Application (7/96)" and the "Cabinet for Economic Development Economic Incentive Disclosure Statement (9/96)" and the lending institution's application for the loans.

Section 2. Loan Package Approval Standards. (1) The eligible lending institution shall submit the original and two (2) copies of the loan package to the cabinet's Small and Minority Business Division at 67 Wilkinson Boulevard, Frankfort, Kentucky 40601.

(2) The cabinet shall review the information provided by the applicant in the Small Business Linked Deposit Loan Application to determine whether each characteristic required by KRS 41.606 has been met to qualify the applicant as an eligible small business for a linked deposit investment program loan submitted through an eligible lending institution.

~~[(2) The eligible lending institution shall submit the original and two (2) copies of the loan package to the cabinet's Small and Minority Business Division at 67 Wilkinson Boulevard, Frankfort, Kentucky 40601.]~~

(3) The cabinet shall return any incomplete loan package to the eligible lending institution which [whe] submitted the application on behalf of the applicant. The completed loan package may be resubmitted to the cabinet for approval.

Section 3. Loan and Investment Approval Process. (1) After the cabinet has determined that the loan package is complete in accordance with this administrative regulation it shall forward the loan package to the State Investment Commission for funding as required by KRS 41.610(5). [~~request the Treasury Department to verify the projected availability of funds in the state's unclaimed and abandoned property program for the purpose of determining whether adequate funds exist for each loan to be made from the linked deposit investment program.]~~]

(2) Funds for Linked Deposit Investment Program loans are derived from the Department of Treasury's unclaimed and abandoned property fund as required by KRS 41.606(1). The availability of funds for Linked Deposit Investment Program loans shall be based on the recommendation contained in the Department of Treasury's annual report detailing the amount of money in the unclaimed and abandoned property fund, but shall not exceed the limits established by the State Investment Commission. The Department of Treasury shall submit its annual report to the State Investment Commission and the cabinet no later than March 31 of each year. [~~Upon determination by the Department of Treasury that adequate funds exist for a loan to be made from the linked deposit investment program, the cabinet shall forward or cause to be forwarded to the State Investment Commission a copy of the Treasurer's certification that adequate funds exist in the unclaimed and abandoned property program to fund the linked~~]

~~deposit investment program for the period of time contemplated by the loan agreement between the eligible lending institution and the borrower. The cabinet shall also forward a copy of the completed Small Business Linked Deposit Loan Application to the State Investment Commission for funding as required by KRS 41.610(5).]~~

(3) ~~[An application for a linked deposit investment program loan shall be denied upon certification from the Treasury Department that sufficient funds do not exist in the state's unclaimed and abandoned property program to make the loan.]~~

~~[(4)]~~ Approval for a new application for a linked deposit investment may be denied or an existing investment revoked by the State Investment Commission for failure of the financial institution to meet and maintain the eligibility requirements prescribed in KRS 42.500 and 200 KAR Chapter 14 for each investment type.

Section 4. Repayments. The eligible lending institution shall remit to the State Investment Commission by June 30 of each year all loan principal repayments for the preceding year beginning June 1 and ending May 31.

Section 5. Reporting Requirements. (1) Within thirty (30) days from the date [When] a linked deposit investment has been funded [approved] by the State Investment Commission, the eligible lending institution shall submit [appropriate] written documentation to the cabinet describing with particularity the actual terms of the loan agreement between the applicant and the eligible lending institution, including the loan amount, the interest rate charged to the applicant, the length of time permitted for repayment of the loan and any other terms or documents required by the eligible lending institution to execute the loan.

(2) The State Investment Commission shall submit to the cabinet's Small and Minority Business Division a copy of the letter confirming each approved linked deposit investment with the eligible lending institution no later than thirty (30) days after the date the Linked Deposit Investment Program loan has been funded.

(3) The eligible lending institution shall submit to the cabinet's Small and Minority Business Division on or before August [~~by September~~] 1 of each year a report summarizing the status and total of each Linked Deposit Investment Program loan outstanding with the lender, including, but not limited to the beginning balance, ending balance and principal repayments received during the year. [~~of all principal repayments made by the eligible lending institution to the State Investment Commission for the preceding year beginning July 1 and ending June 30.~~]

~~[(2) The first annual report shall be filed on or before September 1, 1997 indicating all repayments made between July 15, 1996 and June 30, 1997.]~~

Section 6. [6-] Incorporation by Reference. The "Small Business Linked Deposit Loan Application (7/96)" and the "Cabinet for Economic Development Economic Incentive Disclosure Statement (9/96)" are incorporated herein by reference. A copy of the form of application and the disclosure statement form may be inspected, copied or obtained from the Cabinet for Economic Development Small and Minority Business Division, 67 Wilkinson Boulevard, Frankfort, Kentucky 40601, (502) 564-2064, from 8 a.m. to 4:30 p.m., Monday through Friday.

This is to certify that I have reviewed this administrative regulation, prior to its filing by the Cabinet for Economic Development with the Legislative Research Commission, as required by KRS 41.606.

BILLY RAY SMITH, Commissioner
Department of Agriculture
GORDON L. MULLIS, Secretary
State Investment Commission

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(5) "Encounter" means a health care contact or service delivered by a health care provider in a partnership to a member.

(6) "Family planning services" means counseling services, medical services, and pharmaceutical supplies and devices to aid those who decide to prevent or delay pregnancy.

(7) "Maternity care" means prenatal, delivery, postpartum and complications of delivery care.

(8) "Medical detoxification" means management of symptoms during the acute withdrawal phase from a substance to which the individual has been addicted.

~~[(9) "Medically necessary health services" means age appropriate services reasonable and necessary to diagnose and provide preventive, palliative, curative or restorative treatment for physical or mental conditions in accordance with professionally recognized standards of health care generally accepted at the time services are provided, including services for children authorized under 42 USC 1396d(r).]~~

(9) "Member" means a Medicaid recipient who is enrolled in a partnership plan. Parents, custodial parents, persons exercising custodial control or supervision, or agencies with legal responsibility for a child by virtue of voluntary commitment or emergency or temporary custody orders may act on behalf of a child member, prospective member, or former member for purposes of selecting a primary care provider, filing complaints, grievances or appeals, and otherwise acting on behalf of the child in interactions with a partnership. Legal guardians appointed pursuant to KRS 387.500 to 387.770 may act on behalf of wards as defined in that statute, and those individuals authorized to make health care decisions pursuant to KRS 311.629 and 311.631 may act on behalf of members, prospective members, or former members.

(10) "Partnership" means an entity that meets the requirements as shown in Section 5 of this administrative regulation, and [a single legal entity established within a region that,] under contract with the department in accordance with KRS Chapter 45A, agrees to provide, or arrange for the provision of, health services to members, on the basis of prepaid capitation payments.

(11) "Partnership region" means a geographical coverage area of a partnership health plan in Kentucky.

~~(12) "Primary care provider" means a licensed or certified health care practitioner who meets the description as shown in Section 3(2) of this administrative regulation. [including a doctor of medicine, doctor of osteopathy, advanced registered nurse practitioner, including a nurse practitioner, nurse midwife and clinical specialist, and physician assistant, or clinic, including a primary care center and rural health clinic, that functions within the scope of licensure or certification, has admitting privileges at a hospital or a formal referral agreement with a provider possessing admitting privileges, and agrees to provide twenty-four (24) hour primary health care services to individuals.]~~

(13) ~~[(12)]~~ "Recipient" means an individual who is eligible to receive Medicaid services.

~~[(13)] "Region" means a geographical area in Kentucky that is designated by the department for partnership services.]~~

(14) "Rural area" means those areas outside of the urban areas. ["Traditional Medicaid providers" means providers who currently characterize their encounters with Medicaid recipients to be thirty (30) percent of their practice or business within a partnership region.]

(15) "Urban area" means a metropolitan statistical area, as designated by the U.S. Office of Management and Budget, which contains an urban nucleus of at least 50,000 population, along with adjacent counties which have a high degree of economic and social ties, for a total metropolitan population of at least 100,000.

(16) "Urgent care" means care for a condition not likely to cause death or lasting harm but for which treatment should not wait for a normally scheduled appointment.

Section 2. General. (1) The department shall implement, within the Medicaid Program, a prepaid capitation managed care system to be known as the Kentucky Health Care Partnership Program. Partnerships shall be implemented and administered in accordance with the terms and conditions of the waiver granted by the Secretary, United States Department of Health and Human Services under the authority granted by 42 USC 1315.

(2) As partnerships are established within specified regions, the Kentucky Health Care Partnership Program shall be phased in in all regions statewide.

Section 3. Recipient Participation. (1) Recipients required to participate in partnerships, unless excluded as shown in Section 4 of this administrative regulation, shall include individuals who would have been eligible to receive Aid to Families with Dependent Children (AFDC) and Medicaid using AFDC requirements as in effect as of July 16, 1996, as subsequently amended in accordance with 42 USC 1396u-1 [Section 1921 of the Social Security Act], and individuals who are eligible to receive Medicaid under the following Medicaid categories:

- (a) Children and family related;
- (b) Aged, blind, and disabled Medicaid only;
- (c) Pass through in accordance with 907 KAR 1:011;
- (d) Poverty level pregnant women and children;
- (e) State supplementation for aged, blind, and disabled;
- (f) Supplemental security income (SSI);
- (g) Under the age of twenty-one (21) years and in a psychiatric residential treatment facility (PRTF); ~~and~~

(h) Under the age of eighteen (18) years, placed in foster care as described in 907 KAR 1:011 and under supervision of a Kentucky public or private child welfare agency; due to administrative and case management issues related to this group of children, each child within the group shall be phased into the Partnership Program as the administrative and case management issues relating to the child are resolved; and

(i) Under the age of eighteen (18) years, adopted and have special needs; due to administrative and case management issues related to this group of children, each child within the group shall be phased into the Partnership Program as the administrative and case management issues relating to the child are resolved.

(2) A member shall be allowed to select, from at least two (2) primary care providers serving the member's assigned partnership, one (1) of which shall be [including] a physician, a primary care provider who shall:

(a) Be a licensed or certified health care practitioner, including a doctor of medicine, doctor of osteopathy, advanced registered nurse practitioner, including a nurse practitioner, nurse midwife and clinical specialist, physician assistant, or clinic, including a primary care center and rural health clinic, that functions within the scope of licensure or certification;

(b) Have admitting privileges at a hospital or a formal referral agreement with a provider possessing admitting privileges;

(c) Agree to provide twenty-four (24) hours a day, seven (7) days a week primary health care services to individuals; and

(d) For a member who has gynecological or obstetrical health care needs, disabilities or chronic, complex conditions, be a specialist who agrees to provide or arrange for all appropriate primary and preventive care directly or through linkage with a primary care provider. The decision to utilize a specialist as the primary care provider shall be based on an agreement among the member, specialist and the partnership medical director.

(3) The primary care provider voluntarily selected by the member shall be:

(a) A primary care provider who participates in the member's assigned partnership and is located in the member's county of residence or an adjoining county; or

~~standards when contracting with the department. If health care financing administration's standards are more stringent than Kentucky contracting standards, Health Care Financing Administration's contract guidelines shall take precedence in accordance with the approved provisions of the 1115 Waiver; and]~~

(6) [(4)] Establish a governance body, or board of directors, that shall:

(a) Assume responsibility for establishing and implementing policies and procedures regarding health services delivery to members of the partnership;

(b) Broadly represent the partnership region's health services providers, including currently enrolled [traditional] Medicaid providers and other providers, including hospitals, primary care providers, specialty providers, nonphysician health professionals, dentists, primary care centers, public health departments, and the University of Louisville and University of Kentucky medical centers for regions in which they are located;

(c) Include at least **four (4) [two (2)]** consumer representatives who [one (1) of whom] shall be [a] members of the partnership and represent each of the following categories of Medicaid recipients:

- 1. Children and family related;**
- 2. Children with special health care needs;**
- 3. Aged; and**
- 4. Disabled adults.**

(d) Be approved, in terms of composition as shown in paragraphs (b) and (c) of this subsection, by the department.

(7) [(6)] Demonstrate adequate protection against insolvency by[:

(a) ~~Providing the department, within thirty (30) days of the partnership contract, a performance bond that equals one (1) month of projected capitation payments and names the department as obligee;~~

~~(b) Sustaining a capital reserve equal to \$100,000, or an amount equal to one (1) percent of the anticipated annual premiums paid under the contract, whichever is greater; and~~

~~(c) establishing and maintaining an insolvency reserve equal to [one (1) month's capitation per member to be held by a regulated financial institution and available to] the amount of the [department for paying partnership providers if a] partnership's net worth determined in accordance with specifications for a provider-sponsored integrated health delivery network set forth in KRS 304.17A-310 [becomes insolvent]. A partnership's reserve requirement shall be:~~

~~(a) Reduced by up to fifty (50) percent of an amount equal to the anticipated cost of health care services to be provided by hospitals that execute contracts with the partnership that contain requirements for continuation of services to members following partnership insolvency until the end of the period for which Medicaid capitation payments were received by the partnership.~~

~~(b) Met by any one (1) or a combination of the following methods:~~

~~1. Establishing an insolvency reserve in the amount of the partnership's net worth as specified in this subsection;~~

~~2. Maintaining insolvency insurance that shall be obtained through a reinsurer approved by the department and shall provide coverage for expenses incurred for members' health services from the date of insolvency until the end of the period for which Medicaid capitation payments were received by the partnership;~~

~~3. Providing the department with a bank letter of credit for an amount up to fifty (50) percent of the insolvency reserve amount; or~~

~~4. Providing a written guarantee to the department for the insolvency reserve amount from a regulated guarantor or provider sponsor or sponsors if the sponsor or sponsors restrict a portion of their assets equivalent to the value of the expenses or required reserves that the sponsor agrees to cover.~~

(8) [(6)] Be required to:

(a) Submit monthly financial statements to the department within **forty-five (45) [thirty (30)]** days of the end of each month during the first year of operation and on a quarterly basis, or as designated by the department, thereafter. The financial statement shall include:

- 1. A balance sheet;**
- 2. A statement of revenue and expenses;**
- 3. Changes in partnership plan equity; and**
- 4. Other reports designated by the department through contracts in accordance with KRS Chapter 45A.**

(b) File a financial disclosure report, as required [approved] by the Health Care Financing Administration and in accordance with 42 CFR 455, with the department within **120 [thirty (30)]** days of the end of the contract year and within **forty-five (45) [thirty (30)]** days of entering into, renewing, or terminating any transaction with an affiliated party ~~[in accordance with 42 CFR 456];~~

(c) Make available all books, records, and information related to claims for member services and financial transactions of the partnership for review, inspection, auditing, and photocopying by authorized federal and state agency [department] reviewers and auditors. The books, records, information, and partnership staff shall be available upon request of the department during routine business hours at the place of operations;

(d) Maintain all books, records, and information related to partnership providers, members and member services and financial transactions for a minimum of five (5) years, and for any additional time period as required [designated] by federal and state laws [the department]; and

(e) Immediately notify the department of anticipated or projected failure to meet partnership financial insolvency reserve requirements as shown in subsection (7) of this section.

(9) Be required to cooperate with the department, Office of the Inspector General within the Cabinet for Health Services, and the Office of the Attorney General, in the control of fraud and abuse related to the medical assistance program as defined in KRS 205.8451 and in accordance with KRS 205.8453 and 194.030, Section 12, as required by Section 1128A-7(b)(11) of the Social Security Act, 42 CFR 455.21 and 42 CFR 1001.1301.

(10) Include specified providers in the partnership network or submit for the department's approval, documentation which supports that services and service sites, as shown in Section 7(6) of this administrative regulation, shall adequately meet the needs of members if the specified providers are not included in the network. These providers shall include:

- (a) Teaching hospitals located in the partnership region;
- (b) Primary care centers, including federally qualified health centers and rural health clinics, that serve the partnership region;
- (c) The Kentucky Commission for Children with Special Health Care Needs; and
- (d) Public health departments that serve the partnership region.

(11) Use public health departments in the partnership network to:

(a) Provide at least the direct access services as shown in Section 7(5) of this administrative regulation;

(b) Collaborate in assessment of the health and health care needs of the member population and partnership region;

(c) Collaborate in the development and implementation of member and partnership region health promotion programs; and

(d) Serve on the partnership governance body as shown in subsection (6)(b) of this section and on the quality and access recipient advisory committee as shown in Section 10(1)(c) of this administrative regulation.

Section 6. Partnership Payments. (1) The department shall provide each partnership a per month, per member capitation

(60) minutes. If greater, transport time [the community standard] for accessing care shall be equivalent to that of recipients residing in a partnership region but not served by the partnership. Any [utilized, and] exceptions shall be justified and documented by the partnership [on the basis of community standards].

(e) General dental services. Transport time shall not exceed one (1) hour, except in rural areas where transport time shall be equivalent to that of recipients residing in a partnership region but not served by the partnership. Any exceptions shall be justified and documented by the partnership. [community standards and documentation shall apply.] Appointment and waiting times shall not exceed three (3) weeks for regular appointments and forty-eight (48) hours for urgent care.

(f) General vision, laboratory and radiology services. Transport time shall not exceed one (1) hour, except in rural areas where transport time shall be equivalent to that of recipients residing in a partnership region but not served by the partnership. Any exceptions shall be justified and documented by the partnership. [community standards and documentation shall apply.] Appointment and waiting times shall not exceed thirty (30) days for regular appointments and forty-eight (48) hours for urgent care.

(g) Pharmacy services. Transport time shall not exceed one (1) hour, except in rural areas where transport time shall be equivalent to that of recipients residing in a partnership region but not served by the partnership. Any exceptions shall be justified and documented by the partnership. [community standards and documentation shall apply.]

(h) Other services. All covered services not specified in paragraphs (a) through (g) of this subsection shall be available to members as the same services are available to recipients residing in the partnership region, but not served by the partnership. Any exceptions shall be justified and documented by the partnership. [partnerships according to community standards.]

(7) If a partnership fails to meet access standards as shown in subsection (6) of this section, the partnership shall be required to submit a corrective action plan for approval by the department prior to implementation of the plan in order to improve members' access to services.

Section 8. Partnership **Internal** Grievance Procedure. (1) The partnership shall have an internal grievance procedure in place to resolve members' complaints with respect to health care services provided to them.

(2) The partnership grievance procedure shall be subject to approval by the department, and shall include the following components:

(a) Established written policies and procedures for the receipt, handling and disposition of complaints and grievances which shall:

1. Be approved by the partnership's governance body or board of directors;

2. Provide for participation in the process of individuals with authority to require corrective action;

3. Include a routine process for evaluation of patterns of complaints and grievances for impact on partnership policy and procedures;

4. Establish procedures for maintenance of records of complaints, grievances and appeals separate from member medical records;

5. Inform members and subcontractors about internal and state agency complaint, grievance and appeal processes;

6. Provide members with assistance in filing complaints and grievances, if the member requests assistance; and

7. Include assurances that there shall be no discrimination against a member solely on the basis that the member filed a grievance or made a complaint.

(b) An informal complaint process which operates through

verbal communication;

(c) A formal grievance process for handling written grievances;

(d) A procedure for logging and reporting on all complaints and grievances filed; and

(e) A time frame for resolution of complaints or grievances of:

1. An urgent nature, that is complaints and grievances relating to matters which could place the member at risk or which could seriously jeopardize the member's health or well being, within forty-eight (48) hours or less; and

2. Nonurgent nature, within thirty (30) days of the initial filing.

(f) A method for informing all members of the grievance procedures verbally and in writing.

(3) Each partnership shall submit a quarterly report of member complaints and grievances to the department.

Section 9. Complaint, Grievance and Appeal Rights. (1) If dissatisfied with any actions taken with respect to:

(a) Health care services, involving denial, reduction or termination of partnership services, members shall be entitled to a complaint, grievance or appeal with either their respective partnerships, or the department, to be conducted in accordance with 907 KAR 1:560. Appeals shall be processed by partnerships or the department in an expedited manner so as not to place the member at risk or seriously jeopardize the member's health or well being.

(b) Actions of the department, partnerships, or participating providers, members shall be entitled to a complaint, grievance or [and] appeal with either their respective partnerships, or the department, to be conducted in accordance with 907 KAR 1:560.

(2) Members shall be informed in writing of their rights and procedures for due process by the:

(a) Partnership at the time of enrollment and following any denial, reduction or termination of services;

(b) Department upon Medicaid application and at any time there is a change in eligibility status; [following action upon any claim;] and

(c) Partnership or the department at other times as required [determined] by federal and state laws [the department].

(3) The department shall establish and maintain:

(a) A toll-free telephone number for members who seek prompt responses to questions regarding Medicaid services and resolution of verbal [informal] complaints about partnership services; and

(b) A procedure for logging and reporting to the quality and access recipient advisory committee and to the department, the management of all complaints and grievances filed.

(4) The Cabinet for Health Services shall operate, either directly or by contract in accordance with KRS Chapter 45A, a Medicaid managed care ombudsman function, independent of the department and partnerships, to assist members who request assistance. The Medicaid managed care ombudsman shall perform the following functions on behalf of partnership members:

(a) Assist members in filing grievances and appeals through partnership or department grievance, appeal or hearing procedures;

(b) Identify, investigate and resolve member complaints about health care services under the Partnership Program;

(c) Advocate for member interests and rights under the Partnership Program;

(d) Educate consumer organizations that inquire about managed care and the Partnership Program; and

(e) Provide information and referral services to members as necessary to perform functions as shown in this subsection.

Section 10. Quality Improvement. (1) The department shall:

(a) Establish a quality improvement program which evaluates, on

completeness of the application to become a partnership provider.

3. Monitoring and update of ~~(e)~~ goals and objectives of the partnership ~~(a)~~ quality improvement program;

4. Establishing ~~(d)~~ methods for taking corrective actions relating to quality improvement;

~~[(e) Methods to internally and externally review and evaluate the quality of health care, including health services data and quality of care studies;]~~

5. Integrating ~~(f)~~ Methods to integrate quality improvement with other management activities, including changes in the access to partnership providers and member services; and

6. Monitoring and evaluation of benchmarks related to health care outcomes, including at least the members' risk factors, functional status, morbidity, mortality, readmissions to health care facilities, adverse incidents and complications, satisfaction with care and effect of education programs. The health care outcomes shall be based on the performance indicators and standards set forth in the HEDIS, as shown in subsection (1)(a)2 of this section.

~~[(g) Establish a quality and access advisory committee composed of partnership providers and health care researchers.]~~

(b) Be accredited by a national accrediting agency of managed care organizations by the end of five (5) consecutive years of contracting with the department.

Section 11. Fiscal Penalties. (1) Subsequent to the testing and demonstration of the performance of the department's management information systems, ~~[Penalty:]~~ if a partnership knowingly fails to submit health care ~~[encounter]~~ data from processed claims, as required and specified by ~~[te]~~ the department ~~[in accordance with terms and conditions specified in the contract],~~ the department may ~~[shall reserve the right to]~~ withhold up to ten (10) percent of the partnership's capitation rate in ~~[for]~~ the month following nonsubmission of data. This amount withheld shall be returned to the partnership upon receipt and processing ~~[acceptance]~~ of the ~~[encounter]~~ data within five (5) days of receipt by the department.

(2) The department shall provide an annual list of the benchmarks based on health care outcomes as shown in Section 10(1)(a)2 of this administrative regulation and assess the partnership's achievement of the benchmarks. If the department determines benchmarks have not been achieved, a corrective action plan shall be submitted by the partnership to the department within two (2) months of notification. If no improvement in the achievement of benchmarks is demonstrated by the partnership within three (3) months following initiation of the corrective action plan, a penalty of up to one (1) percent of the partnership's capitation payment amount shall be imposed by the department in the subsequent months in which no improvement is made.

Section 12. Termination of a Partnership Contract. The department shall ~~[have the right to]~~ terminate a partnership contract in accordance with administrative regulation 200 KAR 5:312, Section 2.

Section 13. Termination of Partnership Providers or Subcontractors. (1) Any partnership provider or subcontractor of a partnership who engages in activities that result in their suspension, termination, or exclusion from the Medicare or Medicaid Program shall be terminated from participation in the Partnership Program.

(2) If a health care provider is suspended, terminated, or excluded from participation in the Kentucky Medicaid Program, partnerships shall be notified by the department.

Section 14. Liability for Actions Taken Against Partnerships. Individual partnerships and any partnership providers, or subcontractors, shall be required to hold harmless the Commonwealth, its

officers and employees, and members from incurring any liability for their Medicaid related services and debts.

Section 15. Partnership Insolvency. If a partnership fails to meet the insolvency reserve requirements as shown in Section 5(7) of this administrative regulation ~~[becomes insolvent],~~ is terminated from the Kentucky Medicaid Program contract negotiated in accordance with KRS Chapter 45A ~~[participation],~~ or ceases to operate, the department shall:

(1) ~~[Make every effort to]~~ Immediately notify partnership providers and members;

(2) ~~[Provide or]~~ Arrange for the provision of Medicaid services to members in the partnership region, using the insolvency reserve amount as shown in Section 5(7) ~~[(6)(e)]~~ of this administrative regulation; and

(3) Assume responsibility for paying partnership providers directly, after the end of the partnership's obligation and at the partnership rates, for services to members until a new partnership becomes established and operational ~~[can be implemented].~~

Section 16. Partnership Participating Provider and Member Representation and Advocacy. Each partnership shall be required to develop and implement a plan to assure appropriate member and partnership provider participation in the establishment of partnership policies and procedures. The plan shall be approved by the department and include:

(1) The establishment of an ongoing quality and access recipient ~~[consumer]~~ advisory committee composed of ~~[members and] individuals as shown in Section 10(1)(c) of this administrative regulation. The functions shall be to review and make recommendations about:~~

(a) Medicaid and partnership policies affecting members;
(b) Quality improvement of and access to services; and
(c) Grievance and appeals processes. ~~[from consumer advocacy groups who are representative of the member population; and]~~

(2) Mechanisms for involving partnership providers, which may include provider membership on the governance body, separate provider advisory committees and ad hoc provider work groups.

Section 17. Marketing. Regional partnerships, or any subcontractors, shall:

(1) Conduct member marketing and enrollment activities only with recipients residing in a partnership region; ~~[the involvement and approval of the department; and]~~

(2) Be prohibited from:

(a) Direct telephone marketing or direct mail advertising to members, or to recipients who are not enrolled in a partnership; ~~[and]~~

(b) Offering or granting any reward, favor or compensation as an inducement to select a particular provider; and

(c) Misleading or misrepresenting members about the partnership, department or other government agencies.

(3) Submit a marketing plan on an annual basis to the department for approval;

(4) Submit a plan and develop procedures to log and resolve marketing complaints;

(5) Prepare and distribute marketing materials which factually represent the partnership and which shall be:

(a) Available in appropriate foreign languages if more than ten (10) percent of the members speak a particular language;

(b) Prepared so that members who read at a sixth grade level may understand;

(c) Available to members in written form, braille, audio tapes and telecommunications devices; and

(d) Updated annually.

Section 18. Confidentiality. Partnerships shall be required to maintain confidentiality of all member eligibility information and

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public health is expected to improve in that community. Health care quality and access is expected to increase. Certain health outcomes are expected to be achieved. More recipients should be managing their own health needs in the Medicaid population.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The department believes nonimplementation of the Partnership Program will have a detrimental effect on the health of the public, including, but not limited to the Medicaid population.

(c) If detrimental effect would result, explain detrimental effect: The implementation of managed care (Partnership Program) in the Kentucky Medicaid Program as authorized under Section 1115 of the Social Security Act signifies the commitment of the Commonwealth to improve health care for Medicaid recipients and expand their health care coverage, and contain health care costs throughout the state and nation. A large percentage of the population in Kentucky lack any kind of health care coverage. In the almost 30 years since its creation, Medicaid in Kentucky has grown to an over 2 billion dollar program providing many Kentuckians with their only form of health insurance or long-term care services. Kentucky Medicaid, as well as the nation, has experienced an explosive growth in the past several years and based on inflation, health care costs are expected to continually rise. Despite the billions of dollars spent each year, Medicaid recipients often lack access to mainstream medical care and at times complain that they are unable to function effectively in the current fee-for-service system. This system does not always allow for choice of providers and establishment of a medical home to receive quality health care. To date, Medicaid program costs are shared with the federal government; however, at some point in the near future, it is expected that state agencies may receive funding for Medicaid services in the form of a block grant or capitation amount by the federal government in order to contain national health care costs. In order to address the current problems reported by recipients and prepare for potential limitations in funding, Kentucky Medicaid must implement a system that will contain costs, positively effect the quality of health care being delivered and assist in establishing medical homes for its recipients. Although the Partnership Program may not resolve all of these problems and others, the department feels that managed care is the only viable option at this time. If not implemented for the reasons above, health care costs will not be contained and will continue to rise in Kentucky and the state may not have the funds necessary to provide services to recipients. If recipients are not able to access necessary health care, their health needs will not be met and poor health will most certainly result. Communities are only as healthy as the individuals who live, work and play there. Quality of life related to health care needs not being met is sure to have an adverse effect on the community environment.

(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? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq. The department was awarded a waiver under section 1115 of the Social Security Act to implement a demonstration project known as the "Kentucky Health Care Partnership".

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of the local government including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect only county health departments.

3. State the aspect or service of local government to which this administrative regulation relates. County health departments' services to Medicaid recipient in managed care partnerships.

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 estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The regulation states partnerships are required to provide certain direct access services that only health departments currently provide (e.g., screening for communicable diseases). Therefore, local health departments will be affected by the partnership program. Actual affects cannot be projected at this time since the program will be phased-in and individual contracts will be negotiated between partnerships and local health departments.

Kentucky residency on a person.

(17) "Residence" or "residency" means the place of abode of a person and the place where the person is physically present most of the time for a noneducational purpose in accordance with Section 2 of this administrative regulation.

(18) "Summer term" means the sum of the summer session enrollment periods following the spring academic term and preceding the fall academic term as defined by an institution of higher education.

(19) "Sustenance" means living expenses including room, board, maintenance, transportation, and educational expenses including tuition, fees, books, and supplies.

Section 2. Determination of Residency Status; General Rules. (1) A determination of residency includes the following actions:

(a) An initial determination of residency status by a college or university at the time of admission for a specific academic term;

(b) All administrative and Residency Review Committee determinations made by an institution;

(c) A reconsideration of a determination of residency status by the institution based upon changed circumstances;

(d) An intermediate review by the Appeals Officer of the Council on Higher Education if requested by the student; and

(e) An administrative hearing conducted in accordance with the provisions of KRS Chapter 13B and 13 KAR 2:070, if requested by the student.

(2)(a) An initial determination of residency status shall be based upon the facts in existence when the credentials established by an institution for admission for a specific academic term have been received and during the period of review by the institution;

(b) An initial determination of residency status is made on:

1. The basis of information derived from admissions materials;

2. Other materials required by an institution and which are consistent with this administrative regulation; or

3. Other information available to the institution.

(3) An individual seeking a determination of Kentucky residency status must demonstrate that status by a preponderance of the evidence.

(4) A determination of residency status shall be based upon verifiable circumstances or actions, and a student may be required to submit original or notarized copies of any documents required or offered in support of a claim of Kentucky domicile and residency.

(5) Evidence and information cited as the basis for Kentucky domicile and residency shall be documented, and the required documentation shall accompany the application for a determination of residency status.

(6) Institutions may request additional documentation to clarify the person's circumstances in order to formulate a determination of residency status which considers all relevant facts.

(7) A student classified as a nonresident shall retain that status until the student is officially reclassified by the institution or the Council on Higher Education, as appropriate.

(8) A student may apply for a review of a determination of residency status only once for each academic term.

(9) When an institution has information that a student's residency status may be incorrect, the institution is required to review and determine the student's residency status.

(10) When the Council on Higher Education has information that an institution's determination of residency status for a student may be incorrect, it may require the institution to review the circumstances and report the results of that review.

(11) An institution shall impose penalties or sanctions against a student who gives incorrect or misleading information to institutional officials including but not limited to the following:

(a) Criminal prosecution; and

(b) Disciplinary sanctions imposed by the institution through a policy written and disseminated to students.

(12) A penalty imposed pursuant to subsection (11) of this section shall require payment of nonresident tuition for each academic term for which resident tuition was assessed based on an improper determination of residency status.

Section 3. Presumptions Regarding Residency Status. (1) In making an initial determination of residency status and in subsequent determinations of residency status, a presumption that a person is a nonresident is created when:

(a) A person who is, or who seeks to be, an undergraduate student and whose admissions records show the student to be a graduate of an out-of-state high school.

(b) A person's admission records indicate the student's residence to be outside of Kentucky at the time of application for admission.

(c) A person moves to Kentucky primarily for the purpose of enrollment in an institution of higher education.

(d) A person moves to Kentucky and within twelve (12) months enrolls in an institution of higher education more than half time.

(2) A person is presumed to have lost Kentucky domicile and residency upon a one (1) year continuous absence from the state.

(3) When an institution has reason to believe one (1) or more of the circumstances set forth in subsections (1) and (2) of this section is true, the institution shall make an initial determination that a person is a nonresident in the absence of a demonstration of Kentucky domicile and residency.

(4) A determination of residency status created by the presence of circumstances detailed in subsection (1) of this section creates a presumption which can be overcome by a demonstration of Kentucky domicile and residency.

(5) The same facts and conditions which are presumed in establishing Kentucky domicile and residency are similarly presumed in determining when domicile and residency are established elsewhere.

Section 4. Determination of Whether a Student is Dependent or Independent. (1) In a determination of residency status, an institution shall first determine whether a student is dependent or independent.

(2) In determining the dependent or independent status of a person, the following information shall be considered as well as any other relevant information available at the time the determination is made:

(a) That the person has not been claimed as a dependent on the federal or state tax returns for the year preceding the date of application for a determination of residency status; or

(b) Is no longer claimed by a parent or other person as a dependent or as an exemption for federal and state tax purposes; and

(c) That the person has financial earnings and resources independent of parents or persons other than a spouse necessary to provide for the person's own sustenance.

(3) Individuals who enroll in college immediately following graduation from high school and remain enrolled are presumed to be dependent persons unless the contrary is evident from the information submitted.

(4) Domicile may be inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.

(5) Marriage to a person domiciled in and who is a resident of Kentucky is a factor to be considered by an institution in determining whether a student is dependent or independent.

Section 5. Effect of a Determination of Dependent or Independent Status on a Determination of Residency Status. (1) The effect of a determination that a person is dependent is as follows:

(a) The domicile and residency of a dependent person are that of either parent. The domicile and residency of the parent shall be determined in the same manner as the domicile and residency of an independent person.

Section 10. Effect of a Change in Circumstances on Residency Status. (1) If a person becomes independent or if the status of a parent or parents of a dependent person changes, the institution shall reassess residency either upon a request by the student or a review initiated by an institution.

(2) Upon transfer to, or matriculation from, a Kentucky public institution of higher education, a student's residency status shall be reassessed by the receiving institution.

(3) A reconsideration of a determination of residency status for a dependent person shall be subject to the provisions for continuous enrollment.

Section 11. Institutional Requirements; Designation of Office and Officer and Publication of the Administrative Regulation. (1) Each institution shall designate:

(a) A person or office at the institution with responsibility for a determination of residency status at that institution; and

(b) An administrative office or person with delegated day-to-day responsibility for administration of this administrative regulation.

(2) The designation of an administrative office or person pursuant to subsection (1) of this section shall be in writing setting forth the duties and responsibilities. A copy shall be provided to the Council on Higher Education.

(3) Each institution shall establish an operational policy for the determination of residency status which shall be filed with the Council on Higher Education and which shall include but not be limited to the following:

(a) Procedures describing the steps in the initial determination of residency status;

(b) Designated responsibilities of institutional officials;

(c) Responsibilities of persons requesting admission to the institution or who request a change in residency status;

(d) Procedures for the operation of a residency review committee created pursuant to Section 12 of this administrative regulation;

(e) Timetables and deadlines for student and institutional responses to a request for a review of an institutional determination of residency status;

(f) Training of institutional officials responsible for a determination of residency status; and

(g) The role of the Residency Review Committee.

(4) The administrative regulation shall be published in its entirety in the institution's catalog and disseminated to all students.

(5) Copies of the administrative regulation shall be maintained in the office designated pursuant to subsection (1) of this section and shall be made available to students requesting Council on Higher Education review of an institution's initial determination, review or reconsideration of residency status.

Section 12. Establishment of a Residency Review Committee by an Institution. (1) Each institution shall establish a residency review committee, which shall be a standing committee, to review, evaluate, and act upon:

(a) A student appeal related to an initial determination of residency status;

(b) A recommendation of the administrative office or person designated pursuant to Section 11 of this administrative regulation, that the Residency Review Committee review, evaluate, and act upon an initial determination of residency status; and

(c) A student request for a reconsideration of a residency classification because of changed circumstances.

(2) Membership on the Residency Review Committee shall include at least one (1) faculty and one (1) student member.

(3) The policies and procedures of an institution's residency review committee shall be in writing and published for student use.

(4) A copy of the document authorizing and creating an institution's residency review committee, and a copy of the operating policies and procedures of the Residency Review Committee shall be

provided to the Council on Higher Education.

Section 13. Student Responsibilities under this Administrative Regulation. (1) A student has the responsibility for registering under the proper residency classification which includes but is not limited to the following actions:

(a) Raising questions in a timely manner concerning residency classification;

(b) Making application for change of residency classification in a timely manner with the designated office or person at the institution; and

(c) Notifying the designated office or person at the institution immediately upon a change in residency.

(2) When a student fails to notify institutional officials of a change in residency, institutional officials may investigate and evaluate the student's current residency status.

(3)(a) When a student fails to provide, in a timely manner and in accordance with deadlines established in writing by policy, information required by an institution in a determination of residency status or by the Council on Higher Education in an appeal of a determination of residency status, then the student shall be notified by the institution or by the Council on Higher Education, as appropriate, that the review has been canceled and that a determination has been made.

(b) Notification should be made by registered mail, return receipt requested.

(c) Notification shall be made within five (5) working days after the deadline for receipt of materials has passed.

(4) A student may not appeal a determination of residency status made by an institution or by the Council on Higher Education for a failure to meet published deadlines for the submission of information as set forth in subsection (3) of this section. A student may request a review of a determination of residency status in a subsequent academic term.

Section 14. Procedures for an Initial Determination of Residency Status, an Institutional Review of Residency Status and for a Reconsideration of a Determination of Residency Status. (1) Application for a review of a determination of residency status shall be made to the administrative office or person designated by the institution pursuant to Section 11 of this administrative regulation.

(2) The application, with supporting documentation, shall be made by the student not more than thirty (30) calendar days after the first day of classes of the academic term for which a review of a determination of residency status is sought.

(3) An application shall consist of:

(a) An affidavit authorized by the Council on Higher Education and submitted by the student or the parent of a dependent student asserting the claim for a determination of residency status and asserting that the documentation and information are accurate and true; and

(b) Information and documentation required by an institution and consistent with this administrative regulation which is necessary to substantiate a request for a change in a determination of residency status.

(4) A student shall be responsible for ensuring that all necessary documentation as required by the institution is submitted with the affidavit. The time limit set forth in subsection (2) of this section shall apply to the date an application, with necessary documentation, is received in the office designated to administer this administrative regulation.

(5)(a) Applications shall be first reviewed by the office or person designated by the institution pursuant to Section 11 of this administrative regulation.

(b) When a student asks, in writing and in a manner set forth by the institution consistent with this administrative regulation, to appeal the decision of the designated office or person, the Residency Review Committee shall review, evaluate, and act upon that appeal.

notice of payment.

Section 19. New Administrative Regulation Supersedes Previous Administrative Regulation. This administrative regulation supersedes all previous policies and administrative regulations of the Council on Higher Education relating to a determination of residency status of students for admission and tuition assessment purposes.

[Section 1. Definitions. (1) "Academic term" means a division of the school year during which a course of studies is offered: semester, quarter, or summer term as defined by the institution in a manner consistent with subsection (16) of this section.

(2) "Continuous enrollment" means a person is enrolled in the Kentucky system of state-supported colleges and universities at the same degree level for consecutive terms, excluding summer term, since the beginning of the period for which continuous enrollment is claimed unless a sequence of continuous enrollment is broken where the student fails to enroll for a consecutive academic term excluding summer term, except under extenuating circumstances beyond the student's control, such as serious personal illness or injury, or illness or death of a parent.

(3) "Determination of residency status" means the process and decision by which a person is classified as a Kentucky resident or as a nonresident in accordance with this administrative regulation.

(4) "Degree level" means one (1) of the following:

(a) Enrollment in courses or programs which could result in the award of a baccalaureate degree or lower including enrollments in courses by nondegree-seeking postbaccalaureate students;

(b) Enrollment in courses or programs which result in a graduate degree or graduate certification other than the first professional degrees in law, medicine, or dentistry; or

(c) Enrollment in courses or programs which result in a professional degree in law, medicine, dentistry, or "Pharm. D".

(5) "Dependent person" means a person who is unable to meet all of the criteria listed in subsection (10) of this section.

(6) "Documentation" means source documents, such as official letters, papers, or sworn statements.

(7) "Domicile" means a person's true, fixed, and permanent home and is the place where the person intends to remain, and to which the person expects to return without intending to establish a new domicile elsewhere.

(8) "Full time employment" means employment for at least forty-eight (48) weeks at an average of at least thirty (30) hours per week.

(9) "Half time enrollment" means any enrollment during an academic term which is equal to one half (1/2) of full time as determined by the institution.

(10) "Independent person" means a person who demonstrates financial independence from parents and persons other than a spouse and who can meet the criteria in Section 2(2)(a) of this administrative regulation.

(11) "Institution", "institution of higher education", or "college" means all entities offering instruction and conferring degrees or diplomas beyond the secondary school level, including four (4) year colleges or universities, two (2) year institutions including community colleges, and postsecondary vocational technical schools unless the type of institution shall be expressly stated.

(12) "Kentucky residency" or "Kentucky resident" means the result of a determination by an institution that a person is a resident of Kentucky for the purpose of tuition assessment and for the purpose of admission to that institution, if applicable.

(13) "Nonresident" means a person who is domiciled outside of Kentucky or who currently maintains legal residence outside Kentucky or who has not met the criteria for establishing Kentucky residency as defined in this administrative regulation.

(14) "Parent" means one (1) of the following:

(a) A person's father or mother; or

(b) A court appointed legal guardian recognized by an appropriate

court within the United States in which there is a relinquishment of the rights of the parents but shall not apply if a guardianship has been established primarily for the purpose of conferring the status of Kentucky residency on a person.

(15) "Residence" or "residency" means the place of abode of a person and the place where the person is physically present most of the time for a noneducational purpose in accordance with Section 2 of this administrative regulation.

(16) "Summer term" means the sum of the summer session enrollment periods following the spring academic term and preceding the fall academic term as defined by an institution of higher education.

(17) "Sustenance" means living expenses including room, board, maintenance, transportation, and educational expenses including tuition, fees, books, and supplies.

Section 2. Guidelines for Determination of Residency Status.

(1)(a) An initial determination of residency status for admission and tuition assessment purposes shall be based upon the facts in existence when the credentials established by an institution for admission for a specific academic term have been received.

(b) An initial determination of residency status is made on:

1. The basis of information derived from admissions materials;

2. Other materials required by an institution and which are consistent with this administrative regulation; or

3. Other information available to the institution.

(c) An individual seeking a determination of residency status must demonstrate that status by clear and convincing evidence.

(d) An undergraduate student whose admissions records show the student to be a graduate of an out-of-state high school shall be presumed to be a nonresident unless the person demonstrates Kentucky domicile and residency. An institution shall make a determination that a student is a nonresident in the absence of such evidence.

(e) A student whose admissions records indicate the student's residence to be outside of Kentucky at the time of application for admission is presumed to be a nonresident.

(2)(a) A determination shall first be made of whether a student is dependent or independent. In determining the dependent or independent status of a person, the following information shall be considered as well as any other relevant information available at the time the determination is made.

(b) A person claiming independent status shall document that status and demonstrate that the person:

1. Has not been claimed as a dependent on the federal or state tax returns for the year preceding the date of application for a determination of residency status; or

2. Is no longer claimed by a parent or other person as a dependent or an exemption for federal and state tax purposes; and

3. Has financial earnings and resources independent of parents and persons other than a spouse necessary to provide for the person's own sustenance.

(3)(a)1. A dependent person whose parent or parents are domiciled in and whose parents are residents of this state, and whose parents subsequently move from this state, shall be considered a Kentucky resident for the purpose of this administrative regulation while in continuous enrollment at the degree level in which currently enrolled.

2. If continuous enrollment is broken or the current degree level is completed, the person's residency status shall be reassessed in accordance with this administrative regulation.

(b) An independent person who moves to Kentucky and within twelve (12) months enrolls in an institution of higher education more than half time shall be presumed to have come to Kentucky primarily for educational purposes and shall be presumed to be a nonresident and shall be so classified unless establishment of a Kentucky domicile and residency can be demonstrated in a manner consistent

commencement of the academic term for which a classification of Kentucky residency is sought;

3. Filing of Kentucky resident income tax return for the calendar year preceding the date of application for a change in residency status or payment of Kentucky withholding taxes while employed during the calendar year for which a change in classification is sought;

4. Full time employment of at least one (1) year while living in Kentucky;

5. Attendance as a full time, nonresident student at an out of state institution of higher education based on a determination by that school that the person is a resident of Kentucky;

6. Abandonment of a former domicile or residence and establishing domicile and residency in Kentucky with attendance at an institution of higher education following and only incidental to such change in domicile and residency;

7. Obtaining licensing or certification for professional and occupational purposes in Kentucky;

8. Payment of real property taxes in Kentucky;

9. Payment of intangible personal property taxes in Kentucky;

10. Ownership of real property in Kentucky, if the property was used by the student as a residence preceding the date of application for a determination of residency status;

11. Long term lease of at least twelve (12) consecutive months of noncollegiate housing;

12. Kentucky automobile registration;

13. Kentucky driver's license;

14. Continued presence as a resident in Kentucky during vacation periods;

15. Marriage to a Kentucky resident; and

16. Registration as a Kentucky voter.

(5)(a) A determination of residency status shall be based upon verifiable circumstances or actions, and a student may be required to submit original or notarized copies of any documents required or offered in support of a claim of Kentucky domicile and residency.

(b) Evidence cited as the basis for domicile and residency shall be documented, and the required documentation shall accompany the application for a change in a determination of residency status.

(c) Institutions may request additional documentation to clarify the person's circumstances and to formulate a determination of residency status which considers all relevant facts.

Section 3. Penalty and Sanctions for Submission of False Documents. (1) A student who gives incorrect or misleading information to institutional officials may be subject to criminal prosecution and to such disciplinary sanctions as may be imposed by the institution through a policy written and disseminated to students.

(2) A penalty or sanction because of incorrect information shall include but not necessarily be limited to the payment of nonresident tuition for each academic term for which tuition was assessed based on an improper determination of residency status.

Section 4. Determination of Residency Status by Institution. (1) A determination of residency status by an institution refers to:

(a) The determination reached by the institution at the time of consideration of admission including an initial determination and review of that decision by the institution conducted in accordance with university policy and consistent with this administrative regulation; or

(b) A subsequent review of a request for a change in a determination of residency status by the institution whether initiated by the student, the institution, or the Council on Higher Education.

(2) Each institution shall designate a person or office at the institution with responsibility for a determination of residency status at that institution.

(3) Each institution shall designate an administrative office or person with delegated day to day responsibility for administration of this administrative regulation. The designation of an administrative

office or person shall be in writing setting forth the duties and responsibilities. A copy shall be provided to the Council on Higher Education.

(4) Each institution shall establish by written policy filed with the Council on Higher Education a residency review committee, which shall be a standing committee, to review, evaluate, and act upon:

(a) Student requests for a change in a determination of residency status; or

(b) A recommendation of the administrative office or person designated pursuant to subsection (3) of this section, that the residency review committee review, evaluate, and act upon a determination of residency status.

(5)(a) The residency review committee shall be established by the institution in a manner set forth by the institution in accordance with this section.

(b) Membership on the residency review committee shall include at least one (1) faculty and one (1) student member.

(6) Each institution shall establish an operational policy on the determination of residency status which shall be filed with the Council on Higher Education and which shall include but not be limited to the following:

(a) Procedures describing the steps in the initial determination of residency status;

(b) Designated responsibilities of institutional officials;

(c) Responsibilities of persons requesting admission to the institution or who request a change in residency status;

(d) Procedures and requirements pursuant to a residency review committee review of a determination of residency status;

(e) Training of institutional officials responsible for a determination of residency status; and

(f) The role of the residency review committee.

(7) The administrative regulation shall be published in its entirety in the institution's catalog and disseminated to all students.

(8) A student has the responsibility for registering under the proper residency classification which includes but is not limited to the following actions:

(a) Raising questions in a timely manner concerning residency classification;

(b) Making application for change of residency classification in a timely manner with the designated office or person at the institution; and

(c) Notifying the designated office or person at the institution immediately upon a change in residency.

(9) If a student fails to notify institutional officials of a change in residency, institutional officials may investigate and evaluate the current residency status of the student regardless of the source of the information.

(10) A student classified as a nonresident shall retain that status until the student is officially reclassified by the proper administrative officials.

Section 5. Procedures for a Determination of Residency Status.

(1) Application for a review of a determination of residency status shall be made to the administrative office or person designated by the institution for this purpose pursuant to Section 4 of this administrative regulation.

(2) The application, with supporting documentation, shall be made by the student not more than thirty (30) calendar days after the first day of classes of the academic term for which a determination of residency status is sought.

(3) A student may apply for a review of a determination of residency status set out in Section 4 of this administrative regulation only once for each academic term.

(4) When the Council on Higher Education has information that an institution's determination of residency status may be incorrect, it may require the institution to review the determination of residency status and report the results of that review.

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~~executive director, the student shall have the right to appeal the decision to the appropriate court.~~

~~Section 9. Charges for Conduct of Administrative Hearings. The Council on Higher Education, upon receipt of a bill for the conduct of an administrative hearing on an appeal of a determination of residency status, shall assign one half (1/2) of the cost of the administrative hearing to the institution from which the appeal is taken. The institution shall provide payment to the Council on Higher Education or to the office or administrative entity so designated by the council within thirty (30) days of receipt of the notice of payment.~~

~~Section 10. New Administrative Regulation Supersedes Previous Administrative Regulation. This administrative regulation supersedes all previous policies and administrative regulations of the council relating to a determination of residency status of students for tuition assessment purposes.]~~

LEONARD V. HARDIN, Chair

APPROVED BY AGENCY: January 16, 1997

FILED WITH LRC: January 31, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on administrative regulation 13 KAR 2:045, Determination of residency status for admission and tuition assessment purposes, will be held on March 28, 1997, at 9 a.m. at 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify the Council on Higher Education in writing by March 21, 1997. 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 notice of intent to promulgate an 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 amendment to the administration regulation to: Mr. Dennis L. Taulbee, Director of Staff Services/General Counsel, Council on Higher Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky 40601, (502) 573-1555, FAX (502) 573-1535.

REGULATORY IMPACT ANALYSIS

Agency Contact: Dennis L. Taulbee

(1) Type and number of entities affected: This regulation affects the 8 public senior institutions of higher education and the 14 public community colleges. It also affects all students enrolled at those institutions who might seek a determination of residency status.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation is to be implemented. Negligible

(b) Cost of doing business in the geographical area in which the administrative regulation is to be implemented. This administrative regulation has no impact on business.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation. No increase or decrease is anticipated or required.

2. Second and subsequent years. No increase or decrease is anticipated or required.

(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. No additional requirements.

(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 funds - existing appropriation. No new funds required.

(6) Economic impact in Kentucky on:

(a) Geographical area in which administrative regulation will be implemented. None

(b) On Kentucky. None

(7) Assessment of alternative methods; reasons why alternatives were rejected. None. Administrative regulation processes work well but fine tuning was required.

(8) Assessment of expected benefits. The current administrative regulation is poorly organized and is difficult for students, institutional representatives, Council administrators and hearing officers to follow. The proposed amendments will benefit all these groups through a better organization of the materials making implementation easier and more efficient.

(a) Impact on public health and environmental welfare is not applicable.

(b) State whether a detrimental effect on environment and public health would result if not implemented. Same as (a).

(c) If detrimental effect would result, explain detrimental effect. Same as (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. 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. No additional comments are offered.

(11) TIERING: Is tiering being applied. Tiering is not being applied and is not appropriate for this administrative regulation.

GENERAL GOVERNMENT CABINET Kentucky Licensing Board for Specialists in Hearing Instruments (Amendment)

201 KAR 7:040. Examinations.

RELATES TO: KRS 334.060, 334.070, 334.080, 334.090, 334.150

STATUTORY AUTHORITY: KRS 334.150

NECESSITY, FUNCTION, AND CONFORMITY: The purpose of this administrative regulation is to clarify and delineate the procedures for administering examinations.

Section 1. The board or its designee shall administer a qualifying examination to all qualifying applicants in accordance with the following rules:

(1) An applicant for examination shall furnish two (2) forms of identification, one (1) of which shall contain a picture, before being allowed to sit for the examination.

(2) The examination shall consist of the following:

(a) A written examination that evaluates the overall competency of the applicant; [The National Examination in Hearing instrument studies;]

(b) State written examinations on laws and ethics, ear molds and acoustics; and

(c) state practical examinations on ear impressions, audiometric testing, and defective hearing instruments.

(3) A passing grade shall consist of a score of seventy (70) percent on each section. A candidate shall be required to retake only those portions of the examination on which he fails to achieve a passing score.

(4) A notification of examination results shall be issued by the

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

- (1) The fee for the National Board Examination for Veterinary Medicine shall be \$165 [~~149~~].
- (2) The fee for the Clinical Competency Test in Veterinary Medicine shall be \$140 [~~eighty-five (85) dollars~~].
- (3) The fee for the state examination shall be \$100.
- (4) The fee for the veterinary technician or technologist examination shall be eighty (80) [~~seventy-five (75)~~] dollars.

Section 3. Renewal Fees and Penalties. No person holding a license shall practice in this state after November 30 of the year in which their license is to be renewed unless such license has been renewed as provided by law and payment of the prescribed fee has been made. All licenses not renewed by November 30 following the expiration date shall be deemed expired and no person holding an expired license shall engage in the practice of veterinary medicine. The following fees and penalties shall be paid in connection with licensure renewals and penalties:

- (1) The renewal fee for licensure as a veterinarian shall be fifty (50) dollars.
- (2) The late renewal fee, including penalty, for the grace period extending from October 1 to November 30 for licensure as a veterinarian shall be \$150 [~~seventy-five (75) dollars~~].
- (3) The renewal fee for reinstatement of licensure as a veterinarian after November 30 shall be \$300 [~~190~~].
- (4) The renewal fee for renewal of licensure as a veterinary technologist or technician shall be thirty (30) dollars.
- (5) The late renewal fee, including penalty, for the grace period extending from October 1 to November 30 for renewal of licensure as a veterinary technologist or technician shall be forty (40) dollars.
- (6) The renewal fee for reinstatement of licensure as a veterinary technician or technologist after November 30 shall be fifty (50) dollars.

Section 4. Special Permit Fee. The fee for a special permit shall be fifty (50) dollars.

JOHN R. MCCLURE, Chairman

APPROVED BY AGENCY: February 13, 1997

FILED WITH LRC: February 13, 1997 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 24, 1997 at 1 p.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by March 17, 1997, 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. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons applying for licensure as a veterinarian, a veterinary technician, or veterinary technologist and all persons licensed who renew their license after the renewal date or request reinstatement after termination.

(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 are received: Persons licensed as a veterinarian may incur additional costs if they do not renew their license on a timely basis.

(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 change.

2. Second and subsequent years: No change.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The board will break even on examinations.

2. Continuing costs or savings: The board will break even on examinations.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: Negligible

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Board trust and agency funds.

(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: The increased examination fees simply reflect increased costs for the examination.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Licensing veterinarians serves to protect the public.

(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: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a license as a veterinarian, veterinary technician, or veterinary technologist. Provisions contained in this administrative regulation provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET Kentucky Board of Veterinary Examiners (Amendment)

201 KAR 16:040. Approved programs for veterinary technicians and veterinary technologists.

RELATES TO: KRS 321.441

STATUTORY AUTHORITY: KRS 321.235, 321.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.441 provides for the qualification, registration, and use of veterinary

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(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a license as a veterinary technician or technologist. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET

State Board of Examiners and Registration of Architects (Amendment)

201 KAR 19:025. Application for examination.

RELATES TO: KRS 323.050, 323.215

STATUTORY AUTHORITY: KRS 323.210(1)(b), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations. This administrative regulation prescribes conditions for applicants for examination. [To define the procedure for making application for admission to the examinations.]

Section 1. Application for Examination and Registration. All applications must be made upon the printed forms issued by the board and in strict accordance with the instructions to applicants submitted therewith. The forms and instructions, incorporated herewith by reference, are available at the board office: 841 Corporate Drive, Suite 200B, [3302 Breckhill Circle,] Lexington, Kentucky 40503 [40502]. Office hours 9 a.m. to 5 p.m.

Section 2. Examination Applications. (1) An application for admission to the Architect Registration Examination (ARE) shall be accompanied by the payment of fees set forth by these administrative regulations.

(2)(a) Applicants who either fail to pass the entire examination, or who were not admitted to the examination, within the prescribed three (3) year eligibility period shall submit another application, updated to the time of submission with supplemental information. These applicants shall be required to pay the same application fee as for new applicants.

(b) Applicants receiving credit from the previous full examination sequence shall not be required to pay additional application fees during their three (3) year period of eligibility. [When to Submit Applications. Applications for examination will be received at all times but shall be received at the board's office at least ninety (90) days before the date of the scheduled examinations which the applicant wishes to take.]

Section 3. Time and Place for Examinations. The actual dates and locations for the administration of the examination shall be determined by the board. Applicants shall be notified in advance to allow for preparation.]

JERRY W. HERNDON, Executive Director

APPROVED BY AGENCY: February 14, 1997

FILED WITH LRC: February 14, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on March 21, 1997 at 3 p.m. at 841 Corporate Drive, Suite 200B, Lexington Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 17, 1997, 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 this proposed administrative regulation. A tran-

script of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation to: Jerry W. Herndon, Executive Director, State Board of Examiners and Registration of Architects, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503, (606) 246-2069.

REGULATORY IMPACT ANALYSIS

Contact person: Jerry W. Herndon

(1) Type and number of entities affected: Approximately 30 new applicants 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: 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 the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(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: None

(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: None 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: None

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

(c) If detrimental effect would result, explain detrimental effect: No effect.

(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: This regulation amended to new address of office, delete reference to application dates, delete time and place for examinations.

(11) TIERING: Is tiering applied? No Tiering is not required because: (1) this administrative regulation governs one class of person, applicants for examination, for which uniform standards are required; and (2) there is not rational basis for the establishment of different requirements for members of the class.

- (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 effect.
- (c) If detrimental effect would result, explain detrimental effect: No effect.
- (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: This regulation amended to be current dates of publications referenced.
- (11) TIERING: Is tiering applied? No. Tiering is not required because: (1) this administrative regulation governs one class of person, applicants for examination, for which uniform standards are required; and (2) there is not rational basis for the establishment of different requirements for members of the class.

GENERAL GOVERNMENT CABINET

State Board of Examiners and Registration of Architects (Amendment)

201 KAR 19:040. [Types of] Examinations required; general provisions.

RELATES TO: KRS 323.050(1), (3), 323.215

STATUTORY AUTHORITY: KRS 323.210(1)(b), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(1)(b), (2) requires the board to promulgate administrative regulations governing the contents and conduct of examinations. This administrative regulation prescribes conditions for administration of examination. [To define and describe the examinations required.]

Section 1. Examination Definition; Administration. (1) The board has adopted the Architect Registration Examination (ARE) as developed, prepared and graded by the National Council of Architectural Registration Boards (NCARB).

(2) The ARE is required to be taken and passed by all applicants for license.

(3) The board shall designate testing service consultants who will administer the examination in accordance with the agreement between the consultant and [schedule established by] NCARB.

(4) The examination sites and schedules shall be as designated by the testing service and agreed to by NCARB.

Section 2. Conditions of Examination. (1) ~~[A preceptor assigned by the board will be present during each division of the examination.]~~

(2) Grading of the examination shall be in accordance with the national grading procedure administered by NCARB.

(3) ~~(2)~~ The board shall adopt the scoring procedures recommended by NCARB.

(4) ~~(4)~~ No information pertaining to the subject matter of the examination will be given to applicants in advance, except as specifically authorized by the board.

(5) ~~(5)~~ The board, in its discretion, may approve transfer credits for parts of examinations passed prior to the 1983 ARE. Information as to transfer credits will be provided when appropriate, to applicants requesting application forms.

Section 3. Applicant [Application] Notice. Each applicant who has applied and deemed eligible to take the examination shall be notified of the examination sites and the procedures to make the appointments with the testing service centers to take the examination divisions of their choosing. Special instructions and limitations will be

issued to each applicant. [dates set for each division of the examination, the location at which the examination shall be held, the instruments and materials he shall supply or be permitted to bring to the examination, and other necessary information.]

Section 4. Transfer of Scores. (1) The board, in its discretion and upon proper application, may accept passing scores achieved on divisions of the ARE administered and attested to by another NCARB member board.

(2) The board, in its discretion and upon proper application, may forward the grades achieved by an applicant in the various divisions of the examination given under the board's jurisdiction to any other duly constituted architectural registration board and to NCARB for use in evaluating such applicant's eligibility for NCARB certification. The applicant shall state his or her reason for requesting transfer. Such transfer shall terminate the applicant's application pending before the board.

JERRY W. HERNDON, Executive Director

APPROVED BY AGENCY: February 14, 1997

FILED WITH LRC: February 14, 1997

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on March 21, 1997 at 3 p.m. at 841 Corporate Drive, Suite 200B, Lexington Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 17, 1997, 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 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 to: Jerry W. Herndon, Executive Director, State Board of Examiners and Registration of Architects, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503,(606)246-2069.

REGULATORY IMPACT ANALYSIS

Contact person: Jerry W. Herndon

(1) Type and number of entities affected: Approximately 30 new applicants 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: 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 the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(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: None

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

- (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 effect.
- (c) If detrimental effect would result, explain detrimental effect: No effect.
- (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: This regulation amended to method of paying for examination.
- (11) TIERING: Is tiering applied? No. Tiering is not required because: (1) this administrative regulation governs one class of person, applicants for examination, for which uniform standards are required; and (2) there is not rational basis for the establishment of different requirements for members of the class.

GENERAL GOVERNMENT CABINET
State Board of Examiners and Registration of Architects
(Amendment)

201 KAR 19:085. Fees.

RELATES TO: KRS 323.080, 323.110

STATUTORY AUTHORITY: KRS KRS 323.080, 323.210(1)(b), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.080, 323.210(1)(b), (2) requires the board to promulgate administrative regulations establishing fees for services. [To define the basis of fees and fee payments.]

Section 1. License [Annual] Renewal. (1) The [annual] renewal fee shall be due and paid before the first day of the year designated as the licensee's renewal period beginning. [July each year.] Anyone failing to pay the renewal [annual] fee on or before the 30th day of August, of that designated year, who has not voluntarily surrendered his registration by that date, shall be guilty of violation of the law and his license shall be automatically revoked.

(2) Licenses granted on July 1 and thereafter through December 31 shall be first renewed before the first day of July following. Licenses granted January 1 and thereafter through June 30 following shall be first renewed before the first day of July in the year following. This requirement shall also apply to licenses restored or reinstated.

(3) During a period of active military duty an architect in the service may, upon written application to the board, be excused from paying the renewal [annual] fee until such time as his military service is terminated and he wishes to resume practice. An identification card or renewal certificate shall be issued upon notification of his return from duty and payment of the current [annual] renewal fee.

(4) An architect whose license has been revoked for failure to pay the [annual] renewal fee, who wishes to have his license reinstated, shall make a written request giving the reason why he neither surrendered his registration nor paid the fee within the time prescribed by law. Upon payment of the prescribed fees and acceptance by the board, his license shall be reinstated.

(5) The board shall require the application for [annual] license renewal to include a signed affidavit that the licensee has not been in violation of the professional practice standards stated in 201 KAR 19:095. Failure to sign the affidavit shall be cause for the renewal application to be rejected.

Section 2. [Examination Applications. (1) An application for admission to the Architect Registration Examination (ARE) shall be accompanied by the payment of fees set forth by these administrative

regulations.

(2)(a) Applicants who either fail to pass the entire examination, or who were not admitted to the examination, within the prescribed three (3) year eligibility period shall submit another application, updated to the time of submission with supplemental information. These applicants shall be required to pay the same application fee as new applicants.

(b) Applicants receiving credit from the previous full examination sequence shall not be required to pay additional examination fees during their three (3) year period of eligibility.

Section 3.] Fee Schedule. (1) Application for admission to [and administration of] the Architect Registration Examination - \$100.

(2) Reapplication for admission to [and administration of] the Architect Registration Examination after original application has expired - \$100.

(3) For a license certificate after passing of examination - \$25.

(4) Application for restoration of a voluntarily surrendered license - \$150 [50].

(5) Application for a license by reciprocity with another state or country - \$200 [75].

(6) Application for reinstatement of license revoked for failure to pay renewal fee, or suspended by the board; renewal fees from date of revocation [plus application as directed] plus - \$150 [50].

(7) [Annual] Renewal fee: determined each renewal period [year] by board. Not to exceed annually - \$150 [46].

(8) No fee shall be refunded in whole or in part. All payments shall be by check made payable to "Kentucky State Treasurer." All checks shall be certified except those for the [annual] renewal fee [and examination questions].

Section 3. [4.] Charges for Examination [Questions]. Applicants shall register with and pay the cost of taking the examination directly to the designated testing service. [be charged the cost of examination questions required. Payment shall be made when the board is notified by the applicant that he intends to appear.] The charges shall be made each time the examinations are taken and shall not be refunded.

JERRY W. HERNDON, Executive Director

APPROVED BY AGENCY: February 14, 1997

FILED WITH LRC: February 14, 1997

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on March 21, 1997 at 3 p.m. at 841 Corporate Drive, Suite 200B, Lexington Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 17, 1997, 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 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 to: Jerry W. Herndon, Executive Director, State Board of Examiners and Registration of Architects, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503, (606)246-2069.

REGULATORY IMPACT ANALYSIS

Contact person: Jerry W. Herndon

(1) Type and number of entities affected: Approximately 30 new applicants per year and approximately 2500 architects renewing license.

(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

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(d) ~~The Kentucky Department of Fish and Wildlife Resources; [who, while performing official duties as an employee, agent or contractor of those companies or the department, shall not be required to have an area use permit of any kind.]~~

(2) ~~[Any person] En route through the area on a state or county road; or [owned roads shall not be required to have an area use permit.]~~

(3) ~~[Any person who is] On the area; [for reasons of employment]~~

(a) ~~As a necessary part of his job; or~~

(b) ~~For [in] the protection of public safety or well-being [shall not be required to have an area use permit].~~

Section 5. Permit Applications. (1) An applicant for an individual permit shall:

(a) Apply at an authorized license agent;

(b) Complete and sign a waiver of liability form; and

(c) Pay the fee specified in 301 KAR 3:022.

(2) An applicant for an event permit shall:

(a) Apply on a form provided by the department;

(b) Complete and sign a waiver of liability form; and

(c) Pay the fee specified in 301 KAR 3:022.

(3) The department shall keep applications, waivers of liability and copies of event permits issued in a retrievable form for a minimum of one (1) year after the permits expire.

~~[Section 4. Applications, Applicant Information Requirements, Fees, Issuance Requirements, Permit Duration, Rejection, Revocation, Recordkeeping Requirements and Permit Replacement or Refund. (1) Applications. Available by contacting: Division of Fiscal Control, Kentucky Department of Fish and Wildlife Resources, Fiscal Control Division, #1 Game Farm Road, Frankfort, KY 40601 or from other vendors as designated by the department according to provisions described in Section 6 of this administrative regulation. Application shall be only on the individual or event application form dated April 1993, and according to the instructions provided. The application forms are hereby incorporated by reference. Applications shall be available to the public, including inspection and copying, directly from the Division of Fiscal Control between the hours of 8 a.m. and 4:30 p.m. on Monday through Friday, except holidays.~~

~~(2) Applicant information requirements. No person shall knowingly provide false information when applying for a permit.~~

~~(3) Fees. Individual permits shall cost ten (10) dollars and event permits shall cost twenty-five (25) dollars. Mail-in applications shall be accompanied by a certified check or money order in the correct amount.~~

~~(4) Issuance requirements. Permits shall only be issued from fully completed applications, less optional entries as indicated on the form. Incomplete applications shall be returned to the applicant. Applicants shall allow ten (10) working days from the time of application until the receipt of the permit when applying by mail. Those applying in person shall be subject to the same issuance requirements except they shall receive the permit upon its completion.~~

~~(5) Permit duration. Permits issued to individuals prior to the end of February 1995 shall be valid until the end of February, 1995. All other Peabody Coal Company Wildlife Management Area permits shall be valid from March 1 through the end of February of each year.~~

~~(6) Rejection. No permits of any kind shall be issued for activities deemed by the commissioner as being inappropriate to or incompatible with the statutory purpose and policy of the department.~~

~~(7) Recordkeeping requirements. The department shall keep all applications, waivers of liability and copies of permits issued in a retrievable form. Records shall be retained for a minimum of one (1) year after the permits expire.~~

~~(8) Permit replacement or refund.~~

~~(a) Replacement shall be allowed only for lost permits. Those who lose their permits may make a written request to the Department of Fish & Wildlife, #1 Game Farm Rd., Frankfort, Kentucky 40601 for a~~

~~duplicate. After the purchase of a permit is verified the department shall issue a duplicate. The cost of a duplicate permit shall be four (4) dollars.~~

~~(b) Refunds shall be allowed only when the permittee has purchased multiple permits that are valid for the same period of time. Anyone purchasing multiple permits and desiring a refund shall make a written request and provide the actual permit for which a refund is sought. After verifying that a valid permit exists in addition to the one for which a refund is requested, the department shall issue a refund.]~~

Section 6. [6-] Prohibited Activities. While on the area, a person shall not: [No permitted or unpermitted persons, groups, families or organizations shall:]

(1) Swim for recreational purposes [in any body of water on the area];

(2) Camp [anywhere on the area] except in a primitive fashion along an existing road [roads];

(3) Leave a campfire unattended [ignite, create or maintain an open campfire anywhere on the area];

(4) Operate a [off road, all terrain, recreational or other] motorized vehicle;

(a) [vehicles] Off an [of] existing road; [roads] or

(b) [beyond] Where prohibited by signs [indicating "No Vehicles Beyond This Point" or others with similar meaning, have been placed];

(5) Block a road or gate [Park vehicles in such a manner as to block any roads, gates or other thoroughfares];

(6) Park except in a [Utilize other than] designated parking area [areas] unless none are available;

(7) Target shoot except [anywhere other than] at a designated area [target shooting areas];

(8) Construct a permanent structure [semipermanent or any other structures or stands other than temporary blinds for waterfowl hunting, which shall be removed daily];

(9) Leave a temporary blind or stand in place overnight;

(10) Operate a boat;

(a) [boats] With a centerline exceeding eighteen (18) feet six (6) inches in length, except:

1. There shall be no length restriction for a canoe; and

2. A pontoon boat shall not exceed twenty-two (22) feet in length [as measured on deck or from bow to stern on any lake, pond or other water body. This restriction shall not apply to canoes which have no length limit and float boats which shall have pontoons and decking no longer than twenty-two (22) feet]; or

(b) At greater than idle speed;

(c) With an internal combustion engine on:

1. Goose Lake;

2. Island Lake; or

3. South Lake.

Section 7. The following forms are incorporated by reference. They may be obtained and examined at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m. on working days.

(1) "Agreement for Access to Designated Peabody Coal Company Land, Event Permit", 1993.

(2) "License Agreement for Access to Designated Peabody Coal Mining Company Lands", 1995.

[(10) Operate boat motors, except electric trolling motors, on any lake, pond or water body at any speed other than idle speed.

Section 8. Special Use Restrictions. Persons fishing on Goose Lake on Sinclair Mine or Island Lake or South Lake on Homestead Mine shall:

(1) Abide by the following limits:

Species	Creel Limit	Size Limit
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(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 received. This administrative regulation will have no discernable impact on the cost of living 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: This administrative regulation will have no discernable impact on costs 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: The proposed amendment to this administrative regulation imposes no additional paper work requirements. Persons using the Peabody Wildlife Management area are required to purchase a permit and sign a waiver of liability.

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: The proposed amendment to this administrative regulation will have no impact on costs or savings to the department.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements are imposed by the proposed amendment to this administrative regulation. The department must collect and account for the fees charged for permits and file the waivers of liability.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation should have no impact on local revenues. The sale of permits adds \$135,000 annually to the State Fish and Game Fund.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund.

(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: Visitors to the Peabody Wildlife Management Area will have an undetermined positive impact on local economies.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternate to requiring a permit was that the area would be closed to public use. This alternative was rejected because this area represents a valuable recreational and economic resource to the region.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Recreational benefits accrue to users of the area.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify and 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: A large portion of this area is owned by Peabody Coal Company, and is open to public use under a cooperative agreement with the department.

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S.

Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TOURISM CABINET

Department of Fish and Wildlife Resources (Amendment)

301, KAR 6:030. Waterway safety requirements.

RELATES TO: KRS ~~[235.150,]~~ 235.240, 235.250, 235.280, 235.290

STATUTORY AUTHORITY: KRS 235.280, 235.290, 235.320

NECESSITY, FUNCTION, AND CONFORMITY: KRS 235.320 gives the department authority to promulgate administrative regulations to carry out the purpose of KRS Chapter 235; KRS 235.280 authorizes the department to promulgate administrative regulations governing the fair, reasonable, equitable and safe use of all waters of Kentucky. This administrative regulation prohibits certain unsafe practices on the waterways of the Commonwealth. [To prohibit unsafe practices which could lead to accidents, injuries or deaths on Kentucky waterways. This administrative regulation contains the substance of 402 KAR 4:040, 4:110, 4:130, 4:150, 4:160, and 4:170. The administrative transfer of the Division of Water Patrol necessitates that existing administrative regulations be repealed by the Department of Natural Resources and repromulgated by the Department of Fish and Wildlife Resources. Changes in format and wording were made to reflect the current requirements of KRS Chapter 13A.]

Section 1. Accident Reporting. (1) The operator of a vessel required by KRS 235.250(2) to file an accident report shall file the report within five (5) days, except that an accident involving death or serious injury shall be filed within forty-eight (48) hours. [The operator shall file a written report with the department when his vessel is involved in an accident resulting in:

(a) The death of a person;

(b) The disappearance of a person from the vessel under circumstances which suggest the possibility of death or injury;

(c) An injury which requires medical treatment or results in a person being incapacitated for twenty-four (24) hours or more; or

(d) The loss of, or damage to, property in an amount of \$500 or more.

(2) Operators shall submit written reports of accidents involving death or serious injury within forty-eight (48) hours.

(3) Operators shall submit written reports of accidents not involving death or serious injury within five (5) days.]

(2) An accident report [(4) Accident reports] shall contain the following information:

(a) The registration numbers or names of the vessels involved;

(b) The location of the accident;

(c) The weather and water conditions;

(d) The name, address, age and boating experience of the operator of the reporting vessel;

(e) The names and addresses of the operators of other vessels involved;

(f) The names and addresses of persons killed or injured,

(g) The nature and extent of injuries;

(h) A description of the damage to property and an estimated cost of repairs;

(i) A description of the accident, including opinions as to the cause;

(j) The length, means of propulsion, horsepower, fuel and construction of the reporting vessel; and

(k) The names and addresses of known witnesses.

Section 2. Water Skiing and Related Activities. (1) A person [Persons] shall not water ski or tow persons water skiing:

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(c) ~~(b) Shall~~ Not exceed a speed which, given the existing conditions, could cause a loss of control or present a hazard to life or safety.

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: December 6, 1996

FILED WITH LRC: February 13, 1997 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 25, 1997, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 18, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Assistant Director, Division of Public Affairs/Policy, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: There are 144,700 registered motorboats in the Commonwealth of Kentucky. Their operators are affected by the provisions of this administrative regulation. The proposed amendment to this administrative regulation will affect only those who boat in the vicinity of dams.

(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 received. This administrative regulation will not affect cost of living 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: This administrative regulation will not affect costs 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: Persons involved in a boating accident are required by this administrative regulation to file an accident report.

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: No additional costs or savings will be incurred.

2. Continuing costs or savings: No additional costs or savings will be incurred.

3. Additional factors increasing or decreasing costs: None have been identified.

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements are stipulated by this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will not change state or local revenues.

(5) Source of revenue to be used for implementation and

enforcement of administrative regulation: Boating registration 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) Geographical area in which administrative regulation will be implemented: No public comments received. No anticipated economic impacts should occur.

(b) Kentucky: No anticipated economic impacts should occur.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There is no alternative to promulgating administrative regulations governing the safe use of waterways. Failure to do so could endanger life, safety and property on the Commonwealth's waterways.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Without requirements for safety equipment or safe operating procedures, boating accidents could increase, endangering public health and safety on Kentucky's waterways.

(9) Identify and 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:

(11) TIERING: Is tiering applied? Tiering was applied to the extent that operators of different sizes or types of boats are required to have different safety equipment aboard. Otherwise, tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

DEPARTMENT OF AGRICULTURE Division of Animal Health (Amendment)

302 KAR 20:110. Treatment of imported mares.

RELATES TO: KRS 257.070

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: To establish a technique for treatment of mares imported into Kentucky from a any country listed in 78 Part 9 Code of Federal Regulations 92.2 as a country affected ~~[infected]~~ with contagious equine metritis.

Section 1. As used in this administrative regulation, unless the context clearly requires otherwise:

(1) "Mare" means a female horse over 731 days of age.

(2) "Breeding" means natural or artificial insemination of a mare.

(3) "CF test" means a complement-fixation test on equine serum for the detection of ~~[specific]~~ antibodies for ~~[of]~~ contagious equine metritis (CEM) bacterium.

(4) "Set of cultures" means a culture is obtained from the clitoral sinus (if intact), clitoral fossa~~[-cervix or endometrium of the uterus]~~.

Section 2. Any mare imported into Kentucky from a any country known to be affected ~~[infected]~~ with CEM, ~~[shall]~~ before breeding shall ~~[being used for breeding,]~~ be treated by or under the direct supervision of a Kentucky licensed accredited veterinarian ~~[an accredited]~~

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2. Second and subsequent years: No additional requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Because the required time needed to complete the test and treatment requirements is shortened, the department would recognize a savings because the shortened quarantine period would require less monitoring, inspecting and supervision by department employees.

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

3. Additional factors increasing or decreasing costs: By having the brokers reimburse the department for required overtime expenses the department would recognize a savings.

(b) Reporting and paperwork requirements: No additional paperwork required.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department currently budgets for implementing this program. There is not expected to be any additional cost as a result of this amended 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: No public comments received.

(b) Kentucky: All comments received have been supportive of these amended changes being implemented as soon as possible.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative method would to have restrictions which are more stringent than federal 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: None

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

(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 mares and stallions imported from countries considered by the USDA are required to successfully complete a prescribed testing and treatment protocol for the detection of contagious equine metritis before being released from an importation quarantine.

DEPARTMENT OF AGRICULTURE Division of Animal Health (Amendment)

302 KAR 20:120. Treatment of imported stallions.

RELATES TO: KRS 257.030

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: To establish a technique for treatment of stallions imported into Kentucky from any country outside the continental United States, its territories and possessions.

Section 1. Definitions. As used in this administrative regulation, unless the context clearly requires otherwise:

(1) "Stallion" means a male horse other than gelding over 731 days of age.

(2) "Breeding" means natural or artificial insemination of a mare.

(3) "CF test" means a complement-fixation test on equine serum for the detection of ~~specific~~ antibodies for ~~of~~ contagious equine metritis (CEM) bacterium.

(4) "Set of cultures" for female equines means a culture is obtained from the clitoral sinus (if intact), and clitoral fossa~~from the cervix or endometrium of the uterus~~.

(5) "Set of cultures" for an intact male equine[s] means a culture is obtained from the prepuce, the urethral sinus, and the fossa glandis, including the diverticulum of the fossa glandis~~urethral fossa, urethra and prepuce~~.

Section 2. Any stallion imported into Kentucky ~~which at any time~~ after reaching 731 days of age ~~that~~ has been outside the continental United States, its territories, possessions, or Canada shall, before being used for breeding, be treated by or under the direct supervision of a Kentucky licensed ~~an~~ accredited veterinarian ~~(licensed to practice in Kentucky)~~ according to the following ~~procedure~~:

(1) The veterinarian ~~[With the stallion in full erection and]~~ while wearing disposable gloves and using disposable equipment shall:

(a) Collect ~~[The veterinarian shall collect]~~ one (1) set of cultures from the stallion to be cultured for CEM.

(b) The stallion shall be bred to two (2) test mares that have been qualified as CEM free. The test mares shall qualify as CEM free by testing negative to a CF test and when a set of cultures taken from the mares on days one (1), four (4) and seven (7) are culture negative for the CEM bacterium. ~~[Mechanically clean the external genitalia with clean, warm water.]~~

(c) After being bred by the stallion a set of culture specimens shall be collected from the test mares on the third, sixth and ninth days after breeding. ~~[Apply a chlorhexidine containing surgical scrub liberally and using sufficient water to obtain sudsing, cleanse thoroughly paying particular attention to the urethral fossa/sinus and penetration of the folds of the sheath.]~~

(d) The test mares shall have a complement fixation test (CF) conducted fifteen (15) days after breeding. ~~[Wash with clean warm water and dry.]~~

(e) With the stallion in full erection, the veterinarian shall for five (5) consecutive days wash and clean (scrub) with a solution of not less than two (2) percent chlorhexidine in a detergent base, the prepuce, urethral sinus, fossa glandis, including the diverticulum of the fossa glandis. The external genitalia, the prepuce, urethral sinus, fossa glandis, including the diverticulum of the fossa glandis shall then be filled and covered with an antibiotic ointment that is effective against the CEM organism which is approved by the USDA and the Kentucky State Veterinarian. ~~[Apply an ointment containing not less than two tenths (0.2) percent nitrofurazone or other medication approved by the USDA and Kentucky State Veterinarian liberally, insuring filling of the urethral fossa/sinus and penetration of the folds of the sheath.]~~

(2) Repeat the treatment daily for five (5) consecutive days.

(3) After completing the treatment procedure, the stallion must undergo a seven (7) day rest period.

(4) The stallion must breed two (2) mares that have been qualified as free of CEM by negative culture of two (2) sets of specimens collected at intervals of not less than seven (7) days apart and a CF test. One (1) set of cultures must be taken at the time of estrus.

(5) The two (2) qualified test mares bred by a stallion which has been treated as outlined in subsection (1) of this section shall be cultured from the cervix, clitoral fossa and clitoral sinuses on the second, fourth and seventh day after breeding. During the next estrus, specimens for culture shall be collected from the endometrium of the uterus, clitoral sinus and clitoral fossa. Two (2) blood samples for the CF test shall be obtained at intervals of not less than seven (7) days and between the 15th and 40th day after breeding. All tests and cultures required by this section shall be conducted at a laboratory

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department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1)(a) "Department of Corrections Policies and Procedures", February 12 [~~January 13~~], 1997, Department of Corrections, 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, (502) 564-2024, facsimile (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Department of Corrections Policies and Procedures include:

1.1	Legal Assistance for Corrections Staff	15.3	Meritorious Good Time
1.2	News Media	15-05-01	Restoration of Forfeited Good Time
01-04-01	The operation of Contracted Adult Correctional Facilities	15.6	Adjustment Procedures and Programs
1.6	Extraordinary Occurrence Reports	15.7	Inmate Account Restriction
1.9	Institutional Duty Officer	15.8	Unauthorized Substance Abuse Testing
1.11	Population Counts and Reporting Procedures	16.1	Inmate Visits
1.12	Operation of Motor Vehicles by Department of Corrections Employees	16.2	Inmate Correspondence
2.1	Inmate Canteen [(Amended 1/13/97)]	16.3	Telephone Calls
2.2	Warden's Fund	16.4	Inmate Packages
2.10	Surplus Property	17-01-01	Inmate Personal Property
3.12	Institutional Staff Housing	17.2	Assessment Center Operations
4.2	Staff Training and Development	17.3	Controlled Intake of Inmates
4.3	Firearms and Chemical Agents Training	18.1	Classification of the Inmate
4.7	Uniformed Employee Dress Code	18.5	Custody and Security Guidelines
6.1	Open Records Law	18.7	Transfers
7.2	Asbestos Abatement	18.9	Out-of-state Transfers
8.1	Occupational Exposure to Bloodborne Pathogens	18-10-01	Parole Progress Reports
8.4	Emergency Preparedness	18.11	Kentucky Correctional Psychiatric Center Transfer Procedures
9.1	Use of Force	18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
9.4	Transportation of Inmates to Funerals or Bedside Visits	18.13	Population Categories
9.5	Execution	18.15	Protective Custody
9.6	Contraband [<u>(Amended 2/12/97)</u>]	18.17	Interstate Agreement on Transfers
9.7	Storage, Issue and Use of Weapons Including Chemical Agents	18.18	International Transfer of Inmates
9.8	Search Policy [<u>(Amended 2/12/97)</u>]	19.1	Government Services Projects [(Amended 1/13/97)]
9.9	Transportation of Inmates	19.2	Community Services Projects
9.10	Security Inspections	19.3	Inmate Wage Program
9.11	Tool Control	20.1	Educational Programs and Educational Good Time
9.18	Informants	21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)
9.19	Found Lost or Abandoned Property	21.2	Phase I: Program Selection Assessment Criteria
10.2	Special Management Inmates	21.3	Program Schedule - Phase II and Phase III
10.3	Safekeepers	21.4	Platoon Size and Composition
10.4	Special Needs Inmates	21.5	Physical Conditions Program Component
11.2	Nutritional Adequacy of the Diet for Inmates	21.6	Group and Individual Counseling
11.3	Special Diet Procedures	21.7	Drug and Alcohol Abuse Counseling and Treatment
11.4	Alternative Diet	21.8	Work Programs Component
13.1	Pharmacy Policy and Formulary	21.9	Education and Life Management
13.2	Health Maintenance Services	21.10	Auxiliary Services
13.3	Medical Alert System	21.11	Offenses and Penalties
13.4	Health Program Audits	22.1	Privilege Trips
13.5	Acquired Immune Deficiency Syndrome	23.1	Religion
13.6	Sex Offender Treatment Program	25.1	Gratuities
13.7	Involuntary Psychotropic Medication Policy	25.2	Public Official Notification of Release of an Inmate
13.8	Substance Abuse Treatment Program	25.3	Prerelease Program
13.9	Dental Services	25.4	Inmate Furloughs
14.2	Personal Hygiene Items	25.6	Community Center Program
14.3	Marriage of Inmates	25.7	Expedient Release
14.4	Legal Services Program	25.8	Extended Furloughs
14.6	Inmate Grievance Procedures	25.10	Administrative Release of Inmates
15.1	Hair and Grooming Standards	25.11	Victim Notification
15.2	Offenses and Penalties	27-01-01	Probation and Parole Procedures
		27-02-01	Duties of Probation and Parole Officers
		27-03-01	Workload Formula Supervisor/Staff Ratio
		27-05-01	Testimony, Court Demeanor and Availability of Legal Services
		27-06-01	Availability of Supervision Services
		27-06-02	Equal Access to Services
		27-07-01	Cooperation with Law Enforcement Agencies
		27-08-01	Use of Force
		27-09-01	Kentucky Community Resources Directory
		27-11-01	Intensive Supervision
		27-12-01	Supervision: Case Classification
		27-12-02	Risk Assessment
		27-12-03	Initial Interview
		27-12-04	Conditions of Regular Supervision/Request for Modifica-

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. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TRANSPORTATION CABINET
Department of Administrative Services
Division of Fleet Management
Division of Purchases
(Amendment)

600 KAR 1:120. Purchase, use, lease, maintenance and disposal of state-owned motor vehicles.

RELATES TO: KRS 44.045, 186.065 [~~Executive Order 93-560~~]

STATUTORY AUTHORITY: KRS 44.045 [~~Executive Order 93-560~~]

NECESSITY, FUNCTION, AND FUNCTION: In order to assure the most effective utilization of state-owned vehicles, this administrative regulation establishes procedures governing the purchase, licensure, use, lease, maintenance, and disposal of state-owned vehicles.

Section 1. Definitions. (1) "Agency specific motor pool" means the fleet of passenger carrying motor vehicles owned, operated, and maintained by a state agency other than the Transportation Cabinet.

(2) "Exempt vehicle" means a motor vehicle that is not part of the statewide motor pool.

(3) "Motor vehicle" means as defined in KRS 281.011(2).

(4) "Nonexempt vehicle" means a motor vehicle under the control of the statewide motor pool.

(5) "Passenger carrying vehicle" means a motor vehicle whose primary purpose is to transport people.

(6) "Statewide motor pool" means the fleet of passenger carrying motor vehicles operated, controlled, and maintained by the Transportation Cabinet's Division of Fleet Management.

Section 2. General. (1)(a) This administrative regulation is applicable to all executive branch state agencies in regard to the purchase, licensure, use, lease, maintenance and disposal of all motor vehicles.

(b) This administrative regulation is applicable to all legislative or judicial branch state agencies in regard to the use, lease, and maintenance of nonexempt motor vehicles.

(2) The Transportation Cabinet shall establish a statewide motor pool of vehicles for the purpose of providing safe, reasonably priced, necessary and essential vehicular transportation for all cabinets, agencies or entities of any kind in state government. This fleet shall be made available for lease by any state agency.

(3)(a) The Secretary of the Finance and Administration Cabinet [~~Governor's Executive Cabinet~~] may, upon written justification from an agency head, authorize the establishment of an agency-specific motor pool.

(b) An agency-specific motor pool shall provide a similar service level at costs less than or equal to the costs the Transportation Cabinet could provide comparable services.

(c) An agency with authority delegated pursuant to this subsection shall submit cost effectiveness and inventory reports to the Transportation Cabinet on an annual basis or as requested.

tation Cabinet on an annual basis or as requested.

(d) The establishment of an agency-specific motor pool shall not exempt the agency from the provisions of this administrative regulation.

(4) The state-supported universities and the Department of State Police shall be exempt from the provisions of this administrative regulation except for Section 3(2) of this administrative regulation.

(5) A nonpassenger carrying motor vehicle with a weight rating greater than three-fourths (3/4) ton shall be exempt from the statewide motor pool.

Section 3. Vehicle Identification. (1) The Transportation Cabinet shall have inventory responsibility for all state-owned motor vehicles.

(2) A state agency controlling an exempt vehicle shall submit annual inventory reports to the Transportation Cabinet.

(3)(a) At the time of its purchase a nonexempt motor vehicle shall be delivered to the Transportation Cabinet in Frankfort, where licensing, identification and other required markings shall be performed.

(b) When purchased an exempt vehicle may be delivered to a location determined by the agency head.

Section 4. Purchase of Motor Vehicles. (1) Price contracts for the purchase of motor vehicles shall be established by the Finance and Administration Cabinet, Division of Purchases.

(2)(a) The Transportation Cabinet shall approve the purchase of all motor vehicles, except those exempted by the provisions of Section 2(4) of this administrative regulation. Any other state agency desiring to purchase a motor vehicle shall submit a written request to the Transportation Cabinet.

(b) The request shall include the following:

1. Name of the requesting agency;
2. Description of the requested vehicle;
3. Intended use of the vehicle;
4. Number of vehicles requested;
5. Estimated annual vehicle mileage;
6. Whether the vehicle is a replacement or a program expansion;
7. Source of funds for the purchase;
8. If funding for the vehicle was approved in the budget;
9. If the vehicle will be assigned to a motor pool, and if not, an explanation of its planned uses; and

10. The name, address, telephone number, and signature of the person in the agency authorized to request the purchase.

(3) The Transportation Cabinet shall consider for replacement all motor vehicles which are five (5) years old, or which have been driven 90,000 miles. Other motor vehicles may be considered for replacement if the Transportation Cabinet finds them to be inoperable, unsafe, or if the Transportation Cabinet determines that they require extensive repair which would not be economically feasible.

(4) The Transportation Cabinet shall submit a monthly status report to the Governor's Office of Policy and Management that summarizes the vehicle purchases authorized and the impact they have on the motor pool.

(5) Exempt agencies shall submit a purchase document with a copy of vehicle purchase approval from the Transportation Cabinet to the Finance and Administration Cabinet, Division of Purchases for processing.

(6) The Transportation Cabinet shall purchase vehicles used by the cabinet which are not ordered from a price contract, including heavy roadway equipment and other exempt vehicles.

Section 5. Use of Motor Vehicles. (1)(a) Motor vehicles shall be used only in the performance of the official business of the Commonwealth.

(b) It shall be the responsibility of each agency head to ascertain that state-owned motor vehicles are used only for official purposes and he shall insure that the use of these vehicles is not abused.

2. Second and subsequent years: Same
- (3) Effects on the promulgating administrative body:
 - (a) Direct and indirect costs or savings: None
 1. First year: None
 2. Continuing costs or savings: None
 3. Additional factors increasing or decreasing costs: None
 - (b) Reporting and paperwork requirements: Monthly vehicle inventory 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: Motor pool agency fund.
- (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: This regulation provides the best oversight of state-owned motor vehicles. The consolidation of the fleet of state-owned motor vehicles when it became apparent that no one had a clear understanding of the total impact of the state-owned motor vehicles was originally accomplished through an Executive Order signed by Governor Jones. The Executive Order was ratified by the 1996 General Assembly with amendments to KRS 44.045. The amendments required that these changes be made to the existing administrative 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: None
 - (b) State whether a detrimental effect on environment and public health would result if not implemented: No
 - (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
- (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. There are different requirements for motor vehicles which are part of the statewide motor pool from those which are exempt.

**TRANSPORTATION CABINET
(Amendment)**

600 KAR 5:010. Transportation of nonpublic school students.

RELATES TO: KRS 158.115, 1996 Ky. Acts ch. 382, sec. 0 [Part XI of Chapter 5 of the Acts of the First 1994 Extraordinary Legislative Session]

STATUTORY AUTHORITY: 1996 Ky. Acts ch. 382, sec. 0 [Part XI of Chapter 5 of the Acts of the First 1994 Extraordinary Legislative Session.]

NECESSITY, FUNCTION, AND CONFORMITY: The Commonwealth's Biennium Budget for fiscal years 1996-98 [1994-96] included \$2 million in the Transportation Cabinet's public transportation budget [General Fund Surplus Budget Expenditure Plan] each year for the transportation of nonpublic school students. [On September 1, 1994 the state Supreme Court issued an opinion relating to the methods of public financing of the transportation of nonpublic school students. This administrative regulation is promulgated to establish the eligibility criteria for application for a portion of the \$2 million appropriated each of the fiscal years of the biennium. The Transportation Cabinet has made every effort to adhere to the provisions of the 1994 Supreme

Court ruling as well as the stated intention of the General Assembly with the passage of House Bill 2 during the First Extraordinary Legislative Session of 1994.]

Section 1. Application for ~~[Fiscal Year 1994-95]~~ Funds. (1) Any fiscal court which provided financial support for the transportation of nonpublic school students in school year 1996-97 or 1997-98 [1994-96] pursuant to the provisions of KRS 158.115 may make application to the Transportation Cabinet for reimbursement of that financial support.

(2) By May 1, 1997 for school year 1996-97 and May 1, 1998 for school year 1997-98, the fiscal court shall in writing notify the Transportation Cabinet, Office of the Secretary of its intention to apply for reimbursement. The notification shall include:

(a) The name of the person in the county who shall serve as liaison on the application;

(b) A resolution from the fiscal court stating that the county provided funds in the school year for the transportation of nonpublic school students;

(c) A detailing of the method by which the funds were made available for the transportation of the nonpublic school students;

(d) A copy of each contract the fiscal court entered into to provide the transportation services; and

(e) An estimate of the total amount of funds to be provided.

(3) The final application to the Transportation Cabinet shall:

(a) ~~[Not]~~ Be received by the Office of the Secretary not later than June 30 of the applicable school year ~~[-1, 1995];~~

(b) ~~[Include a resolution from the fiscal court stating that the county provided funds in school year 1994-95 for the transportation of nonpublic school students;~~

~~[(e)] Include the amount of funds provided by the county for the transportation of nonpublic school students; and~~

~~[(d)] Include a detailing of the method by which the funds were made available for the transportation of the nonpublic school students.]~~

(c) Proof of payment of the amount requested for reimbursement.

(4) ~~[(3)]~~ The Transportation Cabinet shall evaluate the applications received and divide the \$2 million available in each fiscal year ~~[1994-95]~~ based on the following:

(a) If the valid application amounts spent by the counties equal or total less than the appropriated amount, the Transportation Cabinet shall authorize payment for each requested reimbursement amount.

(b) If the valid application amounts received exceed the appropriated amount, the Transportation Cabinet shall base the appropriation amount to each applicant county on Section 2 [3] of this administrative regulation.

Section 2. ~~[Application for Fiscal Year 1995-96 Funds. (1) Any fiscal court which provided financial support for the transportation of nonpublic school students in and for school year 1995-96 pursuant to the provision of KRS 158.115, may make application to the Transportation Cabinet for funds to reimburse the local funds provided for this purpose, if there are sufficient excess general funds available for this purpose.]~~

~~(2) The application to the Transportation Cabinet shall:~~

~~(a) Not be received by the Office of the Secretary later than June 10, 1996;~~

~~(b) Include a resolution from the fiscal court stating that the county has provided funds in and for school year 1995-96 for the transportation of nonpublic school students;~~

~~(c) Include the amount of funds provided by the county for the transportation of nonpublic school students;~~

~~(d) Include a detailing of the method by which the funds were made available for the transportation of the nonpublic school students; and~~

~~(e) If in existence, include a copy of the contract between the fiscal court and each local school board transporting nonpublic school~~

necessary. The minimal implementation costs will be funded from the General Fund appropriation to the Transportation Cabinet.

(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: The alternatives of allowing the funds to be dispersed directly to nonpublic schools was rejected based on the Supreme Court decision of the fall of 1994.

(8) Assessment of expected benefits: Aid to counties which provide transportation for all of their school students rather than just the public school students.

(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 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 was applied in that only the counties spending money for the transportation of nonpublic school students will be eligible to receive reimbursement funding.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. County fiscal courts.

3. State the aspect or service of local government to which this administrative regulation relates. The transportation of nonpublic and public school students allowed by KRS 158.115 to be funded by a county fiscal court.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The administrative regulation allows a reimbursement of up to \$2 million each year of the current biennium to the fiscal courts in Kentucky which have provided financial support for the transportation of nonpublic school students. The \$2 million was appropriated by the 1996 Regular Session of the General Assembly. Since the total available for the entire state is only \$2 million each year, the applications for reimbursement will likely have to be prorated.

Revenues (+/-): + \$2 million for all counties.

Expenditures (+/-): The eligible counties will incur only the administrative cost of passing a resolution requesting the fund reimbursement.

Other Explanation:

TRANSPORTATION CABINET Department of Highways Permits Branch (Amendment)

603 KAR 4:035. Logo signs placement along fully-controlled access highways.

RELATES TO: KRS 177.0734 through 177.0738

STATUTORY AUTHORITY: KRS ~~177.0734 through~~ 177.0738

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.0734 through 177.0738 require the Commissioner of Highways to prescribe by administrative regulations reasonable standards for the erection of specific information panels within highway rights-of-way to provide directional information for business establishments offering goods and services in the interest of the traveling public. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of specific motorist signing designed to inform motorists where travel related goods and services are available. ~~[Furthermore, as a result of a recommendation of the Governor's Highway Signage and Tourism Task Force, the Federal Highway Administration will allow Kentucky to experiment with a fifth legend logo for tourist activity signing along specified interstate and parkway routes. This administrative regulation sets forth the criteria to be followed in the erection and maintenance of these signs to be used as a demonstration project for the fifth legend logo signs relating to tourist activities. The demonstration project is scheduled to be evaluated in early 1997.]~~

Section 1. Definitions. (1) ~~["Business location" means a place of business where more than one (1) motorist service is available.~~

~~(2) "Business sign" means a separately attached sign mounted on the specific information panel to show the name, brand name or trademark of a qualified motorist service available near the interchange.~~

~~(2) [(3)] "Clear zone" means the area between the edge of the driving-lane of a fully controlled access highway and an imaginary line running parallel to the highway but thirty (30) feet (9.15 meters) away from the highway.~~

~~(3) [(4)] "Combination specific information sign" means a specific information sign with more than one (1) of the services "gas", "food", "lodging", "camping", or "tourist activities" listed on it.~~

~~(4) [(5)] "Contractor" means the entity selected by the Department of Highways pursuant to KRS Chapter 45A and 600 KAR 6:070 [4:104] to administer the specific information signing program in Kentucky. The activities of the contractor shall include but not be limited to marketing; determination of business eligibility; maintenance, erection, and removal of the specific information panels and installation and removal of business signs.~~

~~(5) [(6)] "Contract year" means July 1 through the following June 30.~~

~~(6) [(7)] "Cover" means place a protective shield over a business sign to prohibit viewing of the sign.~~

~~(7) [(8)] "Double exit interchange" means a grade-separated crossing of roadways having two (2) mainline off-ramps in one (1) direction to provide access to the crossroad.~~

~~(8) [(9)] "Fully controlled access highway" means as defined in KRS 177.0734(1), [a highway, limited to interstate highways and state parkways, that gives preference to through traffic and has access only at selected public roads and that has no at highway grade crossings or intersections.]~~

~~(9) [(10)] "Highway guide sign" means an official highway sign which is erected by the Department of Highways to give directions; to furnish advance notice of the approach to intersections or interchanges; to direct drivers into appropriate lanes; to identify routes, and directions on those routes; to show distances to destinations; to indicate access to general motorist services, rest, scenic and~~

(8) Unprotected sign panel supports located within the clear zone shall be of a breakaway design.

(9)(a) If a specific information panel has at least two (2) unused display spaces, and if another of the specific information panels is full but there is an additional eligible business ~~[are additional eligible businesses]~~ requesting logo space for that panel or service, the panel with the unused space may be converted to a combination specific information sign to include the additional service.

(b) A qualified motorist service logo displayed as a result of the creation of a combination specific service information sign in paragraph (a) of this subsection shall have a lower priority than a qualified motorist service of the type initially displayed on the panel.

Section 5. Interchange Specific Information Panel Composition.

(1) A specific information panel shall have a blue background with a white reflectorized border.

(2) The directional arrows and all letters and numbers used in the name of the type of service and the directional legend shall be white and reflectorized.

(3) All letters used in the name of service and the directional legend shall be ten (10)-inch (254-millimeter) capital letters.

(4) All numbers shall be ten (10) inches (254 millimeters) in height.

(5) The size of the specific information panel shall comply with the requirements of the MUTCD.

(6) An average measured retroreflectivity of fifty (50) percent or greater shall be maintained on each specific information panel.

(7)(a) For single exit interchanges, a standard full-size specific information panel shall accommodate a maximum of six (6) business signs.

(b) In instances when the number of businesses does not warrant a full-size panel, a half-size or combination panel may be used.

(8) ~~[If service facilities are not visible from a ramp terminal, supplemental "GAS," "FOOD," "LODGING," "CAMPING" or "TOURIST ACTIVITIES" logos shall be placed along the ramp or at the ramp terminal with a directional arrow and mileage (kilometers) to the service.]~~

~~(9)~~(a) For double exit interchanges, the specific information panel shall consist of two (2) sections, one (1) for each exit, mounted on the same base.

(b) The top section shall display business signs for the first exit and the lower section shall display business signs for the second exit.

(c) Each section shall accommodate a maximum of three (3) business signs for each service per exit.

(d) If a type of motorist service is to be signed for only one (1) exit, one (1) section of the specific information panel may be omitted or a single exit interchange sign may be used.

(9) ~~(10)~~ Business signs for two (2) types of services may be displayed on the same combination specific information sign under the following conditions:

(a) For the two (2) types of services there is a total of not more than six (6) qualified businesses at the interchange unless as set forth in Section 4(9) of this administrative regulation;

(b) Up to three (3) business signs may be displayed for each type of service in combination on a panel;

(c) If four (4) business signs are displayed for one (1) type of service on a combination specific information sign, no more than two (2) business signs for the other type of service shall be displayed on the combination specific information sign; and

(d) The name of each type of service shall be displayed above its respective business signs.

(10) ~~(11)~~ Business signs shall not be combined on a panel as described in subsection (9) ~~(10)~~ of this section if:

(a) It is anticipated that additional service businesses shall become available in the near future; or

(b) It becomes necessary to display more than a total of six (6) business signs for the two (2) types of services displayed in combina-

tion;

~~(11)~~ ~~(12)~~(a) Except at unnumbered exits, the exit number shall be displayed above the names of the types of services; and

(b) At unnumbered exits, the legend "NEXT RIGHT" or "NEXT LEFT" shall be displayed above the names of the types of services.

Section 6. Ramp Signs. (1) At a single-exit interchange ~~[interchanges]~~, an exit ramp sign ~~[signs]~~ shall be installed except that the logo for a facility ~~[logos for facilities]~~ visible from the ramp terminal may be omitted.

(2) The business sign on a ramp sign shall be a duplicate of the corresponding logo ~~[Business signs on ramp signs shall be duplicates of the corresponding logos]~~ installed along the main roadway, but reduced in size.

(3) A ramp sign for a service facility not visible from the ramp terminal may include the distance to the service facility. Direction to the service facility shall be indicated by an arrow. ~~[Ramp signs shall include distances to the service facilities. Directions shall be indicated by arrows.]~~

(4) Ramp signing may be used on ramps at double-exit interchanges.

Section 7. Business Signs. (1) Each business sign shall have a legend and border. However, if the business identification symbols or trademarks are used alone for a business sign, the border may be omitted.

(2) Each business sign on the specific information panel shall be contained within a forty-eight (48)-inch (1219.2-millimeter) wide and thirty-six (36)-inch (914.4-millimeter) high rectangular background area which includes the border, if required.

(3) The principal legend shall be legible from the main traveled way of the highway under normal driving conditions.

(4) A symbol or trademark shall be reproduced in the colors and general shape consistent with customary use and an integral legend shall be in proportionate size.

(5) A message, symbol or trademark which resembles any official traffic control device shall be prohibited.

(6) The vertical and horizontal spacing between business signs on specific information panels shall not exceed eight (8) inches (203.2 millimeters) and twelve (12) inches (304.8 millimeters), respectively.

(7) The required reflectivity, material composition, and adhesiveness of the business signs are set forth in the "LOGO PROGRAM SPECIFICATIONS" form 99-133 last revised by the Kentucky Transportation Cabinet in April 1991. ~~[This form is incorporated by reference as a part of this administrative regulation.]~~

(8) If a business ceases to exist or is not in operation for thirty (30) days, the business sign shall be immediately covered or removed as circumstances of each closing or cessation of business dictate.

(9) Any business which operates on a seasonal basis shall make provisions for removing or covering business signs during the off season. A business ~~[Businesses]~~ of this type shall notify the Department of Highways' contractor in writing thirty (30) days before the opening or closing occurs.

(10) In the absence of an official trademark or logo, the official name as indicated in partnership agreements, incorporation documents, or otherwise documented may be substituted on the business sign.

(11)(a) With the exception of "Open 24 Hours" or "24 Hours," descriptive advertising words, phrases or slogans shall not be allowed on a business sign; i.e., ~~["Open 24 Hours,"]~~ "Joe's 24-Hour Market," "Free Coffee," "Credit Cards Accepted," etc.

(b) Descriptive words which are part of the official name of the business shall be permitted on a business sign; i.e., "hotel," "motel," "inn," "lodge," "restaurant," "cafe," "cafeteria," "diner," or others with a similar meaning.

(c) The word "Diesel" on a "GAS" business sign shall be permitted.

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qualify for a business sign until the violation has been removed.

(5) A business with an advertisement on an outdoor advertising device determined by the Transportation Cabinet pursuant to 603 KAR 3:080 to be in violation of KRS 177.830 through 177.890 shall not be eligible to qualify for a business sign until the violation has been removed.

(6) An activity which is identified at an interchange by a highway guide sign pursuant to Chapter 2F of the "Manual on Uniform Traffic Control Devices" may also be identified with a logo, but shall have a lower priority for selection than any other eligible business with the same activity.

(7) A business offering more than one (1) motorist service shall not be eligible to display more than one (1) business sign with the same logo at an interchange or intersection unless no other eligible business has applied for use of the available space on the second specific information panel.

Section 9. Bumping. (1) ~~[(e)]~~ If an eligible ~~[a new qualifying]~~ business which has a higher priority pursuant to Section 8 of this administrative regulation ~~[comes into existence nearer the interchange or intersection]~~ than one which already has a business sign displayed on a fully utilized panel applies by April 1 to have its business sign displayed and is approved for the program, the ~~[new]~~ business with the higher priority shall be allowed to ~~[may]~~ have its business sign displayed at the beginning of the next contract year.

(2) The business with the lowest priority ~~[farthest from the interchange]~~ shall have its business sign removed at the end of the current contract year ~~[if the closer business has applied to have its business sign displayed and has been approved for the program].~~

~~[(d)] A qualifying business or activity which has been identified on an official highway guide sign shall have a lower priority to have its business sign displayed than any other qualifying business or activity.~~

Section 10. Fees. (1) ~~[(8)(a)]~~ The qualifying business shall pay to the department's contractor an annual fee of \$600, in advance, for each business sign placed on the fully controlled access highway for gas, food, and lodging and \$300 for camping and tourist activities.

(b) The annual fee for the first year shall accompany the initial application.

(c) If the first contract ~~[lease]~~ is for less than one (1) year, the first year's annual fee shall be prorated on a monthly basis with each portion of a month the business sign is up requiring payment of one-twelfth (1/12) of the fee.

(d) The yearly renewal fee and application for renewal shall be due forty-five (45) days prior to the annual renewal date.

(e) The payment of this fee guarantees that the business sign will be displayed for one (1) contract year or portion of the first contract year as long as the business does not violate any part of their agreement with the Department of Highways' contractor.

(2) ~~[(9)]~~ If a sign ~~[or signs]~~ for a business is removed or covered for any reason, a fee of \$100 shall be charged for the reinstallation or uncovering of the sign for each business at each interchange.

(3) ~~[(10)]~~ The qualifying business shall be responsible for damages to business signs caused by acts of vandalism or natural causes requiring repair or replacement of business signs.

(4) ~~[(11)]~~ A business sign shall provide a new or renovated business sign if the displayed sign ~~[not be displayed which]:~~

(a) Would misinform the traveling public; or

(b) Is unsightly, badly faded, or in a state of dilapidation. ~~[In these instances the business shall provide a new or renovated business sign.]~~

Section 11. ~~[(10)]~~ Trailblazing Signs For Campgrounds. (1) Only those campgrounds within fifteen (15) miles (24.15 kilometers) of the centerline of a fully controlled access highway shall be eligible for new trailblazing signs.

(2) Only one (1) specific service trailblazing sign shall be erected

for each business with a logo. This sign shall be placed a minimum of 300 feet (91.5 meters) in advance of the intersection from which the camping service is available.

(3) A trailblazing sign shall not be erected or displayed if the business is visible from a point on the fully controlled access highway within 300 feet (91.5 meters) prior to intersection.

Section 12. ~~[(11)]~~ Measurements. (1) Measurements in the selection of qualified businesses for business signs shall be from the juncture of the center line, measured between the center edges of the main traveled way of the fully controlled access road and the center line of a nonlimited access crossroad.

(2) Selection of businesses for display of business signs shall begin at the point of measurement described in subsection (1) of this section to the nearest point of vehicle travel to the exit from the crossroad or public thoroughfare to the particular motorist service.

Section 13. ~~[(12)]~~ Business Sign Contract. (1)(a) A business sign contract between a participating business and the department's contractor shall be approved by the Transportation Cabinet prior to the erection of a business sign.

(b) Each business sign and contract shall be subject to review by the Transportation Cabinet at any time.

(c) Failure to comply with any of the requirements set forth herein including nonpayment by the participating business shall be cause for the revocation of a business sign contract.

(d) If the contract is revoked for cause, the prepaid fees for a contract year or portion thereof, shall not be refunded.

(2) If the Department of Highways or its contractor determines that a contract, business, or business sign does not comply with the requirements of this administrative regulation, the Department of Highways' contractor shall notify the business in writing of the violation.

(3) If the business fails to comply with the requirements of this administrative regulation within fifteen (15) days after receiving the notification, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the business signs.

(4) If, in a single contract year, a business has been issued a notice pursuant to subsection (2) of this section and is again in noncompliance with this administrative regulation, the Department of Highways' contractor shall take immediate action to cancel the contract and remove, replace, or cover the business signs.

Section 14. ~~[(13)]~~ Appeal to the Commissioner of Highways for Exemption. (1) The Commissioner of Highways may grant an exemption to a business from the necessity of complying with any of the requirements set forth in this administrative regulation provided:

(a) It is determined by the commissioner that the exemption is in the public interest;

(b) The business conforms to the Federal Highway Administration standards for specific information signs; and

(c) That business which conforms to all the requirements set forth in this administrative regulation shall be given a preference over a business not conforming to all of the requirements in qualifying for placement of a business sign on a specific information panel.

(2) Any request for an exemption by a business to the Commissioner of Highways shall be filed in the form of an appeal as prescribed for in Section 16 ~~[(14)]~~ of this administrative regulation.

Section 15. ~~[(14)]~~ Encroachment Permits. The Department of Highways' contractor shall apply for an encroachment permit pursuant to 603 KAR 5:150 for each new specific service sign proposed to be erected or removed from state-owned right-of-way.

Section 16. ~~[(15)]~~ Appeal of Department of Highways Action. (1) Any business or person aggrieved by the action taken by the

health would result if not implemented: No

(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

(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: The benefits of the increased locations allowed the "tourist attraction" fifth legend logo will be reaped by the small tourist-oriented businesses who will now be able to participate in the logo program.

(11) TIERING: Is tiering applied? Tiering was applied by allowing different eligibility criteria between the extremely rural areas and the more populous areas. In addition, there are different eligibility criteria for the different services eligible to purchase logo space.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no true federal mandate. However, the Federal Highway Administration through its regulation 23 CFR Part 655 requires that the traffic control devices on all public highways or streets be in substantial conformance with the Manual on Uniform Traffic Control Devices. Logo signs are included in the manual. However, the primary requirement beyond limiting the placement, size, color and services listed, is that each state choosing to have a logo sign program, have its policies specifically set forth and submitted to the Federal Highway Administration. This administrative regulation accomplishes the federal requirement.

2. State compliance standards. The state compliance standards set forth in this administrative regulation meet the federal requirements, but do not exceed them. They are no more stringent.

3. Minimum or uniform standards contained in the federal mandate. Same as adopted in the state administrative regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Board of Education Department of Education Bureau of Learning Support Services (Amendment)

704 KAR 3:305. Minimum ~~unit~~ requirements for high school graduation; high school transcripts.

RELATES TO: KRS 156.160(1)(a), (c), 158.6451

STATUTORY AUTHORITY: KRS 156.070, 156.160(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 requires ~~that~~ the Kentucky ~~[State]~~ Board of ~~for Elementary and Secondary~~ Education ~~[shall]~~ adopt ~~[rules and]~~ administrative regulations relating to the courses of study for the different grades and the minimum requirements for high school graduation. The courses of study are described in the program of studies, 704 KAR 3:303. This administrative regulation establishes the ~~[relates to the establishment of]~~ minimum requirements necessary for entitlement to a high school diploma, including the requirements beginning with the graduating class of 2002. This administrative regulation also establishes minimum requirements for the content of a high school transcript.

Section 1. Until the graduating class of 2002, each student in a common school shall have a total of at least twenty (20) credits for

high school graduation. Those credits shall include the following minimum requirements: [All students in the common schools and all students in the private or parochial schools which are accredited by the State Board for Elementary and Secondary Education shall meet the following minimum credit requirements for high school graduation:]

(1) ~~[(a)]~~ Language arts - 4;

(2) ~~[(b)]~~ Social studies - 2 (including one (1) credit in U.S. History).

(3) ~~[(c)]~~ Mathematics - 3;

(4) ~~[(d)]~~ Science - 2;

(5) ~~[(e)]~~ Health - 1/2;

(6) ~~[(f)]~~ Physical education - 1/2.

~~[(2)(a)] Required—12;~~

(7) ~~[(b)]~~ Electives - 8;

~~(e) Total—20.~~

Section 2. (1) Beginning with the graduating class of 2002, each student in the common schools shall complete an individual graduation plan which incorporates emphasis on vocational studies and shall have a total of at least twenty-two (22) credits for high school graduation. Those credits shall include the following minimum requirements: [All students shall have completed at least two (2) credits in English at the ninth and tenth grade levels, except those repeating such courses. Students transferring from nonaccredited schools, as defined in 704 KAR 3:307, and schools properly accredited under the laws of other states may be awarded ninth and tenth grade required credits under the procedures set forth in 704 KAR 3:307, and, if such is not possible, may be allowed to complete such required credits beyond the tenth grade level.]

(a) Language arts - four (4) credits (including English I, II, III, and IV);

(b) Social studies - three (3) credits (to incorporate U.S. History, Economics, Government, World Geography, and World Civilization);

(c) Mathematics - three (3) credits (including Algebra I, Geometry, and one (1) elective as provided in the program of studies, 704 KAR 3:303);

(d) Science - three (3) credits (including life science, physical science, and earth and space science as provided in the program of studies, 704 KAR 3:303);

(e) Health - one-half (1/2) credit;

(f) Physical education - one-half (1/2) credit;

(g) History and appreciation of visual and performing arts (or a performing arts course which incorporates such content) - one (1) credit; and

(h) Electives - seven (7) credits.

(2) A local board of education may substitute an integrated, applied, interdisciplinary or higher level course for a required course if the alternative course provides rigorous content and addresses the same applicable components of 703 KAR 4:060. If a substitution is made, a rationale and course description shall be filed with the Department of Education.

(3) Each local board of education shall maintain a copy of its local policy on high school graduation requirements. This policy shall include a description of how the requirements address KRS 158.6451(1), (6) and 703 KAR 4:060. A letter of assurance of compliance and a copy of the local policy from the local board of education shall be submitted to the Department of Education. If the local board amends its policy, a letter of assurance of compliance referencing the amendments shall be filed with the Department of Education.

Section 3. (1) ~~A~~ ~~[Each]~~ student who satisfactorily completes the requirements of this administrative regulation ~~[and such credits]~~ and additional requirements as may be imposed by a local board of education shall be awarded a graduation diploma.

(2) ~~[Local boards of education may grant different diplomas to these students who complete credits above the minimum number of~~

exemption from the Principal Intern Program as allowed by KRS 161.027 shall have successful principal experience confirmed by the school official responsible for evaluating the applicant during the time of employment as a school principal. ~~[(1) Effective July 1, 1988, All applicants for certification as a school principal, including vocational principal, shall successfully complete a one (1) year intern program.~~

~~(2) Exception to this requirement shall be granted to applicants who have successfully served as a school principal, while holding the appropriate certification required for that position, for two (2) of the ten (10) years immediately preceding application for certification. Successful experience shall be established by recommendation from the school official responsible for evaluating the applicant during the experience as a school principal. Such recommendation shall be submitted on the letterhead of the previously employing or currently employing school district and shall be signed by the school official responsible for evaluating the person when employed as a school principal. Recommendations shall be directed to the Kentucky Department of Education, Division of Teacher Education and Certification, and shall include the applicant's name, social security number, dates of employment as a principal, name of school in which employed, and statement of successful performance while employed as a principal.]~~

Section 2. (1) Only an applicant ~~[applicants]~~ who has ~~[have]~~ successfully completed all prerequisites to certification specified by KRS 161.027 ~~[statute]~~ and administrative regulation~~[-including the testing requirements mandated by KRS 161.027;]~~ and who has ~~[have]~~ been issued either a statement of eligibility or a temporary certificate ~~[for Internship]~~ by the Kentucky Department of Education shall be eligible to participate in the Principal Intern Program specified by this administrative regulation.

(2) The principal internship specified by KRS 161.027 shall take place when a person holding either a valid statement of eligibility or temporary certificate ~~[for Internship]~~ is employed as a principal or full-time assistant principal in a public school or a nonpublic school that is accredited by a regional or national accrediting agency ~~[the Kentucky State Board of Education].~~

Section 3. (1) The purposes ~~[primary purpose]~~ of the Principal Intern Program shall be:

(a) To provide beginning principals with the opportunity for learning under the supervision of experienced educators; and

(b) ~~[-(2) A secondary purpose shall be]~~ To provide continuing certification only upon the demonstration of the principal intern's ability to meet the administrator standards adopted by the Kentucky Education Professional Standards Board ~~[achievement by the principal intern].~~

(2) ~~[(3)]~~ These purposes shall be accomplished through the principal intern committee which shall be assigned to supervise, assist, and assess the principal intern. ~~[As a significant part of this process, the committee shall utilize performance evaluation in the areas of instructional leadership, school management, interpersonal relationships, and professional responsibilities. These areas reflect the research and literature on effective schools and effective principals. Evaluation areas and performance descriptors shall be included in the Handbook for the Principal Intern and Handbook for Principal Intern Committee which are incorporated herein by reference and may be obtained from the Office. The Handbook for the Principal Intern and Handbook for the Principal Intern Committee shall be distributed by the Kentucky Department of Education, Division of Teacher Education and Certification.]~~

Section 4. (1) The administrator standards used in the assessment of the principal intern shall be as follows:

(a) The administrator is the instructional leader who guides, facilitates, and supports the curriculum, instruction, and assessment;

(b) The administrator practices positive, promotional, and

proactive communication strategies (oral and written) for effective parent, community, and school involvement to improve the learning environment for all students; and

(c) The administrator is the organizational leader and manager who acts within legal and ethical guidelines to accomplish educational purposes.

(2) The intern shall demonstrate to the intern committee the ability to meet the administrator standards through observations of performance and the preparation of a portfolio.

(3) The required entries in the portfolio shall be documentation which illustrates each of the administrator standards and the Principal Intern Program professional growth targets.

Section 5. (1) Members of the principal intern committee shall include a principal mentor, employing school district superintendent or designee, and an administrator educator.

(2) The principal mentor shall be selected by the superintendent of the school district employing the principal intern. Preference in selection shall be given to the following criteria in the order stated:

(a) A currently-employed principal of a similar school level within the employing district;

(b) A currently-employed principal of a similar school level in a nearby school district;

(c) A currently-employed principal of a different school level within the employing school district;

(d) A currently-employed principal of a different school level in a nearby school district;

(e) A recently-retired successful principal of a similar school level; and

(f) A recently-retired successful principal of a different school level.

(3) Selection of a principal mentor from another school district shall be subject to the approval of the superintendent of the proposed principal mentor. An assistant principal shall not serve in this capacity. Should no principal mentor be available through these options, a qualified person shall be identified by the Kentucky Department of Education.

(4) The superintendent of the employing local school district shall serve or shall appoint a designee who has had experience as a principal or assistant principal.

(5) An administrator educator, who is a faculty member in a state-approved administrator training program at an institution of higher education, shall be appointed by the Kentucky Department of Education in consultation with the employing institution of higher education. The administrator educator shall have had experience as a principal or assistant principal. If an administrator educator is not available, the Kentucky Department of Education shall identify a qualified person.

Section 6. ~~[5.]~~ (1) Each member of the principal intern committee shall successfully complete a ~~[specified number of hours of approved]~~ training program approved ~~[provided]~~ by the Kentucky Education Professional Standards Board ~~[Department of Education]~~ in the supervision, assistance, and assessment of principal interns.

(2) Updated training shall be required for an intern committee member under the following conditions:

(a) The member has not assessed an intern within the previous two (2) years; or if

(b) The Principal Intern Program is revised.

(3) The ~~[Such]~~ training shall provide for a high degree of consistency of implementation throughout the state.

(4) ~~[(4)]~~ The cost of travel expenses incurred during the ~~[such]~~ training shall be reimbursed by the Kentucky Department of Education in accordance with state travel administrative regulations.

(5) ~~[(4)]~~ Training sessions shall be scheduled during the summer months when possible.

(6) ~~[(6)]~~ Training for administrator educators shall be scheduled

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administrator educator and for mileage expenses in accordance with state travel administrative regulations. Each institution shall make its own determination as to the allocation of funds received from this program.

(3) If the administrator educator member of the committee does not represent an institution of higher education, the Kentucky Department of Education shall reimburse the appropriate agency or individual for mileage expenses in accordance with state travel administrative regulations and for an amount not to exceed \$200.

(4) All costs for the superintendent or designee, except travel reimbursement to attend required training, shall be the responsibility of the local school district.

(5) Payments to members of principal intern committees for vocational principal interns shall be administered by the Kentucky Department of Education with reimbursement through the Cabinet for Workforce Development, Department for Technical Education [Office of Vocational Education].

Section 14. A complaint [~~43-Complaints~~] relative to the failure of the principal intern committee to comply with statutory and regulatory provisions of the Principal Intern Program shall be reviewed by a committee of four (4) persons appointed by the Kentucky Education Professional Standards Board. The review committee shall include one (1) principal, one (1) superintendent or designee, one (1) administrator educator, and one (1) employee of the Office of Teacher Education and Certification [directed to and evaluated by, the Kentucky Department of Education]. Whenever practical, a decision on the complaint [~~such complaints~~] shall be made within sixty (60) days following receipt of the complaint.

Section 15. [~~44-~~] The Kentucky Education Professional Standards Board [Department of Education] shall collect and analyze data, on an annual or biennial basis, which permit evaluation of the Principal Intern Program covered by this administrative regulation.

ROSA WEAVER, Chair

APPROVED BY AGENCY: January 29, 1997

FILED WITH LRC: February 3, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 21, 1997, 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 March 14, 1997, five work 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, Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, (502) 573-1610 Fax.

REGULATORY IMPACT ANALYSIS

Contact Person: Rita Osborne

(1) Type and number of entities affected: Principal certification candidates.

(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: Principal candidates will be required to complete a portfolio during their year of internship.

2. Second and subsequent years: Principal candidates will be required to complete a portfolio during their year of internship.

(3) Effects on 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: Annual state budget.

(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: The Education Professional Standards Board adopted the Administrative Standards upon which these changes were made in June 1994.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas 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:

(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:

(11) TIERING: Is tiering applied? Tiering is not applied. All candidates are required to take the same assessment that correlates with their teaching certificates. No - All principal certification candidates must meet the requirements.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (Amendment)

704 KAR 20:510. Probationary certificate for teachers of exceptional children.

RELATES TO: KRS 161.020, 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 and 161.030 require that teachers and other professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation prescribed by the Education Professional Standards Board; furthermore, the teacher education institutions are required to be approved for offering the preparation programs corresponding to particular certificates on the basis of standards and procedures adopted by the Education Professional Standards Board. This administrative regulation establishes a plan for recruiting certified classroom teachers into positions for teachers of exceptional children.

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(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. Certification requirements are uniformly applicable to all individuals.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Individuals with Disabilities Education Act (IDEA) 20 USC 1413(a)(3), (14); 34 CFR 300.153 and 380-383.

2. State compliance standards. This administrative regulation sets out requirements for recruitment, retraining and certification of teachers of exceptional children.

3. Minimum or uniform standards contained in the federal mandate. The federal laws and regulations require an adequate supply of qualified personnel to carry out the purposes of the IDEA including recruitment of teachers to serve children with disabilities and retraining of probationary special education teachers.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will not impose additional or different or more strict responsibilities or requirements. The administrative regulation requires only that special education teachers meet the state's certification requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. NA

WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation (Amendment)

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

RELATES TO: KRS 151B.190, 34 CFR 361.31(b), (c), 61 Fed. Reg. 24402 (1996), 29 USC 706(8)(A), (15)(A)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195, 34 CFR 361.31(b), 61 Fed. Reg. 24402 (1996)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires the Commissioner, Department of Vocational Rehabilitation to promulgate administrative regulations governing the services and administration of the Department of Vocational Rehabilitation. 34 CFR 361.31(b), 61 Fed. Reg. 24402 (1996), requires the department to determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection for state vocational rehabilitation services. 34 CFR 361.31(c), 61 Fed. Reg. 24402 (1996), established federal guidelines for the imposition of an order of selection. This administrative regulation establishes when an order of selection and an economic need test shall be applied to the provision of vocational rehabilitation services 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.

(2) "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.

(3) "Permanent functional limitation" means an impairment in activity or function imposed by a disability that:

(a) Is unlikely to be corrected through surgical intervention or medical treatment; and

(b) Differs from a mental or physical condition that can be remedied through the provision of a physical or mental restoration

service.

(4) "Commissioner" means Commissioner of the Department of Vocational Rehabilitation.

(5) "Individual with a most severe disability" means an individual who has a severe disability and who:

(a) Requires intensive long-term support to facilitate the performance of work activities or daily living activities on or off the job which would typically be performed independently if the individual did not have a disability; or

(b) Has serious limitations in four (4) or more functional capacities (i.e., mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

Section 2. Economic Need. Vocational rehabilitation services may be provided subject to economic need, as follows, and with consideration of applicable comparable benefits as provided in 781 KAR 1:020, Section 2:

(1) An economic needs test shall be applied as a condition for furnishing the following vocational rehabilitation services:

(a) Physical and mental restoration services;

(b) Books, supplies, tools and equipment for vocational and other training;

(c) Maintenance other than diagnostic;

(d) Transportation other than diagnostic;

(e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual with a disability;

(f) Occupational licenses, tools, equipment, and initial stock (including livestock) and supplies;

(g) Postemployment services except as provided in subsection (2) of this section;

(h) Tuition and initial registration fees for training beyond the baccalaureate level;

(i) Other goods and services which can reasonably be expected to benefit an eligible individual in terms of an employment outcome; and

(j) Vehicle and property modifications in excess of \$6,000.

(2) The following services shall be excluded from an economic needs test:

(a) Assessment for determining eligibility and vocational rehabilitation needs;

(b) Counseling and guidance and referral services;

(c) ~~Services provided by staff at state owned and operated rehabilitation facilities;~~

~~(d) Placement;~~

(3) The commissioner may exclude the following services from an economic needs test if the agency is able to provide services to all eligible individuals with severe disabilities:

(a) ~~(e)~~ Rehabilitation technology except as provided by subsection (1) of this section;

(b) ~~(f)~~ Communication assistance in the individual's native language;

(c) ~~(g)~~ Tuition and initial registration fees for vocational and college training up to and including the baccalaureate level;

(d) ~~(h)~~ Supported employment;

(e) ~~(i)~~ Interpreter services for the deaf;

(f) ~~(j)~~ Reader services for the blind;

(g) ~~(k)~~ Personal assistance services;

(h) ~~(l)~~ Tutors, note-takers, and assistive technology educational aides; and

(i) ~~(m)~~ Other training, including driver training, on-the-job training, job coaching, job development and training.

(4) ~~(3)~~ Except as provided in this section [781 KAR 1:060], a client who does not meet total financial need criteria shall apply 100 percent of the monthly excess household income to the rehabilitation program.

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 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: 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: Not applicable.

(10) Any additional information or comments:

(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.

2. State compliance standards. This administrative regulation details the agency standards for an economic needs test and an order of selection for vocational rehabilitation services.

3. Minimum or uniform standards contained in federal mandate. The federal mandate permits a state to restrict access to services based on reasons of economic need; an order of selection is required when sufficient funds are not available to serve all eligible individuals.

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. The Department of Vocational Rehabilitation is financially unable to provide services for all the eligible individuals. An economic needs test and an order of selection must be imposed which will allow available limited funds to be distributed while assuring adequate services will be available to serve individuals with severe disabilities.

WORKFORCE DEVELOPMENT CABINET Department for the Blind (Amendment)

782 KAR 1:020. Definition of terms.

RELATES TO: KRS 163.450 to 163.470, 29 USC 701 et seq., 34 CFR Part 361

STATUTORY AUTHORITY: KRS 163.470, 29 USC 701 et seq., 34 CFR 361.41, 361.48, 361.49

NECESSITY, FUNCTION, AND CONFORMITY: KRS 163.470(6) requires the Department for the Blind to implement policies and procedures for carrying out programs of services for persons of the Commonwealth who are blind or visually impaired. Under its state plan for vocational rehabilitation authorized under Title I of the Rehabilitation Act of 1973, as amended, the department is required to establish policies and procedures for the conduct of its programs. This administrative regulation provides definitions of terms relating to 782 KAR 1:030, 782 KAR 1:040 and 782 KAR 1:050.

Section 1. Definitions. As used in this chapter, unless the context

otherwise requires:

(1) "Applicant" means an individual who submits an application for vocational rehabilitation services.

(2) "Comparable benefits" means any service, benefit or financial assistance available to an eligible individual from a program other than the department which meets, in whole or part, the cost of services to be provided under an individualized written rehabilitation program.

(3) "Correction" means the best visual functioning using conventional eyeglasses or contact lenses as prescribed by an ophthalmologist or optometrist.

(4) "Counselor" means a vocational rehabilitation counselor of the department who is responsible to maintain a counseling relationship with an applicant or eligible individual in order to determine eligibility for, plan, coordinate and authorize an individualized written rehabilitation program of services.

(5) "Department" means the Department for the Blind.

(6) "Eligible individual" or "client" means an applicant for vocational rehabilitation services who the department determines is an individual with a disability who requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment.

(7) "Institution of higher education" means a university, college, community college, junior college, vocational school, business school, technical institute, or hospital school of nursing.

(8) "Eligible individual with the most severe disability" means an eligible individual whose impairment(s) seriously limits four (4) or more functional capacities in terms of an employment outcome and whose rehabilitation requires three (3) or more services.

(9) "Progressive visual disorder" means a visual condition where the impairment is not complete or fully developed at time of medical diagnosis, and there is a medical prognosis that the impairment will increase in extent or severity.

(10) ~~(9)~~ "Services" means those goods and services that are appropriate to meet the vocational rehabilitation needs of each individual.

(11) "Functional capacities" means:

(a) Orientation and mobility: the ability to travel independently to and from destinations in the community;

(b) Self-care: the ability to manage one's own situation, including meal preparation, house cleaning, and health and safety needs;

(c) Communication: the ability to effectively exchange information through spoken or written words, sign language, Braille, concepts, gestures or other means;

(d) Work skills: the ability to do specific tasks required for a particular job;

(e) Work tolerance: the ability to sustain required levels of functioning in work related activities with or without accommodations;

(f) Interpersonal skills: the ability to make and maintain personal, family and community relationships; and

(g) Self-direction: the ability to independently plan, initiate, problem solve, organize and carry out goal-directed activities.

DENISE PLACIDO, Commissioner

RODNEY CAIN, Secretary

APPROVED BY AGENCY: January 21, 1997

FILED WITH LRC: January 21, 1997 at 11 am.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 21, 1997 at 10 a.m. Eastern Time at the Charles W. McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242. However this hearing will be canceled unless interested persons notify the following office in writing by March 14, 1997, of their desire to appear and testify at the hearing: Jeanne Pherson, Department for the Blind, Charles W. McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242, (502) 327-6010 or (800) 346-2115, (502) 327-9991 (FAX).

The Department for the Blind does not discriminate on the basis

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department shall pay only for actual costs of materials needed for each course.

(5) The eligible individual shall maintain full-time status as defined by the institution, unless a status of less than full-time is needed to graduate in the current year.

(6) By the end of the second term or semester, an eligible individual must have achieved an overall "C" grade average or such standing required for admission, licensure or certification and must maintain this standing for each subsequent term or semester.

(7) Exceptions may be granted to subsections (5) and (6) of this section, but only according to the following criteria:

(a) The eligible individual shall have needs or circumstances which render the eligible individual unable to maintain the standards in subsections (5) and (6) of this section;

(b) The eligible individual shall notify the counselor of the needs or circumstances prior to any change of standing at the institution;

(c) Any exception shall not compromise the program requirements that the employment objectives of the client must be realistic and attainable;

(d) Any exception to subsection (6) of this section shall not be extended beyond one (1) year; and

(e) Any exception shall be consistent with federal regulations contained in EDGAR (34 CFR 80.22) which provide that costs to be allowable under a grant program must be necessary and reasonable for the proper administration of the grant program.

(8) The eligible individual shall provide the counselor with a copy of course grades as soon as possible after the end of each term or semester.

(9) The counselor shall terminate services at an institution of higher education for an eligible individual who does not maintain the standards of subsections (5), (6), (7) and (8) of this section, and shall simultaneously notify the eligible individual of appeal procedures available under 782 KAR 1:040.

(10) Services terminated under subsection (9) of this section, may be reinstituted if the outcome of the eligible individual's appeal of the counselor's decision through administrative regulation 782 KAR 1:040 so directs or if the eligible individual meets the standard under which services were terminated through his own initiative.

Section 4. On-the-job-training. On-the-job-training provided in private or public employment other than within the department shall be subject to the following conditions:

(1) The eligible individual shall receive at least minimum wage;

(2) The employer shall be responsible for the provision of benefits and privileges that accrue to other employees;

(3) Prior to the training, a written agreement shall be completed by the counselor between the department and the employer giving a description of goals and objectives of the training, including, the length of training, the skills taught, wages earned and an understanding that the eligible individual shall be hired as a permanent employee after successful completion of the training program;

(4) The eligible individual shall make satisfactory progress as documented by training reports provided by the employer; and

(5) The agreement for on-the-job training may be terminated by the department, the employer, or the eligible individual if the conditions of this section are not met.

Section 5. Work Experience/Work Adjustment. Programs of work experience in private or public employment other than within the department shall be provided according to the following conditions:

(1) The individual may be sponsored for a period not to exceed 520 total hours of work experience;

(2) A written agreement shall be completed by the counselor between the department and the employer or provider of services to designate the length of the work experience, the number of hours to be worked each week, and payment that the individual will receive, and any payment to the provider by the department;

(3) The employer or provider must monitor the performance of the individual in work experience and make periodic reports to the counselor; and

(4) The work experience contract may be terminated by the department at anytime if it is determined that the work experience is not beneficial to the individual.

Section 6. Physical and Mental Restoration. (1) An applicant or eligible individual shall have freedom of choice of any specialist qualified and skilled in an appropriate field of restoration practice providing the specialist is licensed in accordance with state laws and administrative regulations and agrees to provide services according to established state laws and administrative regulations.

(2) Restoration services shall not be provided outside the Commonwealth of Kentucky, unless:

(a) The service is provided in a nearby out-of-state area routinely used for the convenience of the department;

(b) The out-of-state service may be cost saving;

(c) The service is not provided in state; or

(d) The provision of an in-state service would delay service to an eligible individual at extreme medical risk.

Section 7. Maintenance. (1) Maintenance may be provided only when necessary to support and derive the full benefit of other services being provided.

(2) Maintenance may begin at any time after other services have begun, but shall cease thirty (30) days after the eligible individual has achieved suitable employment.

(3) The amount the department may pay for room and board for an eligible individual enrolled in an institution of higher education shall not exceed the highest rate for campus residence room and board charged by an in-state public institution.

(4) ~~Room and board shall not be provided for an eligible individual who attends an institution of higher education in the home community of the eligible individual, unless:~~

~~(a) Transportation is not available; or~~

~~(b) The cost of transportation exceeds the rate of on-campus residence and board at the institution.~~

~~(6)~~ Lodging and meals provided in support of services other than at an institution of higher education shall be limited in cost to:

(a) For a period less than thirty (30) days may not exceed the per diem rates established for state employees by the Kentucky Finance and Administration Cabinet; and

(b) For a period more than thirty (30) days may not exceed the written rates of payment established by the department.

~~(5)~~ ~~(6)~~ The department shall not provide for maintenance identified only as personal expenses or miscellaneous expenses.

Section 8. Transportation. (1) Public transportation by common carrier shall be at a cost that is economically most prudent and feasible to the department.

(2) Private transportation by private vehicle shall be at the mileage rate established for state employees by the Kentucky Finance and Administration Cabinet.

(3) Lodging and meals necessary during travel shall not exceed the per diem rates established for state employees by the Kentucky Finance and Administration Cabinet.

(4) The total cost of transportation allowed for commuting between home and campus for an eligible individual who attends an institution of higher education shall not exceed the rate of on-campus residence and board at the institution.

(5) Transportation for an eligible individual who resides on campus at an institution of higher education shall be limited annually to six (6) round trips between the eligible individual's home and the campus.

(6) Transportation may include relocation and moving expenses when necessary for an eligible individual to achieve placement in employment.

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Section 18. Emergency Denial of Services. The department may immediately suspend or terminate any services provided to an individual if during the course of those services the conduct of the individual poses a threat to personal safety or the safety of others.

Section 19. Order of Selection. (1) If the commissioner determines that the agency lacks available funds for all eligible individuals who apply for services, then the department shall follow an order of selection to give service priority according to a ranking of categories of eligible individuals based on the severity of disability as follows:

(a) Priority Category One: means an eligible individual whose impairment seriously limits four (4) or more functional capacities in terms of an employment outcome and whose rehabilitation requires three (3) or more services.

(b) Priority Category Two: Eligible individuals whose impairment seriously limits three (3) or more of functional capacities in terms of employment outcome and whose rehabilitation requires three (3) or more services;

(c) Priority Category Three: Eligible individuals whose impairment seriously limits two (2) or more functional capacities in terms of an employment outcome and whose rehabilitation requires two (2) or more services.

(d) Priority Category Four: Eligible individuals whose impairment seriously limits one (1) or more functional capacities in terms of an employment outcome and whose rehabilitation requires two (2) or more services; and

(e) Priority Category Five: All other eligible individuals.

(2) The order of selection shall be implemented on a statewide basis.

(3) Eligible individuals who are public safety officers as defined in Section 7(12) of the Rehabilitation Act of 1973, as amended, will receive priority for services within each priority category.

(4) The department shall conduct an assessment to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under the order of selection.

(5) The order of selection shall not apply to the following:

(a) The acceptance of referrals and applicants;

(b) The provision of assessment services to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under the order of selection; and

(c) Services needed by any eligible individual who has begun to receive services prior to the effective date of the order of selection.

(6) The commissioner of the department shall direct the order of selection by designating in written memorandum the priority categories to be served.

(7) An eligible individual shall be immediately reclassified into a higher priority category whenever appropriate justification exists in the case record of the individual.

(8) In the order of selection each eligible individual within a closed priority category shall be placed on a waiting list until such time as the priority category is opened.

DENISE PLACIDO, Commissioner
RODNEY CAIN, Secretary

APPROVED BY AGENCY: January 21, 1997

FILED WITH LRC: January 21, 1997 at 11 am.

PUBLIC HEARING: A public hearing on this regulation has been scheduled for March 21, 1997 at 10 a.m. Eastern Time at the Charles W. McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242. However this hearing will be canceled unless interested persons notify the following office in writing by March 14, 1997, of their desire to appear and testify at the hearing: Jeanne Pherson, Department for the Blind, Charles W. McDowell Center, 8412 Westport Road, Louisville, Kentucky 40242, (502) 327-6010 or (800) 346-2115, (502) 327-9991 (FAX).

The Department for the Blind 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 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 Jeanne Pherson at the address above.

REGULATORY IMPACT ANALYSIS

Contact person: Jeanne Pherson

(1) Type and number of entities affected: All applicants for vocational rehabilitation services from the Department for the Blind.

(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: There will be no direct or indirect savings since any funds conserved would be redistributed among otherwise eligible individuals.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There should be no additional reporting or paperwork requirements.

(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 department uses state and federal funds with a match ratio of 78.7 federal to 21.3 state dollars.

(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 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: Not applicable.

(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: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with

insurance coverage at a reasonable cost, and the health insurance policy information.

(n) [(4)] 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 noncustodial [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 employer of the noncustodial parent [absent parent's employer] shall:

- a. Send notice to the noncustodial [absent] parent within fifteen (15) calendar days of locating the noncustodial [absent] parent or his employer;
- b. Provide the noncustodial [absent] parent with the opportunity to contest the withholding; and
- c. Send notice to his employer and to the noncustodial [absent] parent.

5. The child support agency shall notify the state in which the custodial parent resides when the noncustodial [absent] parent is no longer employed in the state and provide the state with both the noncustodial [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 noncustodial [absent] parent is employed shall apply.

(o) [(4)] 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 a noncustodial [an-absent] parent receiving unemployment compensation under the following conditions:

1. A noncustodial [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 noncustodial [absent] parent; or
- b. A notice of claim of intent to withhold is completed by the child support enforcement agency when the noncustodial [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 noncustodial [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 noncustodial [absent] parent.

(3) Federal tax refund (offset).

(a) Past-due child support, 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 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 noncustodial [absent] parent's name and Social Security number.

(b) Past due child support, medical support or maintenance in a nonpublic assistance case 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;

3. 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. 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. The child support agency shall calculate an assigned arrearage;

6. The child support agency shall verify the accuracy of the noncustodial [absent] parent's name and Social Security number.

(4) State income tax refund (offset).

(a) A K-TAP [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 noncustodial [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) 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. Kentucky Transitional Assistance Program (K-TAP) [Aid to Families with Dependent Children (AFDC)] Accounts Distribution. (1) A child support payment collected on behalf of a recipient of K-TAP [AFDC] shall:

(a) Be made payable to the child support agency; and

(b) Be reported to the K-TAP [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 K-TAP [AFDC] family ineligible for K-TAP [AFDC] shall be reported to the child support agency by the K-TAP [AFDC] agency.

(a) If the family is ineligible for a K-TAP [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 a K-TAP [an-AFDC] payment or if a hearing is requested:

1. The K-TAP [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.

reporting agency the January following the certification year.]

(3) ~~[(5)]~~ Denial or suspension of driver's license.

(a) The cabinet shall as provided by KRS 186.570(2): [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. Contact the contracting official to determine if the contracting official intends to pursue judicial action.

3. If the contracting official determines that judicial action will not be taken, advise the contracting official of the intent of the agency to proceed with the referral to revoke or deny a driver's license.

4. ~~[(2)]~~ Send by first class mail to a noncustodial ~~[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. A noncustodial ~~[An absent]~~ parent answer to notice of intent.

5. ~~[(3)]~~ Notify the noncustodial ~~[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;

b. The wrong individual has been identified;

c. A bond is posted for the total arrearage which has accrued since January 1, 1994;

d. A payment agreement is entered into by the noncustodial ~~[absent]~~ parent to pay current support, plus a specified monthly payment amount on the total arrearage which has accrued since January 1, 1994. The monthly payments shall be:

(i) Fifty (50) percent if the arrearage owed is less than \$1,000; or

(ii) \$500 plus twenty-five (25) percent of the amount over \$1,000 if the arrearage is not less than \$1,000 and not greater than \$2,000; or

(iii) \$750 plus ten (10) percent of the amount over \$2,000 if the arrearage is \$2,000 or more; or

e. The noncustodial ~~[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 noncustodial ~~[absent]~~ parent requests a dispute hearing by contesting the arrearage based upon a mistake of fact and returns the noncustodial ~~[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 noncustodial ~~[absent]~~ parent's response, schedule and hold an interview with the noncustodial ~~[absent]~~ parent;

2. Attempt to resolve the dispute at the time of the interview; and

3. Forward the noncustodial ~~[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 noncustodial ~~[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.

(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 noncustodial ~~[absent]~~ parent makes full payment of the total arrearage that may have accrued since January 1, 1994;

2. The noncustodial ~~[absent]~~ parent enters into a payment agreement to pay current support, plus the specified amount on the total arrearage which accrued since January 1, 1994 as determined by paragraph (a)3d of this subsection; or

3. The noncustodial ~~[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 sent.

(g) If the noncustodial ~~[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 Families and Children shall refer the name of the noncustodial ~~[absent]~~ parent to the Transportation Cabinet for the denial or suspension of the driver's license, unless:

1. The noncustodial ~~[absent]~~ parent makes full payment of the arrearage within twenty (20) calendar days of the interview by the Cabinet for Families and Children;

2. The noncustodial ~~[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 noncustodial ~~[absent]~~ parent enters into a payment agreement to pay current support, plus the specified amount on the total arrearage which has accrued since January 1, 1994 as determined by paragraph (a)3d of this subsection.

(h) The Cabinet for Families and Children shall notify the Transportation Cabinet to reinstate or reissue a previously suspended or revoked driver's license if:

1. The noncustodial ~~[absent]~~ parent makes full payment of the arrearage;

2. The noncustodial ~~[absent]~~ parent posts a bond for the total arrearage amount; or

3. The noncustodial ~~[absent]~~ parent:

a. Makes a good faith payment which equals three (3) months' current support; and

b. Enters into a payment agreement to pay the specified amount on the remaining arrearage which has accrued since January 1, 1994 as determined by paragraph (a)3d of this subsection.

Section 10. Appeal Procedure. An obligor may request a dispute hearing in accordance with KRS 405.490 or 405.450 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. These forms include:

(a) CS-44, revised 2/97; [CS-111, revised 5/89];

(b) CS-63, revised 2/97 [issued 2/95];

(c) CS-78, revised 2/97 [5/89];

(d) CS-111, revised 2/97;

(e) CS-122, revised 7/96;

(f) CS-123, revised 7/96;

(g) CS-148, revised 3/97;

(h) CS-149, revised 2/97; [CS-44, issued 2/95;

(e) CS-148, revised 10/93;

(f) CS-149, revised 10/93;

(g) CS-122, revised 7/94;

(h) CS-123, revised 7/94.]

(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 L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: February 12, 1997

FILED WITH LRC: February 14, 1997 at 11 a.m.

ed as the Child Support Enforcement Program is currently utilizing the denial or suspension of drivers' license as an enforcement tool.

2. The distribution of wage withheld child support obligations, as provided by KRS 405.467: No fiscal impact is anticipated as these amendments will not change the method by which the Division of Child Support Enforcement currently distributes child support payments.

3. Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: No fiscal impact is anticipated as these amendments will not change the method by which the Division of Child Support Enforcement currently provides information to credit reporting agencies.

4. The removal of the federal mandate to pass through the first \$50 of child support as a result of 42 USC 651 et seq.: Had Kentucky not opted to eliminate the pass through payment, ongoing pass through payments would have to be made using 100% state funds. For SFY 96, the state share of the pass through payments totaled \$1.8 million. The \$6.0 million included both the federal and state share. SFY 97 enacted budgets do not contain funds to offset the loss of federal participation. Had Kentucky opted to continue the \$50 pass through payments, the additional cost would have been an estimated \$4.2 million annually in general funds. The state has authorized six months of reduced pass through payments with \$1.8 million already budgeted as the state share. Payments will not continue after that time.

1. First year: See explanation above.

2. Continuing costs or savings:

a. The removal of the last resort provisions for the denial or suspension of drivers' licenses when a child support arrearage of one year accumulates beginning January 1, 1994: No impact is anticipated as the Child Support Enforcement Program is currently utilizing the denial or suspension of driver's license as an enforcement tool.

b. The distribution of wage withheld child support obligations, as provided by KRS 405.467: No fiscal impact is anticipated as these amendments will not change the way the Division of Child Support Enforcement currently distributes child support payments.

c. Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: No fiscal impact is anticipated as these amendments will not change the way the Division of Child Support Enforcement currently provides information to credit reporting agencies.

(4) The removal of the federal mandate to pass through the first \$50 of child support as a result of 42 USC 651 et seq.: Kentucky's decision to eliminate DEFRA was based on the recent passage of 42 USC 651 et seq.: which contains removal of the DEFRA federal mandate and disallows federal funding/(FFP) for DEFRA payments. Therefore, these regulatory amendments were developed to harmonize with statutory language to eliminate DEFRA payments as the child support budget does not contain funds to offset the loss of federal participation/(FFP). The Child Support Enforcement Program did not receive a general fund budget appropriation for the state share of administrative/operating funds. This necessitates the state share of cost to be funded through agency generated receipts. The Child Support Enforcement Program's K-TAP (AFDC) collections which generate agency receipts have not increased as previously anticipated, preventing the possibility of absorbing any additional program costs. The cost to award DEFRA in SFY 96 was approximately \$6 million paid at the funding rate of 34% state (1.8M)/66% federal (4.2M). Therefore, failure to pass this proposal would result in the continuing cost of DEFRA which lost FFP effective 10/1/96 and would require an estimated additional \$4.2M annually in 100% state funds. Any future state share savings resulting from the abolishment of pass through will aid in implementing the IVD mandates of 42 USC 651 et seq.: which is designed to be beneficial to all clients.

3. Additional factors increasing or decreasing costs:

a. The removal of the last resort provisions for the denial or suspension of drivers' licenses when a child support arrearage of one

year accumulates beginning January 1, 1994: No impact is anticipated as the Child Support Enforcement Program is currently utilizing the denial or suspension of driver's license as an enforcement tool.

b. The distribution of wage withheld child support obligations, as provided by KRS 405.467: No reporting or paperwork requirement is anticipated as these amendments will not change the way the Division of Child Support Enforcement currently distributes child support payments.

c. Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: No reporting or paperwork requirement is anticipated as these amendments will not change the method by which the Division of Child Support Enforcement currently provides information to credit reporting agencies.

d. The removal of the federal mandate to pass through the first \$50 of child support as a result of 42 USC 651 et seq.: None

(b) Reporting and paperwork requirements:

1. The removal of the last resort provisions for the denial or suspension of drivers' licenses when a child support arrearage of one year accumulates beginning January 1, 1994: No impact is anticipated as the Child Support Enforcement Program is currently utilizing the denial or suspension of drivers' license as an enforcement tool.

2. The distribution of wage withheld child support obligations, as provided by KRS 405.467: No reporting or paperwork requirement is anticipated as these amendments will not change the way the Division of Child Support Enforcement currently distributes child support payments.

3. Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: No reporting or paperwork requirement is anticipated as these amendments will not change the way the Division of Child Support Enforcement currently provides information to credit reporting agencies.

4. The removal of the federal mandate to pass through the first \$50 of child support as a result of 42 USC 651 et seq.: Paperwork requirements will be decreased since pass through checks will no longer be issued and mailed. Reporting requirements will not change.

(4) Assessment of anticipated effect on state and local revenues:

(a) The removal of the last resort provisions for the denial or suspension of drivers' licenses when a child support arrearage of one year accumulates beginning January 1, 1994: No impact is anticipated as the child Support Enforcement Program is currently utilizing the denial or suspension of drivers' license as an enforcement tool.

(b) The distribution of wage withheld child support obligations, as provided by KRS 405.467: No fiscal impact is anticipated as these amendments will not change the way the Division of Child Support Enforcement currently distributes child support payments.

(c) Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: No fiscal impact is anticipated as these amendments will not change the way the Division of Child Support Enforcement currently provides information to credit reporting agencies.

(d) The removal of the federal mandate to pass through the first \$50 of child support as a result of 42 USC 651 et seq.: While there will be an effect on state and local revenue, the cabinet believes that self-sufficiency through the aid of the initiatives set forth in 42 USC 651 et seq.: will soon outweigh any economic impact caused by the elimination of pass through payments.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation:

(a) The removal of the last resort provisions for the denial or suspension of drivers' licenses when a child support arrearage of one year accumulates beginning January 1, 1994: No impact is anticipated as the Child Support Enforcement Program is currently utilizing the denial or suspension of drivers' license as an enforcement tool. Funding rate remains 34% state/66% federal.

(b) The distribution of wage withheld child support obligations, as provided by KRS 405.467: No fiscal impact is anticipated as these amendments will not change the way the Division of Child Support

Support Enforcement currently provides information to credit reporting agencies.

4. The removal of the federal mandate to pass through the first \$50 of child support as a result of 42 USC 651 et seq.: No.

(c) If detrimental effect would result, explain detrimental effect:

1. The removal of the last resort provisions for the denial or suspension of drivers' licenses when a child support arrearage of one year accumulates beginning January 1, 1994: No impact is anticipated as the Child Support Enforcement Program is currently utilizing the denial or suspension of drivers' license as an enforcement tool.

2. The distribution of wage withheld child support obligations, as provided by KRS 405.467: No impact is anticipated as these amendments will not change the way the Division of Child Support Enforcement currently distributes child support payments.

3. Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: No impact is anticipated as these amendments will not change the way the Division of Child Support Enforcement currently provides information to credit reporting agencies.

4. The removal of the federal mandate to pass through the first \$50 of child support as a result of 42 USC 651 et seq.: Not applicable.

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

(a) 1. The removal of the last resort provisions for the denial or suspension of drivers' licenses when a child support arrearage of one year accumulates beginning January 1, 1994: No statute administrative regulation or policy is in conflict as the Child Support Enforcement Program is currently utilizing the denial or suspension of drivers' license as an enforcement tool.

2. The distribution of wage withheld child support obligations, as provided by KRS 405.467: No statute, administrative regulation or policy is in conflict as these amendments will not change the way the Division of Child Support Enforcement currently distributes child support payments.

3. Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: No statute administrative regulation or policy is in conflict as these amendments will not change the way the Division of Child Support Enforcement currently provides information to credit reporting agencies.

4. The removal of the federal mandate to pass through the first \$50 of child support as a result of 42 USC 651 et seq.: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

1. The removal of the last resort provisions for the denial or suspension of drivers' licenses when a child support arrearage of one year accumulates beginning January 1, 1994: No statute administrative regulation or policy is in conflict as the Child Support Enforcement Program is currently utilizing the denial or suspension of drivers' license as an enforcement tool.

2. The distribution of wage withheld child support obligations, as provided by KRS 405.467: No statute administrative regulation or policy is in conflict as these amendments will not change the way the Division of Child Support Enforcement currently distributes child support payments.

3. Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: No statute administrative regulation or policy is in conflict as these amendments will not change the way the Division of Child Support Enforcement currently provides information to credit reporting agencies.

4. The removal of the federal mandate to pass through the first \$50 of child support as a result of 42 USC 651 et seq.: None

(10) Any additional information or comments:

(a) The removal of the last resort provisions for the denial or suspension of drivers' licenses when a child support arrearage of one year accumulates beginning January 1, 1994: No impact is anticipated as the Child Support Enforcement Program is currently utilizing the

denial or suspension of drivers' license as an enforcement tool.

(b) The distribution of wage withheld child support obligations, as provided by KRS 405.467: No fiscal impact is anticipated as these amendments will not change the way the Division of Child Support Enforcement currently distributes child support payments.

(c) Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: No fiscal impact is anticipated as these amendments will not change the way the Division of Child Support Enforcement currently provides information to credit reporting agencies.

(d) The removal of the federal mandate to pass through the first \$50 of child support as a result of 42 USC 651 et seq.: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 CFR 302.32, 303.21, 302.51, 303.105, 303.107, 302.34, 651 et seq.

(a) The removal of the last resort provisions for the denial or suspension of drivers' licenses will occur when a child support arrearage of one year accumulates beginning January 1, 1994: 42 USC 651 et seq.

(b) The distribution of wage withheld child support obligations, as provided by KRS 405.467, 45 CFR 302.32, 302.51.

(c) Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: 45 CFR 303.105.

(d) The removal of the federal mandate to pass through the first \$50 of child support as a result of 42 USC 651 et seq., 651 et seq.

2. State compliance standards. There are no differing or additional state compliance standards.

(a) The removal of the last resort provisions for the denial or suspension of drivers' licenses will occur when a child support arrearage of one year accumulates beginning January 1, 1994: There are no differing of additional state compliance standards.

(b) The distribution of wage withheld child support obligations, as provided by KRS 405.476: There are no differing or additional state compliance standards.

(c) Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: There are no differing of additional state compliance standards.

(d) The removal of the federal mandate to pass through the first \$50 of child support as a result of 42 USC 651 et seq.: There are no differing of additional state compliance standards.

3. Minimum or uniform standards contained in the federal mandate.

(a) The removal of the last resort provisions for the denial or suspension of drivers' licenses will occur when a child support arrearage of one year accumulates beginning January 1, 1994: This administrative regulation provides requirements of the child support agency in the collection and distribution of child support payments, and does not differ from federal mandate.

(b) The distribution of wage withheld child support obligations, as provided by KRS 405.467: This administrative regulation provides requirements of the child support agency in the collection and distribution of child support payments, and does not differ from federal mandate.

(c) Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: This administrative regulation provides requirements of the child support agency in the

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(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky, 40621.

(3) The manual shall be available for review during the normal business week, Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee in accordance with KRS 61.872.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: February 13, 1997

FILED WITH LRC: February 14, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1997, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 1997, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Administrative Specialist, Principle, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick, Trish Howard, or Anita Moore

(1) Type and number of entities affected: All providers of ambulatory surgical center program services who participate in the Kentucky Medicaid 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: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(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: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(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: \$0

2. Continuing costs or savings: \$0

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: Federal and state matching

funds.

(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: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

(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 effect.

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

(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

(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? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

(15) ~~[(44)]~~ Applicable with regard to determinations of eligibility for periods beginning on or after July 1, 1991, children born after September 30, 1983, who have attained six (6) years of age but have not attained nineteen (19) years of age as specified in 42 USC 1396a(1)(I); and

~~[(15) Effective with regard to determination of eligibility for periods beginning on or after January 1, 1991, participants in a work supplementation program under the Title IV-A program (Aid to Families with Dependent Children (AFDC)) and any child or relative of the participating individual (or other individual living in the same household as the participating individual) who would be eligible for AFDC if there was no work supplementation program; and]~~

(16) Applicable with regard to determinations of eligibility for periods beginning on or after January 1, 1991, disabled widows, widowers and disabled surviving divorced spouses, who would ~~[should]~~ be eligible for SSI except for entitlement to an old-age, survivors, and disability insurance (OASDI) benefit resulting from a change in the definition of disability.

Section 3. ~~[2-]~~ The Medically Needy. Other individuals (including children as shown in Section 2 ~~[(1)]~~(7) of this administrative regulation), and pregnant women meeting income and resource standards of the medically needy program), meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet their basic maintenance needs may apply for Medicaid ~~[MA]~~ with need determined in accordance with income and resource standards prescribed by administrative regulations 907 KAR 1:004 and 907 KAR 1:640 through 907 KAR 1:665 of the Cabinet for Health Services ~~[Human Resources]~~. Included within the medically needy eligible groups are pregnant women during the course of their pregnancy; a woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated).

Section 4. ~~[3-]~~ Qualified Medicare Beneficiaries and Qualified Disabled Working Individuals. (1) Coverage is extended to qualified Medicare beneficiaries as specified in 42 USC 1396a(a)(10)(E), subject to the income as shown in 907 KAR 1:640, and resource limitations shown in 907 KAR 1:004, and for the scope of benefits specified in 907 KAR 1:006. A qualified Medicare beneficiary must be eligible for and receiving Medicare Part A benefits, and may be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made but not retroactively and not for the month in which the determination is made.

(2) Qualified disabled working individuals as defined in 42 USC 1396i-2 and 42 USC 1396d(s) of the Social Security Act shall be eligible under Medicaid for payment of their Medicare Part A premiums as shown in 907 KAR 1:006.

Section 5. ~~[4-]~~ Technical Eligibility Requirements. Technical eligibility factors of families and individuals included as categorically needy under Section 2 ~~[(1)]~~(1) through (6) of this administrative regulation, or as medically needy under Section 3 ~~[2]~~(2) of this administrative regulation are:

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

(2) Pregnant women shall be ~~[are]~~ eligible only upon medical proof of pregnancy, except as otherwise specified in Section 2 of this administrative regulation;

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) A blind individual shall ~~[must]~~ meet the definition of blindness as contained in 42 USC 416 and 42 USC 1382c relating to RSDI and SSI.

(7) A disabled individual shall ~~[must]~~ meet the definition of permanent and total disability as contained in 42 USC 423 and 42 USC 1382c relating to RSDI and SSI.

(8) Families who lose K-TAP ~~[AFDC]~~ eligibility on or after July 16, 1996 ~~[October 1, 1999]~~ solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to twelve (12) months of extended medical assistance for family members included in the K-TAP assistance unit ~~[AFDC grant]~~ prior to losing K-TAP ~~[AFDC]~~ eligibility. The extended medical assistance shall be divided into two (2) transitional six (6) month benefit periods. Each transitional benefit period has specified eligibility and reporting requirements.

(a) The first transitional six (6) month benefit period begins with the month the family became ineligible for K-TAP assistance ~~[AFDC]~~.

1. To be eligible for this transitional benefit period, the family shall have correctly received:

a. K-TAP assistance ~~[AFDC]~~ in three (3) of the six (6) months immediately preceding the month the family became ineligible for K-TAP assistance ~~[AFDC]~~;

b. Have a dependent child living in the home; and

c. Meet the reporting requirements relating to earnings and child care costs no later than the 21st day of the fourth month.

2. If ~~[When]~~ the family no longer has a dependent child living in the home, medical assistance for all family members, except the former dependent child, shall be terminated the last day of the month the family no longer includes a dependent child, with eligibility for the

not participating in a managed care partnership. The effective date of Medicaid [medical assistance] shall generally be the first day of the month of eligibility. For individuals eligible on the basis of unemployment, eligibility shall not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met. For individuals eligible on the basis of desertion, a period of desertion shall [must] have existed for thirty (30) days, and the effective date of eligibility shall not precede the first day of the month in which the thirty (30) day period ends. For individuals eligible on the basis of utilizing their excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met.

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

(14b) Benefits shall be denied to any family for any month in which any legally liable caretaker relative with whom the child is living is, on the last day of the month, participating in a strike, and [no] individual's needs shall not be considered in determining eligibility for Medicaid [medical assistance] for the family if, on the last day of the month, the individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(15) ~~(14b) A responsible relative (but not a child) [sanctioned (removed)] from a family [an AFDC or AFDC] related Medicaid [medical assistance] only case due to failure to meet a technical eligibility requirement shall not be eligible for Medicaid [medical assistance] as a medically needy individual unless the individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the individual has been removed [sanctioned].~~

Section 6. [5-] Institutional Status. An [No] individual shall not be eligible for Medicaid:

- (1) ~~[MA] If a resident or inmate of a nonmedical public institution;~~
- (2) ~~[No individual shall be eligible for MA] While a patient in a state tuberculosis hospital unless he has reached age sixty-five (65);~~
- (3) ~~[No individual shall be eligible for MA] While a patient in a mental hospital or psychiatric facility unless he is under age twenty-one (21) or age twenty-two (22) if receiving inpatient services on his 21st birthday or is sixty-five (65) years of age or over; or~~
- (4) ~~[No individual shall be eligible for MA] While a patient in a nursing facility classified by the Medicaid program as an institution for mental diseases unless the individual has reached age sixty-five (65).~~

Section 7. [6-] Emergency Shelters. An individual (or family group) who is in an emergency shelter for a temporary period of time may be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions shall be [are] as follows. The individual or family group shall:

- (1) ~~[The individual (or family group) must]~~ Be a resident of an emergency shelter no more than six (6) months in any nine (9) month period;
- (2) ~~[The individual (or family group) shall]~~ Not be in the facility serving a sentence imposed by the court, or awaiting trial; and

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

Section 8. [7-] Application for Other Benefits. (1) As a condition of eligibility for Medicaid [medical assistance], applicants and recipients shall apply for all annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so.

(a) Good cause shall be considered to exist when the benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions.

(b) Annuities, pensions, retirement and disability benefits shall include:

1. ~~[, but not be limited to,]~~ Veterans' compensations and pensions;
2. Retirement and survivors disability insurance benefits;
3. Railroad retirement benefits; and
4. Unemployment compensation. ~~[Notwithstanding the preceding,]~~

(2) No applicant or recipient shall be required to apply for federal benefits when the federal law providing for the benefits shows the benefit to be optional and that the potential applicant or recipient for the benefit need not apply for the benefit when to do so would, in his opinion, act to his disadvantage.

Section 9. [8-] Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the Cabinet for Health Services ~~[Human Resources]~~ of any medical support owed for the child not to exceed the amount of Medicaid [medical assistance] payments made on behalf of the recipient.

Section 10. [9-] Third Party Liability as a Condition of Eligibility. (1) Any individual (except as further specified in this section) applying for or receiving Medicaid [medical assistance] shall be required as a condition of eligibility to cooperate with the Cabinet for Health Services ~~[Human Resources]~~ in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless the individual has good cause for refusing to cooperate as determined by the cabinet taking into consideration the best interests of the individuals involved.

(2) A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 11. [10-] Provision of Social Security Numbers. (1) Each applicant for or recipient of Medicaid [medical assistance] shall be required to provide a social security number as a condition of eligibility except as provided in this section.

(2) An individual ~~[However, no one]~~ shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration if ~~[when]~~ appropriate application for ~~[the]~~ ~~[such]~~ number has been made.

(3) If the specified relative refuses to cooperate with obtaining a social security number for the newborn child or other dependent children, the specified relative shall be ineligible due to failure to meet technical requirements. The newborn child or other dependent may still be eligible for Medicaid [medical assistance] if financial eligibility requirements are met.

JOHN H. MORSE, Commissioner, Secretary
APPROVED BY AGENCY: February 13, 1997
FILED WITH LRC: February 14, 1997 at 11 a.m.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(Amendment)**

907 KAR 1:019. Pharmacy services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 314.011, 320.210, 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396a-d, s, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services [~~Human Resources~~] has responsibility to administer the Medicaid Program [~~of Medical Assistance~~]. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to pharmacy services for which payment shall be made by the Medicaid [~~Medical Assistance~~] Program on [in] behalf of both the categorically needy and medically needy.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Drug manufacturer" means an entity meeting the definition shown in 42 USC 1396s(k)(5).

(3) "Legend drug" refers to a drug which by federal law requires a prescription by an authorized prescriber before it can be dispensed.

(4) ~~(2)~~ "Outpatient drug program" means the program of drug services provided directly by pharmacists to Medicaid recipients, including both the drug product and dispensing of the drug.

Section 2. Prescribed Drugs. Coverage and Limitations Provisions Relating to the Outpatient Drug Program. Drugs prescribed by a physician, osteopath, dentist, optometrist, advanced registered nurse practitioner or podiatrist in accordance with 907 KAR 1:021 ~~[4:020]~~ shall be provided in accordance with the coverage and limitations provisions specified in this ~~[section of the]~~ administrative regulation.

(1) Coverage for outpatient drugs shall be limited to drugs for which the drug manufacturer has entered into and complies with a rebate agreement under 42 USC 1396s(a) which are prescribed for a medically accepted indication, and those drugs with a prior authorized ~~[preauthorized]~~ exemption from the rebate agreement granted by the Health Care Financing Administration.

(2) Drugs included on the Kentucky Medicaid [~~Medical Assistance~~] Program Outpatient Drug List (as published by the ~~department~~ Cabinet for Human Resources) may be provided without prior authorization. Prior authorization ~~[preauthorization. Preauthorization]~~ shall be required for all other drugs in accordance with 907 KAR 1:021.

(3) The drugs or classes of drugs listed in 42 USC 1927s(d)(2) shall be excluded from coverage unless specifically (individually by drug within the class) placed on the outpatient drug list or prior authorized ~~[preauthorized]~~ using the usual prior authorization ~~[preauthorization]~~ criteria of the department as specified in the Pharmacy Manual ~~[for Medicaid services]~~.

(4) Prescribing quantities may be limited by the program.

(5) Recipients ~~[Patients]~~ placed in "lock-in" status shall receive services in accordance with 907 KAR 1:677. [due to overutilization shall receive services only from their lock-in provider except in the case of emergency or referral]

(6) Practitioner authorization, i.e., actual signature of the prescriber, shall be required on all prescriptions not phoned in, on all Schedule II controlled substances prescriptions, and when the

prescriber ~~[physician]~~ override (certification of brand name necessity) procedure is being used. For telephone prescriptions (but not including the preceding) the pharmacist shall enter on the prescription form the name of the prescriber and the initials of the pharmacist.

(7) A ~~[No]~~ prescription shall not be refilled more than five (5) times, or more than six (6) months after the original prescription is written.

(8) Drugs, provided to recipients in institutions in which drugs are considered a part of the reasonable allowable costs under the Kentucky Medicaid [~~Medical Assistance~~] Program, shall not be billed as an outpatient pharmacy benefit.

(9) Drugs provided to recipients in nursing facilities (except for patients in head injury units and units providing care for ventilator dependent patients) shall be billed as an outpatient pharmacy benefit.

(10) Legend drugs, ~~[of a type]~~ not included on the Kentucky Medicaid [~~Medical Assistance~~] Program Outpatient Drug List, and which shall ~~[will]~~ prevent hospitalization or a higher level of care of the recipient ~~[patient]~~, shall be considered covered for individual recipients if prior authorized ~~[when preauthorized]~~ by qualified medical professionals in ~~[within]~~ the department ~~[for Medicaid Services]~~.

(11) Drugs ~~[of a type]~~ not on the Kentucky Medicaid Program ~~[KMAP]~~ outpatient drug list may be placed on a prior authorization ~~[preauthorization]~~ list and authorized as a group, in accordance with 907 KAR 1:021 for recipients in personal care homes and for those recipients in nursing facilities who meet patient status criteria for the facility.

(12) Drugs for which the Food and Drug Administration has issued a "less than effective (LTE)" rating and drugs which are determined to be "identical, related, or similar to LTC drugs" shall not be covered.

Section 3. Material Incorporated by Reference. (1) The "Pharmacy Manual", dated December 1996 shall be incorporated by reference in this administrative regulation.

(2) The manual shall be on file in the Office of the Commissioner, Department for Medicaid Services, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(3) The manual shall be available for review during the normal business week. Monday through Friday, 8 a.m. through 4:30 p.m. (eastern standard time), excluding state holidays.

(4) Each participating provider shall be provided one (1) copy of the manual and appropriate manual updates following their incorporation by reference. Additional copies may be obtained from the Department for Medicaid Services upon payment of an appropriate fee in accordance with KRS 61.872.

Section 4. The amendments to this administrative regulation shall be implemented ~~[effective]~~ with regard to services provided on or after December 1, 1996 ~~[May 1, 1994]~~.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: February 13, 1997

FILED WITH LRC: February 14, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1997, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 1997, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments

providers shall bill the actual acquisition cost of the drug purchased.

(c) If an average wholesale price is listed, reimbursement for the drug cost shall be the lesser of the federal maximum allowable cost (FMAC) or average wholesale price (AWP) minus ten (10) percent plus a dispensing fee (and unit dose add-on, as appropriate) or the usual and customary billed charge unless the prescriber [physician] has written "brand medically necessary" [~~"do not substitute"~~] or "brand necessary" on the prescription.

(d) If an AWP is not listed, reimbursement shall be the lesser of the FMAC or direct price plus a dispensing fee (and unit dose add-on, as appropriate), or the usual and customary billed charge unless the prescriber [physician] has hand-written "brand medically necessary" [~~"do not substitute"~~] or "brand necessary" on the prescription.

(e) If the prescriber [physician] has hand-written "brand medically necessary" [~~"do not substitute"~~] or "brand necessary" on the prescription, reimbursement shall be based on the lower of the pharmacy's usual and customary charge or the estimated acquisition cost (EAC) (AWP minus ten (10) percent or direct price as appropriate) for the respective drug plus a dispensing fee (and unit dose add-on, as appropriate).

(f) 1. For nursing facility residents meeting Medicaid patient status criteria, there shall be:

a. No more than one (1) dispensing fee allowed per drug within a calendar month for maintenance drugs;

b. [~~as determined by the Medicaid agency~~], and No more than two (2) dispensing fees allowed per drug within a calendar month for other drugs, except for Schedules II, III, and IV controlled substances; and

c. For nonsolid dosage forms, including topical medication preparations, for which no more than four (4) dispensing fees per drug shall be allowed within a calendar month.

2. For nursing facility residents not meeting Medicaid patient status criteria and nonresidents of nursing facilities, there shall be:

a. No more than one (1) dispensing fee allowed per drug per calendar month for drugs classified by the Medicaid Program as maintenance drugs; and

b. No more than four (4) dispensing fees shall be allowed per drug within a calendar month for legend intravenous drugs.

3. The limitations on the number of ~~(Though)~~ dispensing fees ~~(are limited, this)~~ shall not have the effect of ~~(be construed as)~~ placing a limit on the quantity of reimbursable drugs for which the program shall ~~(will)~~ pay for any patient, since the reasonable cost of the drug shall be ~~(as defined herein) is~~ reimbursable as a covered service in whatever quantity is considered medically necessary for the patient.

4. Nonsolid dosage forms include all covered drug items other than oral tablets or capsule forms.

(g) Whenever possible in accordance with 21 USC, 201 KAR 2:190, 902 KAR 55:065 and other administrative regulations promulgated pursuant to KRS 217.005 to 217.215, unused drugs paid for by the Department for Medicaid Services [cabinet] shall be returned to the pharmacy with the credit for the cost of the drug and the unit dose packaging cost (if applicable) accruing to the Department for Medicaid Services. [cabinet]

(2) Reimbursement to hospitals for drugs provided to eligible recipients shall be on the basis of reasonable cost pursuant to 907 KAR 1:013. While reimbursement for drugs provided to patients in brain injury units in nursing facilities and units providing ventilator dependent care in nursing facilities is within the all-inclusive rate for the brain injury unit or ventilator care unit, the upper limits in this administrative regulation shall be applicable with regard to payments for drugs provided in those settings.

Section 2. Dispensing Fees. (1) The dispensing fee shall be four (4) dollars and seventy-five (75) cents per prescription for drugs reimbursed through the outpatient drug program to all eligible recipients except those in nursing facilities meeting Medicaid patient status criteria.

(2) For eligible recipients in nursing facilities meeting the appropriate patient status criteria requirements, the dispensing fee shall be five (5) dollars and seventy-five (75) cents per prescription for drugs reimbursed through the outpatient drug program; for these recipients, a unit dose addition to the usual dispensing fee shall be made for drugs dispensed through the pharmacy outpatient drug program in the amount of two (2) cents per unit dose for unit dose drugs packaged in unit dose form by the manufacturer and four (4) cents per unit dose for unit dose drugs packaged in unit dose form by the pharmacist; the unit dose dispensing fee amount shall be paid, as appropriate, even though the usual dispensing fee of five (5) dollars and seventy-five (75) cents is not paid due to monthly limits on dispensing fees.

Section 3. Reimbursement to Dispensing Physicians. Participating dispensing physicians who practice in counties where no pharmacies are located shall be [are] reimbursed for the cost of the drug only, with the cost computed as the maximum allowable cost or estimated acquisition cost as shown in Section 1(1) of this administrative regulation, or the physician's usual and customary charge to the general public for the drug if less, or in accordance with 907 KAR 3:010 ~~[4:040]~~ for drugs purchased on the open market for specified immunizations shown in 907 KAR 3:005 ~~[4:009]~~.

Section 4. Reimbursement in Regards to Prior Authorization. (1) All Medicaid covered drugs, except those included on the Kentucky Medicaid Program Outpatient Drug List require prior authorization unless otherwise specified by the Department for Medicaid Services.

(2) For recipients in personal care homes, a select group of the prior authorized drugs referenced in subsection (1) of this section may be authorized in its entirety unless otherwise specified by the Department for Medicaid Services. All other drugs in subsection (1) of this section shall require prior authorization.

(3) For recipients in long term care facilities, who meet patient status criteria for the facility, a select group of the prior authorized drugs referenced in subsection (1) of this section may be authorized in its entirety unless otherwise specified by the Department for Medicaid Services. All other drugs in subsection (1) of this section shall require prior authorization. [Implementation Date. The provisions of this administrative regulation shall be applicable with regard to services provided on or after July 1, 1994.]

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: February 13, 1997

FILED WITH LRC: February 14, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1997, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 1997, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Administrative Specialist, Principle, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick, Trish Howard, or Anita

Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of an appropriate fee which shall not exceed approximate cost.

~~Section 3. Limitations for Those Under Age Twenty-one (21). The following limitations shall be applicable with regard to services provided to eligible recipients of medical assistance who are under age twenty-one (21):~~

~~(1) Dental prophylaxis, to include application of stannous fluoride, shall be limited to one (1) treatment per year.~~

~~(2) Bitewing x rays shall be limited to four (4) x rays per patient per year per dentist.~~

~~(3) Full mouth radiograph shall be limited to one (1) per patient per every two (2) years per dentist.~~

~~(4) The following orthodontic procedures shall be limited per twelve (12) month period to any combination totaling two (2) per patient: fixed space maintainer, band type; removable space maintainer, acrylic; removable appliance for tooth guidance; and fixed or cemented appliance for tooth guidance. Effective with regard to services provided on or after July 1, 1980, the following orthodontic procedures shall be available upon appropriate preauthorization by the cabinet (except orthodontic consultation, which need not be preauthorized) when services are medically necessary to correct handicapping malocclusions, with limitations as specified for the individual procedure:~~

~~(a) Orthodontic consultation shall be limited to one (1) per recipient per twelve (12) month period;~~

~~(b) Preauthorized orthodontia services for moderately severe handicapping malocclusions;~~

~~(c) Preauthorized orthodontia services for severe handicapping malocclusions;~~

~~(d) Retention visit or stabilization visit shall be allowable as a separate procedure only when a patient is referred to another practitioner in another service area and is limited to one (1) per month per recipient with a maximum of twenty four (24) retention visits and with a maximum of ten (10) stabilization visits per lifetime.~~

~~(5) The following prosthetic procedures shall be limited as specified for the individual procedure:~~

~~(a) Transitional appliance, includes one (1) tooth on appliance, upper appliance, shall be limited to one (1) per twelve (12) month period, per patient;~~

~~(b) Transitional appliance, includes one (1) tooth on appliance, lower appliance, shall be limited to one (1) per twelve (12) month period, per patient;~~

~~(c) Repair of fracture of transitional appliance and space maintainer shall be limited to three (3) per twelve (12) month period, per patient;~~

~~(d) Repair of fracture and replacement of one (1) broken tooth on a transitional appliance and space maintainer shall be limited to three (3) per twelve (12) month period, per patient;~~

~~(e) Repairing broken complete denture with no teeth damaged shall be limited to three (3) per twelve (12) month period, per patient; and~~

~~(f) Repairing broken complete denture and replacing one (1) broken tooth shall be limited to three (3) per twelve (12) month period, per patient.~~

~~(g) Relining upper denture (flask-cured only) shall be limited to one (1) per twelve (12) month period per patient.~~

~~(h) Relining lower denture (flask-cured only) shall be limited to one (1) twelve (12) month period per patient.]~~

Section 3. [4.] Inpatient Hospital Services. (1) Payment shall be made for all hospital inpatient covered services rendered by oral surgeons subject to the general physician limitations shown in 907 KAR 3:005 [4:009], Physicians' services.

(2) Payment shall be provided for covered services rendered by general dentists for hospital inpatient care for patients termed to be

"medically a high risk," defined as:

(a) Heart disease;

(b) Respiratory disease;

(c) Chronic bleeder;

(d) Uncontrollable patient, i.e., a person with mental or emotional disorder [retardate, emotionally disturbed];

(e) Other, e.g., car accident, high temperature, massive infection.

[Section 5. Coverage of Dental Benefits for Adults. The following named dental benefits only shall be covered for adults (eligible individuals aged twenty-one (21) or over), effective January 1, 1982 except as otherwise specified in this administrative regulation.

(1) Oral surgery, as follows:

(a) Extraction, single tooth, with local anesthetic and including routine postoperative care, effective with regard to services provided on or after November 1, 1987;

(b) Extraction, each additional tooth, with local anesthetic and including routine postoperative care, effective with regard to services provided on or after November 1, 1987; and

(c) Root removal (but not payable on the same day the same tooth was extracted).

(2) Operative, as follows:

(a) Amalgam filling for one (1) surface cavity;

(b) Amalgam filling for two (2) surface cavity;

(c) Amalgam filling for cavity involving three (3) or more surfaces;

(d) Silicate cement filling;

(e) Acrylic, plastic, or composite filling; and

(f) Buildup to repair a fractured incisal or anterior tooth.

(3) Diagnostic services, as follows:

(a) Bitewing x-rays, limited to four (4) x-rays per patient per year per dentist;

(b) Intraoral periapical radiograph, single view; and

(c) Full mouth radiograph, single panoramic film limited to one (1) per patient per every two (2) years per dentist.

(4) Preventive services as follows: adult dental prophylaxis, effective with regard to services provided on or after August 1, 1986.

(5) Other services, as follows: emergency treatment for pain, infection and hemorrhage.

Section 6. Other Provisions, Limitations and Clarifications. (1) Intraoral periapical radiograph, single view, shall be limited to fourteen (14) per patient, per year, per dentist.

(2) The procedure code for stainless steel crown shall also include polycarbonate (acrylic) and full composite crown for anterior teeth. However, should a provider choose to provide crowns for anterior teeth, the usual and customary charge for a stainless steel crown shall be billed.

(3) Bonded veneers shall not be covered as a separate entity, nor shall they be provided and billed under any existing procedure code.

(4) The Sargenti method of root canal treatment shall not be covered under the present root canal procedure codes.

(5) The Medicaid Program recognizes five (5) surfaces of a tooth (buccal or labial, mesial, distal, lingual, occlusal or incisal). Only one (1) filling may be billed per surface with a maximum of five (5) per tooth.

(6) Nitrous oxide shall not be covered under the procedure for general anesthesia or any other procedure.

(7) Effective with regard to services provided on or after May 1, 1980, the following procedures shall be covered for all age groups:

(a) Alveoplasty (alveoleplasty) in conjunction with extractions per quadrant;

(b) Apicoectomy (per tooth) — first root;

(c) Apicoectomy (per tooth) each additional root;

(d) Gingivectomy or gingivoplasty — per quadrant;

(e) Gingivectomy or gingivoplasty — per tooth;

(f) Biopsy — excision of benign tumor — lesion diameter up to 1.25 cm.;

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(Amendment)

907 KAR 1:673. Claims processing.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 447.45, 42 USC 1396a, b, c, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized [reorganizes] the Cabinet for Human Resources and placed [places] the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the provisions relating to Medicaid provider claims processing requirements.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health Services.

(2) "Claim" means any request for payment that relates to each individual billing submitted by a provider to the department which details services rendered to a recipient [beneficiary] on a specific date~~(s)~~. The claim may be either a line item of service or all services for one (1) recipient [beneficiary] on a bill.

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

(4) "POS" means on-line real time point of sale claims electronically transmitted to the department.

(5) "ProDUR" means prospective drug use review in accordance with 201 KAR 2:210.

(6) "Provider" means as defined in 907 KAR 1:002.

(7) "Provider type fifty-four (54)" means an enrolled pharmacy provider who dispenses drugs to outpatient, long-term care residents, and personal care home residents who are Medicaid recipients. A number shall be assigned by the department to these providers and the first two (2) digits shall be fifty-four (54).

(8) ~~[(6)]~~ "Recipient" means as defined by KRS 205.8451.

(9) ~~[(6)]~~ "Services" means as defined in 907 KAR 1:671.

(10) ~~[(7)]~~ "Unacceptable practice" means as defined in 907 KAR 1:671.

(11) ~~[(9)]~~ "Withholding" means as defined in 907 KAR 1:671.

Section 2. Claims Processing. (1) Claim submittal process for all Medicaid providers.

(a) ~~[(A)]~~ Providers, except for type fifty-four (54), shall submit a claim by an electronic billing process or by paper form approved by the department. ~~[- using forms and procedures specified by the department, for covered services or supplies rendered to an eligible recipient within twelve (12) months of the date the service was rendered.]~~

(b) ~~[(A)]~~ Claims shall ~~[may]~~ be submitted for payment within twelve (12) months of the date the service was rendered to an eligible Medicaid recipient for covered services or supplies. ~~[(a)]~~

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, its representatives employees or any individual or entity working on

the provider's behalf; 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 and subject to all the remedies available to the department.

(2) Provider type fifty-four (54) claims shall meet POS submittal requirements for services provided on or after December 1, 1996.

(a) A provider who files in excess of 100 claims in a twelve (12) month period shall transmit by POS and be subject to ProDUR.

(b) Providers that receive a POS exemption shall be subject to ProDUR as specified in 201 KAR 2:210. POS exemptions are as follows:

1. Providers who are unable to submit POS claims for a period of two (2) or more hours, for drugs in an emergency situation which are essential to avoid life-threatening situations.

2. If a claim requires paper documentation as requested by the department, this claim shall not be subject to POS.

3. Provider type fifty-four (54) that file a maximum of 100 claims or less in a twelve (12) month period to the department may request an exemption from the department for the POS requirement.

4. Provider type fifty-four (54) that dispense drugs to be used in the provision of home infusion therapy (involving the parental administration of premanufactured or sterile compounded products for intravenous, intramuscular, subcutaneous or intraspinal infusion to a patient in a nonacute alternative site setting) shall request an exemption from the department for the POS requirement.

5. Retroactive recipient eligibility or retroactive nursing facility resident status.

Section 3. Claim payment. (1) ~~[(a)]~~ Payment shall be made by the department, if:

~~[(a)]~~ ~~[-]~~ The information required to pay the claim is complete;

~~[(b)]~~ ~~[-]~~ The claim is not under review for medical necessity;

~~[(c)]~~ ~~[-]~~ The provider has submitted all reports and information relevant to claims required by the department; and

~~[(d)]~~ ~~[-]~~ The department is not withholding the provider's payments in accordance with 907 KAR 1:671.

(2) ~~[(b)]~~ The department may audit claims paid to determine if any unacceptable practices have occurred that may result in sanctions.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: February 13, 1997

FILED WITH LRC: February 14, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1997, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 1997, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Administrative Specialist, Principle, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

ADMINISTRATIVE REGISTER - 3455

Section 3. Cabinet for Health Services Community Mental Health and Mental Retardation Reimbursement Manual, January 1, 1997 [~~December 1, 1996~~]. The Cabinet for Health Services incorporates this manual by reference. This manual relates to the following: scope of services, requirements and limitations of participation, method and principles of reimbursement. The manual shall be adhered to by those community mental health and mental retardation boards contracting with the cabinet.

Section 4. Copies of the manuals are on file for inspection in the Division of Administration and Financial Management, Department for Mental Health and Mental Retardation Services, 4th Floor, Leestown Square, 100 Fair Oaks Lane, Frankfort, Kentucky 40601.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: January 29, 1997

FILED WITH LRC: February 3, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1997, at 9 a.m. in the Health Services Auditorium, First Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Administrative Specialist, Principal, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4th Floor, West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: All community mental health and mental retardation boards receiving funds from the department to provide mental health, mental retardation, and substance abuse services.

(2) Direct and indirect cost or savings 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: No hearing was requested as a result of the Notice of Intent being published, and no written 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 comments received: No hearing was requested as a result of the Notice of Intent being published, and no written 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: Minimal

(a) Direct and indirect cost or savings:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

(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: Existing general and federal funds.

(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 written comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published, and no written comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since provisions are mandated by state and federal law.

(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:

(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. Tiering was not applied since the application of policy is required to be applied in a like manner for all individuals.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal statute or regulation constituting a federal mandate.

2. State compliance standards. None

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standards or responsibilities are imposed.

of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by March 17, 1997, 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. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons applying to be certified or who are certified as drug and alcohol counselors in Kentucky.

(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: Those persons applying for certification or renewing certification will be impacted.

(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 are 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: Certificate holders will be required to renew certification and to pay the required renewal fee.

2. Second and subsequent years: Certificate holders will be required to renew certification and to pay the required renewal fee.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Application fees will provide initial funding for board operation.

2. Continuing costs or savings: Application and renewal fees will provide continuing funding for board operation.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Applications and renewals will be processed.

(4) Assessment of anticipated effect on state and local revenues: These funds will provide the only funding for board operation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: These funds will provide the only funding for board operation.

(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: Minimal

(7) Assessment of alternative methods; reasons why alternatives were rejected: These are the only sources of funding as set forth by the statute.

(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 regulation will assist in insuring the competence of persons holding themselves out as alcohol and drug counselors.

(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: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a certificate as an alcohol and drug counselor. Therefore there is no need to tier this regulation.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (New Administrative Regulation)

301 KAR 5:040. Selling and purchasing migratory game bird and waterfowl permits.

RELATES TO: KRS 150.195, 150.235, 150.603(1), (2)

STATUTORY AUTHORITY: KRS 150.195(4)(g), 150.603(1), (2), 50 CFR 20.20 (Fed. Reg. Vol. 61 No. 170 (1996))

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.603 requires waterfowl and migratory game bird hunters to possess the appropriate permits; 50 CFR 20.20 requires that waterfowl and migratory game bird hunters participate in a national harvest survey; and KRS 105.195(4)(g) authorizes the department to determine by administrative regulation the details relating to the application for and sale of licenses and permits. This administrative regulation requires that the purchasers and sellers of waterfowl and migratory game bird permits follow the procedures necessary to comply with the provisions of 50 CFR 20.20; it imposes no additional requirements beyond the federal mandate.

Section 1. A person purchasing a waterfowl permit or a migratory game bird permit shall:

(1) Obtain a Kentucky Migratory Bird Harvest Information Program form from the license agent;

(2) Complete the form, using black ink; and

(3) Return the form to the license agent.

Section 2. A license agent shall:

(1) Not sell a waterfowl permit or a migratory game bird permit to a person who has not complied with the provisions of Section 1 of this administrative regulation;

(2) Return completed Migratory Bird Harvest Information Program forms to the department:

(a) Weekly; and

(b) In the envelopes provided.

Section 3. The Kentucky Migratory Bird Harvest Information Program Form, 1997, is incorporated by reference. It may be inspected and copied at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601 from 8 a.m. through 4:30 p.m. on regular business days.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: December 6, 1996

FILED WITH LRC: February 13, 1997 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 25, 1997, at 9 a.m. at the Depart-

EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(New Administrative Regulation)

704 KAR 20:555. Professional certificate for college faculty: secondary education.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030, 161.048

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.048 establishes the eligibility requirements for a candidate seeking to participate in an alternative teacher preparation program. This administrative regulation establishes the requirements for and renewal of the professional certificate for college faculty: secondary education. This administrative regulation is not required by federal law.

Section 1. Prerequisites. (1) A candidate shall possess a master's or doctoral degree in an academic subject area for which certification is being sought.

(2) A candidate shall have a minimum of five (5) years full-time teaching experience, or its equivalent, in the academic subject area for which certification is being sought. The experience shall be in a regionally or nationally accredited institution of higher education and verified by signature of the appropriate officer of the institution.

(3) An eligible candidate shall be issued a statement of eligibility for the professional certificate for college faculty: secondary education valid for five (5) years. Upon confirmation of employment in an assignment for the grade level and specialization identified on the statement of eligibility, a provisional teaching certificate shall be issued. Upon successful completion of the Kentucky Teacher Internship Program as provided in KRS 161.030, the professional certificate for college faculty: secondary education shall be issued, valid for an additional four (4) years.

Section 2. Renewal. Each five (5) year renewal of the professional certificate for college faculty: secondary education, shall require:

- (1) Three (3) years of successful classroom teaching experience; or
- (2) Six (6) semester hours of additional graduate credit.

ROSA WEAVER, Chair

APPROVED BY AGENCY: December 6, 1996

FILED WITH LRC: January 29, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on March 21, 1997, at 10 a.m., in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by March 14, 1997, five work 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, 1024 Capital Center Drive, Frankfort, Kentucky 40601, (502) 573-4606, Fax (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Ronda Tamme

- (1) Type and number of entities affected: 176 school districts and college and university faculties.
- (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: The candidate will incur costs of the application process.

2. Second and subsequent years: Same as above.

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Routine costs associated with processing applications and issuing certificates.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: Routine reporting.

(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: Qualified instructional personnel are required for the education of public school children.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas 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:

(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? (Explain why tiering was or was not used) No. Certification requirements are uniformly applicable to all individuals.

PUBLIC PROTECTION AND REGULATION CABINET
Department of Financial Institutions
Division of Law and Regulatory Compliance
(New Administrative Regulation)

808 KAR 10:225. Procedural administrative regulation governing hearing and hearing related procedures for matters before the Department of Financial Institutions.

RELATES TO: KRS 292.330, 292.460, 292.470, 292.500(1), (3), (9)

STATUTORY AUTHORITY: KRS Chapter 13B, 292.500(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: To enact a uniform set of hearing and hearing related procedures consistent with KRS Chapter 13B and the needs of the Department of Financial Institutions for administrative proceedings before the department for actions brought pursuant to the department's oversight responsibility

as applicable, to the extent they exist or come into existence, in matters pertaining to KRS Chapter 287 (Banks and Trust Companies), KRS Chapter 288 (Consumer Loans), KRS Chapter 289 (Savings and Loan Associations), KRS Chapter 290 (Credit Unions), KRS Chapter 291 (Industrial Loan Corporations), KRS Chapter 294 (Mortgage Loan Companies), KRS Chapter 366 (Sale of Checks), KRS Chapter 368 (Check Cashers), and any administrative regulations promulgated pursuant thereto. Furthermore, such actions and proceedings shall be permissible during the pendency of a hearing conducted pursuant to this administrative regulation when circumstances justify such dual action.

(3) Nothing herein shall be construed as precluding or limiting in any way the power of the commissioner or the commissioner's designee, as applicable, to conduct an investigation pursuant to KRS 292.460 including but not limited to the power of the commissioner or any officer designated by the commissioner to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner or the commissioner's designee, as applicable, deems relevant or material to the inquiry. In the case of contumacy by, or refusal to obey a subpoena issued to any person, nothing in this administrative regulation shall limit the power of the commissioner to apply to, or preclude the commissioner from applying to, any court of competent jurisdiction, to issue to that person an order requiring him to appear before the commissioner, or the officer designated by the commissioner, to produce documentary evidence if so ordered or to give evidence (including but not limited to sworn testimony) touching the matter under investigation or in question. Furthermore, nothing herein shall preclude or limit the power of the commissioner or commissioner's designee to petition the court to seek contempt of court sanctions when applicable.

(4) It shall be the purpose and intent of this administrative regulation to ascertain the truth in all matters before the department when facts are in dispute and to do so in a fair and efficient manner with due regard for the interest of the investing public, as well as the persons and entities regulated by the department. In all decisions of the hearing officer concerning the interpretation and application of this administrative regulation, the interest of the investing public in maintaining integrity in the markets shall be given at least as much weight as the interest of the respondents before the department.

(5) This administrative regulation shall be applicable to all proceedings before the Department of Financial Institutions pursuant to the Securities Act, including, but not limited to, KRS Chapter 292.330 (Broker-dealers, Agents, Investment Advisers and Securities) and any administrative regulations promulgated pursuant thereto. To the extent certain provisions herein are not applicable to a particular subject area regulated by the department or can not be rationally or logically applied to that subject area, those provisions shall not be utilized.

Section 3. All persons appearing before the department shall have the right to counsel and attorney representation subject to the following terms:

(1) Right to counsel. Any person who appears before the department at any stage in a formal administrative hearing shall have the right, at his or her own expense, to be represented or advised by legal counsel. Nothing in this administrative regulation shall be construed to allow or permit representation of a person by a nonattorney.

(2) Filing of notice of entry of appearance. Any attorney representing a party before the department must file a written notice of entry of appearance in conformity with the notice provisions contained in this administrative regulation in each case before he may practice such case before the department. Filing of a notice of entry of appearance shall constitute agreement by the attorney to be bound by the provisions of this section. The notice of entry of appearance

shall provide the appearing attorney and such attorney's client's current, complete and correct name, address, phone number and telefax number. The appearing attorney shall promptly notify the department of any change of address for himself or his client by filing a notice of change of address in the record.

(3) Conditions of withdrawal. An attorney of record in an administrative action before the department shall request permission to withdraw as counsel for a party in writing, with an affidavit from the moving attorney setting forth the grounds for withdrawal, certifying that the request to withdraw has been served upon the attorney's client, and an explanation why the withdrawal will not have a material adverse effect on the interests of the attorney's client.

(4) Withdrawal before a hearing. An attorney shall not withdraw from representing a person in an administrative action before the department without permission of the hearing officer before whom he is practicing. Within ten (10) days of an administrative hearing, an attorney of record shall not be permitted to withdraw from an administrative action absent a compelling reason shown upon a written motion filed in the record.

Section 4. Informal Proceedings and Show Cause Proceedings. Prefiling informal proceedings. Before an administrative action commences, the department may seek informal resolution of the dispute with a party. The department may seek any orders from the commissioner, or the commissioner's designee, as or the hearing officer as applicable which are helpful or reasonably necessary to facilitate informal resolution of any matter.

Section 5. The following terms apply to the assignment to hearing officer and the duties and authority of the hearing officer. The department shall designate a hearing officer for a formal administrative action in any manner consistent with KRS 13B.030 as soon as practicable after the commencement of the administrative action but not prior to the expiration of time limits for filing an answer to the department's complaint and for requesting a hearing.

(1) Delegation of powers. A request for or assignment of a hearing officer under KRS 13B.030(2) shall be a designation of a hearing officer under this administrative regulation and a delegation to the hearing officer under KRS 13B.030(1) of all powers conferred on an department relating to the conduct of the administrative action. The hearing officer shall have the authority to take any procedural action authorized by the Securities Act of Kentucky, KRS Chapter 292 and any administrative regulations promulgated pursuant thereto, KRS Chapter 13B, or this administrative regulation, including, but not limited to the authority to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas for witnesses and production of documents or things;
- (c) Regulate discovery;
- (d) Rule on procedural requests;
- (e) Hold prehearing conferences;
- (f) Regulate the course of, and maintain order in the administrative hearing;
- (g) Rule on evidentiary matters and admit in or exclude evidence from the record;
- (h) Examine witnesses;
- (i) Require the parties to submit legal memoranda, and proposed findings of fact and conclusions of law;
- (j) Make proposed findings of fact, conclusions of law and recommended orders for the commissioner; and
- (k) Take any action consistent with law to promote the orderly and prompt conduct of the administrative action.

(2) The department shall take no further action with respect to an administrative action, except as a party litigant, as long as the administrative action is assigned to a hearing officer. However, notwithstanding this provision, the department shall not be precluded from taking action to seek injunctive relief pursuant to KRS 292.470

file an answer to the allegations in that pleading within twenty (20) days of the service of the pleading. The department may take action adverse to the named party's interest if no answer is filed.

(6) The answer shall specifically admit or deny in short and plain terms each and every allegation contained in the pleading and shall set forth all claims against other parties which arise out of the same transaction or occurrence that is the subject matter of the claims in the pleading and which fall within the department's jurisdiction. If the answering party is unable to admit or deny an allegation in the pleading, he shall so state in his answer and this shall have effect of a denial. The answer shall be in writing and shall include the named party's address and telephone number, or, if represented by an attorney, the name, address and telephone number of the attorney. Parties against whom claims are directed in an answer shall answer such claims within ten (10) days after service of the answer.

(7) The filing of a motion for more definite statement, motion for judgment on the pleadings, motion to dismiss or a motion for summary disposition shall not toll the time to file a responsive pleading.

(8) Any party filing frivolous or meritless motions or other pleadings or documents which would subject the individual to sanctions under Rule 11 of the Rules of Civil Procedure shall also be subject to sanctions to be imposed at the sound discretion of the hearing officer as appropriate under the circumstances to the extent such sanctions are authorized by law.

(9) Every defense to be pleaded. Every defense in law or fact to a claim for relief in any pleading shall be asserted in the responsive pleading thereto, if one (1) is required.

(10) Any matter constituting an avoidance or affirmative defense in an administrative action shall be set forth in a responsive pleading. Failure to plead an affirmative defense in a responsive pleading may constitute a waiver of that defense.

(11) The following defenses may at the option of the pleading party be asserted by motion before making a responsive pleading:

- (a) Lack of jurisdiction over the person;
- (b) Lack of jurisdiction over the subject matter;
- (c) Improper venue;
- (d) Insufficiency of process;
- (e) Insufficiency of service of process;
- (f) Failure to state a claim upon which relief can be granted; and
- (g) Failure to join a required party. Failure to plead any of the defenses listed in this subsection in a responsive pleading shall not constitute a waiver of that defense. Notwithstanding this provision, the time for filing an answer is not tolled by filing such motion and if the time for filing the answer expires, the department may take action adverse to the named party's interest.

(12) A party may amend his pleading once as a matter of course at any time before a responsive pleading is served, or if the pleading is one (1) to which no responsive pleading is permitted, he may so amend it at any time within five (5) days after it is served. Otherwise, a party may amend his pleading only by leave of the hearing officer or by written consent of the adverse party filed in the record. Leave to amend shall be freely given to achieve just, timely and inexpensive determinations of matters before the department. It shall be permissible in the discretion of the hearing officer to amend a pleading if necessary after the conclusion of a hearing to conform to the evidence presented so long as the party opposing such amendment has a reasonable and fair opportunity to confront and cross-examine all evidence.

(13) A party shall file a response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be longer, unless the hearing officer orders otherwise.

(14) Whenever the claim or defense asserted in an amended pleading arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment shall relate back to the date of filing of the original pleading.

(15) The hearing officer may upon his own initiative or upon motion of a party permit a party to file a supplemental pleading which sets forth transactions, occurrences or events which have happened since the date of a prior pleading. The hearing officer shall allow such supplemental filings upon reasonable notice and upon such terms as are just, and shall grant the adverse party leave to file a responsive pleading to the supplemented pleading.

Section 7. Service shall be completed pursuant to the following terms:

(1) Unless the hearing officer otherwise orders, every order, every pleading subsequent to the document commencing the administrative action, every paper relating to discovery required to be served upon a party and every written motion, summons, notice, appearance, demand, and similar paper filed in the record shall be served upon each party to an administrative action. If a party is represented by legal counsel, service upon the attorney shall suffice.

(2) Service may be made by personal delivery of or by mailing a copy of the paper to the party served.

(a) Service may be accomplished by certified mail by placing a copy of the paper to be served in an envelope, addressing the envelope to the person to be served at his last known address, affixing adequate postage to and mailing the sealed envelope by certified mail, return receipt requested. Service by certified mail under this section is complete upon mailing. The department shall immediately upon receipt mark all return receipts and returned mail served under this paragraph with the date the department receives the receipt or the mail. The United States Mail return receipt or returned mail shall be proof of the date of acceptance or refusal to claim a paper served by mail. The certificate of service required by subsection (5) of this section for papers to be filed in the record shall be evidence of the date of service. The proper address for the purposes of service by mail shall be the last known address of the person to be served. If the person to be served is a licensee or permittee of the department, then the proper address for service of process shall include that person's last address of record in the department's files.

(b) Service may be accomplished by regular mail in the same manner as for certified mail. Service by regular mail is effective upon mailing. The certificate of service required by subsection (5) of this section for papers to be filed in the record shall be evidence of the date of service.

(c) Papers may be served by personal delivery by any person over eighteen (18) years of age authorized by law or administrative regulation to deliver them in person. Delivery within this administrative regulation means handing it to the party; or leaving it at the party's business address with the person in charge thereof; or, leaving it at the party's residence with a person eighteen (18) years of age or older residing therein. The person serving the papers in person shall fill out a certificate of service indicating the date and manner of service and whether service was offered and accepted or refused. The serving person shall return the endorsed certificate of service to the department, which shall immediately file it in the record.

(d) Service may be made upon any person permitted by law to receive service, including, but not limited to the following:

1. Service shall be made upon an individual within this Commonwealth, other than an unmarried infant or person of unsound mind, by delivering a copy of the administrative summons and petition to such person or, if acceptance is refused, by offering personal delivery to such person, or by delivering a copy of the administrative summons and petition to an agent authorized by appointment or by law to receive service of process for such individuals.

2. Service shall be made upon an unmarried infant or a person of unsound mind by serving the person's resident guardian or committee if there is one (1) known to the initiating party or, if none, by serving either the person's father or mother within this state or, if none, by serving the person within this state having control of such individual. If there are no such persons enumerated above, the

before the department.

(4) Administrative hearings shall be conducted at a site selected by the department, or, if no site is selected by the department, at a site designated by the hearing officer. In determining venue, the hearing officer shall consider the requirements of law, the convenience of the parties, the witnesses and the evidence.

Section 11. The following terms apply to calculation of time:

(1) In computing any period of time prescribed or allowed by order of the hearing officer or by administrative regulation, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. Unless otherwise directed by the hearing officer, when the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation. In the event the last day of the period so computed is a day on which the government of the Commonwealth of Kentucky is fully or partially closed due to weather or natural disaster, the period shall run until the next day which is not such a day of closing, a Saturday, a Sunday or a legal holiday. Legal holidays shall be defined as state holidays designated as such by the Commonwealth of Kentucky.

(2) When by administrative regulation or by order of the hearing officer an act is required or allowed to be done by a specified time, the hearing officer may, before the specified time expires order the period enlarged or, may upon motion made after the specified period expires, permit the act to be done where the failure to act was the result of excusable neglect. The hearing officer may not enlarge or reduce a time frame established by statute.

(3) Whenever a party has the right or is required to do some act or take some proceeding within a period prescribed by order of the hearing officer or by administrative regulation after the service of a notice or other paper upon the party by mail, three (3) days shall be added to the prescribed period. This provision shall not apply to the service of administrative summons, notices and petitions by mail.

Section 12. The following terms shall govern waivers:

(1) Any person granted a procedural right under this administrative regulation or KRS Chapter 13B may voluntarily, knowingly and expressly waive such a right on the record orally or in a signed writing.

(2) A failure by any party to object in a timely manner, in writing, to a violation of a procedural right granted herein shall be deemed a waiver of such right. An objection shall be timely when raised contemporaneously with the event which precipitates the objection or when raised at the time the party, through reasonable diligence, should have discovered the violation of the procedural right.

Section 13. Prehearing conferences and orders shall be governed by the following terms:

(1) A hearing officer, upon the motion of any party, or upon the hearing officer's own initiative, may hold a prehearing conference in any administrative action assigned to him to consider any matter set forth in KRS 13B.070(1).

(2) Prehearing conferences may be held by telephone upon agreement of all persons concerned. The persons to be involved in the telephonic conference shall place the conference call to the hearing officer.

(3) Any prehearing conference in which the hearing officer will hear or rule on motions, objections, or hear argument on or make intermediate rulings shall be recorded and made part of the record.

(4) A hearing officer may order a settlement conference to facilitate settlement discussions. The hearing officer assigned to the administrative action shall not be present during the course of a

settlement conference in that administrative action. No statements or admissions made at the settlement conference for the purpose of settlement negotiations shall be admitted in evidence at a formal administrative hearing nor be used by the hearing officer in making any report and recommendation to the department head. To facilitate the settlement conference, the hearing officer may order:

(a) That expedited discovery be had before the settlement conference;

(b) That the parties or their representatives appear at the settlement conference with settlement authority;

(c) That any party produce witnesses, documents or other discovery at the settlement conference.

(5) The hearing officer shall file a prehearing conference order in compliance with KRS 13B.070(2) after each prehearing conference which sets forth the date, place and attendees of the prehearing conference and sets out any rulings made by the hearing officer at the prehearing conference.

Section 14. Discovery shall only be granted as follows:

(1) No fewer than five (5) days before the hearing and within twenty (20) days of service of the notice required under this administrative regulation, the parties shall produce, file and serve on every other party the following information:

(a) The name, address, and telephone number of each witness whom the disclosing party expects to call at the hearing, with a designation of the subject matter of which each witness might be called to testify.

(b) The name and address of each person whom the party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to the proceeding and the nature of the knowledge or information each such individual is believed to possess.

(c) The name and address of each person who has given statements, whether written or recorded, signed or unsigned, regarding matters relevant to the petition, and the custodian of the copies of those statements.

(d) The name and address of each person whom the disclosing party expects to call as an expert witness at the hearing, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert in connection with the action.

(e) The existence, location, custodian, and general description of any tangible evidence or relevant documents that the disclosing party plans to use at the hearing.

(f) A list of the documents or, in the case of voluminous documentary information, a list of the categories of documents, known by a party to exist, whether or not in the party's possession, custody or control and which that party believes may be relevant to the subject matter of the proceeding and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the date(s) when those documents will be or have been made available for inspection and copying. Unless good cause is shown for not doing so, a copy of each document listed shall be served with the list. If the listing party does not produce a listed document, the party shall indicate the name and address of the custodian of the document not produced. Whenever possible, a party who produces documents for inspection shall produce them in the same form they are kept in the ordinary course of business.

(g) The department shall separately identify and produce for examination and copying all exculpatory information in the department's possession, or if unable to produce that evidence, the department shall give the location, custodian and general description of the exculpatory evidence.

(h) In lieu of paragraphs (b), (c), (e) and (f) of this subsection, the department shall be permitted to make all of its files, excepting

closer than twelve (12) pitch. All written motions filed with the department which are longer than fifteen (15) pages in length shall contain an introduction, a table of contents and authorities, an argument and a conclusion section in which the filing person asks for specific relief. Failure to comply with the requirements of this subsection may be grounds for denying a motion.

(4) Any party making a motion may move for oral argument before the hearing officer on that motion. If the hearing officer grants oral argument on the motion, he shall record the oral argument and make the recording part of the record.

(5) If a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the responding party may move for a more definite statement before filing a responsive pleading. The motion for more definite statement shall detail the defects complained of and shall set forth the details desired and explain how the details desired cannot be reasonably understood from the pleading. A hearing officer may on his own initiative require a party to file in the record a more definite statement of his allegations, claims, defenses and requested relief.

(6) If the hearing officer grants a motion for a more definite statement, the nonmoving party shall file an amended pleading setting forth the claims in the original pleading more definitely within ten (10) days of the hearing officer's order, or within such time as the hearing officer may order. If the nonmoving party does not timely file an amended pleading, the hearing officer may, upon motion, strike the pleading to which the motion was directed or make such order as the hearing officer deems just.

(7) After the time for filing any responsive pleading has passed, but within such time as not to delay a formal administrative hearing, any party may move for a recommendation on the pleadings. If, on such motion, matters outside the pleadings are presented to the hearing officer, the hearing officer shall treat and determine the motion as one for summary disposition. If no response has been filed to the department's complaint within the allotted time for doing same, the department may apply to the hearing officer, or directly to the commissioner or commissioner's designee for entry of the relief sought by default of the respondent or respondents. Pursuant to such application or motion for a final order by default, the final order containing the relief sought by the department shall be entered.

(8) At any time after an administrative action commences, a party may move for summary disposition of a claim in his favor. In moving for summary disposition, the moving party shall support any factual allegations with affidavits or citations to deposition testimony, answers to interrogatories, responses to requests to admit, documents or with other citations to the record.

(9) A hearing officer may grant a motion for summary disposition and recommend the commissioner or commissioner's designee rule in the moving party's favor if the hearing officer finds that there is no genuine dispute as to any issue of material fact and the moving party is entitled to a summary disposition as a matter of law.

(10) If the hearing officer grants a motion for summary disposition in part, the hearing officer shall, as part of his order granting summary disposition in part, set forth all facts that are not genuinely disputed. These facts shall be established for the purpose of any subsequent proceedings in the administrative action. Following a partial summary disposition, the hearing officer shall order such further proceedings as are appropriate.

(11) Motions for postponements and continuances shall be granted upon good cause shown or written agreement of the parties. No motion for a postponement shall be granted if made within two (2) days of a prehearing conference or ten (10) days of an administrative hearing, unless compelling cause is shown therefor. All motions for a postponement shall be in writing and filed with the department, and shall be served upon all other parties to the administrative action.

(12) In the event that a party is prejudiced by some event at a hearing or subjected to some unfair disadvantage, and the hearing officer is of the opinion that some relief is warranted, the hearing

officer may consider the granting of a continuance to remedy the harm or damage to the party. Such remedy of a continuance shall be preferred, if warranted, over other possible remedies. However, the hearing officer shall also give due regard to avoiding unnecessary delays.

Section 18. Immediate review of nondispositive rulings may be obtained pursuant to the following terms:

(1) At any time during the course of an administrative action, a party may move the hearing officer for leave to appeal any nondispositive ruling by the hearing officer to the commissioner or commissioner's designee for immediate review. The hearing officer may grant the motion upon a showing that the moving party's rights have been unduly prejudiced by the hearing officer's ruling, that the ruling will materially and adversely affect the presentation of the party's case before the hearing officer, and that the party does not otherwise have an adequate remedy in filing exceptions with the commissioner, or appeal to a court of law.

(2) If the hearing officer grants a motion for immediate review, the hearing officer shall reduce his ruling to writing, stay the administrative action, certify his ruling to the commissioner under this section and set an expedited briefing schedule for the parties. At the conclusion of the briefing schedule, the hearing officer shall cause the ruling and the briefs to be transmitted to the commissioner for review. The commissioner shall thereafter consider the matter and issue a ruling within a reasonable time period.

Section 19. Relief by or from default may be obtained pursuant to the following terms:

(1) If a party fails to timely comply with an order of a hearing officer or a requirement of this administrative regulation, the hearing officer shall file an order directing the noncomplying party to show cause why the hearing officer should not deem that party to have waived his right to an administrative hearing and why the hearing officer should not immediately recommend the commissioner enter an order adverse to the party. If the noncomplying party does not satisfy the show cause order as required, the hearing officer may recommend the commissioner enter a final order in conformity with the relief requested by the opposing party in the administrative action.

(2) If a party fails to appear at a formal administrative hearing, the hearing officer may deem that party to have waived his right to a formal administrative hearing and may immediately recommend the commissioner enter a final order in conformity with the relief requested in the appropriate pleadings, or may proceed without the defaulting party.

(3) Upon a party's failure to timely comply with a hearing officer's order, the hearing officer may recommend the commissioner grant any relief to which the opposing party is entitled. Upon a party's failure to appear at a formal administrative hearing, the hearing officer shall recommend the commissioner grant the relief requested in the appropriate pleading.

(4) A hearing officer may, before the time for filing exceptions with the commissioner has run, set aside a recommendation by default under this section for good cause shown.

Section 20. The burden of proof and going forward shall be assigned to the parties as follows:

(1) The party proposing the department take action or grant a benefit shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion to show the propriety of the department action or entitlement to the benefit sought.

(2) The party asserting an affirmative defense shall have the burden of going forward and the ultimate burden of persuasion to establish that defense.

(3) The ultimate burden of persuasion in all administrative actions shall be met by a preponderance of substantial evidence in the record.

need not notify the parties to the administrative action that they must retrieve their exhibits by a date certain or risk having them discarded.

Section 23. The following terms shall apply to posthearing procedures, exceptions, and jurisdiction:

(1) At the conclusion of an administrative hearing, the hearing officer may, within his discretion, order the parties to submit posthearing memoranda or draft recommended orders for the commissioner. If the hearing officer orders such filings, he may allow response times for each side. The hearing officer may in his discretion hear oral argument on posthearing filings. The record of the formal administrative hearing shall not close until after the time has run for all posthearing filings.

(2) As soon as practicable after the conclusion of the administrative hearing, the hearing officer shall file an order that memorializes the time, place and duration of the hearing of the administrative action and recites appearances by counsel and parties. The hearing officer shall order at the close of the hearing whether the hearing will be transcribed, and shall set this forth in the posthearing order. The posthearing order shall set a date for the final close of the record.

(3) Within five (5) days after the posthearing order is filed, or the transcript of the hearing is received by the department if a hearing officer orders a transcript, the department shall compile the official record, as defined in KRS 13B.130, and shall transmit a dated, certified copy of the record to the hearing officer. The hearing officer shall file a recommended order within sixty (60) days of the record's certified date.

(4) Any party filing exceptions to a hearing officer's recommended order as provided for in KRS 13B.110(4) shall file with their exceptions a draft final order for the commissioner. The excepting party's draft final order shall set out the relief the party requests in its exceptions. The party filing exceptions shall serve a copy on the hearing officer.

(5) The hearing officer shall retain jurisdiction over the administrative action until the time for filing exceptions under KRS 13B.110(4) has run. After that time, the administrative action shall be submitted to and within the sole jurisdiction of the commissioner.

(6) Administrative actions which have been on the docket of the department for a period of one (1) year without any activity shall be dismissed, with prejudice, for failure to prosecute unless there is good cause shown why they should not be dismissed. Once per year the department or the hearing officer shall determine all administrative action in which no activity has been taken for one (1) year or more. Thereafter, the hearing officer (or department as applicable) shall file an order directing the party commencing the administrative action to show cause why the administrative action should not be dismissed. If the commencing party does not show good cause why the administrative action should not be dismissed, the hearing officer (or department as applicable) shall recommend that the commissioner dismiss the administrative action.

Section 24. Within sixty (60) days of the entry of a final judgment by a court of law resolving an appeal of a final order by the commissioner, the party prevailing in the appeal shall file with the department in the original administrative action a report notifying the department of the court's judgment. The reporting party shall attach to the report a copy of the court's judgment and shall recommend in the report actions to be taken to comply with the final judgment, along with a tendered final order implementing those actions.

Section 25. The following procedures shall apply when the Commissioner of the Department of Financial Institutions elects to enter a summary order to cease and desist or to suspend exemptions from registration or to suspend registrations or some similar summary order pursuant to the Securities Act of Kentucky, KRS Chapter 292.

(1) The commissioner may at any time enter a summary order to cease and desist or to suspend exemptions from registration or to

suspend registrations or some similar summary order pursuant to the Securities Act of Kentucky, KRS Chapter 292 when in his sole discretion the facts and circumstances warrant such action.

(2) A summary order shall be utilized whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Securities Act of Kentucky, KRS Chapter 292, or any administrative regulation or order thereunder and such determination shall be within the sole discretion of the commissioner.

(3) The summary order shall be served upon the respondents as soon as practicable after entry.

(4) The respondents may request a hearing on the issue of whether a summary order is warranted in the matter pursuant to the notice of right to hearing and terms in the summary order for such a request.

(5) If a hearing is requested pursuant to this section, the matter shall be heard as soon as practicable.

(6) The matter may be heard by the commissioner, the hearing officer, or the commissioner's designee, as applicable.

(7) During the pendency of a matter in which a summary order has been entered, the commissioner or the commissioner's designee, as applicable, shall in no way be restricted from continuing to investigate the matter pursuant to KRS 292.460 nor shall he be under any duty to notify the respondents of the information the investigation reveals or any other details of the investigation.

(8) A hearing conducted pursuant to this section of this administrative regulation shall not preclude the respondents from receiving a complete hearing on all issues at some later date nor shall it prevent the department from confronting all issues at such later date.

(9) A hearing conducted pursuant to this section of this administrative regulation shall be solely on the issue of whether a summary order is warranted in the proceedings.

(10) In a matter in which a summary order has been entered, the respondents shall be bound by the terms of the summary order until it is vacated or modified by the commissioner.

(11) The entry of a summary order shall not in any other way limit the powers of the commissioner including the power to enter additional orders in the matter or to seek injunctive relief pursuant to KRS 292.470.

(12) In the event the commissioner discovers that violations are more widespread and involve more individuals and entities than originally known by the commissioner to exist, he shall in no way be precluded from expanding the matter in scope, including the amendment of an existing summary order to reflect additional discovered facts.

(13) In the event that pursuant to a hearing respondents convince the commissioner or the commissioner's designee, as applicable, to vacate or modify the summary order, the commissioner or the commissioner's designee, as applicable, is not precluded from causing the department to prosecute the case to its conclusion through other sections of this administrative regulation.

(14) The commissioner, his designated hearing officer, or the commissioner's designee, as applicable, may from time to time make, enter and amend any orders that are necessary or beneficial in conducting proceedings pursuant to this section of this administrative regulation.

Section 26. This hearing procedures administrative regulation was written for proceedings brought pursuant to the Securities Act of Kentucky, KRS Chapter 292 and are only applicable to such proceedings. These hearing and hearing related procedures shall not apply to any actions brought pursuant to KRS Chapter 287 (Banks and Trust Companies), KRS Chapter 288 (Consumer Loans), KRS Chapter 289 (Savings and Loan Associations), KRS Chapter 290 (Credit Unions), KRS Chapter 291 (Industrial Loan Corporations), KRS Chapter 294 (Mortgage Loan Companies), KRS Chapter 366 (Sale of Checks), KRS Chapter 368 (Check Cashers), and any

must be treated the same under the law.

**PUBLIC PROTECTION AND REGULATION CABINET
Department of Housing, Buildings and Construction
Office of the State Fire Marshal
(New Administrative Regulation)**

815 KAR 25:040. Fire safety requirements in manufactured and mobile homes.

RELATES TO: KRS 227.550 to 227.660

STATUTORY AUTHORITY: KRS 227.555

NECESSITY, FUNCTION, AND CONFORMITY: The State Fire Marshal is required by KRS 227.555 to adopt administrative regulations requiring the owners of manufactured and mobile home parks defined by KRS 219.320 to notify the owners of homes in their park that smoke detectors and two (2) means of egress are required in manufactured and mobile homes. This administrative regulation is necessary to implement the statute and specify the type, size and location of the notice.

Section 1. (1) Each manufactured and mobile home park licensed by the Cabinet for Health Services shall post official notice of a homeowner's responsibility for the manufactured or mobile home occupied by the owner or others. The notice shall read as follows:

(a) Each homeowner shall maintain at least one (1) working smoke detector located inside the home, near the bedroom areas on each floor level to provide early warning in the event of fire; and

(b) Each homeowner shall maintain at least two (2) operable and unobstructed doors to serve as alternate escape routes in the event of fire or other emergency; and

(c) The failure of a homeowner to comply with the smoke detector and door requirements may subject the owner to a fine pursuant to KRS 534.040.

(2) The county court clerk shall maintain a typed eleven (11) inch by fourteen (14) inch poster in a conspicuous place in the clerk's office providing the notice required by subsection (1) of this section.

Section 2. Posting of Notice. (1) The notice shall be permanently posted outside, along the vehicle path near the business office of the park.

(2) The color of the letters on the notice shall contrast with the background color of the notice. The notice shall also be printed with and on material which will not deteriorate and be of sufficient size to be clearly read by any resident entering the park.

(3) The information on the notice may also be printed in any appropriate legal agreements and publications distributed by the park.

(4) The size of the notice shall be a minimum of eight and one-half (8 1/2) by eleven (11) inches in order to provide an alert to the owners of the homes as to minimum requirements for safe occupancy in the park.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: February 12, 1997

FILED WITH LRC: February 13, 1997 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, March 27, 1997 at 10 a.m., 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 March 20, 1997, (five working days prior to the hearing) of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A

transcript of the public hearing will not be made unless a written request for a transcript is made 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 the contact person: Judith G. Walden, Office of General Counsel, Department of Housing, Buildings and Construction, The 127 Building, 1047 U.S. 127 South, Frankfort, Kentucky 40601, Telephone: (502) 564-8044, Fax: (502) 564-6799.

REGULATORY IMPACT ANALYSIS

Contact person: Judith G. Walden

(1) Type and number of entities affected: Mobile home park owners and tenants.

(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:

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: The cost of putting up a small sign at each park as notice of the law to the occupants should be negligible.

(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 owner of a manufactured home shall either install or maintain in working condition a smoke detector and not block the doors of the home.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no financial impacts on the department except the cost of mailing a copy of the requirements to each county court clerk after adoption.

1. First year: Cost of mailing; about \$300.

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: No increase or decrease in state or local revenue with implementation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fees from manufactured housing licensing program.

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

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

(b) Kentucky: Statewide

(7) Assessment of alternative methods; reasons why alternatives were rejected: The statute was very specific but the type of sign to be used was at first too big and expensive when it is the occupants who need to be aware.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Safer environment and means of escape in the event of a fire in a mobile home park.

(b) State whether a detrimental effect on environment and public health would 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:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(5) Fees for certification shall not be imposed on department employees or its' agents.

Section 4. Initial Certification. (1) A person who requests certification by the department shall provide documentation that he has complied with a minimum of one (1) of the following requirements:

(a) Completed and received a passing certificate from a department accredited training provider;

(b) Completed and received a passing certificate from a training provider using an EPA model training course, for a training course in the appropriate discipline taken prior to July 1, 1997; or

(c) Qualified for equivalent certification under reciprocity from another state as per conditions indicated in KRS 211.9069(1).

(2) When a training course was completed, or certification by another state for reciprocity qualifications, was obtained prior to July 1, 1995, the person shall provide documentation of the following:

(a) Successful completion of an EPA model or department accredited refresher training course; and

(b) The refresher training course was completed after July 1, 1996.

(3) A person seeking certification shall also provide documentation that he has successfully completed a third-party exam, when required under the specific discipline, and met or exceeded other educational experience identified as follows:

(a) Lead-hazard inspector discipline requires successful completion of an accredited training course for inspectors, and the completion of a third-party exam for the lead hazard inspector discipline. Experience requirements include one (1) of the following:

1. A high school diploma or equivalent; or

2. One (1) year's experience in a profession related to lead, asbestos, environmental remediation work, or building construction.

(b) Lead-hazard risk assessor discipline requires the completion of an accredited training course for inspectors, prior to successful completion of an accredited risk assessor course, and successful completion of a third-party exam, for the lead hazard risk assessor discipline. Experience requirements include one (1) of the following:

1. A bachelor's degree and one (1) year of experience in a profession related to lead, asbestos, environmental remediation work, or building construction;

2. An associate degree and two (2) years of experience in a profession related to lead, asbestos, environmental remediation work, or building construction;

3. Certification as an industrial hygienist, professional engineer, registered architect, or registered sanitarian or certification in another related engineering-health-environmental field (e.g., safety professional, environmental scientist); or

4. A high school diploma (or equivalent), and at least three (3) years of experience in a profession related to lead, asbestos, environmental remediation work, or building construction.

(c) Lead-hazard supervisor discipline requires successful completion of an accredited training course for supervisors, and the completion of a third-party exam, for the lead hazard risk supervisor discipline. Experience requirements include one (1) of the following:

1. One (1) year of experience as a certified lead-hazard abatement worker; or

2. At least two (2) years of experience in a profession related to lead, asbestos, environmental remediation work, or building construction.

(d) Lead-hazard project designer requires successful completion of an accredited training course for supervisors, and the completion of a third-party exam, for the lead hazard supervisor discipline. Experience requirements include one (1) of the following:

1. A bachelor's degree in engineering, architecture, or a related profession, and one (1) year of experience in building construction and design, or a related field; or

2. Four (4) years of experience in building construction and

design, or a related field.

(e) Lead-hazard worker discipline requires successful completion of an accredited training course for workers, but has no additional testing, experience, or education requirements.

(4) Certain documents shall be provided to the department by the applicant as evidence of meeting certification requirements of a specific discipline. These documents are as follows:

(a) Official academic transcripts, as evidence of meeting the educational requirements;

(b) Resumes, letters of reference, or documentation of work experience as evidence of meeting the work experience, requirements; and

(c) Course completion certificates from lead-specific or other related training courses, issued by training providers, as evidence of meeting the training requirements; and

(d) Certified record of the successful passing of a third-party examination.

(5) In order for a lead-hazard company to be certified by the department, the company shall submit a list of department certified employees and their certification numbers. The company shall also provide a notarized affidavit indicating that their employees involved in lead-hazard activities will follow the work practice standards identified in 902 KAR 47:100.

Section 5. Renewal and Recertification Requirements. (1) To maintain certification in a particular discipline, a certified person shall:

(a) Apply to department for recertification sixty (60) days prior to end of the two (2) year certification period;

(b) Provide documentation of successfully completed the appropriate accredited refresher training course and submit a valid copy of the completion certificate; and

(c) Submit the renewal fee, which is the same amount as the initial certification fee, as indicated in Section 6 of this administrative regulation.

(2) When the person has failed to apply for recertification or failed to complete the refresher course during the two (2) year certification period, recertification shall be denied.

(3) In order for the person to regain certification he shall be required to:

(a) Complete and pass the basic discipline course identified in Section 11 of 902 KAR 47:090; and

(b) Shall apply for certification under the procedures specified in Sections 3 and 4 of this administrative regulation.

(4) In order for a lead hazard company to maintain certification, as a lead hazard company, it shall do the following:

a. Pay the certification fee; and

b. Submit a current notarized affidavit certifying that their employees involved in lead-hazard activities have had additional training, and continue to conform with the work practice standards identified in KAR 47:100.

Section 6. Fee Schedule. The fee for application for certification shall be made to the department in the amount for the particular discipline as indicated below:

Fee Schedule

Discipline	Application Fee (Due upon application for initial and renewal of certification)
Lead Hazard Project Designer	\$300
Lead Hazard Risk Assessor	\$250
Lead Hazard Inspector	\$200
Lead Hazard Supervisor	\$150
Lead Hazard Abatement Worker	\$75
Lead Hazard Company	\$50

implemented: See (b) below.

(b) Kentucky: Should have positive impact on local/state economy relative to goods and services common to residential construction/remodelling/renovation. If out-of-state certified individuals/firms provide service then local revenues from lodging/meals/etc., also would increase. Negative impact should be limited to owners of properties with lead hazards present, and the costs of detection/abatement activities. Once abated, however, property value increase should balance abatement cost.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Do nothing alternative not feasible, as statutes mandate regulatory program; and, do-nothing allows lead poisoning hazards to remain a threat to public health. Delay or minimal program alternatives - not feasible, as statute sets timetable for implementation in one instance, and federal mandates establish acceptable state program to avoid federal takeover of state lead activities.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: As program is statewide, all areas should reap public health and environmental benefits. The detection and removal of lead hazards from target housing and child-occupied structures will prevent current and future generations of children (and their parents) from the damage of lead poisoning. Requiring providers of lead-hazard detection and abatement services to meet standards of training and competency, and be subject to continuing education and performance scrutiny, assures the property owner that work will be properly done.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not implemented, lead poisoning hazards for small children will remain which can result in permanent brain damage as well as other physical and mental effects. As to work being performed by certified providers, if work is not done properly it can result in a major increase in lead contamination and exposure to children and adults.

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

(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:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: Companion regulation to 902 KAR 47:090 and 47:100.

(11) TIERING: Is tiering applied? Yes. As different levels of certification require different degrees of education, training and experience this regulation can be considered tiered.

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. May relate to any local government which owns/operates target housing and/or child-occupied facilities.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Would affect only those local governments which own/operate target housing and/or child-occupied facilities, and only that part of local government involved in the management/maintenance of such structures.

3. State the aspect or service of local government to which this administrative regulation relates. Rental of target housing units and operation of child-occupied facilities and their maintenance.

4. How does this administrative regulation affect the local government or any service it provides. Will require that lead hazards in the above structures be addressed only by properly trained and certified personnel (either local government staff or third party providers), and any mitigation or abatement work performed in compliance with state and federal regulations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 745; *Note that federal intent is that states and indian tribes establish their own lead programs and seek federal authorization to administer same; otherwise, federal EPA will enforce rules in states and tribal lands after August 31, 1998.

2. State compliance standards. KRS 211.9063 through 211.9075; and the proposed 902 KAR 47:080, 47:090, and 47:100. Note: The above statutes and the proposed regulations have been drafted with federal EPA oversight, with the intent to secure federal authorization for Kentucky's Lead Program.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR Part 745.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 902 KAR 47:080, 47:090, and 47:100 have been reviewed by Region IV federal EPA staff and edited to conform with federal mandates, so that application for authorization of the state program may proceed.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. State standards will mirror federal standards.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Environmental Health and Community Safety (New Administrative regulation)

902 KAR 47:090. Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection and abatement.

RELATES TO: KRS 211.900 through 211.905, 211.990, 211.994, 217.801

STATUTORY AUTHORITY: KRS 211.090, 211.180, 211.9061 through 211.9079, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.9065 authorizes the Department for Public Health to promulgate administrative regulations relating to the accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection or lead-hazard abatement activities in target housing or child-occupied facilities.

Section 1. Definitions. As used in this administrative regulation:

(1) "Accredited training provider" means a training provider that has been accredited by the department to provide training for individuals engaged in lead-hazard detection and abatement activities.

(2) "Certificate of accreditation" means a document issued by the department, or under the authority of the department, affirming that a training provider is approved to provide training for individuals who perform lead-hazard detection and abatement.

(3) "Certified" means that a person engaged in lead-hazard detection or abatement activities has successfully completed the required training through an accredited training provider or qualified under other department recognized training, completed other requirements established by the department, and has been issued a document of certification.

(4) The definition of "child-occupied facility" shall be governed by KRS 211.9061.

(5) "Course agenda" means an outline of the key topics to be

department shall approve or disapprove an applicant for accreditation no more than sixty (60) calendar days after receipt. If needed, during that time period the department shall request clarification or additional information from the applicant.

(2) In the case of acceptance, written correspondence indicating approval, along with the accreditation certificates for each training program shall be sent to the applicant or verbal confirmation of acceptance, shall be provided within the sixty (60) day time period.

(3) In the case of disapproval, written correspondence indicating the reason for disapproval shall be sent to the applicant or verbal indication of nonacceptance, shall be provided within the sixty (60) day time period. At which time the applicant may correct the unapproved conditions and reapply for accreditation if desired.

(4) A training provider may apply for accreditation to offer courses or refresher courses in as many disciplines as desired and seek accreditation for additional courses at any time.

Section 5. Additional Requirements of the Training Provider. (1) The training provider shall ensure the availability of and provide adequate facilities for the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(2) The provider shall ensure that a course test is given for each course offered at its completion, and if applicable, a hands-on skill assessment. Each individual shall successfully complete the hands-on skills assessment, and receive a passing score of seventy (70) percentile on the course test in order to pass the course and receive a course completion certificate.

(3) The provider shall also ensure the issuance of the unique course completion certificate to each individual who passes the training course. The course completion certificate shall include the following:

- (a) Name, unique identification number, and address of the individual;
- (b) Title of the particular course that the individual has completed;
- (c) Date of course completion or test passage; and
- (d) Name, address, and telephone number of the training provider.

Section 6. Requirement of a Training Manager. (1) For a training provider to obtain accreditation to offer lead-hazard training courses, he shall employ a training manager who has one (1) of the following qualifications:

- (a) Two (2) or more years of experience, education, or training in teaching adults;
- (b) A bachelor or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management; or
- (c) Two (2) or more years experience managing an occupational health and safety training program specializing in environmental hazards.

(2) In addition, the training manager shall have experience in the construction industry, in areas concerning lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

Section 7. Responsibilities of the Training Manager. (1) It shall be the responsibility of the training manager to review the qualifications of and to designate a qualified principal instructor to organize the course and oversee the teaching of all course materials. The qualifications of the principal instructor are as follows:

- (a) Demonstrated experience, education, or training in teaching workers or adults; and
- (b) Successfully completed at least sixteen (16) hours of any EPA-model, or department accredited lead-specific training; and
- (c) Demonstrated experience, education, or training in lead or

asbestos abatement, painting, carpentry, renovating, remodeling, occupational safety and health, or industrial hygiene.

(2) The training manager shall also have the following responsibilities:

(a) Designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course; and

(b) Shall also be responsible for conducting the following activities which concern course activities and course evaluation:

1. Maintaining the validity and integrity of the hands-on skills assessment to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics;

2. Maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics; and

3. Insuring that the course test was developed in accordance with the course test blueprint submitted with the training accreditation application.

(c) The training manager shall also develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

1. Procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

2. Procedures for the training managers annual review of principal instructor competency.

(d) The training manager shall also be responsible for ensuring that the training provider complies at all times with all of the requirements of this administrative regulation.

Section 8. Supportive Documentation. (1) Certain documents shall be recognized by the department as evidence that the training managers and principal instructors have the education, work experience, training requirements or experience.

(2) The supportive documentation is not required to be submitted when applying for accreditation, but shall be retained by the training provider and shall be provided to the department upon request. Those documents include the following:

(a) Official academic transcripts, as evidence of meeting the education requirements; and

(b) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirement; and

(c) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

Section 9. Inspection Requirements. (1) The training provider shall allow representatives of the department to conduct unannounced on-site audits and monitoring of the training programs.

(2) The department shall if needed, use other indirect methods to verify the documentation for accreditation.

Section 10. Knowledge of Work Practice Standards. (1) The training provider shall offer courses which teach the work practice standards established by this administrative regulation for conducting lead-hazard activities, other related standards developed by EPA, and other federal and state agencies.

(2) These standards shall be taught in the appropriate courses to provide trainees with knowledge needed to perform the lead-hazard evaluation and abatement activities they are responsible for conducting.

Section 11. Requirements for Specific Program Disciplines. The training provider shall provide training courses that meet the following training hour requirements:

- (1) The lead-hazard inspector course shall last a minimum of

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- (b) A list of courses for which they are applying for reaccreditation;
- (c) A description of any changes or updates to the training facility or equipment since the last application was approved; and
- (d) A statement signed by the program manager stating:

1. The training provider complies at all times with all accreditation requirements indicated in this administrative regulation, as applicable; and

2. The recordkeeping and reporting requirements of this administrative regulation shall be followed.

(5) Upon request, the training provider shall allow the department to audit the training provider to verify the contents of the application for reaccreditation.

(6) The documentation submitted for reaccreditation shall be reviewed and either approved or disapproved under procedures indicated in Section 4(1) through (3) of this administrative regulation.

(7) When the training provider has failed to apply for reaccreditation for the course(s) during the two (2) year certification period, it shall be required to become accredited for the training course(s), under the requirements, procedures and fee schedule, specified in Section 3 of this administrative regulation.

Section 14. Recordkeeping Requirements. (1) An accredited training provider shall maintain, update annually, and make available to the department upon request the following records:

(a) All documents specified in Section 8 of this administrative regulation that demonstrate the qualifications of the training manager and principal instructors;

(b) Current curriculum, course materials, and documents reflecting any changes made to these materials;

(c) The course test blueprint;

(d) Information regarding how the hands-on assessment is conducted, including:

1. Who conducts the assessment;
2. How the skills are graded;
3. What facilities are used; and
4. The pass or fail rate.

(e) The quality control plan;

(f) Results of the student's hands-on skills assessments, course tests, and a record of each student's course completion certification; and

(g) Any other material not listed in paragraphs (a) through (f) of this subsection that was submitted to the department when provider applied for accreditation.

(2) The training provider shall notify the department in writing within thirty (30) days of an address change or transference of the records to the new training providers address.

(3) The training provider shall retain the documentation for a minimum of three (3) years and six (6) months at the specified location(s).

Section 15. Notice to Suspend, Revoke, Deny or Modify Accreditation. (1) The department shall immediately suspend, revoke, deny or modify the accreditation for any training program, when the department finds that the training provider fails to comply with the requirements for initial accreditation and continued accreditation in this administrative regulation.

(2) When the department finds cause to suspend, revoke, deny or modify the accreditation of the training provider, it shall notify the affected entity in writing of the following:

(a) The legal and factual basis for the suspension, revocation, denial, or modification;

(b) The commencement date and duration of the suspension, revocation, or modification;

(c) Action, if any, which the affected certified person may take to avoid suspension, revocation, denial or modification to certification in the future;

(d) The opportunity and method for requesting a hearing prior to final department action; and

(e) Any additional information, as appropriate, which the department may provide.

Section 16. Administrative Hearings. All administrative hearings shall be conducted in accordance with 902 KAR 1:400.

RICE C. LEACH, MD, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: February 7, 1997

FILED WITH LRC: February 10, 1997 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held March 21, 1997 at 9 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Department for Public Health, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by March 14, 1997. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notice of intent to attend the public hearing or written comments to: Mae B. Lewis, Administrative Specialist Principal, Cabinet for Health Services, Office of the Counsel, 275 E. Main Street - 4th Floor West, Frankfort, Kentucky 40621, Telephone: (505) 564-7900, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: David Nichols, Manager

(1) Type and number of entities affected: 20-30 training providers (in-state and out-of-state) for lead-hazard detection and abatement services training.

(2) Direct and indirect costs or savings 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 comment received: As regulation applies statewide, training providers currently engaged in similar training activities relative to construction, renovation and remodeling on a local, regional or statewide basis, there should experience no change for in-state providers. For out-of-state providers there would be no impact.

(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: For in-state individuals and firms costs will increase for those who choose to become accredited as training providers. Cost increases involve being accredited to offer training in approved discipline levels (actual costs will vary depending on level of training, training site location, etc.), and accreditation cost for initial application and annual renewal (based on discipline levels of accreditation desired). For out-of-state training providers, accreditation costs would also apply. Actual cost to an individual/firm to attain and maintain accreditation as trainers and conduct business on an annual basis, is unknown due to startup nature of the program and the highly variable nature of their specific 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: Reporting and paperwork will increase for those individuals and firms who choose to become training providers seeking accreditation. Training curricula (federal EPA approved), course content documentation, initial application for accreditation form, and application for annual renewal, will be generated by all accreditation recipients; costs will only increase for those individuals and firms who desire accreditation as training providers; as only accredited training providers can provide lead-

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Environmental Health and Community Safety
(New Administrative Regulation)

902 KAR 47:100. Permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement.

RELATES TO: KRS 211.190, 211.900 through 211.905, 211.994, 217.801

STATUTORY AUTHORITY: KRS 211.090, 211.180, 211.9061 through 211.9079, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources, establishes and creates the Cabinet for Health Services, changes the name of the Department for Health Services to Department for Public Health, and places the Department for Public Health and its programs under the Cabinet for Health Services. KRS 211.9067 and KRS 211.9075 authorizes the Department for Public Health to promulgate administrative regulations relating to the establishment of permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement activities in target housing or child-occupied facilities.

Section 1. Definitions. As used in this regulation:

(1) "Abatement permit" means a permit issued by the department or its representative to a "person" who intends to conduct lead-hazard abatement in target housing or child occupied facilities.

(2) "Abatement permit holder" means a person who has been issued a permit to conduct abatement activities, and who is "certified" by the department to perform the activities.

(3) "Action lead level in paint" means a level of lead in paint or similar coating equal to or in excess of one (1.0) milligrams per square centimeter or more than five-tenths (0.5) percent by weight.

(4) "Adequate quality control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples; including dust, soil, and paint chips. Adequate quality control also includes provision for representative sampling.

(5) "Certified" means that a person engaged in lead-hazard detection or abatement activities has successfully completed the required training through an accredited training provider, or qualified under other department recognized training, completed other requirements established by the department, and has been issued a document of certification.

(6) The definition "child-occupied facility" shall be governed by KRS 211.9061.

(7) "Clearance level" means an assigned value that indicates the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

(8) "Common area" means a portion of a building that is generally accessible to the occupants. Such an area may be hallways, stairways, laundry and recreational rooms, playgrounds, community center, garages, and boundary fences.

(9) "Component or building component" means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location.

(10) "Containment" means a process to protect workers and the environment by controlling exposures to lead-contaminated dust and debris created during an abatement.

(11) "Department" means the Department for Public Health.

(12) "Deteriorated paint" means paint that is cracking, flaking, chipping, peeling or separating from the substrate of a building component.

(13) "Distinct painting history" means the application history, as indicated by its visual appearance or a record of application, over

time, of paint or other surface coatings to a component or room.

(14) "Documented methodologies" means methods or protocols used to sample for the presence of lead in paint, dust, and soil.

(15) "Encapsulant" means a substance that forms a barrier between lead containing paint and the environment, using a liquid-applied coating or an adhesively bonded covering material.

(16) "Encapsulation" means the application of an encapsulant.

(17) "Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate, in order to act as a barrier between the underlying lead containing paint and the environment. This does not include the application of paneling to lead painted surface through the use of a fastening method that does not disturb the underlying lead painted surface.

(18) "EPA" means the U.S. Environmental Protection Agency.

(19) "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-hazards or potential hazards, and the establishment and operation of management and resident educational programs.

(20) "Large scale" means an abatement project with ten (10) or more residential dwellings.

(21) "Lead-contaminated dust" means surface dust that contains an area or mass concentration of lead at or in excess of clearance levels.

(22) "Lead-contaminated soil" means bare soil on residential real property and on the property of a child-occupied facility that contains lead at or in excess of levels identified in EPA regulations and guidelines.

(23) "Lead-hazard" means any condition that causes exposure to lead from lead-contaminated dust, soil, water, or paint that is deteriorated or present in accessible surfaces, friction or impact surfaces, that would result in adverse human health effects.

(24) The definition of "lead-hazard abatement" is governed by KRS 211.9061.

(25) "Lead-hazard abatement worker" means a person who performs physical lead-hazard abatement activities and is "certified" by the department to perform the activities.

(26) "Lead hazard activities" means in the case of target housing and child-occupied facilities, inspection, screening, risk assessment, and abatement.

(27) The definition of "lead-hazard detection" is governed by KRS 211.9061.

(28) "Lead-hazard inspection" means a surface-by-surface examination to determine the presence of lead hazards and the provision of a report explaining the findings.

(29) "Lead-hazard inspector" means a person who performs lead-hazard inspections, collects samples, and is "certified" by the department to perform the activities.

(30) "Lead-hazard project designer" means a person who prepares abatement project plans, reports, occupant protection plans for lead-hazard abatement projects, and is "certified" by the department to perform the activities.

(31) "Lead-hazard risk assessment" means an on-site investigation to determine the existence, nature, severity, location of lead hazards, and the provision of a report by the person or firm conducting the risk assessment, explaining the results of the investigation and options for reducing the potential for lead exposure.

(32) "Lead-hazard risk assessor" means a person who conducts risk assessments in addition to conducting lead-hazard inspections and sample collection, and is "certified" by the department to perform the activities.

(33) "Lead-hazard screen" means a risk assessment activity that involves limited paint and dust or other potential lead-hazard sampling.

(34) "Lead-hazard supervisor" means a person who in addition to supervising lead-hazard abatement activities, prepares abatement

8. Name, address, and telephone number of each laboratory conducting an analysis of collected samples, when applicable;

9. Each testing method, testing device, or sampling procedure employed for paint analysis, including quality control data, and when used the serial number and radioactive materials license number of any x-ray fluorescence (XRF) device;

10. Specific locations of each painted component tested for the presence of lead in paint; and

11. The results of the inspection expressed in terms appropriate to the sampling method used.

(3) A copy of the lead-hazard inspection report shall be maintained by the certified individual for the time period specified in Section 13 of this administrative regulation. In addition, a copy of the inspection report shall be submitted to the department within thirty (30) days after the completion of the inspection.

Section 5. Lead-hazard Screening. (1) Work practice standards and procedures for lead-hazard screening shall be as follows:

(a) A lead-hazard screen shall be conducted only by a person certified by the department as a risk assessor; and

(b) When conducting a lead-hazard screen the risk assessor shall:

1. Collect background information regarding the physical characteristics of the residential dwelling or child-occupied facility, and occupant use patterns that may cause lead exposure to one (1) or more children, age six (6) or under;

2. Conduct a visual inspection of the residential dwelling or child-occupied facility to determine if any deteriorated paint is present, and locate at least two (2) dust sampling locations;

3. Test for the presence of lead on each surface with deteriorated paint, which is determined by using documented methodologies to be in poor condition and to have a distinct painting history;

4. Collect two (2) composite dust samples. One (1) from the floors and the other from the windows, in rooms where one (1) or more children, age six (6) or younger, are most likely to come in contact with dust; and

5. Collect additional samples in multifamily dwellings and child-occupied facilities. Composite dust samples shall be collected from common areas where one (1) or more children, age six (6) or younger, are most likely to come into contact with dust.

(c) All collected paint chip or dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures using the EPA guidelines, identified in Section 3 of this administrative regulation, and shall be analyzed under the conditions indicated in Section 11 of this administrative regulation.

(2) In addition to performing the specified work practices and activities, the risk assessor shall prepare a lead-hazard screen report, which shall include the following information:

(a) The information required in a risk assessment report as specified in Section 6(2)(a) through (o) of this administrative regulation. Additionally, any background information collected pursuant to Section 6(1)(b)2 of this administrative regulation shall be included in hazard screen report; and

(b) Recommendations, when warranted, for a follow-up risk assessment, and when appropriate, any further actions.

(3) A copy of the lead-hazard screen report shall be maintained by the certified individual for the time period specified in Section 13 of this administrative regulation. In addition, a copy of the report will be submitted to the department within thirty (30) days after the completion of the assessment.

Section 6. Lead-hazard Risk Assessments. (1) Work practice standards and procedures for risk assessments shall be as follows:

(a) A risk assessment shall be conducted only by a person certified by the department as a risk assessor; and

(b) When conducting a lead-hazard screen the risk assessor shall:

1. Conduct a visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and review for other potential sources of lead hazards;

2. Collect background information regarding the physical characteristic of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead exposure to one (1) or more children, age six (6) or younger;

3. Examine the following locations and conduct sampling, using EPA and HUD guidelines indicated in Section 3 of this administrative regulation, for presence of lead:

a. Deteriorated paint, which is determined to be in poor condition and to have a distinct painting history; and

b. Other surfaces or sites determined, using documented methodologies, to be a potential lead hazard;

4. Collect in residential dwellings, dust samples (either composite or single-surface samples) from the window and floor in all living areas where one (1) or more children, age six (6) or younger, are most likely to come into contact with dust;

5. Collect additional samples in multi-family dwellings and child-occupied facilities. Window and floor dust samples (either composite or single-surfaces samples) shall be collected in the following locations:

a. Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

b. Other common areas in the building where the risk assessor determines that one (1) or more children, age six (6) or younger, are likely to come into contact with dust;

6. Collect additional samples in child-occupied facilities. Window and floor dust samples (either composite or single-surface samples) shall be collected in each room utilized by one (1) or more children, age six (6) or younger, and in other common areas where the risk assessor determines children, age six (6) or younger, are likely to come in contact with dust;

7. Collect soil samples, to be analyzed for lead concentrations, in the following locations:

a. Exterior play areas where bare soil is present; and

b. Dripline or foundation areas where bare soil is present.

(c) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate quality control procedures; and

(d) Any collected paint chip, dust, or soil samples shall be analyzed accordingly by a recognized laboratory to determine if they contain detectable levels of lead.

(2) In addition to performing the specified work practices and activities, the certified risk assessor shall prepare a risk assessment report which shall include the following information:

(a) Date of assessment;

(b) Address of each building;

(c) Date of construction of buildings;

(d) Apartment numbers (when applicable);

(e) Name, address, and telephone number of each owner of each building;

(f) Name, signature, and certification number of the certified risk assessor conducting the assessment;

(g) Name, address, and telephone number of the firm or individual employing each certified risk assessor, when applicable;

(h) Name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples;

(i) Results of visual inspection;

(j) Testing method and sampling procedure for paint analysis employed;

(k) Specific locations of each painted component tested for the presence of lead; and

(l) All data collected from on-site testing, including quality control data, and when used, the serial number of any XRF device;

2. Paint chips or other painted debris shall not be present in the dripline area or next to the foundation below any exterior surface abated; and

3. When present shall be removed from the site and properly disposed of, according to all applicable federal, state and local requirements.

(7) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each dust sample, with applicable clearance levels for lead in dust as indicated in Section 10 of this administrative regulation. When the residual lead levels in a dust sample exceed the specified clearance levels, all the components represented by the failed sample shall be recleaned and retested until clearance levels are met.

(8) In a multifamily dwelling with similarly constructed and maintained residential unit, random sampling for the purposes of clearance may be conducted provided:

(a) The individuals who abate or clean the residential dwelling do not know which residential dwelling will be selected for the random sample;

(b) A sufficient number of residential dwellings are selected for dust sampling to provide a ninety-five (95) percent level of confidence that no more than five (5) percent or fifty (50) of the residential units (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels; and

(c) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in Sections 8 and 11 of this administrative regulation.

Section 9. Abatement Report. (1) An abatement report shall be prepared by the certified person who prepared the abatement plan. The abatement report shall include the following information:

(a) Start and completion dates of abatement;

(b) The name and addresses of each certified supervisor assigned to the abatement project;

(c) The occupant protection plan prepared pursuant to Section 7(1)(d) and (e) of this administrative regulation.

(d) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing;

(e) The results of clearance testing and all soil analysis (when the applicable) and the name of each recognized laboratory that conducted the analysis; and

(f) The abatement plan results - a detailed written description of the abatement, including abatement methods used, locations of rooms and components where abatement occurred, and reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulation or enclosures.

(2) A copy of the final abatement report shall be maintained by the certified individual or the abatement permit holder for the time period specified in Section 13 of this administrative regulation. In addition, a copy of the report will be submitted to the department within thirty (30) days after the completion of the abatement.

Section 10. Clearance Levels. The following levels are to be used as the clearance dust standards (wipe sampling only) for requirements under this administrative regulation.

Surface	Level (ug/ft2)
Bare and carpeted floors	100
Interior Window Sills	500
Window Troughs	800
Exterior concrete	800

Section 11. Collection and Laboratory Analysis of Samples. Any paint chip, dust, or soil samples collected pursuant to the work practice standards and procedures contained in this administrative

regulation shall be:

(1) Collected by persons certified by the department as an inspector or risk assessor; and

(2) Analyzed by a recognized laboratory that is capable of performing analysis for lead compounds in paint chip, dust, and soil samples.

Section 12. Composite Dust Sampling. Composite dust sampling shall be conducted under the conditions specified in this administrative regulation. When this sampling is conducted, the following conditions shall apply:

(1) Composite dust samples shall consist of at least two (2) sub-samples;

(2) Every component that is being tested shall be included in the sampling; and

(3) Composite dust samples shall not consist of subsamples from more than one (1) type of component.

Section 13. Recordkeeping. All reports or plans required by this administrative regulation shall be maintained by the abatement permit holder or other certified individual who prepared the report for no fewer than three (3) years. The abatement permit holder or certified individual also shall provide copies of these reports to the building owner or other individual who contracted for the services.

Section 14. Abatement Permit Application and Clearance Procedures. (1) A certified person shall submit the following:

(a) Form DFS-355 (01/97) "Lead-hazard Abatement Permit Application" (01/97), which is herein incorporated by reference. This form is on file in the Office of the Commissioner, Department for Public Health, 275 East Main Street, Frankfort, Kentucky 40621, and available for public inspection and copying, Monday through Friday, 8 a.m. to 4:30 p.m.

(b) An abatement plan; and

(c) Fee payment, as indicated in Section 15 of this administrative regulation, submitted in the form of check or money order, to be made payable to the Kentucky State Treasurer.

(2) There shall be a fee adjustment consideration, for local governments as indicated in KRS 211.9067, when a certified employee of local government is performing a lead-hazard abatement activity for that agency. The local government shall provide the department an annual accounting of abatement activities, at least thirty (30) days before July 1 each year, in order for the department to consider the reduction. The adjustment shall also take into consideration programmatic costs, and at minimum the departmental cost to conduct regulatory quality assurance inspections.

(3) On receipt of the application, the appropriate information and fee, the department shall respond according to the time requirements indicated in KRS 211.9063(6).

(4) When the application is approved, the abatement services shall proceed. When an application is not approved a written notification of nonacceptance shall be provided to the applicant. The applicant shall correct the unacceptable conditions of the application, accompanying information, or permit fee, indicated in notification by department before the abatement service is approved. The applicant then shall resubmit the application according to the procedures specified in subsection (1) of this section.

(5) On completion of the abatement project the permit holder shall notify the department of the completion of the abatement services and clearance testing. The department shall conduct a quality assurance inspection of a minimum of ten (10) percent of the abatement jobs for which permits issued, on a random basis. These inspections shall be conducted to determine compliance with state, federal, and local requirements. It is the responsibility of the abatement permit holder to provide the department access to the facility for conducting the quality assurance inspection.

(6) The quality assurance inspection for the department shall be

2. Continuing costs or savings: Program operation beyond startup should stabilize within 2-3 years as certified workforce levels attune to service volume. Fee collection should be sufficient to cover program cost by that time on a break-even basis.

3. Additional factors increasing or decreasing costs: None currently, although future federal mandates may warrant changes.

(b) Reporting and paperwork requirements: Will require setup and maintenance of a database for accredited training providers; certified service providers; status of abatement projects/testing and clearance status; creation of appropriate forms/educational materials; and quarterly/year-end reports to federal EPA on program status. Also will require liaison with surrounding states for reciprocity/enforcement activities.

(4) Assessment of anticipated effect on state and local revenues: For agency, should be revenue neutral; for other state/local agencies which collect taxes or fees for construction activities or sales of materials, it may have a positive impact.

(5) Source if revenue to be used for implementation and enforcement of administrative regulation: Startup source of funding is by federal grant, with ongoing funding by 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) Geographical area in which administrative regulation will be implemented: See (b) below.

(b) Kentucky: Should have positive impact on local/state economy relative to goods and services common to residential construction/remodelling/renovation. If out-of-state certified individuals/firms provide service then local revenues from lodging/meals/etc., also would increase. Negative impact should be limited to owners of properties with lead hazards present, and the costs of detection/abatement activities. Once abated, however, property value increase should balance abatement cost.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Do nothing alternative not feasible, as statutes mandate regulatory program; and, do-nothing allows lead poisoning hazards to remain a threat to public health. Delay or minimal program alternatives - not feasible, as statute sets timetable for implementation in one instance, and federal mandates establish acceptable state program to avoid federal takeover of state lead activities.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: As program is statewide, all areas should reap public health and environmental benefits. The detection and removal of lead hazards from target housing and child-occupied structures will prevent current and future generations of children (and their parents) from the damage of lead poisoning. Requiring providers of lead-hazard detection and abatement services to meet standards of training and competency, and be subject to continuing education and performance scrutiny, assures the property owner that work will be properly done.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If not implemented, lead poisoning hazards for small children will remain which can result in permanent brain damage as well as other physical and mental effects. As to work being performed by certified providers, if work is not done properly it can result in a major increase in lead contamination and exposure to children and adults.

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

(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:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: Companion regulation to 902 KAR 47:080 and 47:090.

(11) TIERING: Is tiering applied? No. Tiering was not used because performance standards must apply equally statewide for the same work. There is some inherent tiering within the standards relative to clearance levels after abatement work is done, and between lead abated situations and lead safe.

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. May relate to any local government which owns/operates target housing and/or child-occupied facilities.

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Would affect only those local governments which own/operate target housing and/or child-occupied facilities, and only that part of local government involved in the management/maintenance of such structures.

3. State the aspect or service of local government to which this administrative regulation relates. Rental of target housing units and operation of child-occupied facilities and their maintenance.

4. How does this administrative regulation affect the local government or any service it provides. Will require that lead hazards in the above structures be addressed only by properly trained and certified personnel (either local government staff or third party providers), and any mitigation or abatement work performed in compliance with state and federal regulations.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 40 CFR Part 745; *Note that federal intent is that states and indian tribes establish their own lead programs and seek federal authorization to administer same; otherwise, federal EPA will enforce rules in states and tribal lands after August 31, 1998.

2. State compliance standards. KRS 211.9063 through 211.9075; and the proposed 902 KAR 47:080, 47:090, and 47:100. Note: The above statutes and the proposed regulations have been drafted with federal EPA oversight, with the intent to secure federal authorization for Kentucky's Lead Program.

3. Minimum or uniform standards contained in the federal mandate. 40 CFR Part 745.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? 902 KAR 47:080, 47:090, and 47:100 have been reviewed by Region IV federal EPA staff and edited to conform with federal mandates, so that application for authorization of the state program may proceed.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. State standards will mirror federal standards.

CABINET FOR FAMILIES AND CHILDREN Division of Program Management Department for Social Services (New Administrative Regulation)

905 KAR 5:080. Certification of assisted living residences.

RELATES TO: KRS Chapter 13B, 209.200

STATUTORY AUTHORITY: KRS 194.050, 209.200, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 209.200

authorizes the cabinet to establish requirements for the voluntary certification of an assisted living residence. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Social Services and the Adult Protection Program under the Cabinet for Families and Children. This

compliance with this administrative regulation, the cabinet shall notify the applicant of the findings within ten (10) days after the compliance review is completed.

(2) If the cabinet or designee finds that the applicant is not in compliance with this administrative regulation, the cabinet shall forward a notice of noncompliance to the applicant. The notice shall be delivered by certified mail, return receipt requested within ten (10) days after completion of the review of the assisted living residence. The notice shall:

(a) Describe the noncompliance with particularity and include the corrective action to be taken by the applicant.

(b) Include a description of the action that shall be taken by the cabinet or designee regarding the application or certification status if the corrective action is not completed;

(3) Within ten (10) days after receiving the notice of non-compliance, the applicant shall submit a corrective action plan specifying dates by which noncompliance shall be corrected. The corrective action plan shall be submitted by certified mail, return receipt requested.

(4) If the applicant does not respond to the cabinet within the ten (10) day period or if the applicant agrees to take the corrective action but fails to complete the required corrective action within the specified time frame, the cabinet shall commence the action described in the notice of noncompliance.

(5) The cabinet or designee shall review and may deny, suspend, or revoke certification if the applicant fails to comply with certification standards set forth in this administrative regulation.

Section 4. Appeal. (1) If the cabinet or designee intends to deny, suspend, or revoke a certification, the cabinet or designee shall notify the applicant in writing stating the reasons for the adverse action and the applicant's right to appeal.

(2) Upon appeal, the applicant shall be afforded a hearing. Notice of hearing shall comply with KRS 13B.050 and shall be conducted in accordance with KRS Chapter 13B.

Section 5. General Requirements for an Assisted Living Residence. An assisted living residence shall meet the following requirements to obtain and maintain certification:

(1) Physical requirements.

(a) An assisted living residence shall provide only single occupancy (unless shared with spouse, other family member or another individual by mutual agreement) apartments with lockable doors on the entry door of each apartment. Residents shall have exclusive rights to their apartments.

(b) Each apartment shall include:

1. A private bath with one (1) lavatory;

2. One (1) toilet;

3. A bathtub or shower stall; and

4. A kitchenette consisting of a microwave, refrigerator, sink and cabinet area.

(c) For those home-style residences, each tenant shall be provided:

1. An individual bedroom with lockable door;

2. A shared bathroom with one (1) other bedroom; and

3. The use of the community kitchen facilities.

(d) Every assisted living residence shall meet the requirements of the state sanitation, building, and fire and safety code laws and regulations governing use and access by persons with disabilities.

(2) Supportive service requirements. A supportive service package is required for an assisted living residence seeking certification or renewal of certification. The service package may include:

(a) Assistance with household chores;

(b) Cleaning;

(c) Shopping;

(d) Meals;

(e) Laundry;

(f) Transportation;

(g) Twenty-four (24) hour supervision;

(h) Organized social and recreational activities;

(i) A congregate meal site;

(j) Barber and beauty services;

(k) Sundries for personal consumption;

(l) Supervision of self-administered medications; and

(m) Health related services.

Section 6. Tenant Rights and Agreement. (1) A lease agreement which clearly describes the rights and responsibilities of the tenant and owner shall be drawn between a certified living residence and a tenant, or his legal representative, who seeks to reside in the residence. The tenant agreement shall be signed by the tenant or his legal representative and the authorized signatory for the assisted living residence.

(a) The tenant agreement shall include the following:

1. Charges, expenses and other assessments for the provision of tenant services, lodging and meals;

2. The agreement of the tenant to make payment of the charges specified;

3. Arrangements for payment;

4. A tenant grievance procedure;

5. The owner's covenant to comply with applicable federal and state laws and regulations concerning consumer protection and protection from abuse, neglect and financial exploitation of the elderly and disabled;

6. The conditions under which the tenant agreement may be terminated by either party;

7. Reasonable rules for conduct and behavior of the staff, management and the tenant; and

8. A copy of the tenants' rights.

(b) The tenant agreement may include the agreement of the owner to provide or arrange for the provision of additional services as identified in the supportive services package.

(c) The tenant agreement shall be for a term not to exceed one (1) year and may be renewable upon the agreement of both parties. The tenant agreement shall be for a single-living apartment. It is permissible for the apartment to also be inhabited by a spouse, other family member or another adult by mutual agreement provided all household members are a party to the tenant agreement.

(2) Tenant rights. Every tenant of an assisted living residence shall have the right to:

(a) Live in a decent, safe, and habitable residential living environment;

(b) Be treated with consideration, respect and due recognition of personal dignity, autonomy, individuality and the need for privacy;

(c) Privacy within the tenant's unit during provision of health related services subject to rules of the assisted living residence reasonably designed to promote the health, safety and welfare of tenants;

(d) Private communications, including receiving and sending unopened correspondence, access to a telephone, and visiting with any person of his choice;

(e) Freedom to participate in and benefit from community services and activities, and to achieve the highest possible level of independence, autonomy, and interaction within the community;

(f) Retain and use his own personal property, space permitting, in the tenant's living area so as to maintain individuality and personal dignity;

(g) Directly engage or contract with any licensed health care provider to obtain necessary health care services in the tenant's unit or in such other space in the assisted living residence as may be made available to tenants for such purposes, to the same extent available to persons residing in private homes;

(h) Manage his own financial affairs;

(i) Exercise civil and religious liberties;

health would result if not implemented: The only detrimental effect would be the Commonwealth's inability to draw down additional federal funds for the low interest loans for the development of assisted living residences which could provide additional residential resources for the Commonwealth's aging population.

(c) If detrimental effect would result, explain detrimental effect: The only detrimental effect would be the Commonwealth's inability to draw down additional federal funds for the low interest loans for the development of assisted living residences which could provide additional residential resources for the Commonwealth's aging population.

(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: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(10) Any additional information or comments: There are no additional information or comments of which we are aware.

(11) TIERING: Is tiering applied? No. This is a statewide voluntary certification process that will be effective for any entity that wants to become a certified assisted living residence.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(New Administrative Regulation)

907 KAR 1:381. Repeal of 907 KAR 1:380.

RELATES TO: KRS 13A.310, 205:520

STATUTORY AUTHORITY: KRS 13A.310, 194.050

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. This administrative regulation acts specifically to repeal 907 KAR 1:380 which is obsolete. A new manual, titled Ambulatory Surgical Centers Manual is incorporated in 907 KAR 1:008.

Section 1. 907 KAR 1:380, Incorporation by reference of the Ambulatory Surgical Centers Services Manual, is hereby repealed.

JOHN H. MORSE, Commissioner and Secretary

APPROVED BY AGENCY: February 13, 1997

FILED WITH LRC: February 14, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on March 21, 1997, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by March 14, 1997, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Adminis-

trative Specialist, Principle, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick, Trish Howard, or Anita Moore

(1) Type and number of entities affected: All providers of ambulatory surgical center program services who participate in the Kentucky Medicaid 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 comments 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: No comments 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: Budget neutral.

2. Continuing costs or savings: Budget neutral.

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: Federal and state matching funds. Budget neutral.

(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: To be implemented statewide.

(b) Kentucky: None

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

(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 effect.

(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: Ambulatory surgical centers would be using obsolete manual which could result in Medicaid recipients not receiving appropriate care.

(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? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

about 50 or 60 cents for the Retirement System to try to locate the retiree.

In response to a question by Representative Bruce, Ms. Johnson stated that: (1) on the first check, a retiree received a notification of withholdings; (2) would not receive another notification, unless there was a change to his net check through a: (a) raise; (b) cost-of-living increase ("COLA"); (c) a change in health insurance; or (d) change in federal withholding; (3) retirees now on electronic system transfer had retired in the last few years; and (4) current retirees will not be required to accept electronic transfer of their retirement checks.

In response to a question by Senator Pendleton, Ms. Johnson stated that: (1) not having a checking account would be a reason one could receive his check by mail; and (2) there are banks in Kentucky that are not on the electronic wire transfer. Mr. Haynes stated that not having a checking account would be considered undue hardship and permit the mailing of a retiree's check.

In response to a question by Representative Lee, Ms. Johnson stated that (1) a new retiree who does not have a bank account would receive his check by mail; (2) a form is provided for the retiree to fill out; and (3) the Retirement System would check a retiree's status on an annual basis.

In response to a question by Chairman Crenshaw, Ms. Johnson stated that: (1) a retiree could not receive his check by mail if: (a) he informs the Retirement System that he has a bank account; and (b) the Retirement System has been informed that the bank is a part of the electronic wire transfer system; (2) the requirement and methods for electronic transfer are similar to the electronic transfer of wages for state employees; and (3) electronic transfer of funds is a more efficient way of getting checks to retirees.

Representative Bruce stated that: (1) if a retiree objected to the electronic transfer by filing a notarized form or letter, he should be allowed to get his check by mail; and (2) there would be less than 5% of retirees who would object to electronic transfer.

Ms. Johnson stated that the Retirement System: (1) had a group of checks that were sent to Northern Kentucky lost by the post office; (2) does not have the ability to track a check after delivery to the post office; (3) can check the electronic transfer system after funds had been sent; and (4) without electronic transfer, it may take up to six weeks to issue a duplicate check.

In response to a question by Representative Lee, Mr. Haynes stated that: (1) the Retirement System could accept a method whereby a retiree must submit a letter if he objected to the electronic transfer; (2) he thought that if all retirees were to be notified to the opportunity to decline electronic transfer, it could defeat the purpose behind the requirement of the electronic transfer; and (3) retirees who wanted to receive their check by mail would be the same ones who would call the office when a check is lost.

Representative Lee stated that: (1) if this administrative regulation was approved the Subcommittee would be: (a) restricting someone who is owed the money; (b) telling retirees that they cannot get their money sent to their house; and (c) a mandatory electronic transfer of retirement checks is, in effect, a requirement that retirees have a bank account, whether they want one or not; (2) he did not think this should be done or imposed; and (3) this administrative regulation should include an option permitting a retiree to state, in writing, that he: (a) does not want his money electronically transferred; and (b) wants it mailed to his house.

In response to a question by Senator Kafoglis as to whether the \$50,000 savings the Retirement System stated electronic transfer would cause, Ms. Johnson stated that: (1) if the Retirement System saved \$50,000 by implementing this system, she hoped its budget request would be less; (2) the Retirement System could save at least one person's time spent preparing checks; (3) retirees do not understand that around December and April, because of Christmas and tax deadline, a lot of mail is sent; and (4) the Retirement System hoped that retirees would view this requirement as a convenience.

Representative Lee stated that: (1) if a retiree had the option, the

Retirement System could explain that: (a) a check could get lost; and (b) it is suggesting that the funds be sent electronically; (2) he did not think there would be very many people who would request that their check be sent to them; (3) he felt the Retirement system was changing the rules; (4) there are people retired now, who can still get their checks sent to them; (5) new retirees would not be given this option; (6) he thought there would be some people who wanted their check mailed; and (7) the Subcommittee would be remiss in its duty if it did not represent the retirees who felt they should have the right to have their check sent to them.

Representative Lee stated the Retirement System could notify members: (1) periodically through its newsletter; (2) once per year; or (3) in a different timely manner.

Chairman Crenshaw requested that the one time option be deleted because a retiree might: (1) not see the announcement in the newsletter; and (2) decide later that he wanted to make a change.

Agency personnel agreed to amend this administrative regulation to make electronic transfer of retirement checks optional.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) The NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly and accurately state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); (3) Sections 1, 2, 3, 5(4), 6, and 7 were amended to comply with drafting requirements of KRS 13A.222(4); (4) Section 5 was amended to delete a specific date, pursuant to KRS 13A.100, 13A.120(6), and 13A.130; (5) Section 5(1) was amended to allow: (a) a retiree the option of having his check electronically transferred to his account; or (b) receipt of the check through the mail by giving written notice to the retirement board; (6) Section 5(4)(b) and 5(4)(c) were amended, in accordance with KRS 13A.100 and 13A.130, to require a recipient to: (a) prove hardship; and (b) an annual certification that the original reason a recipient requested a check is still applicable; (7) a new section, Section 10, was inserted to incorporate material by reference.

Department for Local Government: Bonds

109 KAR 7:020. Energy conservation projects. Tom Troth, Attorney, represented the Department.

Section 4(2) of this administrative regulation was amended to correct a reference to another subsection.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:040. Kentucky State Penitentiary. Jack Damron and Tamela Biggs, Staff Attorneys, represented the Department of Corrections. Mr. Damron stated that amendments were made as housekeeping measures and to comply with KRS Chapter 13A.

In response to a question by Representative Bruce, Subcommittee staff stated that an amendment was made to this administrative regulation to comply with a statutory requirement that the Department give notice to a crime victim when an offender is released from prison.

In response to a question by Representative Bruce, Mr. Damron stated that the Department of Corrections would also provide notification to the: (1) sentencing judge; (2) prosecuting attorney; (3) county attorney; and (4) Kentucky State Police.

This administrative regulation was amended as follows: (1) the References Section of KSP 06-01-01 and KSP 09-08-01 were amended to correct statutory citation; (2) KSP 06-01-01, E.3. was amended to specify that the Department would notify the victim of a crime, upon the release of an inmate; (3) KSP 06-01-01, F.1.c.(5)(a) was amended to cross-reference KRS 197.025(3); (4) KSP 09-08-01, A. was amended to cross-reference KRS 520.010; (5) KSP 19-04-01, G. was amended to delete provisions ordering state and local fire and health officials to conduct inspections, pursuant to KRS 13A.120(2)(h), and insert a "request" by the Department for inspec-

with the drafting requirements of KRS 13A.222(4).

704 KAR 20:700. Standards for admission to teacher education. Mr. Fluegge stated that: (1) this was a new administrative regulation that updated the list of academic proficiency tests, which is used for applicants desiring admission to teach education programs; (2) the current tests list was a standards board policy in which the Cabinet used the: (a) ACT; or (b) old benchmark edition, which was normal in the 1980's; (3) the list was woefully out-of-date; (4) the Cabinet had: (a) added additional academic proficiency tests; and (b) made them an alternative to the ACT or CTBS as a basic academic proficiency test for admission.

In response to a question by Senator Roeding, Mr. Fluegge stated that (1) basic academic proficiency is required by the standards board for accreditation; (2) because the CTBS-4 is out of date, the Cabinet is restricted to the ACT, as a permissible academic proficiency test; (3) this administrative regulation allowed a variety of instruments to be used in lieu of the ACT; and (4) a student who has taken a different test: (a) can use that test instead of the ACT; and (b) is not saddled with additional testing requirements.

This administrative regulation was amended as follows: (1) The NECESSITY, FUNCTION, AND CONFORMITY paragraph, Sections 2(2), 2(3)(f) and 3 were amended to comply with drafting requirements of KRS 13A.222(4).

Workforce Development Cabinet: Department for Employment Services: Division of Unemployment Insurance

787 KAR 1:320 (& E). Priority of deductions from benefits. Beverly Haverstock, General Counsel, and Vic Gausepohl, represented the Workforce Development Cabinet.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly and accurately state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); (3) Sections 1(1) and 1(4) were amended to comply with drafting requirements of KRS 13A.222(4); (4) Section 1(5) was amended to correct a statutory citation.

Labor Cabinet: Department of Workers' Claims

803 KAR 25:036 & E. Computation of life expectancies for purposes including apportionment and attorney's fees. In response to a question by Representative Bruce, Mr. Cox stated that this administrative regulation did not affect attorney's fees.

Ms. Ches stated the life expectancy tables are used: (1) in calculating (a) attorney's fees; (b) apportionment with the special fund; and (c) reserves for self-insureds; and (2) so that everyone in the workers' compensation system will use the same life expectancy; and (3) to avoid inconsistency problems.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly and accurately state the necessity for and function served by the administrative regulation, pursuant to KRS 13A.220(3)(f); and (3) Sections 1, 2, and 3 were amended to comply with drafting requirements of KRS 13A.222(4).

Department of Insurance: Health Insurance Contracts

806 KAR 17:140 & E. Health insurance rate filing requirements. Carla Montgomery, Attorney, Herb Patterson, Actuary, Life and Health Division, Department of Insurance, appeared before the Subcommittee. Ms. Montgomery stated that this regulation governed rate filing requirements for health insurance. In response to questions by Senator Roeding relating to fees imposed by this administrative regulation, and the loss of 44 insurance companies in the state, Ms. Montgomery and Mr. Patterson stated that: (1) fees had not been

increased; and (2) it was hoped that the regulation would help to connivance insurance companies to do business in the state.

This administrative regulation was amended as follows: (1) Sections 1 and 8 were amended to comply with the drafting and format requirements of KRS 13A.222(4); and (2) Section 8 was amended to incorporate material by reference.

Cabinet for Health Services: Department for Health Services: State Health Plan

902 KAR 17:040 & E. Data reporting by health care providers. Charles Kendall, Branch Manager, Health Policy Analysis Branch, Department for Public Health appeared before the Subcommittee.

Chairman Crenshaw stated that: (1) he had received several calls regarding this administrative regulation; (2) he understood that the Cabinet had stated that patient identifying information was not required to carry out the duties imposed on it by KRS 216.2901 to 216.2929; (3) KRS 216.2927(4) requires that data be collected in a non-identifying format; (4) the deletion of Section (3)(3)(f) violates statutory requirements; and (5) Section 3(3)(f) should be restored. Chairman Crenshaw stated that: (1) a great deal of concern over the violation of patient confidentiality had been raised by the deletion of Section 3(3)(f); and (2) requested the Cabinet to agree to amend this administrative regulation to re-insert Section 3(3)(f).

Mr. Kendall stated that he: (1) understood the issue; (2) agreed with the concerns raised; and (3) would agree to the amendment. Mr. Kendall stated that: (1) while language in KRS 216.2927 permitted the Cabinet to collect identifying information, providers currently were required to expunge that information before the data is transmitted to the Cabinet; and (2) technology existed by which identifying information can be expunged by the Cabinet's vendor before it is transmitted to the Cabinet; and (3) the Cabinet allowed, but did not require the submission of identifying information to the vendor and expunged before transmittal to the Cabinet.

Chairman Crenshaw stated that: (1) Section 3(3)(f) should be reinserted; and (2) the submission of identifying information by the provider prohibited.

The Subcommittee approved an amendment to re-insert Section 3(3)(f).

Cabinet for Families and Children: Department for Social Insurance: Division of Management and Development Public Assistance

904 KAR 2:001. Definitions. Pat Patterson, Division of Management & Development and Department of Social Insurance, and Gerald Gilkins, Assistant Director of Child Support Enforcement, represented the Cabinet for Families and Children. Ms. Patterson stated that the: (1) amendments to these administrative regulations arose from: (a) House Bill 300; and (b) the Welfare Reform Act of 1996; (2) Department is changing the: (a) title of "AFDC" to "KTAP", Kentucky Transitional Assistance Program; (b) definition of "absent parents" to "custodial parents" and "non-custodial parents"; and (c) definition of "client".

The RELATES TO paragraph of this administrative regulation was amended to correct statutory citations.

Cabinet for Health Services: Department for Mental Health and Mental Retardation Services: Substance Abuse

908 KAR 1:350. Licensing procedures and standards for the operation of alcohol and other drug abuse prevention programs. Mike Townsend, Director, Division of Substance Abuse, and Barbara Steward, Branch Manager, Prevention and Training Branch, appeared before the Subcommittee. Mr. Townsend stated that: (1) in January, the Subcommittee had requested that this administrative regulation be deferred in order to review issues raised by the Subcommittee; and (2) agency staff had met with Senator Kafoglis on: (a) licensing procedures; (b) the licensure of satellite clinics, to ensure that each satellite clinic that is licensed by the agency is designated as an

that closures and permissions to take required action took a great deal of time; and (2) asked whether these administrative regulations established sufficient time for compliance by citizens. Agency personnel stated that: (1) these administrative regulations had not been amended insofar as they dealt with payments made by the fund, other than clarifying when the 90 day period for the review and process of payment claims started; and (2) the issue of the beginning period for corrective action and approval of closure would be handled by the UST branch.

Mr. Saliga, Schumaker Environmental, Inc., stated that: (1) his company did a lot of underground storage tank work; (2) the majority of the work had been for small independent gas station owners; (3) while these administrative regulations provide that at the beginning of each calendar year the fund agency shall establish a mailing list of persons who want to comment on the issue and solicit comments from interested persons who will contract to perform corrective action, the only opportunity anybody had to comment was through the public hearing process; (4) at the agency public hearing, participants were on the defensive, because the administrative regulations already had been proposed and participants had to defend their objections to existing administrative regulations; (5) language was inserted that provided that upon agreement of the owner-operator and the Fund, the Fund may reimburse for work, testing, and equipment in a manner other than prescribed in Section 1; (6) while Section 1 is a lengthy list that established what will be paid for, and what enterprises may be used, the administrative regulation was amended to provide that the Fund and a particular owner-operator can establish their own set of rules; (7) some regulated entities will not be granted the same privilege, especially if they were not involved in discussions relating to the establishment of this language. Mr. Saliga requested that these administrative regulations be deferred to permit discussion of these issues in a setting more conducive to discussion than at a hearing that required defense of suggestions.

Agency personnel stated that: (1) the provision was added to the cost administrative regulation, 415 KAR 1:110, in order to provide the agency with alternatives for payments that are not now established in the fund; (2) generally, the costs now made are consistent with Section 1, and on a time and material basis; (3) so long as contractors continue to work, they can continue to bill the Fund time and material rates; (4) EPA has a program called "pay for performance", which: (a) permits negotiation with the underground storage tank owner and the contractor to establish a fixed price for corrective action; and (b) provides for payments to the contractor being based on meeting clean-up standards and goals set during the reclamation or remediation project; (4) current administrative regulations did not grant authority for this type of contract, by using the new "pay for performance" program currently being developed by EPA; (5) it would be a year or more before the agency would be ready to begin negotiations; and (5) no one will be excluded.

In response to a question by Representative Bruce, agency personnel stated that the cost regulation, 415 KAR 1:110 was the administrative regulation to which the issues related, and that it provided that the methods established by this administrative regulation, such as task orders, firm fixed price, were not exclusive and that others could be included.

Senator Roeding stated that an absolute standard or coverage could not be established for storage tank removal because of the inability to anticipate problems or required measures to correct them. Agency personnel stated that under the EPA "pay for performance" scheme: (1) the removal of tanks would be covered; (2) an allotment or allocation would be made for a detailed site investigation in order to determine the sub-surface conditions; (3) a firm, fixed "pay for performance" contract would be entered into only after the: (a) completion of the removal and investigation; and (b) contractor knows exactly the horizontal-vertical extent of contamination and what is being dealt with underground.

Mr. Saliga stated that the administrative regulation: (1) referred

only the agreement by the owner-operator and the fund; and (2) did not mention the contract or the professional engineer who would do the work.

The Cabinet agreed to Representative Bruce's recommendation that the issues raised by the cost administrative regulation, 415 KAR 1:110, be reviewed by the Cabinet, Mr. Saliga, including questions raised by requirements established by KRS Chapter 13A regarding the specific establishment of conditions or standards in an administrative regulation.

- 415 KAR 1:050 (& E). Definitions.
- 415 KAR 1:060 (& E). Financial responsibility account.
- 415 KAR 1:070 (& E). Petroleum storage tank account.
- 415 KAR 1:080 (& E). Claims procedures.
- 415 KAR 1:090 (& E). Ranking system.
- 415 KAR 1:100 (& E). Third party claims.
- 415 KAR 1:110 (& E). Contractor costs.
- 415 KAR 1:114 (& E). Contractor certification.
- 415 KAR 1:120 (& E). Hearings.
- 415 KAR 1:125 (& E). Discovery procedure.

Transportation Cabinet: Department of Vehicle Regulation: Division of Driver Licensing

601 KAR 12:020. Expired, transferred, or suspended driver's license; retesting requirements. In response to a question by Chairman Crenshaw, Ms. Davis stated that: (1) the Transportation Cabinet is loosening driver retesting requirements; (2) currently, a person whose driving privilege has been withdrawn must apply to the State Police for retesting; (3) the Cabinet noted that drivers whose licenses were suspended for under 1 year rarely had trouble passing the retesting requirement; (4) the retest requirement is causing a backlog of cases: (a) in the Circuit Clerk's offices; and (b) with the State Police; (5) the Department, Circuit Clerks, and State Police decided that retesting should not be required for one whose privilege has been withdrawn for under 1 year.

601 KAR 12:041. Repeal of 601 KAR 12:040.

Labor Cabinet: Department of Workers' Claims

803 KAR 25:034E. Repeal of 803 KAR 25:035. Steve Cox and Marcie Ches represented the Department of Workers' Claims. Mr. Cox stated that: (1) Senate Bill 161 requires the Commissioner to adopt life tables; (2) the Department of Workers' Claims initially, and in error, adopted decennial life tables in 803 KAR 25:035; (3) this administrative regulation was subsequently promulgated to repeal the error; (4) the correct life tables were substituted in 803 KAR 8:036E; and (5) the ordinary 803 KAR 8:036 is before the subcommittee.

In response to a question by Chairman Crenshaw, Ms. Ches stated that: (1) the life table adopted by the Department of Workers' Claims is: (a) in 803 KAR 25:035; (b) repealed with 803 KAR 25:034E; and (2) the correct life table is in 803 KAR 25:036.

Department of Insurance: Agents, Consultants, Solicitors and Adjustors

806 KAR 9:240 (& E). Financial institutions licensed as noncredit related insurance agents. George Nichols, Commissioner, Julie McPeak, Counsel, Department of Insurance, Deborah Stamper, Counsel, Kentucky Bankers Association, Dennis Desmond and Robert Moore, Independent Insurance Agents of Kentucky ("IIAK"), Ed O'Daniel, Travelers Insurance Company, Jorge Sandoval, Vice President of Government Relations, Travelers Insurance Holdings, Doug Breitenbach, American Council of Life Insurance ("Council"), Steve Bolton, American Insurance Associations ("American Insurance"), and James Everett, Vice President and Counsel, Securities Industry Association, appeared before the Subcommittee.

Chairman Crenshaw: (1) stated that a number of issues relating to terminology had been raised by regulated entities; and (2) asked whether deferral of this administrative regulation would permit interested parties an opportunity to discuss and reach agreement on

Financial Institutions and Insurance have decided that state banks should be allowed to sell in cities of less than five thousand population; (4) while the Association does not agree with this decision, it believes that if banks are going to sell insurance, this administrative regulation is necessary to protect consumers; (5) the Association has spent a great deal of time and effort working with the Department and the Bankers Association to develop this administrative regulation; (6) while this administrative regulation differs from what the Association would have drafted, the Association believes it provides controls necessary to protect consumers when they obtain a loan or insurance from a financial institution; (7) the Association would suggest that Section 1(2) be amended to provide insurance agencies activities mean any activity relating to insurance other than credit life, credit health, forced placed voluntarily credit personal property, credit voluntary unemployment insurance, or insurance of the interest of a real property mortgagee in mortgage property other than title insurance for which a licensee agent, solicitor, broker, or consultant is required pursuant to KRS Chapter 304; (8) by adding the words personal and insurance so that the phrase reads voluntary credit personal property insurance, the sales of home owners insurance by financial institutions will be covered by this administrative regulation; (9) in its Statement of Consideration, the Department stated that this administrative regulation is intended to cover financial institutions; (10) the suggested amendments would clarify meaning and not change the meaning of this administrative regulation; and (11) and no other revision was necessary.

In response to a question by Chairman Crenshaw, Commissioner Nichols stated that: (1) the amendment suggested by Mr. Desmond had been discussed with him prior to the Subcommittee meeting; and (2) the Department did not accept the amendment because the amendment would include general finance companies and require them to be licensed as banks.

Mr. Moore stated that the IIAK: (1) supports this administrative regulation; (2) believed that it was critical to implement this administrative regulation in order to protect Kentucky consumers; (3) if this administrative regulation was deferred it might become effective after expiration of the emergency, which would result in a period of time in which no administrative regulation was in effect; and (4) additional consideration is not required, because the Department had been extremely open in allowing people to discuss the provisions of this administrative regulation with the Department.

Mr. Everett stated that: (1) the existing definition of financial would include Travelers, an insurance company, as a financial institution by virtue of its affiliates offering products such as variable and fixed annuities to its customers; and (2) any delay was not intentional.

Chairman Crenshaw stated that the: (1) Subcommittee could request, but could not force, the Department to defer; and (2) Commissioner stated that the Department would not defer.

Mr. O'Daniel stated that: (1) the Commissioner and his staff had done an outstanding job in developing a complex administrative regulation as evidenced by the agreement among bankers and independent agents; (2) by virtue of the Commissioner's national role, Kentucky's administrative regulation will be viewed by regulatory agencies across the country as a model; (3) Travelers is concerned, because the word, affiliate, is not defined, its meaning is entirely open to interpretation by administrators; (4) while the Commissioner's interpretation is acceptable, a successor may not interpret the term, financial institution, in the same manner; (5) while the Commissioner is understandably trying to write an administrative regulation that anticipates future change, as circumstances change and administrative regulation must change; (6) the effect of the definition can be damaging because of the broadness of the definition of affiliate; and (7) this administrative regulation is deficient because it leaves open to interpretation the critical issue of the meaning of the word, affiliate.

Chairman Crenshaw stated that he agreed with Representative Bruce that the Commissioner's statement on the record makes it clear that Travelers is exempt.

Senator Roeding stated that he was concerned over what effect the deletion of the word, affiliate, have on this administrative regulation. Ms. McPeak stated that the Department was: (1) opposed to amending the definition because it was concerned that the Comptroller of the Currency or the Kentucky Department of Financial Institutions may approve some type of corporate entity that could qualify to be chartered as a bank, and still apply to the Department for licensure under the ruling in the Barnett Bank case; (2) attempting to keep the definition all-inclusive, so that it would include any bank that wanted to be licensed as an insurance company or to sell an insurance product; and (3) the companies, and the security dealers, who have spoken against this administrative regulation: (a) are exempt; and (b) would be covered under this administrative regulation through the affiliate language if they wanted to license their banks as a distribution channel.

Commissioner Nichols stated that: (1) the Department wanted to insure it would have jurisdiction over a bank that, while based in another state and not doing business in Kentucky, had an affiliation with a bank in Kentucky; and (2) since Travelers was not doing business in Kentucky, it was exempt.

In response to a question by Senator Roeding, Ms. McPeak stated that: (1) this administrative regulation did not have an anti-competitive effect in Kentucky; (2) Kentucky was one of the first states to open up the insurance market to banks; and (3) administrative regulations simply establish the method of practice in the state.

Mr. Everett stated that a competitive disadvantage existed because while national banks incorporated in, and that have their primary place of business in, Kentucky are subject to Kentucky administrative regulations, other national banks are subject to the Comptroller of the Currency rather than Kentucky administrative regulations.

Commissioner Nichols stated that the Comptroller's office: (1) had reviewed and agreed with this administrative regulation; and (2) stated that banks in the insurance business in any state should comply with state insurance regulations, not national regulations.

Kentucky Racing Commission: Thoroughbred Racing

810 KAR 1:026. Racing associations. Bernie Hettel, Executive Director and Chief Steward, Kentucky Racing Commission, Dick Carroll, Office of the Attorney General, and Bill Lear, representing the Thoroughbred Owners and Breeders of America, and United Thoroughbred Trainers of America appeared before the Subcommittee.

Mr. Hettel stated that the amendments pertaining to exculpatory clauses were: (1) developed during the last two years; and (2) believed by horsemen and racing associations to protect both the racing associations and participants, including owners, trainers, jockeys, drivers.

Chairman Crenshaw stated that it appeared that the amendment permitting exculpatory clauses would restrict the right to sue for negligence.

Mr. Carroll stated that: (1) the intent of the amendment is to prohibit the exculpation or limitation of liability for gross negligence or intentional wrongdoing; (2) the amendment would somewhat restrict recovery for ordinary negligence; and (3) all parties: (a) believed that the problem created by contracts containing exculpatory clauses waving the right to recover for negligence were having an adverse impact on racing in Kentucky; (b) requested the Commission to address the issue; (c) prior to a ruling by the Commission, agreed to prohibit exculpation for gross negligence or intentional wrongdoing; and (d) presented the language to the Commission, which the Commission added to these administrative regulations.

Chairman Crenshaw stated that the amendment to these administrative regulations limited a person's right to recovery for ordinary negligence.

Mr. Lear stated that: (1) without the amendment to these administrative regulations, the current practice of requiring agree-

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tee and the promulgating agency:

Legislative Research Commission: Capital Planning Advisory Board

1 KAR 6:020. Policies and procedures.

Kentucky Board of Medical Licensure

201 KAR 9:021. Medical and osteopathic schools approved by the board; denial or withdrawal of approval; application of KRS 311.271; postgraduate training requirements; approved programs; recognition of degrees.

201 KAR 9:041. Fee schedule.

201 KAR 9:141. Denial, probation, revocation and suspension of certificate.

201 KAR 9:310. Continuing medical education.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality

Representative Bruce stated that he: (1) wanted to complete his review of administrative regulations governing water quality; and (2) requested that all administrative regulations relating to water quality be deferred in order to permit the complete review required.

Chairman Crenshaw stated that Subcommittee staff also needed additional time to complete their review of these administrative regulations.

Representative Bruce stated that: (1) questions had been raised concerning the state and agriculture water quality plans; and (2) in order to permit the Subcommittee and its staff sufficient time to consider the issues raised by the plans, including whether or not the promulgation of administrative regulations was required to implement the plans, the Cabinet be requested to appear before the Subcommittee at its next meeting to inform it: (a) of the manner in which it has implemented Senate Bill 241, Regular Session 1994, governing water quality; (b) whether administrative regulations have been promulgated to implement Senate Bill 241; (c) if administrative regulations have not been promulgated, the reasons why; (d) what requirements the Cabinet is imposing; and (e) whether the Cabinet, or another agency or group, is implementing Senate Bill 241.

The Cabinet agreed to defer considerations of these administrative regulations, and to appear before the Subcommittee at its next meeting on the issue of the implementation of statutes relating to water quality.

401 KAR 5:001. Definitions of terms used in 401 KAR Chapter 5.

401 KAR 5:005. Permits to construct, modify, or operate a facility.

401 KAR 5:006. Wastewater planning requirements for regional areas.

Public Water Supply (See Discussion of 401 KAR 5's)

401 KAR 8:010. Definitions for 401 KAR Chapter 8.

401 KAR 8:030E. Water treatment plants; water distribution systems; certification of operators.

401 KAR 8:060. Variances and exemptions.

401 KAR 8:070. Public notification.

401 KAR 8:100. Design, construction and approval of facilities.

401 KAR 8:150. Disinfection and filtration.

401 KAR 8:200. Microbiological monitoring.

401 KAR 8:250. Inorganic chemical sampling, analytical techniques and maximum contaminant levels.

401 KAR 8:300. Lead and copper.

401 KAR 8:350. Corrosivity monitoring.

401 KAR 8:400. Synthetic organic chemicals.

401 KAR 8:420. Volatile organic chemicals.

401 KAR 8:440. Special testing for unregulated inorganic and synthetic organic contaminants.

401 KAR 8:500. Disinfection by-products.

401 KAR 8:600. Secondary standards.

401 KAR 8:700. Bottled water.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:130. Western Kentucky Correctional Complex.

Department of State Police: Candidate Selection

502 KAR 45:005E. Definitions.

502 KAR 45:035E. Application.

502 KAR 45:045E. Written examination.

502 KAR 45:055E. Oral interview.

502 KAR 45:075E. Register.

502 KAR 45:150E. Content Based Task Test (CBTT).

Department of Insurance: Group and Blanket Health Insurance

806 KAR 18:080E. Association uniform data collection.

Cabinet for Health Services: Long-term Care

900 KAR 2:060. Hearings concerning transfer and discharge rights. Ralph Von Derau, Office of the Inspector General, appeared before the Subcommittee. Mr. Von Derau stated that this administrative regulation: (1) governed transfer and discharge rights; and (2) had been amended by the Cabinet to conform to KRS Chapter 13B, governing administrative hearings.

In response to questions by Senator Roeding related to the rights of persons in rest-homes, Mr. Von Derau stated that: (1) if they receive notice from the facility that they are going to be transferred or discharged for specified reasons, they will receive notice of their right to appeal; and (2) this administrative regulation establishes the manner in which hearings on appeals by residents will be conducted. Senator Roeding: (1) stated that there was no provision requiring the conduct of hearings within a specified period; (2) asked why a specific period had not been established; and (3) stated that the absence of a required period could: (a) mean a hearing might be delayed for as long as two years; and (b) work to the detriment of both the facility and residents.

Senator Kafoglis asked whether a resident who appealed a facility decision would be permitted to remain in the facility until the hearing had been held, or whether the resident could be transferred or discharged prior to the hearing. Mr. Von Derau stated that he believed that the: (1) Cabinet Hearings Branch would determine whether the resident could remain; and (2) resident, in most cases, is discharged, subject to restoration of the facility loses the hearing. Senator Kafoglis stated that: (1) provisions for adequate notice existed; (2) provisions for a prompt hearing should be established; and (3) residents should not be transferred or discharged until the appeal has been heard. Mr. Von Derau stated that he was uncertain whether the Cabinet had statutory authority to address the issues.

Pursuant to Chairman Crenshaw's recommendation, the Cabinet agreed to: (1) consider the issues raised by Senator Kafoglis, and other issues raised by Subcommittee members; and (2) defer this administrative regulation to permit Subcommittee and Cabinet staff to discuss the issues.

Health Services and Facilities

902 KAR 20:016. Hospitals; operations and services. Ralph Von Derau, Office of Inspector General, Darlene Aiken, Director, Kentucky Optometric Association, Bill Doll, Kentucky Medical Association ("KMA") appeared before the Subcommittee.

Mr. Von Derau stated that the purpose of the amendments to this administrative regulation was to: (1) address the prescriptive authority of advanced registered nurse practitioners and therapeutically certified optometrists required by legislation enacted by the General Assembly at its 1996 Regular Session; and (2) make administrative amendments required by the Executive Order that reorganized the Cabinet for Human Resources. Mr. Von Derau stated that an issue had been raised by optometrists relating to the definition of the word, medical staff.

Ms. Aiken stated that, while the Optometric Association supported the administrative regulation, it believed additional amendments were required relating to optometrists.

ADMINISTRATIVE REGISTER - 3505

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON EDUCATION Meeting of February 6, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of February 6, 1997, having been referred to the Committee on January 10, 1997, pursuant to KRS 13A.290(6):

702 KAR 4:150
702 KAR 5:150
703 KAR 4:010 & E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 6, 1997 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON LICENSING AND OCCUPATIONS Meeting of February 14, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Licensing and Occupations during its meeting of February 14, 1997, having been referred to the Committee on January 15, 1997, and February 10, 1997, pursuant to KRS 13A.290(6):

Board of Hairdressers and Cosmetologists
201 KAR 12:082
201 KAR 12:200
Department of Alcoholic Beverage Control
804 KAR 4:330
Kentucky Racing Commission
810 KAR 1:026
811 KAR 1:020
811 KAR 1:035
811 KAR 1:120

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:
Department of Alcoholic Beverage Control
804 KAR 4:330

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:

Board of Hairdressers and Cosmetologists
201 KAR 12:082
201 KAR 12:200
Kentucky Racing Commission
810 KAR 1:026
811 KAR 1:020
811 KAR 1:035
811 KAR 1:120

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the February 14, 1997 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES Meeting of February 12, 1997

Administrative regulations were available for consideration by the Interim Joint Committee on Agriculture and Natural Resources during its meeting of February 12, 1997, having been referred to the Committee on January 14, 1997, pursuant to KRS 13A.290(6).

The following administrative regulations were found to comply with KRS Chapter 13A:

Department of Fish and Wildlife Resources
301 KAR 2:225 & E
Department of Agriculture
302 KAR 20:110 E
302 KAR 20:120 E

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

Division of Waste Management
401 KAR 30:005 401 KAR 34:245 401 KAR 38:020
401 KAR 30:010 401 KAR 34:250 401 KAR 38:030
401 KAR 30:031 401 KAR 34:275 401 KAR 38:040
401 KAR 30:040 401 KAR 34:280 401 KAR 38:050
401 KAR 30:080 401 KAR 34:281 401 KAR 38:060
401 KAR 31:005 401 KAR 34:287 401 KAR 38:070
401 KAR 31:010 401 KAR 34:290 401 KAR 38:080
401 KAR 31:030 401 KAR 34:360 401 KAR 38:090
401 KAR 31:040 401 KAR 35:005 401 KAR 38:100
401 KAR 31:050 401 KAR 35:010 401 KAR 38:150
401 KAR 31:060 401 KAR 35:020 401 KAR 38:160
401 KAR 31:070 401 KAR 35:050 401 KAR 38:170
401 KAR 31:110 401 KAR 35:060 401 KAR 38:190
401 KAR 31:120 401 KAR 35:070 401 KAR 38:250
401 KAR 31:160 401 KAR 35:080 401 KAR 38:500

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates I2

The Locator Index lists all administrative regulations published in VOLUME 23 of the Administrative Register from July, 1996 through June, 1997. 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 22 are those administrative regulations that were originally published in the Volume 22 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1996 bound Volumes were published.

KRS Index I14

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 23 of the Administrative Register.

Subject Index I28

The Subject Index is a general index of administrative regulations published in VOLUME 23 of the Administrative Register, and is mainly broken down by agency.

ADMINISTRATIVE REGISTER - I3

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
201 KAR 11:190E	1877	10-14-96	701 KAR 5:020E	80	6-14-96
201 KAR 12:082E	321	7-1-96	Replaced	2464	12-5-96
201 KAR 12:200E	324	7-1-96	701 KAR 5:051E	81	6-14-96
201 KAR 20:390E	1541	8-16-96	Expired		10-14-96
301 KAR 2:221E	1880	10-2-96	701 KAR 5:055E	82	6-14-96
301 KAR 2:222E	1883	10-2-96	Replaced	2465	12-5-96
301 KAR 2:224E	1887	10-2-96	701 KAR 5:086E	84	6-14-96
301 KAR 2:225E	1544	8-16-96	Expired		10-15-96
Replaced	2972	2-12-97	701 KAR 5:090E	85	6-14-96
302 KAR 3:010E	325	7-15-96	Replaced	2466	12-5-96
Expired		1-18-97	702 KAR 1:080E	86	6-14-96
302 KAR 20:110E	2439	11-6-96	Replaced	2467	12-5-96
302 KAR 20:120E	2440	11-6-96	702 KAR 7:055E	1368	8-12-96
302 KAR 78:020E	61	6-5-96	702 KAR 7:065E	87	6-14-96
Replaced	1934	11-11-96	Replaced	1433	12-5-96
307 KAR 5:010E	327	7-15-96	702 KAR 7:125E	1369	8-12-96
Expired		1-18-97	Replaced	2722	1-9-97
401 KAR 8:030E	1888	10-7-96	703 KAR 3:060E	1372	8-12-96
401 KAR 50:035E	62	6-14-96	Replaced	2724	1-9-97
415 KAR 1:050E	328	7-3-96	703 KAR 3:205E	89	6-14-96
415 KAR 1:060E	330	7-3-96	Replaced	2472	12-5-96
415 KAR 1:070E	333	7-3-96	703 KAR 4:010E	1376	8-12-96
415 KAR 1:080E	336	7-3-96	Replaced	2728	2-6-97
415 KAR 1:090E	340	7-3-96	703 KAR 4:090E	1379	8-12-96
415 KAR 1:100E	343	7-3-96	Replaced	2731	1-9-97
415 KAR 1:110E	344	7-3-96	704 KAR 20:305E	367	6-28-96
415 KAR 1:114E	348	7-3-96	704 KAR 20:475E	370	6-28-96
415 KAR 1:120E	352	7-3-96	Replaced	2356	1-9-97
415 KAR 1:125E	359	7-3-96	707 KAR 1:180E	91	6-14-96
502 KAR 45:005E	1350	8-14-96	Replaced	2474	12-5-95
502 KAR 45:035E	1351	8-14-96	781 KAR 1:030E	1548	9-12-96
502 KAR 45:045E	1351	8-14-96	Replaced	2737	1-9-97
502 KAR 45:055E	1897	10-15-96	787 KAR 1:200E	371	6-26-96
502 KAR 45:075E	1352	8-14-96	Replaced	1681	1-3-97
502 KAR 45:150E	1353	8-14-96	787 KAR 1:320E	1898	10-3-96
502 KAR 60:010E	1354	8-14-96	803 KAR 2:301E	3210	2-6-97
Withdrawn		9-11-96	803 KAR 2:306E	3211	2-6-97
503 KAR 6:010E	1355	8-14-96	803 KAR 2:308E	3214	2-6-97
Expired		2-18-97	803 KAR 2:320E	3217	2-14-97
503 KAR 6:020E	1357	8-14-96	803 KAR 2:402E	3223	2-6-97
Replaced	2717	1-9-97	803 KAR 2:403E	3224	2-6-97
503 KAR 6:030E	1358	8-14-96	803 KAR 2:404E	3226	2-6-97
Replaced	2718	1-9-97	803 KAR 2:405E	3231	2-6-97
503 KAR 6:040E	1359	8-14-96	803 KAR 2:410E	3232	2-6-97
Expired		2-18-97	803 KAR 2:411E	3234	2-6-97
503 KAR 6:050E	1360	8-14-96	803 KAR 2:424E	3236	2-6-97
Replaced	2718	1-9-97	803 KAR 2:425E	3237	2-6-97
503 KAR 6:060E	1361	8-14-96	803 KAR 2:500E	3240	2-6-97
Replaced	2719	1-9-97	803 KAR 2:900E	3243	2-14-97
503 KAR 6:070E	1362	8-14-96	803 KAR 25:010E	3245	2-11-97
Expired		2-18-97	803 KAR 25:034E	2442	11-14-96
503 KAR 6:080E	1363	8-14-96	803 KAR 25:036E	1899	10-15-96
Replaced	2719	1-9-97	803 KAR 25:089E	372	6-28-96
503 KAR 6:090E	1365	8-14-96	Replaced	2485	12-12-96
Replaced	2720	1-9-97	803 KAR 25:200E	3257	2-11-97
503 KAR 6:100E	1366	8-14-96	803 KAR 25:210E	3258	2-11-97
Expired		2-18-97	803 KAR 25:220E	3259	2-11-97
503 KAR 6:110E	1367	8-14-96	803 KAR 25:230E	3261	2-11-97
Replaced	2720	1-9-97	803 KAR 50:010E		
505 KAR 1:020E	3208	2-14-97	Replaced	191	9-11-96
603 KAR 5:320E	1546	9-3-96	804 KAR 13:010E	373	7-8-96
Replaced	2641	2-10-97	Replaced	1942	11-11-96
603 KAR 5:330E	366	7-12-96	806 KAR 5:060E	375	7-15-96
Replaced	2529	1-9-97	Replaced	2368	2-10-97

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Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
12 KAR 2:066	1809	1-10-97	200 KAR 22:130	210	9-11-96
12 KAR 3:012			201 KAR 1:040		
Amended	1613	1-10-97	Amended	169	
12 KAR 3:017			As Amended	1393	9-11-96
Amended	1615	1-10-97	201 KAR 1:045		
12 KAR 3:022			Amended	464	
Amended	1616	1-10-97	As Amended	1578	9-13-96
12 KAR 3:027			201 KAR 1:130		
Amended	1617	1-10-97	Amended	465	
12 KAR 3:037			As Amended	1579	9-13-96
Amended	1618	1-10-97	201 KAR 2:045	3124	
12 KAR 3:042	1810	1-10-97	201 KAR 2:220	3125	
13 KAR 2:045			201 KAR 7:040		
Amended	3380		Amended	3389	
13 KAR 2:060			201 KAR 8:015		
Amended	164		As Amended	1394	8-21-96
As Amended	1389	9-5-96	201 KAR 8:430	211	
13 KAR 2:070	1049		As Amended	1395	
Expired		9-13-96	As Amended	1581	9-18-96
Resubmitted	2892		201 KAR 9:021		
40 KAR 1:040	206		Amended	2836	
Withdrawn		10-22-96	201 KAR 9:041		
40 KAR 1:050	207		Amended	2838	
Withdrawn		10-22-96	201 KAR 9:141		
40 KAR 1:060	208		Amended	2839	
Withdrawn		10-22-96	201 KAR 9:310		
40 KAR 1:070	209		Amended	2840	
Withdrawn		10-22-96	201 KAR 10:050		
40 KAR 3:020	2894		Amended	170	9-11-96
101 KAR 1:325			201 KAR 12:082		
Amended	3070		Amended	2195	
101 KAR 1:365			As Amended	2969	
Amended	2193		201 KAR 12:200	2335	
As Amended	2711	1-13-97	As Amended	2971	
103 KAR 18:050			201 KAR 16:015		
Amended	461		Amended	3390	
As Amended	1578	10-14-96	201 KAR 16:040		
104 KAR 1:020			Amended	3391	
Amended	166		201 KAR 19:025		
As Amended	1391	9-11-96	Amended	3393	
105 KAR 1:200			201 KAR 19:031	3456	
Amended	2834		201 KAR 19:035		
As Amended	3311		Amended	3394	
106 KAR 3:010	2896		201 KAR 19:040		
109 KAR 7:020	2638		Amended	3395	
Amended	3005		201 KAR 19:050		
As Amended	3312		Amended	3396	
200 KAR 5:021			201 KAR 19:085		
Amended	1403	11-11-96	Amended	3397	
Amended	3072		201 KAR 20:215		
200 KAR 5:025	1467		Amended	3073	
Amended	1955		201 KAR 20:220		
As Amended	2458	12-13-96	Amended	3075	
200 KAR 5:302	1468		201 KAR 20:230		
As Amended	1924	11-11-96	Amended	3076	
200 KAR 5:304			201 KAR 20:370		
Amended	1401	11-11-96	Amended	3077	
200 KAR 5:306			201 KAR 20:390		
Amended	1405		Amended	2534	
As Amended	1925	11-11-96	Amended	3006	
200 KAR 5:325	1470	11-11-96	201 KAR 22:031		
200 KAR 15:010			Amended	171	8-21-96
Amended	462		201 KAR 22:106		
As Amended	1927	10-24-96	Amended	173	8-21-96

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Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
401 KAR 31:160			401 KAR 34:280		
Amended	546		Amended	663	
401 KAR 31:170			401 KAR 34:281	1109	
Amended	550		Amended	2042	
401 KAR 32:005	1067		401 KAR 34:287	1118	
Amended	1989		401 KAR 34:290		
401 KAR 32:010			Amended	669	
Amended	559		401 KAR 34:360		
401 KAR 32:020			Amended	672	
Amended	562		401 KAR 35:005	1121	
401 KAR 32:030			Amended	2051	
Amended	564		401 KAR 35:010		
As Amended	2973		Amended	680	
401 KAR 32:040			401 KAR 35:020		
Amended	567		Amended	683	
401 KAR 32:050			401 KAR 35:050		
Amended	569		Amended	687	
401 KAR 32:100			Amended	2065	
Amended	573		401 KAR 35:060		
401 KAR 33:005	1080		Amended	690	
Amended	2003		401 KAR 35:070		
401 KAR 33:010			Amended	694	
Amended	577		401 KAR 35:080		
401 KAR 34:005	1093		Amended	701	
Amended	2016		401 KAR 35:090		
401 KAR 34:010			Amended	703	
Amended	579		401 KAR 35:100		
401 KAR 34:020			Amended	710	
Amended	581		401 KAR 35:120		
401 KAR 34:050			Amended	717	
Amended	586		Amended	2068	
401 KAR 34:060			401 KAR 35:180		
Amended	589		Amended	722	
Amended	2029		401 KAR 35:190		
As Amended	2975		Amended	724	
401 KAR 34:070			401 KAR 35:200		
Amended	597		Amended	731	
401 KAR 34:080			401 KAR 35:210		
Amended	603		Amended	735	
401 KAR 34:090			401 KAR 35:230		
Amended	606		Amended	738	
401 KAR 34:100			401 KAR 35:245	1133	
Amended	613		Amended	2073	
401 KAR 34:120			401 KAR 35:250		
Amended	621		Amended	742	
Amended	2037		401 KAR 35:275		
401 KAR 34:180			Amended	744	
Amended	626		401 KAR 35:280		
401 KAR 34:190			Amended	751	
Amended	629		401 KAR 35:281	1137	
401 KAR 34:200			401 KAR 35:290		
Amended	635		Amended	757	
401 KAR 34:210			401 KAR 36:005	1154	
Amended	640		Amended	2076	
401 KAR 34:230			401 KAR 36:020		
Amended	644		Amended	760	
401 KAR 34:240			401 KAR 36:025		
Amended	649		Amended	783	
401 KAR 34:245	1105		401 KAR 36:030		
401 KAR 34:250			Amended	795	
Amended	653		401 KAR 36:070		
401 KAR 34:275			Amended	797	
Amended	655		401 KAR 37:005	1166	
			Amended	2089	

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Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
500 KAR 11:030			503 KAR 4:070	1291	
Amended	1001		As Amended	1590	9-17-96
As Amended	1935	11-8-96	503 KAR 6:020	2342	
500 KAR 11:060			As Amended	2717	1-9-97
Amended	1412	11-8-96	503 KAR 6:030	2344	
500 KAR 11:070			As Amended	2718	1-9-97
Amended	1413	11-8-96	503 KAR 6:050	2345	
500 KAR 11:080			As Amended	2718	1-9-97
Amended	1414		503 KAR 6:060	2346	
As Amended	1938	11-8-96	As Amended	2719	1-9-97
500 KAR 11:090			503 KAR 6:080	2346	
Amended	1415	11-8-96	As Amended	2719	1-9-97
500 KAR 11:110	1279		503 KAR 6:090	2348	
As Amended	1938	11-8-96	As Amended	2720	1-9-97
500 KAR 11:120	1282	11-8-96	503 KAR 6:110	2349	
501 KAR 6:020			As Amended	2720	1-9-97
Amended	175	9-11-96	600 KAR 1:120		
Amended	1005	9-17-96	Amended	3409	
Amended	1416	11-11-96	600 KAR 2:020		
Amended	2250	1-9-97	Amended	2850	
Amended	2616	2-10-97	As Amended	3342	
Amended	3088		600 KAR 2:030		
Amended	3406		Amended	2853	
501 KAR 6:040			As Amended	3345	
Amended	2252	1-9-97	600 KAR 5:010		
Amended	2618		Amended	3411	
501 KAR 6:050			601 KAR 1:005		
Amended	1677	12-11-96	Amended	2257	
501 KAR 6:060			Amended	2817	2-10-97
Amended	2253	1-9-97	601 KAR 1:025		
501 KAR 6:130			Amended	1010	
Amended	1007		As Amended	1591	10-1-96
As Amended	1941		601 KAR 1:101		
Amended	1678		Amended	1012	
501 KAR 6:170			As Amended	1592	10-1-96
Amended	1008		601 KAR 1:160		
As Amended	1586	9-17-96	Repealed	441	9-3-96
Amended	2255	2-10-97	601 KAR 1:200		
501 KAR 13:010			Amended	441	9-3-96
Amended	1418		601 KAR 9:074		
502 KAR 45:005			Repealed	441	9-3-96
Amended	3090		601 KAR 11:020		
502 KAR 45:035			Amended	2260	
Amended	3091		As Amended	2721	1-9-97
502 KAR 45:045			601 KAR 12:020		
Amended	3092		Amended	2855	
502 KAR 45:055			601 KAR 12:041	2901	
Amended	3093		601 KAR 13:025		
502 KAR 45:075			Amended	2261	
Amended	3094		As Amended	2982	2-10-97
502 KAR 45:150			601 KAR 13:070		
Amended	3095		Amended	2264	
503 KAR 4:010	1283		As Amended	3347	
As Amended	1587	9-17-96	601 KAR 13:090	219	
503 KAR 4:020	1284		As Amended	1593	10-1-96
As Amended	1587	9-17-96	601 KAR 13:100	221	
503 KAR 4:030	1285		Amended	1399	
As Amended	1587	9-17-96	As Amended	1594	10-1-96
503 KAR 4:040	1286		601 KAR 13:110	2639	
As Amended	1588	9-17-96	Amended	3032	
503 KAR 4:050	1288		As Amended	3349	
As Amended	1589	9-17-96	603 KAR 2:015		
503 KAR 4:060	1290		Amended	1014	
As Amended	1590	9-17-96	As Amended	1596	10-1-96

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Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
781 KAR 1:010 Amended	3110		803 KAR 2:402 Amended	1732	12-13-96
781 KAR 1:030 Amended	2283		803 KAR 2:403 Amended	1734	12-13-96
As Amended	2737	1-9-97	803 KAR 2:404 Amended	1735	12-13-96
Amended	3425		803 KAR 2:408 Amended	1740	12-13-96
782 KAR 1:020 Amended	3427		803 KAR 2:410 Amended	1741	12-13-96
782 KAR 1:030 Amended	3428		803 KAR 2:422 Amended	1743	12-13-96
782 KAR 1:040 Amended	3113		803 KAR 2:425 Amended	1744	12-13-96
785 KAR 1:010 Amended	1679		803 KAR 2:500 Amended	1746	12-13-96
As Amended	2480	12-5-96	803 KAR 2:600 Amended	1748	1-9-97
787 KAR 1:200 Amended	1681	1-3-97	803 KAR 25:012 Amended	1450	
787 KAR 1:210 Amended	189	10-14-96	Amended	2173	
787 KAR 1:320 As Amended	3355		As Amended	2481	12-13-96
803 KAR 2:019 Amended	1682	12-13-96	803 KAR 25:015 As Amended	1475	2-10-97
803 KAR 2:200 Amended	1684	12-13-96	803 KAR 25:035 Amended	1453	
803 KAR 2:300 Amended	1687	12-13-96	Withdrawn		9-30-96
803 KAR 2:301 Amended	1689	12-13-96	Repealed	2442	11-14-96
803 KAR 2:302 Amended	1690	12-13-96	803 KAR 25:036 As Amended	2904	
Repealed	3243	2-14-97	803 KAR 25:089 Amended	3355	
803 KAR 2:303 Amended	1692	12-13-96	As Amended	1750	12-12-96
803 KAR 2:304 Amended	1694	12-13-96	803 KAR 25:091 Amended	2619	
803 KAR 2:305 Amended	1696	12-13-96	As Amended	2988	2-10-97
803 KAR 2:306 Amended	1698	12-13-96	803 KAR 25:096 Amended	1455	
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803 KAR 2:308 Amended	1705	12-13-96	As Amended	2485	12-13-96
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