

ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

VOLUME 23, NUMBER 11
THURSDAY, MAY 1, 1997



Administrative Regulation Review Subcommittee, May Agenda	3673
Regulation Review Procedure	3677
Notices of Intent:	
State Board of Elections	3678
Teachers' Retirement System	3678
Revenue Cabinet	3679
Finance Cabinet	3680
Board of Landscape Architects	3681
Board of Veterinary Examiners	3681
Board of Nursing	3682
Board of Social Workers	3683
Department of Fish and Wildlife Resources	3683
Department of Agriculture	3684
Justice Cabinet - Charitable Gaming	3684
Justice Cabinet - Corrections	3687
Justice Cabinet - Juvenile Justice	3691
Transportation Cabinet	3692
Department of Education	3692
Education Professional Standards Board	3693
Labor Cabinet - Workers' Claims	3695
Department of Insurance	3697
Kentucky Racing Commission	3699
Cabinets for Health Services, and Families and Children	3700
Emergencies:	
Department of Military Affairs - Disaster and Emergency Services	3709
Justice Cabinet - Juvenile Justice	3713
Department of Insurance	3714
Kentucky Racing Commission	3717
Cabinets for Families and Children, and Health Services	3719
As Amended:	
Board for Specialists in Hearing Instruments	3747
Board of Hairdressers and Cosmetologists	3747
Board of Architects	3748
Board of Alcohol and Drug Counselors	3752
Department of Fish and Wildlife Resources	3752
Department of Agriculture	3757
Office of the Petroleum Storage Tank Environmental Assurance Fund	3759
Justice Cabinet - State Police	3763
Education Professional Standards Board	3765
Workforce Development Cabinet	3768
Kentucky Racing Commission	3774
Department of Housing, Buildings and Construction	3778
Cabinets for Health Services, and Families and Children	3779
Amended After Hearing:	
Council on Higher Education	3797
Board of Pharmacy	3806
NREPC - Water	3808
Transportation Cabinet	3817
Department of Education	3827
Workforce Development Cabinet	3829
Cabinets for Health Services, and Families and Children	3831
Proposed Amendments Received Through Noon, April 15, 1997:	
Board of Pharmacy	3866
Department of Fish and Wildlife Resources	3867
Department of Agriculture	3882
Justice Cabinet - Department of Corrections	3892
Transportation Cabinet	3899
Education Professional Standards Board	3920
Labor Cabinet - OSH	3925
Labor Cabinet - Workers' Claims	3958
Department of Insurance	3970
Department of Housing, Buildings and Construction	3972
Cabinets for Health Services, and Families and Children	3981

(TABLE OF CONTENTS CONTINUED ON NEXT PAGE)

ADMINISTRATIVE REGISTER - 3673

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE

AGENDA - May 13, 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)

COUNCIL ON HIGHER EDUCATION

Public Educational Institutions

13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes. (Public Hearing in March)

GENERAL GOVERNMENT CABINET

Office of the Attorney General

Prosecutors Advisory Council

Medical Examination of Sexual Abuse Victims

40 KAR 3:010. Payment schedule to hospitals, physicians and sexual assault nurse examiners for medical examinations of victims of sexual offenses.

PERSONNEL CABINET

Department of Personnel, Unclassified

101 KAR 3:045E. Compensation plan and compensation incentive systems.

REVENUE CABINET

Office of General Counsel

Division of Tax Policy and Research

Income Tax; Corporations

103 KAR 16:200. Consolidated Kentucky corporation income tax return.

GENERAL GOVERNMENT CABINET

Board of Pharmacy

201 KAR 2:045. Technicians. (Amended After Hearing)

201 KAR 2:220. Collaborative care agreements. (Amended After Hearing)

Real Estate Commission

201 KAR 11:400. Agency disclosure requirements.

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:210. Retired and inactive status.

Board of Nursing

201 KAR 20:057. Scope and standards of practice of advanced registered nurse practitioners.

Kentucky Real Estate Appraisers Board

201 KAR 30:040. Standards of practice administrative regulation.

201 KAR 30:070. Complaints of violations.

201 KAR 30:081. Repeal of 201 KAR 30:080 and 201 KAR 30:140.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Division of Water

Public Water Supply

401 KAR 8:030 & E. Water treatment plants; water distribution systems; certification of operators. (Public Hearing in March)

OFFICE OF THE PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND

Public Protection and Regulation Cabinet

Petroleum Storage Tank Environmental Assurance Fund

415 KAR 1:130. Small operators tank removal account.

JUSTICE CABINET

Department of Corrections

Division of Adult Institutions

Office of the Secretary

501 KAR 6:120. Blackburn Correctional Complex.

Execution Hearings

501 KAR 8:010E. Execution hearings.

Jail Standards for Counties Not Housing Class D Felons

501 KAR 13:020. County jail and juvenile detention facility victim notification system.

ADMINISTRATIVE REGISTER - 3675

803 KAR 2:405E. Fire protection and prevention.
803 KAR 2:410E. Electrical.
803 KAR 2:411E. Scaffolds.
803 KAR 2:424E. Diving.
803 KAR 2:425E. Toxic and hazardous substances.
803 KAR 2:500E. Maritime employment.
803 KAR 2:900E. Repeal of 803 KAR 2:302.

Department of Workers Claims (Deferred from April)

803 KAR 25:010E. Procedure for adjustment of claims.
803 KAR 25:200E. Workers compensation notice.
803 KAR 25:210E. Affidavit of exemption from the Kentucky Workers' Compensation Act.
803 KAR 25:220E. Guaranty funds.
803 KAR 25:230E. Lessors of employees.

PUBLIC PROTECTION AND REGULATION CABINET Department of Mines and Minerals

Division of Oil and Gas

805 KAR 1:160. Posting of a danger sign on a facility used for the storage of oil.
805 KAR 1:170. Content of the operations and reclamation proposal; form on which the proposal is filed.
805 KAR 1:180. Production reporting.

PUBLIC PROTECTION & REGULATION CABINET Department of Insurance

Group and Blanket Health Insurance

806 KAR 18:080 & E. Association uniform data collection. (Amended After Hearing) (Agency Requests Deferral)

Health Maintenance Organizations

806 KAR 38:090E. Open enrollment.

Public Service Commission

Utilities

807 KAR 5:063. Filing requirements and procedures for proposals to construct telecommunications antenna towers.

Department of Financial Institutions

Securities

808 KAR 10:225. Procedural regulation governing hearing and hearing related procedures for matters before the Department of Financial Institutions. (Deferred from April)

Department of Housing, Buildings and Construction Office of the State Fire Marshall

Boilers and Pressure Vessels

815 KAR 15:026. Existing boilers and pressure vessels; testing, repairs, inspection and safety factors.

CABINET FOR HEALTH SERVICES

Long-Term Care

900 KAR 2:060. Hearings concerning transfer and discharge rights. (Amended After Hearing) (Deferred from February)

Certificate of Need

900 KAR 6:015E. Certificate of need matters. (Deferred from March)

Department for Public Health

Division of Epidemiology

902 KAR 2:020. Disease surveillance (Amended After Hearing)

State Health Plan

902 KAR 17:035E. State health plan for facilities and services. (Deferred from March)

Health Services and Facilities

902 KAR 20:003. License procedures and fee schedule.

Hazardous Substances (Deferred from April)

902 KAR 47:080 & E. Training and certification requirements for persons who perform lead-hazard detection or lead-hazard abatement.
902 KAR 47:090 & E. Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection and abatement.
902 KAR 47:100 & E. Permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement.

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management & Development

Public Assistance

904 KAR 2:006E. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP). (Deferred from April)
904 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability. (Deferred from April)
904 KAR 2:016E. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP). (Deferred from April)
904 KAR 2:410 & E. Child support collection and distribution. (Public Hearing in March)

ADMINISTRATIVE REGULATION REVIEW PROCEDURE
(See KRS Chapter 13A for specific provisions)

Notice of Intent

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

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

Filing and Publication

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

Public Hearing

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

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

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

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

Review Procedure

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

the negative impact that the current regulation imposed on investment performance with stocks historically outperforming fixed income investments including returns of 15 percent to 8 percent over the last 10 years.

(d) The benefit expected from the proposed administrative regulation is to allow the Kentucky Teachers' Retirement System to take advantage of opportunities that may develop in the stock market that would increase the level of income derived from prudent investment of the system's trust funds.

(e) The administrative regulation will be implemented as follows: The Investment Commission of the Kentucky Teachers' Retirement System will not make investments to exceed a position equal to 50 percent of the stock holding of the retirement system without obtaining prior approval of the Board of Trustees.

REVENUE CABINET
Office of General Counsel
Division of Tax Policy and Research

April 15, 1997
Revenue Cabinet
Office of General Counsel
Division of Tax Policy and Research

(1) **103 KAR 15:050**, Filing dates and extensions.

(2) The Revenue 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 administrative regulation has been scheduled for May 30, 1997, at 1 p.m., at 200 Fair Oaks Lane, Third Floor, Training Room A, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 30, 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: Jennifer C. Hays, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy and Research, 200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40620, Telephone (502) 564-6843, Facsimile (502) 564-9565.

(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 Revenue Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of administrative regulation is KRS 131.130(1), 141.050(4), 141.042(6), and 141.300(6).

(b) The administrative regulation that the Revenue Cabinet intends to promulgate will amend 103 KAR 15:050, Filing dates and extensions. The amendment will eliminate and revise language which contradicts KRS 141.200 and 103 KAR 16:200.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is specifically required by KRS 141.042 and 141.300 to provide filing dates and extensions for declarations of estimated income tax and for income tax returns.

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

1. Improved taxpayer education;
2. Fewer mistakes made by taxpayers on declarations and returns which are filed; and
3. Fewer adjustments made by the cabinet to returns filed.

(e) The administrative regulation will be implemented as follows: The provision of this administrative regulation will be incorporated into the instructions of Revenue Form 720, Kentucky Corporation Income and License Tax Return, and other publications issued by the Revenue Cabinet.

April 11, 1997
Revenue Cabinet
Office of General Counsel
Division of Tax Policy and Research

(1) **103 KAR 31:030**, Direct pay authorization.

(2) Revenue Cabinet intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 1997, at 10 a.m., in Meeting Room A, 3rd Floor, 200 Fair Oaks Lane, 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 May 30, 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: Charlotte T. Quarles, Tax Consultant, Kentucky Revenue Cabinet, Division of Tax Policy and Research, 200 Fair Oaks, Third Floor, Frankfort, Kentucky 40620, Telephone: (502) 564-5843 Fax: (502) 564-9565.

KENTUCKY STATE BOARD OF EXAMINERS AND REGISTRATION OF LANDSCAPE ARCHITECTS

April 14, 1997

Kentucky State Board of Examiners and Registration of Landscape Architects

(1) **201 KAR 10:010**, Board personnel; **201 KAR 10:040**, Applications; **201 KAR 10:070**, Seals; and **201 KAR 10:080**, Continuing education.

(2) The Kentucky State Board of Examiners and Registration of Landscape Architects intends to promulgate administrative regulations governing the subject matters listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for May 28, 1997, at 10 a.m. at the board office located at the Kentucky Engineering Center, 160 Democrat Drive, 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 May 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: 160 Democrat Drive, Frankfort, Kentucky 40601.

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Kentucky State Board of Examiners and Registration of Landscape Architects at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulations relating to :

1. **201 KAR 10:010**, Board personnel, is KRS 323A.210(2)(b);
2. **201 KAR 10:040**, Applications, is KRS 323A.210(2)(b);
3. **201 KAR 10:070**, Seals, is KRS 323A.080 and 323A.210; and
4. **201 KAR 10:080**, Continuing education, is 323A.210(2)(a), (b).

(b) The administrative regulations that the Kentucky State Board of Examiners and Registration of Landscape Architects intends to promulgate will amend **201 KAR 10:010**, Duties of the board; **201 KAR 10:040**, Applications; **201 KAR 10:070**, Seals; and **201 KAR 10:080**, Continuing education.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: These administrative regulation amendments update and bring current the requirements of board personnel, application procedures, the use of seals, and continuing education requirements.

(d) The benefits expected from administrative regulation are: Our operations will become concise and more easily understood by the registrants to whom they apply.

(e) The administrative regulation will be implemented as follows: All registrants will receive a copy of the amended regulations and this board will operate under the requirements of the new regulations.

KENTUCKY BOARD OF VETERINARY EXAMINERS

April 15, 1997

Kentucky Board of Veterinary Examiners

(1) **201 KAR 16:060**, Complaint processing procedure; **201 KAR 16:071**, Repeal of **201 KAR 16:070**.

(2) The Kentucky Board of Veterinary Examiners intends to promulgate administrative regulations 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 May 22, 1997, at 9 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 22, 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: David L. Nicholas, Director, Division of Occupations and Professions, P. O. Box 456, Frankfort, Kentucky 40602-0456.

(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 by writing to David L. Nicholas at the above address, or by calling (502) 564-3296 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of administrative regulations relating to the subject matter listed above is KRS

ADMINISTRATIVE REGISTER - 3683

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Board of Nursing intends to promulgate will amend 201 KAR 20:420, Fees for applications and for services. It will add a new fee and increase other fees.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 314.142 charges the board to promulgate regulations to implement the Sexual Assault Nurse Examiner Program. This regulation will contain the fees for that program. Other fees are being raised to provide for the continued operation of the Board of Nursing.

(d) The benefits expected from the administrative regulation are: The implementation of KRS 314.142 and the continued operation of the Board of Nursing.

(e) The administrative regulation will be implemented as follows: Fees will be raised.

KENTUCKY BOARD OF SOCIAL WORK

April 15, 1997

Kentucky Board of Social Work

(1) **201 KAR 23:011**, Repeal of 201 KAR 23:010, 201 KAR 23:030, 201 KAR 23:040, 201 KAR 23:100, and 201 KAR 23:110; **201 KAR 23:020**, Examination, fee; **201 KAR 23:060**, Licensed and certified social workers; **201 KAR 23:070**, Specialty certification; **201 KAR 23:080**, Code of ethical practice; **201 KAR 23:140**, Per diem compensation for board members.

(2) The Kentucky Board of Social Work intends to promulgate administrative regulations 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 May 22, 1997, at 10 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to May 22, 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: David L. Nicholas, Director, Division of Occupations and Professions, P. O. Box 456, Frankfort, Kentucky 40602-0456.

(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 by writing to David L. Nicholas at the above address, or by calling (502) 564-3296 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of administrative regulations relating to the subject matter listed above is KRS 335.070(3).

(b) The administrative regulations that the Kentucky Board of Social Work intends to promulgate will repeal 201 KAR 23:010, 201 KAR 23:030, 201 KAR 23:040, 201 KAR 23:100, and 201 KAR 23:110; will amend 201 KAR 23:020, 201 KAR 23:060, 201 KAR 23:070, and 201 KAR 23:080; and will create 201 KAR 23:140 to comply with statutory revisions that the Kentucky General Assembly made during the 1996 General Session to KRS Chapters 13B and 335.

(c) The necessity, function, and conformity of the proposed administrative regulations is as follows: Complies with 1996 statutory revisions to KRS Chapters 13B and 335.

(d) The benefit expected from these administrative regulations are that the regulations will comply with state law.

(e) This administrative regulations will be implemented as follows: Licensed persons will be required to comply with the administrative regulations, and the Kentucky Board of Social Work will enforce the administrative regulations.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

March 7, 1997

Tourism Development Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 1:201**, Fishing limits.

(2) The Department of Fish and Wildlife Resources 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 May 21, 1997 at 9 a.m. in the Commission Room, Arnold L. Mitchell Building, at the Game Farm, five miles west of Frankfort on U.S. 60.

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

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

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

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

ADMINISTRATIVE REGISTER - 3685

Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

(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 Wednesday, May 28, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request(s) to the following address: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, (502) 564-5528.

(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 of Charitable Gaming at the address listed above.

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.515(9).

(b) This administrative regulation will amend 500 KAR 11:001. It will establish additional definitions for terms found in 500 KAR Chapter 11 not otherwise defined in KRS 238.505.

(c) The necessity, function, and conformity of this administrative regulation is as follows: This administrative regulation establishes definitions of terms used in KRS Chapter 238 and used throughout 500 KAR Chapter 11 which have not been previously defined or otherwise defined in KRS 238.505.

(d) The benefits expected from the administrative regulation are: This administrative regulation establishes definitions of terms used in KRS Chapter 238 and used throughout 500 KAR Chapter 11 which are not otherwise defined in KRS 238.505. The definitions will promote greater understanding of KRS Chapter 238 and the regulations.

(e) The administrative regulation will be implemented as follows: These definitions will be applicable to statutes and regulations, currently in effect, and division staff and its licensees will be informed of this regulation.

April 14, 1997

Justice Cabinet

Division of Charitable Gaming

(1) **500 KAR 11:025**, Quarterly reports.

(2) The Division of Charitable Gaming intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on this administrative regulation has been scheduled for Wednesday, May 28, 1997, at 9 a.m., at the Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation if requested at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost to be borne by the requesting party.

(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 Wednesday, May 28, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request(s) to the following address: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, (502) 564-5528.

(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 of Charitable Gaming at the address listed above.

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.515(9) and 238.525(4).

(b) This administrative regulation will amend 500 KAR 11:025 by deleting references to payment by money order, by providing that the one-half of one percent (.5%) fee will be received by the division when postmarked if properly addressed and postage is prepaid and to provide that information required on quarterly report forms must be determined under the cash basis method of accounting.

(c) The necessity, function, and conformity of this administrative regulation is as follows: All licensed charitable organizations are required to remit one-half of one (1) percent of gross receipts derived from charitable gaming. Quarterly reports are required of all licensed charitable organizations. This administrative regulation establishes the method and time of filing the quarterly reports and remitting payment of the quarterly fees due.

(d) The benefits expected from the administrative regulation are: The administrative regulation will conform to KRS Chapter 238 by

ADMINISTRATIVE REGISTER - 3687

(5)(a) Persons wishing to request a public hearing should mail their written request(s) to the following address: Division of Charitable Gaming, Justice Cabinet, 403 Wapping Street, Bush Building, Suite 100, Frankfort, Kentucky 40601-2639, (502) 564-5528.

(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 of Charitable Gaming at the address listed above.

(7) Information relating to this administrative regulation.

(a) The statutory authority for the promulgation of this administrative regulation is KRS 238.515(9) and 238.545(4).

(b) This administrative regulation will amend 500 KAR 11:090 to limit the number of special limited charitable gaming licenses which may be issued for any one location.

(c) The necessity, function, and conformity of this administrative regulation is as follows: The Division of Charitable Gaming is authorized to identify, define and approve any games of chance to be included among those classified as a "special limited charitable game", to establish circumstances under which such games will be conducted and to establish reporting requirements.

(d) The benefits expected from the administrative regulation are: The amendment to the regulation will limit the number of special limited charitable gaming licenses which may be issued for any one location, thereby eliminating the possibility that any location will become a large gaming center featuring "special limited charitable games".

(e) The administrative regulation will be implemented as follows: All division staff will be informed of this regulation, and the division's Licensing Section and Enforcement Section will be utilized to enforce the regulation.

Department of Corrections

April 14, 1997

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:040**, Kentucky State Penitentiary.

(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 May 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 May 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 6:040, as follows:

1. Inmate Commissary Program (02-01-01) shall be amended to reflect allowable spending limits.
2. Inmate grooming and dress code (15-01-01) shall be totally revised for clarity and to implement acceptable clothing for industries.
3. Inmate telephone access (16-03-02) shall be amended for clarity.

(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 Kentucky State Penitentiary 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.

April 14, 1997

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:050**, Luther Luckett Correctional Complex.

(2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter

ADMINISTRATIVE REGISTER - 3689

and language in the policy.

29. Religious services (LLCC 26-01-01) shall be amended to delete the religious preference cards and update the scheduling of services.

30. Prayer (LLCC 26-01-02) shall be amended to include language requested for inclusion in the policy based on Sharef v. Parke.

(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 Luther Luckett Correctional Complex 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.

April 14, 1997

Justice Cabinet

Department of Corrections

(1) Regulation Number and Title: **501 KAR 6:060**, Northpoint Training Center.

(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 May 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 May 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 6:060, as follows:

1. Personal hygiene for inmates; clothing and linens (12-02-01) shall be amended to ensure clothing is laundered prior to being released to the inmate's possession.

2. Administration and authority for health services (13-02-01) shall be amended to include psychological and psychiatric services. Section E was added to establish guidelines for collection and recording of health appraisal date.

3. Utilization of pharmaceutical products (13-04-01) shall be amended to place all ACA documentation in one section.

4. Inmate health screening and evaluation (13-11-01) shall be amended to include mental health problems.

5. Special health care programs (13-12-01) shall be amended to include the psychologist and psychiatrist.

6. Suicide Prevention and Intervention Program (13-19-03) shall be amended to state that any staff member can request a psychological evaluation of an inmate.

7. Inmate work programs (19-01-01) shall be amended to include ACA documentation. The auto shop was deleted.

8. Unit management (24-05-01) shall be amended to include the guidelines for bed assignments within the living units.

(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 Northpoint Training Center 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.

April 14, 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

ADMINISTRATIVE REGISTER - 3691

ping pong equipment from the unit recreation rooms.

23. Unit Recreation Program (BCC 22-08-01) shall be amended to: reflect the deletion of pool table, pool sticks, ping pong tables, balls and paddles from the unit recreation rooms; and, include issuance of new or replacement equipment to the unit director or his designee.

24. Religious services (BCC 23-01-01) shall be totally revised to reflect the sequence of events to be more effective in the operation of the institution; deletion of the duplication of CPP's 23.1 and 14.3; and, additional ACA reference.

25. Duties and responsibilities of classification and treatment officers (BCC 24-01-01) shall be amended to reflect typographical errors throughout the policy.

26. Duties and responsibilities of the unit director and assistant to the unit director (BCC 24-02-01) shall be amended to provide that the rules and regulations of the operation of dorms shall be posted within the unit.

27. Temporary and community center releases (BCC 25-02-02) shall be deleted to reflect the duplication of information found in CPP 24.5.

(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 Blackburn Correctional Complex 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.

Department of Juvenile Justice

March 25, 1997

The Department of Juvenile Justice

(1) **505 KAR 1:030**, The Department of Juvenile Justice policies and procedures manual.

(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 May 26, 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 member 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 May 26, 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, 320 W. Main Street, Frankfort, Kentucky 40601, (502) 564-2738, Fax: (502) 564-0839.

(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, The Department of Juvenile Justice, 320 W. Main Street, Frankfort, Kentucky 40601.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to 505 KAR 1.030, Department of Juvenile Justice policy and procedures manual, is KRS 15A.210, 15A.160, 13A.312 and the requirements of a consent decree entered December 4, 1995, in United States of American v. Commonwealth of Kentucky et.al., Civil Action No. 3:95 CV-757-S (W.D.Ky.1995) as well as EO 96-1576.

(b) The administrative regulation that the Department of Juvenile Justice intends to promulgate will not amend an existing regulation. It will establish the current policies and procedures of 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 for youth housed in thirteen residential treatment facilities operated or contracted by the cabinet.

(c) The necessity, function and conformity of the proposed administration regulation is as follows: KRS 15A.160 authorizes the Department of Juvenile Justice to adopt regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. This administrative regulation is promulgated to incorporate into regulatory form, by reference, materials used by the department in the implementation of a statewide social service program. Additionally it will comply with the mandates of the juvenile services consent decree relating to isolation and time out, abuse and neglect, fire safety, suicide screening, and maintenance and sanitation.

(d) The benefits expected from this administrative regulation are: The benefits expected are that the department will have established regulatory authority for the current policies and procedures relating to management procedures, support services, family and children's benefits and youth services. Another benefit is compliance with some of the 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 thirteen residential treatment facilities operated or contracted by the cabinet.

ADMINISTRATIVE REGISTER - 3693

Legal Services, Kentucky Department of Education, 500 Mero Street, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-9321.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to the designation of an agent to manage high school interscholastic athletics is KRS 156.070.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 702 KAR 7:065.

(c) The necessity, function, and conformity of the proposed administrative regulation is to designate an agent for high school athletics and set forth financial planning and review processes for that agent. Also, this administrative regulation adopts the bylaws, procedures, and rules of that agent.

(d) The benefits expected from this administrative regulation are the adoption and dissemination of updated KHSAA bylaws, procedures, and rules.

(e) The administrative regulation will be implemented as follows: Copies of the 1997-98 KHSAA Handbook will be made available to the public.

April 15, 1997

Kentucky Board of Education

(1) **704 KAR 7:130**, Minority teacher recruitment.

(2) The Kentucky Board of Education intends to promulgate 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 May 29, 1997 at 10 a.m. at the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to May 29, 1997, the public hearing will be cancelled.

(5) (a) Persons wishing to request a public hearing should mail their written request to: Kevin M. Noland, Kentucky Department of Education, Office of Legal Services, 500 Mero Street, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, phone (502) 564-4474, fax (502) 564-9321.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the recruitment of minority educators is KRS 160.380(2)(d).

(b) The administrative regulation that the Kentucky Board of Education intends to promulgate will be a new regulation.

(c) The necessity, function, and conformity section of the proposed administrative regulation is to direct each school district superintendent to annually report the school district's recruitment process and the activities used to increase the percentage of minority teachers in the district.

(d) The benefits expected from administrative regulation are:

1. To allow the Kentucky Board of Education to determine which school districts are in compliance with KRS 160.380;
2. To make available to the Department of Education data on the number of minority educators hired in each district on an annual basis;

3. To ensure that each district is working to diversify Kentucky's teacher workforce.

(e) The administrative regulation will be implemented as follows: Once it is promulgated, the new regulation will be disseminated to all local school superintendents for use in gathering data to file their reports, beginning with the first reporting period after promulgation. The results of these reports will be collected, analyzed and reported to the Commissioner of Education and to the Education Professionals Standards Board annually.

EDUCATION PROFESSIONAL STANDARDS BOARD

March 1997

Education Professional Standards Board

(1) **704 KAR 20:165**, Qualifications for professional school positions.

(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 May 21,

ADMINISTRATIVE REGISTER - 3695

other entities having approved preparation programs for instructional leadership - school principal. Division of Certification staff will inform local school districts about the regulations and procedures for applying for certification under 704 KAR 20:710, Instructional leadership - school principal.

LABOR CABINET Kentucky Department of Workers' Claims

April 15, 1997

Labor Cabinet

Kentucky Department of Workers' Claims

- (1) **803 KAR 25:012.** Resolution of medical fee disputes.
- (2) The Commissioner of the Department of Workers' Claims 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 May 22, 1997, at 10 a.m. at the Department of Workers Claims, 1270 Louisville Road, Building C, 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 May 22, 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: 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 workers' compensation medical fee disputes is KRS 342.735.
 - (b) The administrative regulation that the commissioner intends to promulgate will amend 803 KAR 25:012, Resolution of medical fee disputes, as follows: The amendments will bring this administrative regulation into conformity with the statutory changes made to KRS Chapter 342 by House Bill 1, effective December 12, 1997. The legislation enacted in House Bill 1 significantly reformed both the substantive and procedural portions relative to the resolution of workers' compensation claims.
 - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 342.260 requires the Commissioner of the Department of Workers Claims to prepare such administrative regulations as he considers necessary to carry on his work and the work of the administrative law judges under KRS Chapter 342. KRS 342.325 requires that questions arising under KRS Chapter 342 which are not settled by agreement of the parties shall be determined by an administrative law judge and KRS 342.735 requires the commissioner to establish regulations to expedite the payment of medical expense benefits. The function of this administrative regulation is to regulate the resolution of medical fee disputes before the administrative law judges and to increase consistency with other provisions under KRS Chapter 342 relating to payment of medical bills in workers compensation cases.
 - (d) The benefits expected from this amended administrative regulation are: Conformity with the requirements of House Bill 1, enacted December 12, 1997.
 - (e) The administrative regulation will be implemented as follows: Copies of the administrative regulation will be available upon request from the administrative services section of the Department of Workers Claims, 1270 Louisville Road, Frankfort, Kentucky 40601, (502) 564-5550.

April 15, 1997

Labor Cabinet

Kentucky Department of Workers' Claims

- (1) **803 KAR 25:021.** Individual self-insurers.
- (2) The Commissioner of the Department of Workers' Claims 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 May 22, 1997, at 10 a.m. at the Department of Workers Claims, 1270 Louisville Road, Building C, 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 May 22, 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: 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.

ADMINISTRATIVE REGISTER - 3697

(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 a workers' compensation selection of physicians and treatment plans is KRS 342.735.

(b) The administrative regulation that the commissioner intends to promulgate will amend 803 KAR 25:096, Selection of physicians, treatment plans and statements for services, as follows: The amendments will bring this administrative regulation into conformity with the statutory changes made to KRS Chapter 342 by House Bill 1, effective December 12, 1997. The legislation enacted in House Bill 1 significantly reformed both the substantive and procedural portions relative to the resolution of workers' compensation claims.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 342.260 requires the Commissioner of the Department of Workers Claims to prepare such administrative regulations as he considers necessary to carry on his work and the work of the administrative law judges under KRS Chapter 342. KRS 342.735 requires the commissioner to establish regulations to expedite the payment of medical expense benefits. The function of this administrative regulation is to regulate the selection of physicians and provide for treatment plans under KRS Chapter 342 in order to assure high quality medical care at a reasonable cost.

(d) The benefits expected from this administrative regulation are: Conformity with the requirements of House Bill 1, enacted December 12, 1997.

(e) The administrative regulation will be implemented as follows: Copies of the administrative regulation will be available upon request from the administrative services section of the Department of Workers Claims, 1270 Louisville Road, Frankfort, Kentucky 40601, (502) 564-5550.

PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

March 24, 1997

Department of Insurance

(1) Regulation Number and Name: **806 KAR 13:130**, Experience modification factors.

(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 May 21, 1997, at 10:15 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 May 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: Lawrence W. Cook, 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 304.13-415.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish guidelines for application of the experience modification factors.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.13-415 requires that for each workers' compensation policy issued or renewed on or after May 1, 1997, insurers or licensed advisory organizations shall provide policyholders with written explanations of the policyholders' experience modification factor and the data and methodology utilized in the calculation of the factor. KRS 304.13-415 also provides that the commissioner shall establish guidelines for application of experience modification factors to be used in developing workers' compensation insurance rates. This regulation establishes guidelines for the application of experience modification factors and for the written explanations to policyholders regarding how the factors were calculated.

(d) The benefits expected from the administrative regulation are: The administrative regulation will assist workers' compensation insurers and insureds by providing uniform guidelines for the use of experience modification factors. Additionally, workers' compensation insurers or advisory organizations will be required to provide written explanations to insureds in language reasonably calculated to inform the insured of the data and methodology used in formulating the experience modification factor.

(e) The administrative regulation will be implemented as follows: All workers' compensation insurers shall utilize the guidelines set forth in this regulation in developing experience modification factors. All workers' compensation insurers or advisory organizations using

ADMINISTRATIVE REGISTER - 3699

(c) The necessity and function of the proposed administrative regulation is as follows: It is necessary to update the information that insurance companies file with Department of Vehicle Regulation and to update what can be used as alternative proof of insurance.

(d) The benefits expected from the administrative regulation are: The regulation will come into compliance with all statutory requirements on insurers and the Department of Vehicle Regulation.

(e) The administrative regulation will be implemented as follows: Insurers will file the appropriate information concerning cancellations and nonrenewals with the Department of Vehicle Regulation. The Department of Vehicle Regulation will receive pertinent information to carry its statutory duties.

April 15, 1997

Department of Insurance

(1) **806 KAR 40:020**, Registration for charitable health care providers.

(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 May 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 May 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: Sharron S. Burton, 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 304.40-075.

(b) The administrative regulation that the Department of Insurance intends to promulgate will not amend an existing administrative regulation. It will implement the requirements for charitable health care providers as found in KRS 304.40-075.

(c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation is necessary to set guidelines for the registration of charitable health providers as required by KRS 304.40-075.

(d) The benefits expected from the administrative regulation are: The department will obtain all of the necessary information to register charitable health care providers pursuant to KRS 304.40-075.

(e) The administrative regulation will be implemented as follows: Charitable health care providers will register with the department. The department will send notice to the providers that they are registered. The providers will then apply to the Commonwealth for the premium for their medical professional liability insurance policy to be paid by the general fund. Insurers must make policies available for the charitable health care providers.

Kentucky Racing Commission

March 26, 1997

Public Protection and Regulation Cabinet

Kentucky Racing Commission

(1) **810 KAR 1:026**, Racing associations.

(2) The Kentucky Racing Commission 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 May 28, 1997, at 9:30 a.m. at the Office of the Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

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

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

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

(b) If a request 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 May 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: Bernie Hettel, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511. Phone (606) 246-2040, Facsimile (606) 253-9727.

(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 Racing Commission at the address listed above.

(7) Information relating to the proposed administrative regulation.

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

ADMINISTRATIVE REGISTER - 3701

(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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 all of the administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105. The prescription of drugs and medicine by advanced registered nurse practitioners is pursuant to KRS 314.011(8) and 314.042(8). The prescription of drugs by therapeutically-certified optometrists is pursuant to KRS 320.240(14).

(b) The cabinet intends to amend 902 KAR 20:048 at Section 3(11), 4(5)(f)1, and (11)(a)4b to address the prescriptive authority of advanced registered nurse practitioners and therapeutically-certified optometrists. Section 3(8) will be amended to refer to the requirements of 900 KAR 2:050 regarding the transfer or discharge of residents. Section 4(5)(f)5 will be amended regarding the use of restraints or protective devices. Section 4(5)(f)4 will be amended to update the requirements regarding the destruction of controlled substances. Other amendments will delete references to the Cabinet for Human Resources and will refer to the Cabinet for Health Services in accordance with Executive Order 96-862, and will comply with drafting requirements of KRS Chapter 13A.

(c) The Necessity, Function, and Conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for the operation of nursing homes.

(d) The benefits expected from these proposed amendments are that they will permit other categories of health professionals to perform tasks presently restricted to physicians and dentists by the existing regulations. Other amendments will update regulatory requirements regarding the use of restraints or protective devices, and requirements for the destruction of controlled substances.

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

April 1, 1997

Cabinet for Health Services

Office of Inspector General

(1) **902 KAR 20:051** - Operation and services; intermediate care.

(2) The Office of Inspector General intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for May 30, 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 May 30, 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, Office of the Counsel, Cabinet for Health Services, 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: Administrative Regulation Coordinator, Office of Inspector General, CHR Building, 4-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 all of the administrative regulations relating to health facilities and health services is KRS 216B.042 and 216B.105. The prescription of drugs and medicine by advanced registered nurse practitioners is pursuant to KRS 314.011(8) and 314.042(8). The prescription of drugs by therapeutically-certified optometrists is pursuant to KRS 320.240(14).

(b) The cabinet intends to amend 902 KAR 20:051 at Section 3(11)(a), 4(4)(e)1, and (10)(c)4b to address the prescriptive authority of advanced registered nurse practitioners and therapeutically-certified optometrists. Section 3(8) will be amended to refer to the requirements of 900 KAR 2:050 regarding the transfer or discharge of residents. Section 4(1)(c) will be amended regarding the use of restraints or protective devices. Section 4(4)(e)5 will be amended to update the requirements regarding the destruction of controlled substances. Other amendments will delete references to the Cabinet for Human Resources and will refer to the Cabinet for Health Services in accordance with Executive Order 96-862, and will comply with drafting requirements of KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for the operation of intermediate care facilities.

(d) The benefits expected from these proposed amendments are that they will permit other categories of health professionals to perform tasks presently restricted to physicians and dentists by the existing regulations. Other amendments will update regulatory requirements regarding

ADMINISTRATIVE REGISTER - 3703

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 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 registration and licensing of the possession and use of radioactive material in the healing arts. The amendment provides for flexibility in the preparing and compounding of radiopharmaceuticals by physicians and nuclear pharmacists and in the release of patients receiving therapeutic radiopharmaceuticals.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The amendment is necessary to meet U.S. Nuclear Regulatory Commission's requirements of Agreement State Compatibility as required by Section 274 of the Atomic Energy Act, as amended. KRS 211.842(2) states the Cabinet for Health Services shall issue licenses pertaining to radioactive materials and require registration of other sources of ionizing radiation. KRS 211.842(3) states the Cabinet for Health Services shall develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing, nonionizing, and electronic product radiation. KRS 211.844 states the Cabinet for Health Services shall provide administrative regulations for the registration and licensing of the possession and use of any source of ionizing radiation or electronic product radiation and the handling and disposal of radioactive waste. 902 KAR 100:073 provides general provisions and requirements for the issuance of licenses and the use, possession, and transfer of radioactive material for medical uses.

(d) The benefits expected from this administrative regulation are: The amended administrative regulation provides medical licensees flexibility in:

1. Preparing and compounding radiopharmaceuticals by physicians and nuclear pharmacists; and
2. The release of patients receiving therapeutic radiopharmaceuticals.

(e) The administrative regulation will be implemented as follows: The Division of Environmental Health and Community Safety, Department for Public Health will be responsible for the implementation of the administrative regulation.

CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development

April 15, 1997

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 2:017.** Technical requirements; job opportunities and basic skills.

(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 May 30, 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 May 30, 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 Trigg, Regulations Coordinator, Office of the General Counsel, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

(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/TTY).

(7) Information relating to the proposed administrative regulation.

The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the Temporary Assistance for Needy Families (TANF) block grant program and has eliminated entitlement to the Aid to Families with Dependent Children (AFDC) program. In addition, this act has eliminated the Job Opportunities and Basic Skills (JOBS) program funded under Title IV-F. The funding to implement work requirements for the TANF block grant program is now included in Title IV-A. In Kentucky the TANF block grant program is called the Kentucky Transitional Assistance Program (K-TAP) and the program to implement the work requirements is called Kentucky Works. The October filing of Kentucky's Title IV-A State Plan defines our method for operating the work requirements for the program. The work provisions of the program delineated in the state plan submission to health and human services must be implemented in order to qualify for block grant funds.

(d) The benefits expected from administrative regulation are: It is necessary to promulgate this administrative regulation to bring Kentucky in compliance with the mandated requirements found in 42 USC 601 et seq. This administrative regulation will replace the Job Opportunities and Basic Skills (JOBS) program with Kentucky Works.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children, the Department for Social Insurance will be responsible for implementing the administrative regulation.

Department for Social Services

March 18, 1997

Cabinet for Families and Children

Department for Social Services

(1) 905 KAR 1:180, DSS policies and procedures manual.

(2) The Department for Social Services 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 May 30, 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 May 30, 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 Trigg, Regulations Coordinator, Office of general Counsel, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Services, Cabinet for Families and Children, 6th Floor West, 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 Families and Children 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 905 KAR 1:180, DSS policy and procedures manual, is KRS 194.050; 199.420; 200.080; 209.030; 605.150; 615.050; 620.180; 625.120; 630.140; 635.100; 640.120; 645.250 and EO 96-862 and 96-1576.

(b) The administrative regulation that the Department for Social Services intends to promulgate will amend 905 KAR 1:180. It will establish the current policies and procedures of the Department for Social Services. Pursuant to EO 96-1576, effective December 16, 1996, which transferred the residential treatment facilities, services, and programs for public and youthful offenders from the Department for Social Services to the Department of Juvenile Justice, this administrative regulation will remove from the Department for Social Services policy and procedure manual the Children's Residential Treatment Services policies.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 194.050 authorizes the Cabinet for Families and Children to adopt regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. This administrative regulation is amended to incorporate into regulatory form, by reference, materials used by the cabinet in the implementation of a statewide social service program.

(d) The benefits expected from this administrative regulation are: The benefits expected are that the department will have established regulatory authority for the current policies and procedures relating to management procedures, support services, family and children's benefits. Another benefit for the Cabinet for Family and Children is that this administrative regulation enables the Department for Social Services to receive Title IV-B and IV-E federal funds for the administration of children and family services, foster care maintenance payments, adoption assistance, and child welfare services as governed by 45 CFR 1355, 1356, and 1357.

ADMINISTRATIVE REGISTER - 3707

(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 authorities for the promulgation of administrative regulations relating to home and community based waiver services and payments for home and community based waiver services are KRS 194.050, 42 CFR 440.180, 42 USC 1396a, b, d, n, and EO 96-862.

(b) The administrative regulations that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:160 and 907 KAR 1:170 as follows:

1. Revision to 907 KAR 1:160 and 907 KAR 1:170 and corresponding incorporate material in accordance with the provisions of KRS Chapter 13A. Revisions shall provide for clarity, consistency and nonduplication.

2. Incorporation of other technical or conforming changes as necessary to topical and incorporated material.

3. Revision of respite reimbursement limit and inclusion into adult day care health services.

4. Redefinition of attendant care services. The establishment of a payment system for this service to be based on a negotiated fee for service with a maximum upper limit as set by the department and a limit on services to a maximum of forty-five (45) hours per week. Cost for attendant shall be reported as a nonreimbursable cost in the home and community based cost report.

5. Amendment of reassessment process from semiannual to annual.

6. Clarification of adult day basic unit.

7. Deletion of references to respiratory therapy as this is no longer a covered service.

8. Deletion of billing forms and instructions.

9. Subjection of case management to an upper limit of 130 percent of the weighted median of the array of allowable costs.

10. Incorporation of LRC floor amendments.

11. Review and revision of the current reimbursement methodology to improve and enhance the efficiency and cost effectiveness of the system.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: These administrative regulations set forth provisions and requirements necessary to invoke the HCFA approved amendments to the home and community based waiver program.

(d) The benefits expected from administrative regulations are: A more comprehensive service package available to recipients and, in keeping with EMPOWER Kentucky, a reduction in departmental paperwork.

February 17, 1997

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 1:720**, Coverage and payments for the Kentucky Early Intervention Program Services provided through an agreement with the state Title V agency.

(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 May 30, 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 May 30, 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, 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 907 KAR 1:720, Coverage and payments for the Kentucky Early Intervention Program services provided through an agreement with the state Title V agency are KRS 200.650 - 200.676, 205.520, EO 96-862, 43 CFR 431.615, USC 1471-1484.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will provide Medicaid coverage of early intervention services to infants and toddlers who are eligible for those services.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the conditions under which Medicaid will provide coverage and payments for early intervention services to children from birth to three years of age.

(d) The benefits expected from administrative regulation are: Assure better access to early intervention services by infants and toddlers with disabilities who are Medicaid eligible. This early intervention may prevent worsening of the children's disabling condition and improvement

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
106 KAR 1:091E

The severe storms and floods of March 1997 have resulted in widespread devastation across Kentucky. In order to protect the public's health and safety, local disaster workers continue their dedicated and tireless work to help flood victims and to rebuild communities. This vital emergency work means that they are not able to devote time to their day-to-day emergency management duties and are not able to meet certain paperwork requirements on time. In order to avoid loss of funding to local emergency planning committees, this emergency amended administrative regulation which provides an additional sixty (60) days to meet certain funding criteria must be in place immediately. An ordinary administrative regulation will not be filed with the Regulations Compiler because the occurrence of severe storms and flooding is subject to natural causes and is not expected to happen again on March 1.

PAUL E. PATTON, Governor
 JOHN R. GROVES, JR., Brigadier General, Adjutant General
 W. R. PADGETT, Chairman

MILITARY AFFAIRS
Kentucky Emergency Response Commission

106 KAR 1:091E. Kentucky Emergency Response Commission fee account grant requirements for local emergency planning committees.

RELATES TO: KRS 39.800 to 39.990, 42 USC 11001 to 11050
 STATUTORY AUTHORITY: KRS 39.817, 39.845, 39.850
 EFFECTIVE: March 31, 1997

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes criteria and procedures to be met by local emergency planning committees requesting funds generated by KRS 39.817.

Section 1. Definitions. "Tab Q-7 or commission approved equivalent plan" means a plan describing the location and characteristics of extremely hazardous substances which includes the nine (9) required planning elements of PL 99-499, Section 303 and KRS 39.840 and the Kentucky Emergency Response Commission's planning requirements consisting of:

- (1) A legible sketch of the facility which shows a directional arrow, the location of extremely hazardous substances, and the access road;
- (2) The location of the response point and instructions for responsibilities of the facility emergency response coordinator;
- (3) Designation of the staging area and alternative staging area(s);
- (4) A listing of major suppliers of extremely hazardous substances and their telephone numbers;
- (5) A division of the vulnerable zone into four (4) quadrants, listing the special facilities within each quadrant and the total populations of each quadrant.

Section 2. To be eligible for financial assistance, local emergency planning committees which have extremely hazardous substances as listed in 106 KAR 1:081, Section 6, in excess of the threshold planning quantity present in their community shall meet all the following criteria during the preceding calendar year (January 1

through December 31):

(1) The local emergency planning committee shall meet all requirements set forth in KRS 39.840.

(2) The local emergency planning committee shall have an emergency response plan pursuant to KRS 39.840(1)(a), (e), (f) and 39.860 that has been approved by the Kentucky Emergency Response Commission.

(a) The local emergency planning committee's emergency response plan shall contain an approved Tab Q-7 or commission-approved equivalent listed in Section 6 of 106 KAR 1:081 for each facility in the planning district that has an extremely hazardous substance listed in Section 6 of 106 KAR 1:081 in excess of the threshold planning quantity.

(b) The local emergency planning committee shall submit new Tab Q-7 or commission-approved equivalent plans to the state disaster and emergency services area coordinator within sixty (60) days of notification that the facility has an extremely hazardous substance in excess of the threshold planning quantity.

(c) After new Tab Q-7 or commission-approved equivalent plans are submitted, no later than June [April] 1 each year, the local emergency planning committee shall review the Tab Q-7 plans and send certification to the state disaster and emergency services area coordinator stating that there were no changes and therefore the plan is correct as is; or the plan has been revised and the revisions are included with the certification.

(d) The state disaster and emergency services area coordinator shall review new Tab Q-7 or commission-approved equivalent plans for completeness, note any recommendations and forward them to the Chairman of the Kentucky Emergency Response Commission, or designee, within thirty (30) days of receipt from the local emergency planning committee.

(e) The state disaster and emergency services area coordinator shall review Tab Q-7 or commission-approved equivalent revisions and certifications received from the local emergency planning committee for completeness, note any recommendations and forward them to the Chairman of the Kentucky Emergency Response Commission, or designee, no later than July [May] 1 each year.

(3) The local emergency planning committee shall meet at least twice during each calendar year (January 1 through December 31) to conduct its business and a quorum shall be required.

(4) No later than December 1 each year, the local emergency planning committee shall submit an updated membership list to the Kentucky Emergency Response Commission.

(5) In accordance with KRS Chapter 424 (Legal Notice), the local emergency planning committee shall publish during each calendar year (January 1 through December 31) public information on committee activities entitled "Public (Legal) Notice Advertisement" on form DES/SARA-324 as set out in Section 7 of this administrative regulation.

Section 3. To be eligible for financial assistance, local emergency planning committees which do not have any extremely hazardous substances as listed in 106 KAR 1:081, Section 6, in excess of the threshold planning quantity present in their community shall meet the following criteria during the preceding calendar year (January 1 through December 31):

(1) The local emergency planning committee shall meet criteria set forth in KRS 39.840 (1)(b), (c), (d), (2), (4), (5) and Section 1(4) and (5) of this administrative regulation.

(2) The local emergency planning committee shall meet at least

ADMINISTRATIVE REGISTER - 3711

members of the public who wish to review these records may do so (normal hours of business), (Eastern or Central Time), (days of the week), at (location of the office or place where custodian keeps the committee files), as required by the Kentucky Open Records Law. The local 24-hour telephone number for purposes of emergency notification, as required by SARA, is (emergency number adopted by county planning committee).

KENTUCKY EMERGENCY RESPONSE COMMISSION FEE ACCOUNT FUND

Grant Application for Grant Period 09/01/9__ to 08/31/9__

DUE DATES

LEPCs to ACs 05/01

Received by AC _____ Received by State _____

ACs to State 06/01

Received by AC _____ Received by State _____

Final Award 09/15 Initial & Date _____ Initial & Date _____

AUTHORIZED APPLICANT (INFORMATION) Emergency Planning Committee

County Name _____ County Code-3 digit no. _____

Enter total number of Tab Q-7's with Extremely Hazardous Substances in your county. This is the total number of facilities with extremely hazardous substances in your county.

DATE _____ GRANT INFORMATION

Grant Amount Requested \$ _____

Circle Type of Application: LEPC New Revised
State Agency New Revised

GRANT RECIPIENT

Checks shall be made payable to and mailed to the AUTHORIZED APPLICANT. The AUTHORIZED APPLICANT is the county emergency planning committee which is authorized to apply for and manage the grant. The AUTHORIZED APPLICANT shall provide the name _____ and phone number _____ of the designated contact person. The AUTHORIZED APPLICANT shall provide the name _____ and address _____ of the bank where the check shall be deposited.

Emergency Planning Committee

County Name _____ County Code-3 digit number _____

Street Address _____

City, Zip _____

LEPCs shall submit grant request form DES/SARA-303 to their state disaster and emergency services area coordinator. All required documentation shall accompany the form. Incomplete grant request forms may delay processing and may result in invalidating the request.

State agencies shall submit grant request form DES/SARA-303 to the Chairman, or designee, of the Kentucky Emergency Response Commission. All required documentation shall accompany the form. Incomplete grant request forms may delay processing and may result in invalidating the request.

CERTIFICATION

I, the undersigned, certify to the Kentucky Emergency Response Commission that all the information is true and accurate. I further represent that the money received under this grant program will be used for the administration, development and implementation of the Kentucky Emergency Planning and Community Right-to-know program, known as SARA Title III, within the guidelines mandated by PL 99-499/Title III, KRS Chapter 39.800 to 39.990 and subsequent administrative regulations.

Name, Title and Date _____

DES/SARA-303

Grant Application for Grant Period 09/01/9__ to 08/31/9__

ATTACHMENTS

Detailed budget sheet for each budget category you request.
Documentation for preceding year's award.
Copy of published DES/SARA-324
Bylaws.

INELIGIBLE ITEMS

Emergency response equipment.
Reimbursement for emergency response and/or cleanup of a release.

BUDGET CATEGORIES	GRANT REQUEST	GRANT AWARD
Right-to-know responsibilities-includes legal notice DES/SARA-324	_____	_____
Data Management-includes receiving and maintaining data under 302(c)/KRS 39.845; 304/KRS 39.840(b), 311/312/KRS 39.840(c)	_____	_____
Telephone-includes 24-hour warning point for releases and cost of telephone for LEPC business	_____	_____
Services-includes contracts* to support KRS 39.800 to KRS 39.990	_____	_____
Office Supplies-includes postage, printing, copying and paper	_____	_____
File cabinets, desks, chairs	_____	_____
Commission-approved training	_____	_____
Commission-approved travel	_____	_____
TOTAL GRANT REQUEST LESS CARRYOVER MONIES ADJUSTED GRANT AWARD	_____	_____

*Contracts for personal services and equipment shall be in conformance with state laws and administrative regulations.
DES/SARA-303

implemented would be to the public health and environmental welfare because there would be no flood recovery efforts. The public health would be negatively affected if clean up and recovery efforts could not continue. In addition, without the additional time, LEPCs would lose funding which would result in a lack of preparedness in the event of chemical emergencies.

(c) If detrimental effect would result, explain detrimental effect: The detrimental effect on public health and the environmental welfare would be statewide because without recovery efforts, communities will not be able to take advantage of recovery programs through FEMA to rebuild communities. Clean up would be negatively affected and would directly affect both the public's health and the environment. The same people who perform vital emergency management work are also responsible for chemical preparedness and they cannot do two jobs at one time.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not used because the emergency amended administrative regulation only extends the time provided to LEPCs in which they must meet certain criteria in order to be eligible to apply for a grant from the commission. It is necessary to recognize the significant impact the severe storms and flooding has had on LEPCs and to provide an extension of time for certain required tasks. The commission seeks to provide equitable and fair treatment to all 118 LEPCs in Kentucky. Severe storms and flooding has affected more than 80 counties which means that the emergency management people in every county are either directly affected through their own county or are providing mutual aid and assisting counties who have been directly affected.

STATEMENT OF EMERGENCY 505 KAR 1:030E

This emergency administrative regulation and Notice of Intent were promulgated to establish the current policies and procedures of the Department of Juvenile Justice relating to management procedures, support services, family and children's services and youth services. This emergency administrative regulation implements some of the provisions of the consent decree, entered December 4, 1995 by the United States District Court for the Western District of Kentucky in the case of United States of America v. Commonwealth of Kentucky, et al., Civil Action No. 3:95 CV-757-S (W.D.Ky. 1995), entered into with the United States Department of Justice to improve conditions for youth housed in thirteen (13) residential treatment facilities operated or contracted by the cabinet. An emergency administrative regulation is necessary in order to implement requirements of the consent decree which are currently mandated. EO 96-1576 signed November 27, 1996 transfers responsibility of these services to the Department of Juvenile Justice. 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 March 25, 1997.

PAUL E. PATTON, Governor
RALPH E. KELLY, Ed.D., Commissioner

JUSTICE CABINET Department of Juvenile Justice

505 KAR 1:030E. DJJ policy and procedures manual.

RELATES TO: KRS 194.060, 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208, 209, 600 to 645, EO 96-1576, United States of America v. Commonwealth of Kentucky, et al., Civil Action No. 3:95 CV-757-S (W.D. Ky.1995)

STATUTORY AUTHORITY: KRS 194.050, 199.420, 200.080, 209.030, 605.150, 615.050, 620.180, 625.120, 630.140, 635.100, 640.120, 645.250, EO 96-862, 96-1576, United States of America v. Commonwealth of Kentucky, et al., Civil Action No. 3:95 CV-757-S (W.D. Ky.1995)

EFFECTIVE: March 25, 1997

NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 9901-9912 "Block Grants for Social Services - Title XX", authorizes grants to states for social services. KRS 15A.160 authorizes the Justice Cabinet to adopt administrative regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. This administrative regulation is promulgated to incorporate into regulatory form, by reference, materials used by The Department of Juvenile Justice in the implementation of a statewide juvenile service program, and to implement currently required provisions of a consent decree entered December 4, 1995, by the United States District Court for the Western District of Kentucky in United States of America v. Commonwealth of Kentucky, et al., Civil Action No. 3: CV-757-S (W.D.Ky. 1995) and EO 396-1576.

Section 1. Incorporation by Reference. (1) The Justice Cabinet Policy and Procedures Manual is incorporated by reference.

(2) Copies of the Department of Juvenile Justice Policy and Procedures Manual may be inspected, copied or obtained in any department field office or at the Office of the Commissioner, Department for Juvenile Justice, 320 West Main Street, Frankfort, Kentucky, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

RALPH E. KELLY, Ed.D., Commissioner
APPROVED BY AGENCY: March 25, 1997
FILED WITH LRC: March 25, 1997 at 1 p.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.

ADMINISTRATIVE REGISTER - 3715

renewed on or after May 1, 1997, insurers or licensed advisory organizations shall provide policyholders with written explanations of the policyholders' experience modification factor and the data and methodology utilized in the calculation of the factor. KRS 304.13-415 also provides that the commissioner shall establish guidelines for application of experience modification factors to be used in developing workers' compensation insurance rates. This administrative regulation establishes guidelines for the application of experience modification factors, and for the written explanations to policyholders regarding how the factors were calculated.

Section 1. Workers' compensation insurers that use experience modification factors shall develop an experience modification factor for each insured in accordance with the following provisions:

(1) The experience modification factor shall be based upon three (3) full years of experience ending one (1) year prior to the effective date of the modification;

(2) The experience modification factor shall be developed on an annual basis and shall remain effective for twelve (12) months;

(3) Only one (1) experience modification shall apply to a given risk at any time and shall apply to all operations of the risk;

(4) In developing premium for the experience modification factor, insurers shall:

(a) Apply the experience modification factor to the carrier's rates in force on the effective date of the experience modification factor; and

(b) Base the premium upon state qualifying premium amounts and the predetermined state limits, as both are identified in an advisory organization's publications approved by the commissioner; and

(5) An experience modification factor may be determined for a risk when the risk has developed sufficient qualifying premium based on payroll and other exposures reported in accordance with an advisory organization's publications approved by the commissioner.

Section 2. Each insurer or advisory organization using experience modification factors shall provide the policyholder with a written explanation of the policyholder's experience modification factor in language reasonably calculated to inform the policyholder of the data and methodology utilized in the calculation of the factor, including but not limited to the information referenced in Section 1 of this administrative regulation.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: March 20, 1997

FILED WITH LRC: March 24, 1997 at 10 a.m.

CONTACT PERSON: Lawrence W. Cook, Counsel, Kentucky Department of Insurance, 215 W. Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number: (502) 564-6032 (ext. 219), Fax Number: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact Person: Lawrence W. Cook

(1) Type and number of entities affected: Approximately 298 workers' compensation insurers will be affected.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received at this time.

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

(c) Compliance, reporting, and paperwork requirements, including

factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Workers' compensation insurers or advisory organizations will be required to provide written explanations to policyholders of how their experience modification factors were calculated.

2. Second and subsequent years: The same compliance, reporting and paperwork requirements will continue into second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Approximately \$3,000 in costs.

2. Continuing costs or savings: \$3,000 in costs.

3. Additional factors increasing or decreasing costs: It is possible, but unlikely, that more appeals will be filed, thus increasing the department's costs.

(b) Reporting and paperwork requirements: None are foreseeable at this time.

(4) Assessment of anticipated effect on state and local revenues: None are foreseeable at this time.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget created for Department of Insurance will be the source of revenue.

(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 have been received at this time.

(b) Kentucky: No public comments have been received at this time.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is being promulgated to implement provisions of HB 1 (1996 Extraordinary Session). No alternatives existed.

(8) Assessment of expected benefits: This regulation will assist workers' compensation insurers and insureds by providing uniform guidelines for the use of experience modification factors.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This item is not applicable to this regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: This item is not applicable to this regulation.

(c) If detrimental effect would result, explain detrimental effect: This item is not applicable to this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This item is not applicable to this regulation.

(a) Necessity of proposed regulation if in conflict: This item is not applicable to this regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This item is not applicable to this regulation.

(10) Any additional information or comments: None

(11) TIERING: Tiering is not applicable because the regulation applies equally to all workers' compensation insurers that use experience modification factors.

STATEMENT OF EMERGENCY 806 KAR 13:140E

1996 Ky. Acts ch. 1 (First Extraordinary Session) requires the commissioner to prescribe the manner and format in which workers' compensation insurers or agents notify their insureds in writing of their rights afforded by KRS 304.13-161. This administrative regulation creates the notice that will be sent to all workers' compensation

this regulation.

(c) If detrimental effect would result, explain detrimental effect: This item is not applicable to this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: KRS 304.13-161 (overlaps).

(a) Necessity of proposed regulation if in conflict: This item is not applicable to this regulation.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This item is not applicable to this regulation.

(10) Any additional information or comments: HB 1 requires the commissioner to prescribe the manner and format in which insurers or agents notify each insured in writing of their rights under KRS 304.13-161.

(11) TIERING: Tiering is not applicable because the regulation applies equally to all workers' compensation insurers.

STATEMENT OF EMERGENCY

811 KAR 1:090E

This emergency administrative regulation is needed in order to enact the proposed amended administrative regulation changes of 811 KAR 1:090 before the 1997 harness racing season commences on May 1. The ordinary administrative regulation is not sufficient because of the time limits on amending the proposed administrative regulations. This emergency administrative regulation shall be replaced by an ordinary administration regulation. The Notice of Intent was filed with the Regulations Compiler on April 15, 1997.

PAUL E. PATTON, Governor
RICHARD "SMITTY" TAYLOR, Chairman

PUBLIC PROTECTION AND REGULATION CABINET

Kentucky Racing Commission

811 KAR 1:090E. Stimulants and drugs.

RELATES TO: KRS 230.630(1), (3), 230.640, 230.700

STATUTORY AUTHORITY: KRS 230.630(3), (4), (7)

EFFECTIVE: April 15, 1997

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to provide for the testing of horses for stimulants and drugs and the administrative regulation of stimulants and drugs.

Section 1. (1) At every meeting except as stated herein where pari-mutuel wagering is permitted, the winning horse in every heat and/or race shall be subjected to a urine test and/or a blood test and the winning horse and second place horse in every perfecta or quinella race shall ~~may~~ be subjected to a urine test and/or a blood test for the purpose of determining thereby the presence of any drug, stimulant, sedative, depressant, or medicine. The winning horse and/or the second and third horses in a trifecta shall ~~may~~ be tested the same as in the rule above. Also, the judges shall ~~may~~ order any horse in a race to be subjected to a urine, blood and/or saliva test. Such tests shall be made only by qualified veterinarians and by laboratories designated by the commission. In addition to the above, the winning horse and second horse in every heat or dash of a race at any track with a total purse in excess of \$5,000 may be subjected to both blood and a urine test. Positive tests during time trials shall be treated as a violation. The winning time shall be disallowed and the trainer of record may be fined, suspended or both.

(2) The commission may, in its discretion, or at the request of a member, authorize or direct a saliva, blood, urine or other test of any

horse racing at any meeting.

Section 2. (1) During the taking of the blood and/or urine sample by the veterinarian, the owner, trainer or authorized agent shall ~~may~~ be present at all times. Samples so taken shall be placed in two (2) containers and shall immediately be sealed and the evidence of such sealing indicated thereon by the signature of the representative of the owner or trainer. One (1) part of the sample is to be placed in a depository under the supervision of the presiding judge and/or any other agency the commission shall ~~may~~ designate to be safeguarded until such time as the report on the chemical analysis of the other portion of the split sample is received.

(2) Should a positive report be received, an owner or trainer shall have the right to have the other portion of the split sample inserted in with a subsequent group being sent for testing or may demand that it be sent to another chemist for analysis, the cost of which shall ~~will~~ be paid by the party requesting the test.

Section 3. (1) Whenever there is a positive test finding the presence of any drug, stimulant, sedative or depressant present, in the postrace test, the laboratory shall immediately notify the presiding judge who shall immediately report such findings to the commission.

(2) When a positive report is received from the laboratory by the presiding judge, the persons held responsible shall be notified and a thorough investigation shall be conducted by or on behalf of the judges. A time shall be set by the judges for a hearing to dispose of the matter. The time set for the hearing shall not exceed four (4) racing days after the responsible persons were notified. The hearing shall ~~may~~ be continued, if in the opinion of the judges, circumstances justify such action.

(3) Should the chemical analysis of saliva, blood, urine or other sample of the postrace test taken from a horse indicate the presence of a forbidden narcotic, stimulant, depressant, or local anesthetic, it shall be considered prima facie evidence that such has been administered to the horse.

(4) Upon receipt of written notification of a positive test finding, the judges shall not cause the immediate suspension of the horse from further participation in racing.

Section 4. Any person or persons who shall administer or influence or conspire with any other person or persons to administer to any horse any drug, medicament, stimulant, depressant, narcotic or hypnotic to such horse within forty-eight (48) hours of his race, shall be subject to penalties provided in this rule. No horse shall be tubbed in ice in the paddock prior to their racing commitment.

Section 5. Whenever the postrace test or tests prescribed in Section 1 disclose the presence in any horse of any drug, stimulant, depressant or sedative, in any amount whatsoever, it shall be presumed that the same was administered by the person or persons having control and/or care and/or custody of such horse with the intent thereby to affect the speed or condition of such horse and the result of the race in which it participated.

Section 6. A trainer shall be responsible at all times for the condition of all horses trained by him. No trainer shall start a horse or permit a horse in his custody to be started if he knows, or if by the exercise of reasonable care he might have known or have cause to believe, that the horse has received any drug, stimulant, sedative, depressant, medicine or other substance that could result in a positive test. Every trainer must guard or cause to be guarded each horse trained by him in such manner and for such period of time prior to racing the horse so as to prevent any person not employed by or connected with the owner or trainer from administering any drug, stimulant, sedative, depressant, or other substance resulting in a postrace positive test.

(4) Assessment of anticipated effect on state and local revenues: This change will not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Monies paid to cover the administration of lasix or the scoping of a horse shall be paid by the owner of the horse.

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

(a) Geographical area in which administrative regulation will be implemented: There are none.

(b) Kentucky: There are none.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are none.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would be none.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result.

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

(a) Necessity of proposed regulation if in conflict: There is no conflict.

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

(10) Any additional information or comments: None

(11) Tiering: Is tiering applied? Tiering was not applied. No fee is paid to the Kentucky Racing Commission.

STATEMENT OF EMERGENCY

904 KAR 2:017E

The administrative regulation 904 KAR 2:017E, Kentucky Works and Supportive Services, implements the work requirements and supportive services for the Kentucky Transitional Assistance Program (K-TAP). This emergency administrative regulation must be placed into effect immediately in order to meet a deadline imposed by federal law. The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the Temporary Assistance for Needy Families (TANF) block grant program and has eliminated entitlement to the Aid to Families with Dependent Children (AFDC) program. In addition, this act has eliminated the Job Opportunities and Basic Skills (JOBS) program funded under Title IV-F. The funding to implement work requirements and supportive services for the TANF block grant program is now included in Title IV-A. In Kentucky the TANF block grant program is called the Kentucky Transitional Assistance Program (K-TAP) and the program to implement the work requirements is called Kentucky Works. It is necessary to promulgate this emergency administrative regulation to bring Kentucky into compliance with the federally mandated work requirements and supportive services provisions found in 42 USC 601 et seq., in order for Kentucky to implement the work requirements for K-TAP. As a result of 42 USC 601 et seq., the Cabinet for Families and Children filed a Title IV-A State Plan for TANF block grant funding, in order to implement the TANF block grant program in Kentucky. This state plan also includes work requirements as mandated by 42 USC 601 et seq. The Title IV-A State Plan was filed for October 1996, effective the first possible quarter for Kentucky to be considered an eligible state to receive block grant funding for federal fiscal year 1996-97. The new Title IV-A State Plan was submitted as soon as possible for Kentucky to have the ability to be eligible to receive the full total of the Title IV-A block grant funding from the federal government. Implementation

of the plan must include the mandatory work provisions in 42 USC 601 et seq. which were required to be included in the Title IV-A State Plan. An ordinary administrative regulation would not allow sufficient time to meet the time frames to implement the mandated work provisions of the program delineated in the Title IV-A State Plan submission to the U.S. Department of Health and Human Services. The mandated work provisions must be implemented in order to qualify for TANF funding. With the submittal of Kentucky's Title IV-A State Plan, Kentucky was required to certify the state will operate the TANF block grant program in accordance with the federal statutory requirements, as provided by 42 USC 601 et seq. In order for Kentucky to meet the deadline imposed by the federal law, it is necessary to place into effect immediately this emergency administrative regulation. The deadline imposed by the Department of Health and Human Services for the complete Title IV-A State Plan for implementation of the mandated requirements of the cabinet's Title IV-A block grant program is October 18, 1996. Therefore, in order to meet this deadline by the U.S. Department of Health and Human Services and to prevent the loss of federal funds, this emergency regulation must be placed in effect immediately in order to amend the work requirements and supportive services provisions in 904 KAR 2:017 to comply with the federal mandates contained in the Title IV-A State Plan. 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 and Development

904 KAR 2:017E. Kentucky Works [Job opportunities and basic skills (JOBS) child care and] supportive services.

RELATES TO: KRS 205.200(2), 205.211, 42 USC 601 et seq., 602 [45 CFR 250.0, 250.1, 250.11, 250.12, 250.48, 255.0, 255.2, 255.3, 255.4, 255.5, 255.6]

STATUTORY AUTHORITY: KRS 194.050, 205.200(2), 42 USC 601 et seq., EO 96-862

EFFECTIVE: March 27, 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] is required to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive Kentucky Transitional Assistance Program [AFDC] money grants be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the requirements for receiving Kentucky Works [job opportunities and basic skills (JOBS)] child care and supportive services.

Section 1. Definitions. (1) "Approved Kentucky Works [JOBS] activities" means participation in an allowable activity pursuant to 904 KAR 2:370E, Section 2. [component, precomponent, component preparation, preemployment, transitional extension or self initiated JOBS activities which have been determined by the Department for Social Insurance to be consistent with employment goals.]

(2) "Cabinet" means the Cabinet for Families and Children.

(3) "Center-based child care" means full- or part-time:

(a) Type I nonresidential licensed care, day or night, provided for seven (7) or more unrelated children; or

(b) Residential care, day or night, provided for thirteen (13) or more unrelated children.

(4) [(3)] "Certified child care" means child care which is provided

ADMINISTRATIVE REGISTER - 3721

(e) The geographical boundaries of the fifteen (15) area development districts.

(4) Full-time (FT) and part-time (PT) attendance shall be determined by the provider.

(5) FT and PT daily maximum payment levels and PT monthly maximum payment levels shall be established for the following groups of dependent children:

(a) "Special needs" includes children in no certain age group;

(b) "Infants" includes children under age one (1);

(c) "Toddlers" includes children from age one (1) up to age three

(3);

(d) "Preschool" includes children from age three (3) up to age six

(6);

(e) "School age" includes children age six (6) and over.

(6) For needs incurred on or after January 1, 1995, child care maximum payments shall be made as follows:

WESTERN REGION

URBAN COUNTIES

COUNTY NAMES: MCCracken

PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		PT Max	Infants		PT Max	Toddlers		PT Max	Pre-School		PT Max	School-Age		PT Max
	FT	PT		FT	PT		FT	PT		FT	PT		FT	PT	
Center-based	\$12	16	260	13	16	282	12	16	260	12	14	260	12	9	260
Group Home	\$13	13	282	12	12	260	11	11	238	11	10	238	11	10	238
Family/In-Home	\$10	16	217	11	16	238	11	16	238	11	16	238	11	16	238

WESTERN REGION

RURAL COUNTIES

COUNTY NAMES: BALLARD, CALLOWAY, CARLISLE, FULTON, GRAVES, HICKMAN, MARSHALL

PURCHASE AREA DEVELOPMENT DISTRICT #1

	Special Needs		PT Max	Infants		PT Max	Toddlers		PT Max	Pre-School		PT Max	School-Age		PT Max
	FT	PT		FT	PT		FT	PT		FT	PT		FT	PT	
Center-based	\$12	16	260	13	16	282	13	16	282	13	14	282	12	9	260
Group Home	\$13	13	282	13	13	282	13	13	282	13	13	282	13	13	282
Family/In-Home	\$15	16	325	11	16	238	11	16	238	13	16	282	12	16	260

WESTERN REGION

URBAN COUNTIES

COUNTY NAMES: CHRISTIAN

PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		PT Max	Infants		PT Max	Toddlers		PT Max	Pre-School		PT Max	School-Age		PT Max
	FT	PT		FT	PT		FT	PT		FT	PT		FT	PT	
Center-based	\$12	16	260	13	16	282	12	16	260	12	14	260	11	8	238
Group Home	\$13	13	282	12	12	260	11	11	238	10	10	217	10	10	217
Family/In-Home	\$10	16	217	11	16	238	11	16	238	11	16	238	11	16	238

WESTERN REGION

RURAL COUNTIES

COUNTY NAMES: CALDWELL, CRITTENDEN, HOPKINS, LIVINGSTON, LYON, MUHLENBURG, TODD, TRIGG

PENNYRILE AREA DEVELOPMENT DISTRICT #2

	Special Needs		PT Max	Infants		PT Max	Toddlers		PT Max	Pre-School		PT Max	School-Age		PT Max
	FT	PT		FT	PT		FT	PT		FT	PT		FT	PT	
Center-based	\$12	16	260	13	16	282	13	16	282	13	14	282	12	8	260
Group Home	\$13	13	282	13	13	282	11	13	238	13	13	282	13	13	282
Family/In-Home	\$15	16	325	11	16	238	11	16	238	13	16	282	12	16	260

WESTERN REGION

URBAN COUNTIES

COUNTY NAMES: DAVIESS, HENDERSON

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs		PT Max	Infants		PT Max	Toddlers		PT Max	Pre-School		PT Max	School-Age		PT Max
	FT	PT		FT	PT		FT	PT		FT	PT		FT	PT	
Center-based	\$13	16	282	13	16	282	13	16	282	13	14	282	13	10	282

ADMINISTRATIVE REGISTER - 3723

	Special Needs						Pre-School						School-Age					
	PT		Infants		PT		Toddlers		PT		School		PT		Age		PT	
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	\$16	16	347	16	13	347	14	14	303	14	15	303	13	16	282			
Group Home	\$15	15	325	15	12	325	13	11	282	13	10	282	12	9	260			
Family/In-Home	\$15	14	325	14	12	303	12	12	260	12	12	260	11	12	238			

CENTRAL REGION

RURAL COUNTIES

COUNTY NAMES: CARROLL, GALLATIN, GRANT, OWEN, PENDLETON

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

	Special Needs						Pre-School						School-Age			
	PT		Infants		PT		Toddlers		PT		School		PT		Age	
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	
Center-based	\$16	16	347	16	13	347	16	14	347	15	15	325	14	16	303	
Group Home	\$15	15	325	15	15	325	15	15	325	15	10	325	13	9	282	
Family/In-Home	\$15	14	325	15	12	325	15	12	325	15	12	325	15	12	325	

EASTERN REGION

RURAL COUNTIES

COUNTY NAMES: BRACKEN, FLEMING, LEWIS, MASON, ROBERTSON

BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

	Special Needs									Pre-School			School-Age		
	PT		Infants			PT		Toddlers		PT		PT		PT	
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	\$13	16	282	13	12	282	13	12	282	13	12	282	13	14	282
Group Home	\$12	11	260	12	12	260	12	10	260	12	10	260	12	10	260
Family/In-Home	\$10	10	217	11	9	238	11	6	238	15	10	325	12	10	260

EASTERN REGION

RURAL COUNTIES

COUNTY NAMES: BATH, MENIFEE, MONTGOMERY, MORGAN, ROWAN

GATEWAY AREA DEVELOPMENT DISTRICT #9

	Special Needs									Pre-School			School-Age		
	PT		Infants		PT		Toddlers		PT		PT		PT		
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	\$13	16	282	13	12	282	13	12	282	13	12	282	13	14	282
Group Home	\$12	10	260	12	12	260	12	10	260	12	10	260	12	10	260
Family/In-Home	\$10	9	217	11	9	238	11	6	238	15	10	325	12	10	260

EASTERN REGION

URBAN COUNTIES

COUNTY NAMES: BOYD, CARTER, GREENUP

FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs									Pre-School			School-Age			
	PT		Infants			PT		Toddlers		PT	School		PT	Age		PT
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	
Center-based	\$14	16	303	14	12	303	13	12	282	13	12	282	13	14	282	
Group Home	\$13	13	282	13	12	282	12	10	260	12	10	260	12	10	260	
Family/In-Home	\$12	12	260	12	9	260	11	8	238	11	10	238	11	10	238	

EASTERN REGION

RURAL COUNTIES

COUNTY NAMES: ELLIOTT, LAWRENCE

FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs									Pre-School			School-Age		
	PT		Infants			PT		Toddlers		PT		PT		PT	
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	\$14	16	303	14	12	303	13	12	282	13	12	282	13	14	282
Group Home	\$13	13	282	13	12	282	12	10	260	12	10	260	12	10	260
Family/In-Home	\$12	12	260	12	9	260	11	8	238	15	10	325	12	10	260

ADMINISTRATIVE REGISTER - 3725

	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	\$14	14	303	16	11	347	16	14	347	15	14	325	14	16	303
Group Home	\$14	14	303	15	15	325	15	15	325	15	9	325	13	9	282
Family/In-Home	\$15	12	325	15	12	325	12	12	260	15	12	325	15	12	325

(7) ~~Child care payments shall be limited as follows:~~

~~(a) Six (6) semesters (three (3) years) for a two (2) year post-secondary program;~~

~~(b) Eight (8) semesters (nine (9) with good cause) for a four (4) year postsecondary program with an additional semester when:~~

~~1. If only one (1) additional semester is needed to complete the degree requirements; and~~

~~2. If satisfactory progress is being made;~~

~~(c) No restrictions on other education and training activities.~~

~~(8) These limits apply to both full time and part time enrollment.~~

~~(9) In preemployment or precomponent, if necessary to guarantee that the child care arrangement shall not be lost, child care payments shall be provided for a period of:~~

~~(a) Up to two (2) weeks prior to the scheduled start of employment or component activity; and~~

~~(b) Up to one (1) month during a break in employment or component activity if subsequent employment or component activity is scheduled to begin within that period.~~

~~(8) [(40)] Child care payments shall not be made if:~~

~~(a) If only one (1) parent is participating; and~~

~~(b) The nonparticipating parent is not incapacitated.~~

~~(c) The nonparticipating parent is employed and child care is allowed as a deduction as outlined in administrative regulation 904 KAR 2:016.~~

~~(9) [(44)] When child care expenses are paid from another source the agency shall pay:~~

~~(a) Only the difference between the total child care and what the other source is paying; and~~

~~(b) Up to the maximum daily payment rate per child per provider.~~

Section 5. [6-] Authorization of Child Care Payment. (1) Child care payments shall be authorized upon the receipt of appropriate verification of the cost of care.

(2) Departmental forms required for verification are incorporated by reference in this administrative regulation.

(3) Payments shall be authorized in accordance with 904 KAR 2:050.

Section 6. [7-] Restrictions on Authorization of Child Care Payments. Payment shall not be made if:

(1) Verification is not returned by the end of the month following the month in which the cost was incurred; or

(2) The participant is penalized ~~[sanctioned]~~ for noncompliance with Kentucky Works [JOBS] activities, as specified in 904 KAR 2:370E; or

~~(3) A fair hearing decision is pending on an issue of noncompliance with JOBS].~~

Section 7. [8-] Transportation Payments in Kentucky Works [JOBS] components. Transportation reimbursement shall be paid in the following situations:

(1) Precomponent;

(2) Component preparation;

(3) Component participation, with the exception of OJT while the Kentucky Transitional Assistance Program [AFDC] case remains active;

(4) Transitional extension; or

(5) On-the-job training (OJT) participants discontinued from Kentucky Transitional Assistance Program [AFDC], until the end of the component placement.

[Section 9. Transportation Payments in Self-initiated Activities. (1)

Transportation shall be provided in the same situations as in JOBS components, with the exceptions of:

(a) Transitional extension;

(b) OJT participants discontinued due to increased earnings or hours of employment;

(c) Component preparation; and

(d) Precomponent, for persons waiting to enter self-initiated activities for the first time.

(2) Reimbursement shall be paid only for approved self-initiated activities.]

Section 8. [40-] Transportation Payment Amount and Authorization. (1) If free transportation is unavailable which meets the needs of the recipient, transportation shall be provided for individuals participating in approved Kentucky Works [JOBS] activities through:

(a) Arrangement by the state Kentucky Transitional Assistance Program [AFDC] agency or contractor; and

(b) ~~Direct payments to the individual of three (3) dollars per day~~ After receipt of [appropriate] verification [through departmental forms] or through the System Tracking for Employability Program (STEP), direct payments to the individual of:

1. If low-cost transportation is available and meets the needs of the individual, actual transportation costs up to the maximum payment rates listed in subparagraph 2 of this paragraph; or

2. If free or low-cost transportation is unavailable that meets the needs of the individual:

a. Through May 31, 1997, three (3) dollars per day; or

b. Effective June 1, 1997, direct payment to the individual per month of:

(i) Nine (9) dollars for less than four (4) days per month;

(ii) Thirty-five (35) dollars for four (4) to sixteen (16) days per month; or

(iii) Sixty (60) dollars for seventeen (17) or more days per month.

(c) Effective June 1, 1997, for a special circumstance, as determined by the cabinet, when actual transportation costs exceed the maximum payment rates in paragraph (b) of this subsection, if approved by the cabinet, the actual negotiated rate not to exceed ninety-three (93) dollars per month may be paid.

(d) Payments shall be made as specified in 904 KAR 2:050. ~~[JOBS Automated System (JAS). Payments shall be made as specified in 904 KAR 2:050.]~~

(2) Transportation payments shall be limited in the same manner as child care payments, as described in Section 5(7) of this administrative regulation.

(3) In precomponent, if necessary to guarantee that the transportation arrangement shall not be lost, transportation payments shall be provided for the period of:

(a) Up to two (2) weeks prior to the scheduled start of component activity; and

(b) Up to one (1) month during a break in component activity if subsequent component activity is scheduled to begin within that period.

Section 9. [44-] Restrictions on Authorization of Transportation Payments. Payments shall not be made if:

(1) Appropriate verification is not returned by the end of the month prior to [following] the month in which the cost will be [was] incurred;

(2) The participant is penalized ~~[sanctioned]~~ for noncompliance with Kentucky Works [JOBS] activities, as specified in 904 KAR 2:370E. [or

(3) A fair hearing decision is pending on an issue of noncompliance with JOBS].

ADMINISTRATIVE REGISTER - 3727

sions apply to Kentucky Works [JOBS] child care [~~supportive services~~] overpayments:

(1) Necessary action shall be taken promptly by the department to correct and recoup any overpayments occurring on or after October 1, 1990 in a case:

- (a) Of fraud;
- (b) Involving a current recipient; and
- (c) In which the overpayment would equal or exceed the cost of recovery.

(2) An overpayment shall be recovered through:

- (a) Repayment by the individual to the cabinet; or
- (b) Reduction in child care payments; or
- (c) Reduction of Kentucky Transitional Assistance Program [AFDC] benefits only upon a voluntary request of the recipient family.

(3) Repayment by the individual shall allow the recipient family to retain, for any month, a reasonable amount of funds.

(4) Underpayments and overpayments may be offset against each other in adjusting incorrect payments.

Section 15. 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.

Section 16. [4-7] Material Incorporated by Reference. (1) Forms necessary for verification of child care and supportive services payments in the Kentucky Works [JOBS] Program are incorporated [~~effective December 1, 1993~~]. These forms include:

- (a) PA-32, revised 4/97 [~~4/93~~];
- (b) PA-33, revised 4/97 [~~3/94~~];
- (c) PA-33N, revised 4/97 [~~3/94~~];
- (d) PA-33.1, revised 6/91;
- (e) PA-114, revised 4/97 [~~4/93~~]; and
- (f) PA-416, revised 4/97 [~~4/93~~].

(2) These forms may be inspected and copied at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 25, 1997

FILED WITH LRC: March 27, 1997 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive supportive services for Kentucky Works under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the Temporary Assistance for Needy Families (TANF) block grant program and has eliminated entitlement to the Aid to Families with Dependent Children (AFDC) Program. In addition, this act has eliminated the Job Opportunities and Basic Skills (JOBS) program and supportive services provisions funded under Title IV-F. The funding to implement work requirements and supportive services provisions for participation in an approved Kentucky Works activity, for TANF block grant program, is now included in Title IV-A. In Kentucky the TANF block grant program to implement the work requirements and provide supportive services is called Kentucky Works. As of January, 1997, there were a total of 64,798 basic AFDC cases and 2,537 AFDC-UP (unemployed parent) cases, for a total of 67,335 AFDC cases. Effective January 1997, there was approximately 49,000 adults in those cases. Adult K-TAP recipients are required to participate in the Kentucky Works Program unless the recipient meets exemption

criteria delineated in the administrative regulation. Supportive services are provided to enable participation by K-TAP recipients who are in an approved Kentucky Works activity.

(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 cost (note any effects upon competition) for the: First year following implementation: The individuals who are applicants or recipients of K-TAP, who are required to participate in Kentucky Works provisions will not have any additional compliance, reporting or paperwork requirements due to complying with the requirements for receiving Kentucky Works child care and supportive services.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to the agency: Transportation payments will change based on a monthly payment rate basis instead of a flat per day rate. Car repair expenses will be added as a nonrecurring expense. Limitations on other supportive services will be reduced from a cumulative limit of \$200 from \$300 in a twelve (12) month period. Preemployment and employment supportive services will be added to enable the individual to accept a new job or retain an existing one, limited to \$200 in a twelve (12) month period.

1. First year: The breakdown of costs and savings to the agency for the first year (SFY 1997) are listed below:

- a. Transportation for new cases (cost) - \$494,400
- b. Car repair (cost) - \$0
- c. Nonrecurring support services (cost) - \$0
- d. Preemployment and employment (cost) - \$0
- e. Child care for new cases (cost) - \$1,080,200
- f. Child care system (cost) - \$2,000,000
- g. Form revisions, printing and system form revisions (cost) - \$5,000
- h. Total for SFY 1997 - \$3,579,600

2. Continuing cost or savings: The breakdown of cost to the agency for the second year (SFY 1998) are listed below:

- a. Transportation for new cases (cost) - \$5,400,000
- b. Car repair (cost) - \$300,000
- c. Nonrecurring support services (cost) - \$800,000
- d. Preemployment and employment (cost) - 60,000
- e. Child care for new cases (cost) - \$2,306,000
- f. Child care system (cost) - \$0
- g. Form revisions, printing and system form revisions (cost) - \$0
- h. Total for SFY 1998 - \$8,866,000

3. Additional factors increasing or decreasing cost: Reporting and paperwork requirements: The state and federal expenditures do not include projections for the community and local involvement which will be critical to the success of this program.

(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 funds 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 after the publication of the notice of intent.

(b) Kentucky: To be determined after the publication of the notice

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development

904 KAR 2:370E. Technical requirements for Kentucky Works
~~[; job opportunities and basic skills].~~

RELATES TO: 42 USC 601 et seq. [45 CFR 250.0, 250.10, 250.11, 250.30, 250.32, 250.33, 250.34, 250.35, 250.36, 250.41, 250.43, 250.44, 250.45, 250.46, 250.48, 250.60, 250.61, 250.63]

STATUTORY AUTHORITY: KRS 194.050, 205.200(2), 42 USC 601 et seq., EO 96-862

EFFECTIVE: March 27, 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, which is now called the Kentucky Transitional Assistance Program, the block grant program funded under 42 USC 601 et seq. [AFDC]; KRS 205.200(2) requires that the conditions of eligibility to receive [AFDC] money grants from 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 the Kentucky Works [Job Opportunities and Basic Skills (JOBS)] Program participants as they relate to eligibility for receiving assistance from the Kentucky Transitional Assistance Program. [AFDC]

Section 1. Definitions. (1) "Assessment" means the ongoing evaluation of an individual's strengths and needs relative to achieving self-sufficiency; ~~[educational and vocational potential]~~

(2) "Cabinet" means the Cabinet for Families and Children; ~~["Barriers" are any hardships the individual shall overcome to participate in education, training or employment.]~~

(3) "Concerns" means a hardship the individual shall overcome to become employed and self-sufficient; ~~["Case manager" means the Department for Social Insurance (DSI) individual or contractor who:~~

~~(a) Aids the JOBS participant by brokering services for the participant;~~

~~(b) Identifies and resolves barriers to the extent possible; and~~

~~(c) Delivers JOBS related services to the participant.]~~

(4) "Conciliation" means [ie] a process in which participation problems in the Kentucky Works [JOBS] Program can be resolved;

(5) "Kentucky Works" ["JOBS"] means a program which assists recipients ~~[of AFDC]~~ in obtaining ~~[the necessary education and training that will lead to]~~ gainful employment and self-support;

(6) "Vocational education" means a training program which prepares the individual for employment. ~~["Target population" means that group composed of each individual who:~~

~~(a) Is receiving AFDC, and who has received AFDC for any thirty-six (36) of the preceding sixty (60) months;~~

~~(b) Makes application for AFDC and has received AFDC for any thirty-six (36) of the sixty (60) months immediately preceding the most recent month for which application has been made;~~

~~(c) Is a custodial parent under the age of twenty-four (24) who:~~

~~1. Has not completed a high school education and, at the time of application for AFDC, is not enrolled in high school or a high school equivalency course of instruction; or~~

~~2. Had little or no work experience in the preceding year; or~~

~~(d) Is a member of a family in which the youngest child is within two (2) years of being ineligible for AFDC because of age.]~~

Section 2. Program Participation. (1) ~~[Exemptions:]~~ All adult and teenage parent Kentucky Transitional Assistance Program [AFDC]

recipients ~~shall be [are]~~ required to participate in the Kentucky Works [JOBS] Program ~~[if the program is available in the county of residence]~~ unless the recipient meets the exception criteria in Section 3 of this administrative regulation;

(2) All adult Kentucky Transitional Assistance Program recipients who do not meet the exception criteria in Section 3 of this administrative regulation shall be required to participate in the Kentucky Works Program as follows:

(a) For a one (1) parent household a minimum of twenty (20) hours per week shall be required in specific activities listed in paragraph (c) of this subsection;

(b) For a two (2) parent household:

1. A minimum of thirty-five (35) hours per week shall be required for one (1) parent with at least thirty (30) hours of the required thirty-five (35) hours per week in specific activities listed in paragraph (c) of this subsection; and

2. A minimum of twenty (20) hours per week shall be required for one (1) parent in a two (2) parent household with all twenty (20) hours per week in specific activities listed in paragraph (c) 1, 2, 3, 4, and 6 of this subsection if:

a. The family receives child care assistance; and

b. An adult in the family is not disabled pursuant to 904 KAR 2:006E; or

c. An adult is not needed to care for a child in the home with a severe disability pursuant to 904 KAR 2:006E.

(c) Specific activities to be in compliance with program participation requirements in Kentucky shall include:

1. Unsubsidized employment;

2. Subsidized employment;

3. Work experience;

4. On-the-job training;

5. Job search and job readiness assistance;

6. Community service;

7. Vocational educational training not to exceed twelve (12) consecutive months and after that time coupled with work or work activities for the amount of hours per week specified in paragraphs (a) and (b) of this subsection;

8. Full-time enrollment, as defined by the school, in post secondary education not to exceed twelve (12) consecutive months and after that time coupled with work or work activities for the amount of hours per week specified in paragraphs (a) and (b) of this subsection.

9. Satisfactory attendance at secondary school or equivalent in the case of a recipient who has not completed secondary school or equivalent coupled with work or work activities in the amount of hours per week specified in paragraphs (a) and (b) of this subsection.

10. Provision of child care services to an individual participating in community service;

11. Based on the findings of the assessment, the agency or cabinet designee and the participant may determine placement in a work preparation activity which includes:

a. Domestic violence counseling;

b. Life skills training;

c. A substance abuse program;

d. Mental health counseling;

e. Vocational rehabilitation;

f. Literacy; and

g. Adult education; and

12. Participation in work programs approved by the cabinet.

Section 3. Exceptions to Program Participation. (1) A Kentucky Transitional Assistance Program recipient who is a single head of household, who has not obtained a high school diploma or a graduate equivalency diploma and has not attained twenty (20) years of age is deemed to be engaged in work for any month in a fiscal year if the recipient:

(a) Maintains satisfactory attendance at a secondary school or the equivalent during the month; or

(c) The agency shall reassess and revise, if necessary, the individual's employability plan:

1. After each six (6) months of CWEP participation; and
2. At the conclusion of participation in the component.

(d) After an individual has been assigned to CWEP for nine (9) months, the individual shall not be required to continue in that assignment unless the maximum number of hours of participation is no greater than the family's grant divided by the highest of:

1. Federal minimum wage;
2. State minimum wage; or

3. The rate of pay for an individual employed in the same or similar occupations by the same employer at the same site.

(e) Alternative Work Experience Program (AWEP) which provides unpaid work experience and training to assist a participant to move promptly into regular public or private employment.

(a) An AWEP assignment shall be made with for-profit entities.

(b) AWEP placements shall be developed and monitored by the Department for Social Insurance or contracting agencies.

(c) Placements shall be made in conjunction with the participant's assessment and employability development plan to ensure that the placement meets the participant's training needs.

(d) The AWEP component shall not be mandatory in every JOBS county.

(e) AWEP participants are required to participate a minimum of twenty (20) hours per week.

(f) The agency shall reassess and revise, if necessary, the individual's employability plan at the conclusion of participation in the component.

(g) Other work experience program (OWEP) which provides unpaid work experience and training in nonprofit organizations to assist a participant to move promptly into regular public or private employment.

(a) An OWEP assignment shall be limited to projects which serve a useful public purpose in a field such as:

1. Health;
2. Social service;
3. Environmental protection;
4. Education;
5. Urban and rural development;
6. Welfare;
7. Recreation;
8. Public facilities;
9. Public safety; and
10. Day care;

(b) OWEP placements shall be developed and monitored by the Department for Social Insurance or contracting agencies;

(c) Placements shall be made in conjunction with the participant's assessment and employability development plan to ensure that the placement meets the participant's training needs;

(d) OWEP participants shall be required to participate a minimum of twenty (20) hours per week;

(e) The agency shall reassess and revise if necessary, the individual's employability plan at the conclusion of participation in the component.

(10) Post secondary education may be provided if:

(a) The occupational assessment indicates that the participant has the aptitude to perform a specific job for which this education and training is required;

(b) The participant has or is capable of achieving the basic literacy skills required by the occupation; and

(c) Jobs are available in the specific occupation for which education and training is needed;

Section 4. Program [5- JOBS] Participation Requirements. (1) Assessment.

(a) [When an AFDC recipient has been identified as a JOBS participant, the individual shall be referred to a JOBS case manager;

(b)] The cabinet or another entity designated by the cabinet [case manager] shall make an assessment of the individual's employability;

(b) [(e)] Other agencies shall [will] assist in the assessment process as needed;

(c) [(d)] The assessment shall include:

1. Consideration of basic skills; [work skills;]
2. Occupational skills; and
3. Concerns and other relevant factors. [barriers;

(e) The assessment shall be based on:

1. Education, child care and other supportive service needs;

2. The individual's proficiencies, skills deficiencies, and prior work experience;

3. The needs of the family of the participant; and

4. Any other relevant factors;]

(2) The self-sufficiency [Employability] plan. Based on the findings of the assessment, the agency or cabinet designee and participant shall jointly develop a self-sufficiency [an employability] plan by completing the Transitional Assistance Agreement. This plan shall contain:

(a) An employment goal for the participant;

(b) Services to be provided by the agency (including child care);

(c) [JOBS] Activities to be undertaken by the recipient to achieve the employment goal; and

(d) Other needs of the family.

[(3) Special participation requirements for education.

(a) An AFDC parent under age twenty (20) who resides in a JOBS county shall be required to participate in educational activities if:

1. The parent is not otherwise exempt; and

2. The parent lacks a high school diploma or has basic skills in reading or math below the 8.0 grade level.

(b) The agency may require a parent aged eighteen (18) or nineteen (19) to participate in work or training activities instead of education if:

1. The parent fails to make good progress in successfully completing educational activities; or

2. Prior to any assignment of the individual to educational activities it is determined, based on an educational assessment and the employment goal established in the individual's employability plan, that participation in education activities is inappropriate for the parent.

(c) For purposes of this requirement, the exemption contained at Section 2(9) of this administrative regulation shall not qualify the participant for exemption from JOBS activities.

Section 6. Self-initiated JOBS Activities. The agency shall consider an individual self-initiated if the definition specified in 904 KAR 2:017 is met. This shall include the following provisions:

(1) These individuals shall be in good standing at an institution of higher education or school or other entity offering a course of vocational or technical training.

(2) Enrollments in postsecondary programs shall be full time as defined by the education or training institution.

(3) Both exempt and nonexempt individuals may be approved for self-initiated education or training for their JOBS activity.

(4) The participant shall be attending:

(a) A JTPA funded training program; or

(b) A public source or private institution that is:

1. Licensed by the Kentucky Board for Proprietary Education; or

2. Recognized by the appropriate regulatory agency or licensing body for the state in which the training is located; or

(c) A program which will qualify the participant for a recognized occupation; or

(d) Other education or training which would otherwise be an approved JOBS activity unless the participant resides in a JOBS county and is enrolled less than twenty (20) hours in:

1. GED;
2. Adult basic education;

3. Self-sufficiency ~~[Employability]~~ plan development including completion of the Transitional Assessment Agreement, KW-202;

(b) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in the program activities as defined in the Transitional Assessment Agreement, KW-202;

(c) Refuses without good cause, pursuant to Section 6 of this administrative regulation, to accept employment; or

(d) Terminates employment or reduces earnings without good cause, pursuant to Section 6 of this administrative regulation.

(2) A person who ~~is not excused from penalties due to failure, [has failed]~~ to comply without good cause criteria, pursuant to Section 6 of this administrative regulation, shall be penalized by reducing the amount of the assistance otherwise payable to the family on a pro rata basis;

(3) A penalty shall continue to be applied until the participant complies with program requirements;

(4) A protective payee may be required, in accordance with Section 1 of 904 KAR 2:050, for households that include a penalized individual. ~~[sanctioned, as follows:~~

~~(a) The participant is excluded from JOBS activities and services:~~

~~1. For the first failure to comply, until the failure to comply ceases;~~

~~2. For the second failure to comply, until the failure to comply ceases, or three (3) months, whichever is longer; and~~

~~3. For any subsequent failure to comply, until the failure to comply ceases, or six (6) months, whichever is longer.~~

~~(b) In determining the amount of the AFDC grant, the agency shall not take into account the needs of the sanctioned individual, beginning with the first administratively feasible month after JOBS sanctions begin.~~

~~(c) In a case based on unemployment, the agency shall not take into account the needs of the second parent, unless the second parent:~~

~~1. Is exempt for reasons other than those in Section 2(6), (9) and (11) of this administrative regulation;~~

~~2. Is participating; or~~

~~3. Has volunteered to participate in JOBS.~~

~~(d) A sanctioned individual shall participate in a designated activity for two (2) weeks before the failure to comply is considered to have ceased. At that time, the sanctions shall be terminated.]~~

Section 8. 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.

Section 9. ~~[4-]~~ Material Incorporated by Reference. (1) Forms necessary for participation in the Kentucky Works ~~[JOBS]~~ Program are being incorporated ~~[effective May 1, 1993]~~. These forms include:

(a) ~~[PA-33C, revised 1/02;~~

~~(b) PA-33D, revised 1/92;~~

~~(b) [(e)] PA-218A, revised 4/97 [7/94];~~

~~(c) [(d)] PA-219, revised 5/97 [7/94];~~

~~(d) KW [(e)] JOBS]-105, revised 4/97 [6/94];~~

~~(e) KW-200, issued 4/97;~~

~~(f) KW [JOBS]-201, revised 1/01;~~

~~(g) JOBS]-202, revised 4/97 [10/94];~~

~~(g) KW [(h)] JOBS]-204, revised 5/97 [1/94];~~

~~(h) KW [(i)] JOBS]-205, revised 5/97 [8/94];~~

~~(i) KW-211, issued 5/97;~~

~~(j) KW [JOBS]-241A, revised 5/97 [6/94];~~

~~(k) KW [JOBS]-245A, revised 5/97 [2/94]; [and]~~

~~(l) KW [JOBS]-246A, revised 5/97; [2/94];~~

~~(m) KW-241B, issued 5/97;~~

~~(n) KW-244B, issued 5/97;~~

~~(o) KW-245B, issued 5/97; and~~

~~(p) KW-246B, issued 5/97.~~

(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: March 24, 1997

FILED WITH LRC: March 27, 1997 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP). The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the Temporary Assistance for Needy Families (TANF) block grant program and has eliminated entitlement to the Aid to Families with Dependent Children (AFDC) program. In addition, this act has eliminated the Job Opportunities and Basic Skills (JOBS) program funded under Title IV-F. The funding to implement work requirements for TANF block grant program is now included in Title IV-A. In Kentucky the TANF block grant program to implement the work requirements is called Kentucky Works. As of January, 1997, there were a total of 64,798 basic AFDC cases and 2,537 AFDC-UP cases (unemployed parent cases), for a total of 67,335 AFDC cases. Effective January 1997, there were approximately 49,000 adults in those cases. Adults receiving K-TAP are required to participate in the Kentucky Works Program unless the recipient meets exemption criteria delineated in the administrative regulation. A person who has failed to comply without good cause will be sanctioned by reducing the amount of the assistance otherwise payable to the family on a pro rata basis and will continue to be applied until the participant complies with program requirements. A protective payee for the case may be selected for a sanctioned individual.

(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: The individuals who are applicants or recipients of K-TAP, who are required to participate in Kentucky Works provisions will have additional compliance, reporting or paperwork requirements due to the completion of a new self-sufficiency plan by completing the Transitional Assistance Agreement. This plan contains an employment goal for the participant, the services to be provided by the agency including child care, activities to be undertaken by the recipient to achieve the employment goal, and other needs of the family. This plan will be completed by adult members of the case including teenage parents ages 18 and 19. This plan assists the parent in outlining future goals to be achieved by the parent in obtaining employment and achieving self sufficiency. Individuals required to complete the form will be interviewed during the next case recertification and will not be required to make a special trip to the office to complete the form; therefore, the individual will not be fiscally impacted by the completion of the Transitional Assistance Agreement. Work requirements are mandated by 42 USC 601 et seq. for adults receiving K-TAP. Within 24 months of receiving K-TAP assistance, a parent or caretaker relative receiving assistance, will be required to work or participate in approved work activities. Individuals

STATEMENT OF EMERGENCY
905 KAR 1:180E

This emergency administrative regulation and Notice of Intent were promulgated to establish the current policies and procedures of the Department for Social Services relating to management procedures, support services, and family and children's services. Pursuant to Executive Order 96-1576, effective December 16, 1996, which transferred the residential treatment facilities, services and programs for public offenders and youthful offenders from the Cabinet for Families and Children, Department for Social Services to the Justice Cabinet, Department of Juvenile Justice, this emergency administrative regulation removes from the Department for Social Services policy and procedures manual Children's Residential Treatment Services. An emergency administrative regulation is necessary in order to prevent the loss of federal Title IV-B and Title IV-E funds as governed by federal regulations contained in 45 CFR 1355, 1356 and 1357 which requires in the state plan that the Department for Social Services have policy and procedures for the administration for children and family services, foster care maintenance payments, adoption assistance, and child welfare services. This emergency administrative regulation differs from the emergency administrative regulation filed on September 12, 1996, as follows: Policies contained in Chapter Five, Children's Residential Services have been removed and shall be promulgated by the Department of Juvenile Justice as an emergency administrative regulation pursuant to the Executive Order. Specific policies no longer included in material incorporated by reference are as follows: Policy 500-533, Youth Services General Administration Section, Policy 550-556, Admissions Section, Policy 576-587, Treatment Section and Policy 600-626 Health and Safety Services Section. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation shall be filed with the Regulations Compiler on or about June 15, 1997.

PAUL E. PATTON, Governor
VIOLA P. MILLER, Secretary

CABINET FOR FAMILIES AND CHILDREN
Department for Social Services

905 KAR 1:180E. DSS policy and procedures manual.

RELATES TO: KRS 194.060, 199.420 to 199.990, 200.080 to 200.120, 205.201 to 205.204, 205.455 to 205.465, Chapters 208, 209, 600 to 645

STATUTORY AUTHORITY: KRS 194.050, 199.420, 200.080, 209.030, 605.150, 615.050, 620.180, 625.120, 630.140, 635.100, 640.120, 645.250, EO 96-862, 96-1576

EFFECTIVE: March 19, 1997

NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 9901-9912, "Block Grants for Social Services - Title XX," authorizes grants to states for social services. KRS 194.050 authorizes the Cabinet for Human Resources to adopt administrative regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Services under the Cabinet for Families and Children. Executive Order 96-1576, effective December 16, 1996, transferred the residential treatment facilities, services and programs for public and youthful offenders from the Cabinet for Families and Children, Department for Social Services, Division of Children's Residential Services to the Justice Cabinet, Department of Juvenile Justice. This administrative regulation is amended to incorporate into regulatory form, by reference, materials used by the cabinet in the

implementation of a statewide social service program.

Section 1. Incorporation by Reference. (1) The Department for Social Services Policy and Procedures Manual as revised March 1997 [~~December, 1993~~], is incorporated by reference.

(2) Copies of the Department for Social Services Policy and Procedures Manual may be inspected, copied or obtained in any department field office in each of the 120 counties or at the Office of the Commissioner, Department for Social Services, 275 East Main, 6 Floor West, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

DONNA HARMON, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 17, 1997

FILED WITH LRC: March 19, 1997 at noon

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(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 social service program through the current policies and procedures of the department.

(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: There are no first year additional compliance, reporting or paperwork requirements as this administrative regulation only removes from the Department for Social Services policy and procedures manual the Children's Residential Services Program which has been transferred to the Department of Juvenile Justice pursuant to EO 96-1576.

2. Second and subsequent years: There are no second or subsequent year additional compliance, reporting or paperwork requirements as this administrative regulation only removes from the Department for Social Services policy and procedures manual the Children's Residential Services Program which has been transferred to the Department of Juvenile Justice pursuant to EO 96-1576.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings to the promulgating agency as this administrative regulation only removes from the Department for Social Services policy and procedures manual the Children's Residential Services Program which has been transferred to the Department of Juvenile Justice pursuant to EO 96-1576.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings to the Department for Social Services as this administrative regulation only removes from the Department for Social Services policy and procedures manual the Children's Residential Services Program which has been transferred to the Department of Juvenile Justice pursuant to EO 96-1576.

3. Additional factors increasing or decreasing costs: The depart-

meets appropriate patient status; ~~[-]~~ and

(d) Who chooses the HCB services option.

(2) Excluded from coverage shall be an individual who:

(a) Requires only minor home adaptations or minor home adaptations and case management;

(b) Is an inpatient of a hospital, nursing facility, and facility for the mentally retarded.

(3) The department may exclude from coverage an individual for whom the cost of HCB services would reasonably be expected to exceed the cost of the appropriate level of institutional services;

(4) The home and community based services agency ~~[-(provider)]~~ shall be responsible for:

(a) Securing an appropriate physician recommendation ~~[-(recommendations and orders)]~~ relating to the need for HCB services; ~~[-(care)]~~ and

(b) ~~[-(for)]~~ Having a team that includes the following members:

1. A qualified social worker with a degree in social work, sociology or a related field and a registered nurse; or

2. Two (2) registered nurses to perform ~~[-(performing)]~~ the required comprehensive assessment and care planning.

(5) The designated peer review organization shall make the level of care determination as the agent or representative of the cabinet.

(6) HCB services shall be prior authorized by the department. ~~[-(cabinet. The assessment shall not be completed and billed for any Medicaid recipient who does not receive other waiver services.)]~~

Section 3. ~~[-2-]~~ Provider Participation. (1) A participating HCB provider ~~[-(providers)]~~ shall meet all applicable certification and licensure requirements for providing in-home and community based health services in accordance ~~[-(under the Kentucky Medicaid Program, and shall be required to comply)]~~ with 907 KAR 1:030, 907 KAR 1:671, 907 KAR 1:672, and 907 KAR 1:673.

(2) An adult day health care center shall meet all applicable licensure requirements for adult day health care services and comply with 907 KAR 1:671, 907 KAR 1:672, and 907 KAR 1:673. ~~[-(the provider participation agreement providing for services in accordance with the terms and conditions specified in this administrative regulation.)]~~

Section 4. ~~[-3-]~~ Covered Services. The following services shall be covered HCB services:

(1) Assessment.

(a) ~~[-(The assessment)]~~ Includes the collection of data necessary to determine the appropriateness of HCB service for the client, and care ~~[-(case)]~~ planning (a patient care plan shall ~~[-(to)]~~ include services required, duration and frequency, ~~[-(and estimated cost)]~~).

(b) For each assessment ~~[-(or reassessment)]~~, the attending physician shall certify that if HCB services were not available, he would order NF ~~[-(nursing facility)]~~ services and the individual recipient may ~~[-(would)]~~ be admitted in the immediate future.

(2) Case management~~[-(This)]~~ is the process of locating, coordinating and monitoring a group of services with responsibility resting with a designated person.

(a) A recipient shall have a designated case manager.

(b) A case manager shall be a registered nurse, licensed practical nurse, or a social worker with a degree in social work, sociology or related field.

(c) Each recipient shall have at least one (1) case management contact per month ~~[-(thirty (30) to thirty-one (31) days)]~~ to assess the service delivery.

1. The contact may be by telephone or face-to-face.

2. ~~[-(However,)]~~ A face-to-face contact with the recipient shall be made at least every other month.

3. The face-to-face contact with the adult day health care recipient may be made while the recipient is at the adult day health care center.

(3) Homemaker services~~[-(Homemaker services)]~~ are services

relating to general household activities, such as meal preparation and routine household care. Homemaker services ~~[-(and)]~~ shall be provided by a trained homemaker if:

(a) ~~[-(when)]~~ The recipient ~~[-(client)]~~ is functionally unable to perform these tasks and the individual regularly responsible for these activities is temporarily absent or functionally unable to manage the home and care; and

(b) Arrangement ~~[-(Arrangements)]~~ cannot be made with a relative or friend ~~[-(relatives or friends)]~~ for the performance of the service.

(4) Personal care services~~[-(Personal care services)]~~ are medically oriented services relating to the patient's physical requirements that are ~~[-(prescribed by a physician)]~~ in accordance with the recipient's plan of treatment. Personal care services shall:

(a) Be ~~[-(and)]~~ provided by an individual who is qualified, supervised by a registered nurse and not a member of the recipient's ~~[-(client's)]~~ family; and

(b) ~~[-(Personal care services)]~~ May include bathing, assistance with clothing, assisting with medications customarily self-administered, assistance with ambulation, etc.

(5) Respite care services.

(a) Respite care services include:

1. ~~[-(are)]~~ Homemaker, personal care aide; or

2. Nursing ~~[-(or home health aid)]~~ level services provided on a temporary basis due to the absence or need for relief of the informal caregiver.

(b) Respite care shall be:

1. In accordance with the ~~[-(orders of a physician and the)]~~ plan of care;

2. Provided at a level that safely meets the medical needs of the patient;

3. Provided by an individual with appropriate training and qualifications, who is not a family member; and

4. Provided only when an appropriate alternative informal caregiver is not available to provide the necessary services.

(c) Respite care may be provided by the HCB provider or the adult day health care center at the center.

(d) The total value of respite care services covered shall not exceed \$4,000 ~~[-(\$2,000)]~~ in any calendar year, and shall not exceed \$2,000 ~~[-(\$1,000)]~~ per six (6) month period (January 1 through June 30 or July 1 through December 31) within that calendar year.

(6) Minor home adaptations ~~[-(This is)]~~ the addition to or modification of the patient's home environment when the patient's condition necessitates a modification of the existing home situation, and may include such items as rails, ramps, grab bars, etc., including labor and necessary supplies.

(a) Prior approval for minor home adaptations is required.

(b) Major home repair ~~[-(repairs)]~~ shall not be covered.

(7) Adult day health care services.

(a) Adult day health care services are adult day health care services provided in an appropriately licensed facility according to 902 KAR 20:066. Basic services shall include:

1. One (1) meal per day (including special diets);

2. Snacks, as appropriate;

3. Registered nurse and other supervision;

4. Regularly scheduled daily activities;

5. Routine services required to meet daily personal and health care needs;

6. Incidental supplies necessary to provide adult day health care services; and

7. Equipment essential to the provision of adult day health care services.

(b) Ancillary services shall include: physical, speech and occupational therapy ~~[-(evaluations as indicated for the purpose of developing a plan of treatment which may be carried out by center staff, and necessary ongoing supervision and follow up of the maintenance program by the therapist)]~~.

(c) Respite care may also be provided in the center by the adult

(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.

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 1:170E

This emergency administrative regulation is being promulgated to reflect the approved home and community based waiver amendments. This action must be taken on an emergency basis to ensure continuity of care for individuals who will be barred from access to medically necessary services if this administrative regulation is not promulgated. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients if access to continued services is eliminated. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Department for Medicaid Services

907 KAR 1:170E. Payments for home and community based services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

EFFECTIVE: April 15, 1997

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, [Human Resources] has responsibility to administer the Medicaid Program [et Medicaid

Assistance in accordance with Title XIX of the Social Security Act]. 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 coverage provisions applicable to [methods of payment for] home and community based waiver services provided to an eligible recipient as an alternative as an alternative to [skilled] nursing facility [and intermediate] care [facility care].

Section 1. Definitions. (1) "Adult day health care center" means a center licensed in accordance with 902 KAR 20:066.

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

(3) "HCB" means home and community based.

Section 2. Coverage. (1) The department [Cabinet for Human Resources] shall reimburse a participating provider [providers (including coordinating agencies)] of home and community based (HCB) services for a service [services] rendered to an eligible Medicaid recipient [medical assistance recipients] who meet patient status criteria for [skilled] nursing [or intermediate care] facility care, and who is [are] prior authorized for the HCB service.

(2) Coverage provisions shall be [are] contained in 907 KAR 1:160.

Section 3. [2-] Payments for Covered Services. Payment amounts for [HCB] services shall be determined in accordance with the provisions and principles contained in this administrative regulation.

(1) A provider [Assessment, case management, homemaker services, personal care services, respiratory therapy] shall be paid using an interim payment method with a year-end settlement to the lower of actual reasonable costs or [reasonable] charges utilizing Medicare principles of reimbursement, for the following HCB services:

(a) Assessment/reassessment;

(b) Case management;

(c) Homemaker services;

(d) Personal care services.

(2) HCB services [In addition, these services, except for case management and respiratory therapy,] shall:

(a) Be subject to a prospectively set upper limit with the upper limit set at 130 percent of the weighted median of the array of services costs using the most recent cost report available as of May 31 with the upper limits updated each July 1. This limit shall not apply until a provider has participated in the program for two (2) full agency [facility] fiscal years.

(b) The interim rate shall be [is] derived by applying a reduction factor to current charges based on the difference between prior year allowable cost and charges. If a [When] prior year's costs and charges are not available, the interim rate shall [will] be set at the department's [cabinet's] best estimate of current costs [if] not to exceed charges, [if] based on payments made for similar services.

(3) [(2)] Respite care covered services shall be:

(a) Limited to \$4,000 [paid on the basis of billed charges, with reimbursement for an individual (beginning with the first billed HCB service) not to exceed \$2,000] per calendar year or \$2,000 per [\$1,000 in any] six (6) month period within that calendar year for the period beginning January 1 through June 30 or July 1 through December 31;

(b) [-The billed charge should include] Only the actual cost of the respite care services, plus actual overhead costs incurred by the provider;

(c) Subject to [-There will be] a year-end settlement to actual cost, or charges if lower, not to exceed the upper limit; and

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 1:720E

This emergency administrative regulation is being promulgated to provide funding for early intervention services through the Medicaid Program as a unique package of services. This action must be taken on an emergency basis to assure that Kentucky does not lose its Part H federal funding for services to infants and toddlers with disabilities. Complete expenditure of Medicaid allocation for these services will be assured with the implementation of this coverage and payment for early intervention services as a new and separate program within Medicaid. To date Medicaid has been covering early intervention services through other Medicaid Program elements, e.g., Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Special Services Program which requires prior authorization on a case-by-case basis. Providers have been billing mental health rather than Medicaid which is resulting in expenditure of all of the Part H dollars. Without total expenditure of the Medicaid funding the Kentucky Early Intervention Services Program will be unable to continue to fund services statewide and will therefore lose its federal dollars. Enactment of this administrative regulation on an emergency basis would prevent this loss of federal funds. Creation of this unique program within Medicaid will unify payments to providers from all departments involved with these children. Providers will no longer be able to shop among departments. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor
JOHN H. MORSE, Secretary

CABINET FOR HEALTH SERVICES Department For Medicaid Services Division of Administrative and Development

907 KAR 1:720E. Coverage and payments for the Kentucky Early Intervention Program services provided through an agreement with the state Title V agency.

RELATES TO: KRS 200.650-676, 205.520
STATUTORY AUTHORITY: KRS 194.050, 200.650-200.676,

205.520, EO 96-862, 42 CFR 431.615, 42 USC 1471-1485

EFFECTIVE: March 18, 1997

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirements that may be imposed, or opportunity presented, by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation provides for coverage and payment for early intervention services provided through an agreement with the state Title V agency, the Department for Public Health.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services.

(2) "Early intervention services" means those services as defined in KRS 200.654(7).

(3) "Title V agency" means the Department for Public Health.

Section 2. Covered Services. (1) Services shall be provided for Medicaid eligible children under the age of three (3) who meet eligibility requirements for early intervention as specified in 908 KAR 2:120, Section 2.

(2) The services to be provided shall be those services described in 908 KAR 2:160 except for the following services which shall not be covered:

- (a) Respite care;
- (b) Transportation;
- (c) Teacher of the deaf and hard of hearing; and
- (d) Teacher of the visually impaired.

(3) Services shall be provided pursuant to an interagency agreement between the department, the Title V agency and the Department for Mental Health and Mental Retardation Services.

Section 3. Provider Qualifications and Conditions for Participation. The following provider qualifications and conditions for participation shall be applicable for services provided pursuant to this administrative regulation.

(1) Services shall be provided by the Title V agency directly, or through subcontractors, or through agreement with the Department for Mental Health and Mental Retardation Services.

(2) The Department for Mental Health and Mental Retardation Services may subcontract for the provision of services as provided for by the agreement.

(3) Services which are provided by the Departments for Public Health and Mental Health and Mental Retardation Services and their subcontractors shall meet appropriate requirements for the service, as specified in 908 KAR 2:150.

Section 4. Reimbursement. Reimbursement shall be the documented cost for the direct provision of the services. Administrative and indirect overhead cost to the Departments for Public Health and Mental Health and Mental Retardation Services shall not be reimbursable by the department.

(1) Payments shall be based on actual expenditures incurred for the provision of services by the Title V agency or the Department for Mental Health and Mental Retardation Services.

(2) Amounts paid for Department for Mental Health and Mental Retardation Services subcontracted services shall be at service rates set by the Department for Mental Health and Mental Retardation Services and shall not be adjusted except as necessary to correct billing or payment errors.

(3) Amounts paid for Department for Public Health subcontracted services shall be at rates not to exceed those set by the Department

Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation Services and the First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services. This administrative regulation sets forth the provisions relating to early intervention services for which payment shall be made by the First Steps program on behalf of eligible recipients.

Section 1. Definitions. For purposes of determination of coverage and payment, the following definitions shall apply.

(1) "Cabinet" means the Cabinet for Health Services.

(2) "Commercial transportation carriers" means those commercial carriers licensed in accordance with the laws of Kentucky or other states, to transport members of the general public, such as a taxi cab.

(3) "Department" means the Department for Mental Health and Mental Retardation Services.

(4) "Direct contact" means activity or contacts, face to face or by telephone, with the child, or on behalf of the child, with the parent, family or person in custodial control, professionals, and other service providers, or other significant persons. This does not include direct supervision of paraprofessionals by professionals.

(5) "First Steps" means Kentucky's early intervention system as established by KRS 200.650 through 200.676.

(6) "Noncommercial group carriers" means those vendors who provide bus or bus-type transportation to an identifiable segment of the population eligible for service from those carriers.

(7) "Period of eligibility" means from the date the child was determined eligible to the date of the child's third birthday or prior to the child's third birthday, to the date the child is determined ineligible.

(8) "Private automobile carrier" means a person owning or having access to a private vehicle not used for commercial transportation purposes and who uses that vehicle for the occasional transportation of eligible children.

(9) "Providers" means those agencies, persons, or other entities that meet the requirements for approval as established in 908 KAR 2:100 through 908 KAR 2:180 and who sign an agreement with the department.

(10) "Usual and customary charge" means the uniform amount which the individual provider charges in the majority of the cases for a specific service.

Section 2. Participation Requirements. (1) Early intervention providers that request to participate as an approved First Steps provider shall be required to comply with the following:

(a) Submit to an annual review by the Department for Mental Health and Mental Retardation Services, or its agents, for compliance with 908 KAR 2:100 through 908 KAR 2:180.

(b) Meet, or employ or contract with professionals and staff who meet the qualifications specified in 908 KAR 2:150.

(c) Agree to provide First Steps services according to an Individualized Family Service Plan as required in 908 KAR 2:130.

(d) Agree to submit as requested by the department and to maintain all required information, records, and reports to insure compliance with this administrative regulation.

(e) Establish a contractual arrangement with the Cabinet for Health Services for the provision of First Steps services.

(f) Agree to provide upon request information necessary for reimbursement for services by the Cabinet for Health Services in accordance with this administrative regulation, which shall include tax identification number and usual and customary charges.

(2) The Department for Mental Health and Mental Retardation Services may grant provider approval for participation to those providers who meet the criteria in subsection (1) of this section.

Section 3. Reimbursement. The department shall reimburse participating First Steps providers the lower of actual billed charges for the service or the preestablished fixed upper limit taking into consideration information available to the department with regard to

cost and the department's estimate as to the amount necessary to secure the service.

(1) Charges submitted to the department shall be the provider's usual and customary charges for the same services.

(2) The preestablished upper limit fee for services shall be as follows:

(a) Primary service coordination.

1. In the office the fee shall be sixty-five (65) dollars per hour of direct contact service.

2. In the home or community site the fee shall be eighty-eight (88) dollars per hour of direct contact service.

(b) Initial service coordination.

1. In the office the fee shall be sixty-eight (68) dollars per hour of direct contact service.

2. In the home or community site the fee shall be ninety-one (91) dollars per hour of direct contact service.

(c) Primary evaluation.

1. In the office or center-based site the fee shall be \$250 per service event.

2. In the home or community site the fee shall be \$250 per service event.

(d) Service assessment.

1. For an audiologist:

a. In the office or center-based site the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site the fee shall be \$112 per hour of direct contact service.

2. For a family therapist:

a. In the office or center-based site the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site the fee shall be \$112 per hour of direct contact service.

3. For a licensed psychologist and certified psychologist with autonomous functioning:

a. In the office or center-based site the fee shall be \$207 per hour of direct contact service.

b. In the home and community site the fee shall be \$268 per hour of direct contact service.

4. For a developmental interventionist:

a. In the office or center-based site the fee shall be eighty-three (83) dollars per hour of direct contact service.

b. In the home or community site the fee shall be \$108 per hour of direct contact service.

5. For a registered nurse:

a. In the office or center-based site the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site the fee shall be \$112 per hour of direct contact service.

6. For a nutritionist:

a. In the office or center-based site the fee shall be eighty-six (86) dollars per hour of direct contact service.

b. In the home or community site the fee shall be \$112 per hour of direct contact service.

7. For a dietitian:

a. In the office or center-based site the fee shall be eighty-three (83) dollars per hour of direct contact service.

b. In the home or community site the fee shall be \$108 per hour of direct contact service.

8. For an occupational therapist:

a. In the office or center-based site the fee shall be ninety-six (96) dollars per hour of direct contact service.

b. In the home or community site the fee shall be \$112 per hour of direct contact service.

9. For an orientation and mobility specialist:

a. In the office or center-based site the fee shall be eighty-three (83) dollars per hour of direct contact service.

b. In the home or community site the fee shall be \$108 per hour

therapeutic intervention.

(f) Respite shall be seven (7) dollars and sixty (60) cents per hour.

(g) Integrated disciplines center-based services shall be fifty-six (56) dollars per hour of direct contact service.

(3) Except as specified in subsection (4) of this section, payments for professional and staff services listed in subsection (2) of this section shall be based on units of service which shall be fifteen (15) minute increments.

(4) Payments for evaluation listed in subsection (2) of this section shall be based on a complete evaluation as a single unit of service.

(5) Payments for assistive technology devices shall be based on actual invoiced cost including the cost of shipping and handling, for the authorized equipment included in the individualized family service plan.

(6) Payment for transportation shall be the lesser of the billed charge or:

(a) For commercial transportation carrier an amount derived by multiplying one (1) dollar by the actual number of loaded miles.

(b) For private automobile carriers at the basic fee of twenty-five (25) cents per mile transported.

(c) For noncommercial group carriers at the rate of fifty (50) cents per eligible child per mile transported.

(7) Payments for services provided in a group setting shall be per hour fee divided by two (2).

Section 4. Limitations. (1) For primary service coordination payment shall be limited to no more than fifteen (15) hours per child per six (6) month period unless preauthorized by the department.

(2) For initial service coordination payment shall be limited to no more than twenty-five (25) hours per child per period of eligibility unless preauthorized by the department.

(3) For service assessment:

(a) Payment shall be limited to no more than two and one-half (2 1/2) hours per child per discipline per assessment unless preauthorized by the department.

(b) Payment shall be limited to four (4) assessments per discipline per child from birth to the age of three (3) unless preauthorized by the department.

(c) No service assessment payment shall be made for the provision of routine therapeutic intervention services by a discipline in the general practice of their discipline. Payment for a unit of service assessment shall be restricted to the needs for additional testing or other activities by the discipline that go beyond routine practice. Routine activity of assessing outcomes shall be billed as therapeutic intervention.

(4) For therapeutic intervention:

(a) For office and center:

1. Payment shall be limited to no more than one (1) hour of service per day per child for each professional or discipline and paraprofessional meeting the qualifications in 908 KAR 2:150 unless preauthorized by the department.

2. Payment shall be limited to no more than one (1) office visit per child, per day, per discipline unless preauthorized by the department, except that billing for a collateral visit with the parent in the same day shall be allowed.

(b) For home and community sites:

1. Payment shall be limited to no more than one (1) hour of service per day per child for each discipline or professional and paraprofessional unless preauthorized by the department.

2. Payment shall be limited to no more than three (3) disciplines per child per day unless preauthorized by the department, except that billing for a collateral visit with the parent in the same day shall be allowed.

(c) Group therapeutic intervention shall be limited to a maximum of three (3) eligible children per discipline per group.

(5) For respite payment shall be limited to no more than eight (8)

hours of respite per month, per eligible child.

ELIZABETH REHM WACHTEL, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: March 7, 1997

FILED WITH LRC: March 18, 1997 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D.

(1) Type and number of entities affected: The provision of First Steps services will affect over 3,000 children and families. It is estimated that 2 1/2 percent of children under 3, or approximately 3800 children, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health/mental retardation boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

(2) Direct and indirect cost 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 have been received relevant to cost of living. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

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

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds and \$4,000,000 in federal funds in the Department for Mental Health and Mental Retardation Services, and \$930,700 in state general funds in the Department for Public Health to implement First Steps, Kentucky's early intervention system. In addition, federal funds will be available through Title V agreements. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

(b) Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

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

COMPILER'S NOTE: The following administrative regulations were amended by the promulgating agency and the Administrative Regulation Review Subcommittee on April 8, 1997, unless otherwise noted.

GENERAL GOVERNMENT CABINET
Kentucky Licensing Board for
Specialists in Hearing Instruments
(As Amended)

201 KAR 7:040. Examinations.

RELATES TO: KRS 334.060(1), 334.070, 334.080, 334.090(4), 334.150(2), (7), (8), (9)

STATUTORY AUTHORITY: KRS 334.150(2), (7), (8), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334.060(1) requires an applicant for licensure to pass a qualifying examination. KRS 334.150(2) requires the board to establish and administer the qualifying examination. KRS 334.070 establishes the conduct of the qualifying examination applicants for licensure are required to pass. This administrative regulation establishes the qualifying examination, passing scores, and the conditions for reexamination. [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 qualifying examination shall consist of the following sections:

(a) A written examination that tests an applicant's:

1. Knowledge and proficiency in the subject matters established by KRS 334.070; and

2. Qualification to practice the fitting of hearing instruments;

(b) A written examination on:

1. The provisions of KRS Chapter 334 relating to specialists in hearing instruments;

2. The provisions of administrative regulations governing the practice of specialists in hearing instruments, codified in 201 KAR Chapter 7;

3. Conduct required or prohibited by KRS 334.120, 334.130, and the code of ethics established by 201 KAR 7:090;

4. Ear molds; and

5. Acoustics; and

(c) A practical examination on:

1. Ear impressions;

2. Audiometric testing; and

3. Defective hearing instruments. [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.]

Section 2. (1) [(3)] A passing grade shall consist of a score of

seventy (70) percent on each section.

(2) A candidate shall be required to retake the sections [only these portions] of the examination on which he fails to achieve a passing score.

Section 3. [(4)] A notification of examination results shall be issued by the board to each applicant taking the qualifying examination.

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

[(5) An apprentice shall take the next qualifying examination held subsequent to one (1) year after the effective date of his apprentice permit.]

Section 5. (1) [(6)(a)] An apprentice [applicant] who fails to pass a [any] written [a] section of the examination two (2) [three (3)] times shall [may] be allowed to extend his apprenticeship if he has: [provided the following criteria are met:] [shall be required to sit for all portions of the examination. The applicant shall complete additional education and training required by the board. The applicant may sit for the examination only after he has documented completion of the required education and training.]

(a) Met the [4-] continuing education requirements established by [shall be received as set forth in] 201 KAR 7:075; and

(b) Paid the [2-] renewal fees required by [shall be paid as set forth in] 201 KAR 7:015;

(2) An [(b) The] apprentice permit may be extended for no longer than two (2) years from the date of the second examination.

(3) An [(e) The] apprentice shall revert to and remain in stage two (2) of the apprenticeship period established [as set forth] by KRS 334.090(2)(b) until he [successfully] passes the section [portion or portions] of the examination that he [had previously] failed.

(4) An [(d) The] apprentice shall attend and provide documentation of attendance for a program of instruction in the fitting of hearing instruments prior to being scheduled for reexamination.

(5) [(e)] If an [the] apprentice is unable to [successfully] pass the examination within two (2) years from the date of the second examination, he shall immediately cease the practice of fitting hearing instruments.

STEVEN W. BARLOW, Chairman

APPROVED BY AGENCY: February 13, 1997

FILED WITH LRC: February 13, 1997 at noon

COMPILER'S NOTE: The following administrative regulation, 201 KAR 12:200, was amended by the promulgating agency and the Interim Joint Committee on Licensing and Occupations. This administrative regulation became effective on April 11, 1997.

GENERAL GOVERNMENT CABINET
Board of Hairdressers and Cosmetologists
(As Amended)

201 KAR 12:200. Requirements for continuing education for renewal of license.

RELATES TO: KRS 317A.050(8)

STATUTORY AUTHORITY: KRS 317A.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: Beginning July

applicant shall:

(a) Submit an Application for Architect Registration; and
(b) Comply with the requirements of KRS 323.050 through 323.090 and the administrative regulations promulgated by the board.

(2) The requirements are summarized in "Information and Instructions for Applicants for the Architects Registration Examination". [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 Brookhill 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 the fees established in 201 KAR 19:085. [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.]~~

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

(a) "Application for Architect Registration", May, 1992 Edition, State Board of Examiners and Registration of Architects; and

(b) "Information and Instructions for Applicants for the Architects Registration Examination", July, 1996, Edition, State Board of Examiners and Registration of Architects.

(2) This material may be inspected, copied, or obtained at the State Board of Examiners and Registration of Architects, 841 Corporate Drive, Suite 200B, Lexington, Kentucky 40503, Monday through Friday, 9 a.m. to 5 p.m.

JERRY W. HERNDON, Executive Director

APPROVED BY AGENCY: February 14, 1997

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

GENERAL GOVERNMENT CABINET
State Board of Examiners and Registration of Architects
(As Amended)

201 KAR 19:031. Repeal 201 KAR 19:030.

RELATES TO: KRS 323.210

STATUTORY AUTHORITY: KRS 323.210

NECESSITY, FUNCTION, AND CONFORMITY: Changes in the administration of the architect's registration examination eliminates the necessity for the board to define general provisions for taking the examination.

Section 1. 201 KAR 19:030, Examination; general provisions, is hereby repealed.

JERRY W. HERNDON, Executive Director

APPROVED BY AGENCY: February 14, 1997

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

GENERAL GOVERNMENT CABINET
State Board of Examiners and Registration of Architects
(As Amended)

201 KAR 19:035. Qualifications for examination.

RELATES TO: KRS 323.050(2), (3), 323.060, 323.120(1)(a)-(e)

STATUTORY AUTHORITY: KRS 323.210(1)(b), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323.210(1)(b) and (2) require the board to promulgate administrative regulations governing the contents and conduct of examinations, the method and time for filing applications, and the time within which an applicant shall be examined after his application has been filed. This administrative regulation establishes the prerequisites for taking the examination. ~~[prescribes conditions for applicants for examination.]~~

Section 1. Eligibility to Take the State Board Examination. A person who possesses the qualifications prescribed in KRS 323.050, and this administrative regulation, shall be eligible to take the examination ~~[examinations].~~

Section 2. General Requirements. (1)(a) The board shall verify the good moral character of an applicant for examination with employers and registered architects who have knowledge of his moral character.

(b) An applicant shall not be considered to be of good moral character if he has:

1. Committed an act specified in KRS 323.120(1)(a) through (e);
2. Chronic alcoholism, persistent drug abuse, or an act ~~[any such acts]~~ of behavior that would, if the applicant were licensed, jeopardize or impair his judgment to meet professional responsibility as an architect to the public welfare and safety; or
3. Violated a ~~[any]~~ provision of KRS Chapter 323 or a board administrative regulation ~~[regulations]~~ either before or after admission to the examination~~[-or~~
4. ~~Violated the registration law of any other state, territory, or country].~~

(c) If an applicant has violated the registration laws of another jurisdiction, the board shall determine whether the violation adversely affected the moral character of the applicant.

(2) To be eligible for examination, an applicant shall submit to the board ~~[present]~~ college transcripts and verification from employers and architects that he has:

(a) Met ~~[all]~~ the requirements of KRS ~~[Chapter]~~ 323.050 and 323.060 and this administrative regulation; and

(b) ~~[Has]~~ Had well diversified and satisfactory training in architectural practice as evidenced by completion of the Intern Development Program.

(3) The documentation required by subsection (2) of this section shall be verified, compiled, and transmitted in bound record form by the National Council of Architectural Registration Boards.

Section 3. Education Requirements. (1) An applicant who has met the requirements of Section 2 of this administrative regulation shall in addition:

(a) Hold a first professional degree in architecture from a degree program that has been accredited by the National Architectural Accrediting Board not later than two (2) years after termination of

to successfully complete the examination under the provisions of KRS 323.090:

- (1) Shall be considered a new applicant for the examination;
- (2) Shall submit a new application and processing fee; and
- (3) May retain credit for each section of the examination he has successfully completed. [Three (3) Year Period of Eligibility

Defined. (1) If an applicant fails to pass all parts of the first examination to which he is admitted, then the three (3) year period during which he may retake the examinations failed, [by payment for the examination questions at the time prescribed by the board,] shall be from the last day of the month in which his first examination was given. During this period of eligibility, the applicant shall not be required to pay additional application processing fees.

~~(2) The applicant shall register with, and pay direct to the designated testing service, the required fees for taking the selected divisions of the examination. [If an applicant fails to attend the first examination to which he is admitted, then the three (3) year period during which he may take the entire examination or parts thereof, by payment for examination questions at the time prescribed by the board, shall be from the last day of the month in which the examination he failed to attend was given.~~

~~(3) Provided, however, that the board may, in its discretion, grant extensions of time if examinations are cancelled or changed during that period or if illness or other reasonable circumstances prevent the applicant from attending any regular examination.]~~

~~(3) [(4)] At the end of the three (3) year period of eligibility, the applicant shall submit a new application, with the required application processing fee, containing pertinent supplemental information, in order to continue taking the examinations, but an applicant may retain credit for those divisions [sections or subsections] of the examination he has previously passed.]~~

Section 2. Reconsideration of Applicants who were Denied Admission to Examination. (1) An applicant whose original application for admission to the examination was denied may request reconsideration by letter to the board with evidence that he has made up the deficiencies which caused the denial. **A [No] formal application or application fees shall not [will] be required for this [such a] request if it is made within a period of three (3) years from the date denied.**

(2) After three (3) years a new application **shall [must]** be submitted containing relative information on training and experience subsequent to the original application.

JERRY W. HERNDON, Executive Director
APPROVED BY AGENCY: February 14, 1997
FILED WITH LRC: February 14, 1997

**GENERAL GOVERNMENT CABINET
State Board of Examiners and Registration of Architects
(As Amended)**

201 KAR 19:085. Fees.

RELATES TO: KRS 323.080, 323.110

STATUTORY AUTHORITY: 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. **This administrative regulation establishes the deadline for paying the renewal fee and a fee schedule.** [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.] **Except as provided in subsection (3) of this section, a licensee [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)(a) Except as provided by paragraph (b) of this subsection, a license shall be renewed, restored, or reinstated by July 1 of each calendar year.

(b) A license issued between January 1 and June 30 of a calendar year shall not be renewed until the following July 1. [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 **shall [te] 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 - twenty-five (25) dollars.~~

~~(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: **seventy-five (75) dollars annually.** [determined each renewal period [year] by board. Not to exceed annually - \$150 [45].]~~

~~(8) **A [No] fee shall not be refunded. Each payment [in whole or in part. All payments] shall be by check made payable to "Kentucky State Treasurer." Each check [All checks] shall be certified except those for the [annual] renewal fee [and examination questions].**~~

- (a) Limit the number of event permits issued; or
- (b) Assign a specific location for an event.
- (4) The department shall:
 - (a) Deny the application for an event which would interfere with:
 - 1. A management objective for the area; or
 - 2. Other uses or users; or
 - (b) Revoke individual or event permits for violations of the terms of the application or this administrative regulation;
 - (c) Not issue an event permit for an event at which wildlife is taken.

Section 4. ~~[3-User]~~ Permit Exceptions. An individual or event permit shall not be required of a person:

- (1) On official business and employed by or an agent of: [Any person under employment, acting as an agent of or under contract to]
 - (a) Peabody Coal Company;
 - (b) Beaver Dam Coal Company;
 - (c) Peabody Holding Company; or
 - (d) The Kentucky Department of Fish and Wildlife Resources; [~~who, while performing official duties as an employee, agent or contractor of these 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 [~~the~~] 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, 1996. 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. ~~[5-]~~ 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. A canoe shall not have a length restriction; and [~~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

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.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(As Amended)

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 150.195(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. **Incorporation by Reference.** (1) The "Kentucky Migratory Bird Harvest Information Program" form, (1997 edition), Department of Fish and Wildlife Resources, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [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.

TOURISM CABINET
Department of Fish and Wildlife Resources
(As Amended)

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 and 235.320 authorize ~~[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 name and address of the operator ~~[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 a person [persons] water skiing:

- (a) Within 100 feet of a:
 1. [A] Commercial boat dock;
 2. [A] Moorage harbor; or

(4) An operator [Operators] shall sound intermittent warning signals in fog or similar situations of restricted visibility if [when] his vessel is [their vessels are]:

- (a) Underway;
- (b) Adrift; or
- (c) Anchored or moored outside an established anchorage or mooring field.

(5) An operator [Operators] shall:

(a) Not interfere with or obstruct the takeoff, landing or taxiing of aircraft;

(b) ~~[(6) Operators]~~

(a) ~~Shall~~ Maintain complete control of his vessel [their vessels]; and

(c) ~~[(b) Shall]~~ Not exceed a speed which, given existing conditions, could:

1. Cause a loss of control; or

2. Present a hazard to life or safety. ~~[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.

DEPARTMENT OF AGRICULTURE
Division of Animal Health
(As Amended)

302 KAR 20:110. Treatment of imported mares.

RELATES TO: KRS 257.070, 9 CFR 92.301

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.070 requires that the importing of an animal into Kentucky complies with administrative regulations promulgated by the board. KRS 257.030 authorizes the board to establish necessary quarantines and other measures to control the movement of livestock into, through, or within Kentucky. This administrative regulation establishes a technique for the treatment of a mare imported into Kentucky from a country listed in 9 CFR 92.301 as a country affected with contagious equine metritis. [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. Definitions. ~~[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), and clitoral fossa ~~[cervix or endometrium of the uterus].~~

Section 2. A [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 veterinarian licensed to practice in Kentucky], according to the following procedure:

(1) ~~[Pregnant and nonpregnant mares:]~~ The veterinarian shall obtain a [one (1)] set of cultures from the mare on days one (1), four

(4), and seven (7) [and then follow the prescribed treatment].

(2) On completing the set of cultures on day seven (7), the accredited veterinarian shall manually remove all organic debris from the clitoral sinuses. The sinuses shall then be flushed with an approved cerumalytic agent until all remaining debris has been removed. The accredited 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 [For five (5) consecutive days the veterinarian shall aseptically clean and wash] external genitalia, vaginal vestibule, [and] clitoral fossa and clitoral sinuses. The clitoral fossa, clitoral sinuses, [with a solution of not less than two (2) percent chlorhexidine in a detergent base, and then coat the] external genitalia and vaginal vestibule shall be filled and covered with an antibiotic ointment that is effective against the CEM organism and is approved by USDA and the Kentucky State Veterinarian. [ef not less than two tenths (0.2) percent nitrofurazone or other medication approved by the USDA and the Kentucky State Veterinarian insuring that the clitoral fossa is filled.]

(3) After the treatment, the mare shall undergo a seven (7) day rest period.

(4) Nonpregnant mares. The veterinarian shall collect three (3) additional sets of cultures at intervals of not less than seven (7) days. He shall also collect one (1) specimen from the endometrium of the uterus during estrus. All samples shall be submitted to a laboratory approved by the USDA's National Veterinary Services Laboratory and the Kentucky State Veterinarian for culture.

(5) Pregnant mares. These mares must remain quarantined on a state approved premise until all tests results are complete on both the mare and foal. The veterinarian shall collect three (3) additional sets of cultures at intervals of not less than seven (7) days. Seven (7) days after foaling, the veterinarian shall collect one (1) specimen from the endometrium of the uterus of the mare and one (1) specimen from the foal. If the foal is female, the specimen is to be collected from the vaginal vestibule; and, if a male, the specimen shall be collected from the prepuce. Each of these specimens shall be submitted to a laboratory for culture approved by the USDA's National Veterinary Services Laboratory and the Kentucky State Veterinarian for culture.

(6) If positive, the mare must remain under quarantine until three (3) additional specimens from the clitoral fossa are collected by an accredited veterinarian at intervals of not less than seven (7) days. The first set not to be collected less than one (1) year from the last positive and an additional specimen from the endometrium of the uterus during estrus is required.]

(3) [(7)] An imported mare [Imported mares] bred in Kentucky shall [will] be prophylactically scrubbed and bred last of the [any] group of mares bred during that session. The covering stallion shall [will] be scrubbed and treated after breeding and shall [will] remain out-of-service for a minimum of twelve (12) hours. The imported mare and the next three (3) mares bred to the same stallion shall [will] have a CF test, [which shall be taken] fifteen (15) to forty (40) days postbreeding, [after the mare is bred.]

Section 3. The mare may be released from quarantine if:

(1) [when] The requirements of Sections 1 and 2 of this administrative regulation have been completed; and

(2) The [when all] required specimens and tests taken from the mare are test negative and culture negative for the CEM bacterium.

Section 4. A CEM culture positive mare shall remain under quarantine and [The mare then] shall follow the treatment as described in Section 2(2) and (3) of this administrative regulation. No less than twenty-one (21) days after the last day of treatment, the mare shall have sets of cultures obtained as described in Section 2(1) of this administrative regulation. If [When] all required specimens taken from the mare are test negative and culture negative for the CEM bacterium, the mare may be eligible for a quarantine release.

ADMINISTRATIVE REGISTER - 3759

BILLY RAY SMITH, Commissioner
APPROVED BY AGENCY: February 3, 1997
FILED WITH LRC: February 3, 1997 at 2 p.m.

COMPILER'S NOTE: The following administrative regulation, 415 KAR 1:110, was amended by the promulgating agency and the Interim Joint Committee on Agriculture and Natural Resources, and became effective on April 9, 1997.

PUBLIC PROTECTION AND REGULATION CABINET Office of the Petroleum Storage Tank Environmental Assurance Fund (As Amended)

415 KAR 1:110. Contractor costs.

RELATES TO: KRS 224.60-120, 224.60-130, 224.60-140, 40 CFR Part 280

STATUTORY AUTHORITY: KRS 224.60-120, 224.60-130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130 requires the fund ~~[commission]~~ to establish a range of amounts to be paid from the fund for the cost of corrective action, and to establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. This administrative regulation establishes the range of amounts that will be paid for the performance of particular aspects of corrective action and the manner of providing bids by contractors to determine eligibility for reimbursement from the fund.

Section 1. Range of Amounts to be Paid by the Fund for the Cost of Performing Corrective Action. (1) The fund ~~[commission]~~ shall not pay more than the following amounts for the performance of corrective action by certified contractors, except as provided in subsections (2) and (4) of this section. All items in this section are subject to a maximum fifteen (15) percent contractor markup above actual cost, unless specifically excluded. The contractor markup is allowed only for subcontractor or vendor services. The markup is allowed only to the extent that the cost plus the markup do not exceed the maximum cost for that item:

(a) Pavement removal and ~~[removal and]~~ replacement, ~~[not]~~ including labor equipment and material costs:

Asphalt

Removal

Includes the cost of loading:

Asphalt pad, for each 3 inches of thickness, per square yard [feet]	\$2.75 to \$3.25
[yard]	\$1.30 to \$1.60
Asphalt curbing, per linear foot	\$2.40 to \$2.90
	[\$1.25 to 1.55]

Replacement

Asphalt pad, for each 4 inches of thickness, per square foot	\$3.50 to \$4.25
[yard]	\$2.70 to \$3.30
Cost of additional thickness to be prorated.	
Asphalt curb and gutter, per linear foot	\$5.10 to \$6
	[\$3.50 to \$4.40]

Concrete

Removal

Includes the cost of loading:

Concrete pad, per square yard 4 inches thick	\$2 to \$3
	[\$1.70 to \$2]
6 inches thick	\$4 to \$5

	[\$3.25 to \$3.95]
9 inches thick	\$8.20 to \$10
10 inches or more thick	\$26 to \$31
With rebar	add 15%
Concrete curbing, per linear foot	\$4.50 to \$5.50
Replacement	
Concrete, 4 inches thick, per square foot	\$2 to \$2.80
With rebar	add 15%
For each additional inch, per square foot	\$0.20 to \$0.30

Transportation ~~[and disposal]~~ of the first 100 total tons of asphalt or concrete, to disposal facility, per one (1) way mile, per ton. Mileage must be documented. If nearest disposal facility not used, reasonableness must be documented.

\$0.20 to \$0.30

Transportation after the first 100 total tons of asphalt or concrete, to disposal facility, per one (1) way mile, per ton. Mileage must be documented. If nearest disposal facility not used, reasonableness must be documented.

\$0.15 to \$0.20
[Actual cost plus
maximum 4%
markup, not to
exceed \$28]

Disposal fee, per ton

Actual cost plus
maximum 8%
markup, not to
exceed \$32.50

~~[to disposal facility,~~
~~per cubic yard, for each 20 miles—mileage~~
~~must be documented; if closest disposal~~
~~facility not used, reasonableness of~~
~~cost must be justified~~

\$6.60 to \$8

Disposal fee, per cubic yard, not to exceed actual cost per unit

\$12 to \$25]

(b) ~~[Excavation and]~~ Disposal and replacement of contaminated soil, ~~[not]~~ including labor and equipment costs:

Excavation and stockpiling or loading directly into trucks, per ton. Necessity of stockpiling must be demonstrated to justify reimbursement.

\$3.50 to \$4

For less than 100 total tons, add fifty (50) percent.

~~[Excavation and stockpiling or loading directly~~
~~to trucks, per cubic yard~~

\$3.15 to \$3.85]

Install and compact backfill, per ton includes purchase of materials, equipment and labor ~~[and transportation]~~

\$11 to \$17

Transportation of backfill, per ton, per one (1) way mile.

\$0.15 to \$0.20

Transportation of the first 100 total tons of contaminated soil to disposal facility, per ton, per one (1) way mile. Mileage must be documented. If closest disposal facility is not used, reasonableness of cost must be justified.

\$0.20 to \$0.30

Transportation after the first 100 total tons of contaminated soil to disposal facility, per ton, per one (1) way mile. Mileage must

ADMINISTRATIVE REGISTER - 3761

Auger rig, core rig, or wash rotary rig, per mile, minimum of \$200	\$2 to \$3
Air rotary rig, per mile, minimum of \$350	\$3.50 to \$4
2. Installation of <u>PVC</u> monitoring well, including decontamination of down hole materials and grout or backfill materials. Construction using other materials, such as stainless steel screens may be reimbursed if the alternative construction was ordered by the cabinet. [4 inch diameter per linear foot] [\$20 to \$35]	
Two (2) inch diameter well [easing] per linear foot	\$14 to \$16
Four (4) inch diameter well [easing] per linear foot	\$15 to \$20
<u>Necessity for construction of [using] a four (4) inch diameter well [easing] must be established.</u>	
3. Construction of monitoring well surface completion (includes concrete pad, protective casing or manhole, locking cap, etc.) including any labor, equipment, and material costs. If any component listed is not installed, surface completion cost is not allowed. \$ 2 5 0 each	
4. Drilling in unconsolidated material [(excluding monitoring well)] per linear foot [\$5 to \$7][to \$30]	
Hollow stem auger less than five (5) inch inside diameter	\$5 to \$9
Greater than five (5) inch inside diameter	\$8 to \$11
Continuous flight augers	
Four (4) inch nominal outside diameter	\$5 to \$7
Six (6) inch nominal outside diameter	\$6 to \$8
For continuous split spoon sample collection add five (5) dollars per linear foot.	
For split spoon sample collection at five (5) foot intervals add three (3) [two (2)] dollars and fifty (50) cents per linear foot.	
Random split spoon sampling, per sample	\$13 to \$20 [47]
5. Standby time	maximum \$150 per day
<u>[Drilling in unconsolidated material for monitoring well constructing per linear foot — \$8 to \$11]</u>	
For continuous split spoon sample collection add four (4) dollars per linear foot.	
For split spoon sample collection at five (5) foot intervals add two (2) dollars per linear foot.	
Random split spoon sampling, per sample	\$13 to \$17
6. Drilling in rock (per linear foot)	\$18 to \$25 [22]
7. For all drilling costs, for depths greater than sixty (60) feet, add two (2) dollars and forty (40) cents per linear foot.	
<u>[Hourly services (rig and two (2) man crew)</u>	
May include drilling, well installation, decontamination, well development, difficult moving, and delay (not related to weather or mechanical breakdown), per hour	
	\$110 to \$130
8. Well abandonment including all material, equipment and labor costs, per linear foot	
Overdrilling to depth of well and backfilling with concrete grout, per linear foot	\$17 to \$22
Removal of casing to below ground surface and backfilling of casing in place with cement grout, per linear foot	\$5 to \$7.50
Two (2) inch diameter casing	\$5 to \$7
For each additional two (2) inches in casing diameter, add fifty (50) percent.]	
9. Preparation and submittal of well records, per well - \$30 to \$40	
	[25 to \$35]

10. Direct push sampling including personnel, decontamination, materials, supplies, and backfilling of void, per day	\$900 to \$1100
Mobilization and demobilization of direct push sampler, including equipment, labor and supplies, per mile	\$0.30 to \$0.40
11. Equipment, materials and supplies:	
Air compressor, less than 190 CFM, per day	\$65 to \$75
Air compressor, 190 CFM or greater, per day	\$140 to \$165
Backhoe, trailer and accessories, per hour	\$50 to \$55
Concrete saw, per day	\$25 to \$35
Concrete saw (push type), per day	\$70 to \$80
Conductivity meter, per day	\$15 to \$20
Disposal drum, each	\$30 to \$35
Explosimeter, per day	\$30 to \$35
FID, OVA, per day	\$80 to \$95
Generator, per day	\$50 to \$55
Grout unit, per day	\$45 to \$75
Jackhammer, per day	\$50 to \$75
	[\$20 to \$25]
PID/HNu, per day	\$60 to \$75
Power auger, per day	\$40 to \$50
Self-contained steam cleaning unit, per day	\$100 to \$125
Steam cleaner, per day	\$50 to \$75
[Self-contained steam cleaning unit, per day	\$100 to \$125
Grout unit, per day	\$45 to \$75]
Survey equipment, per day	\$30 to \$35
Trackhoe, per hour [day]	\$80 to \$100
Water level indicator, per day	\$10 to \$12
Water trailer (500 gal.), per day	\$50 to \$75
Water truck (800 [4000] gallon capacity or greater), per day	\$125 to \$175
Copies, per page	\$0.05
Faxes, per page	\$1.25
[Materials	
Well materials, decontamination supplies, health and safety supplies, grout, well easing and screen, filter pack, well covers, etc. — Actual cost +15%]	
12. [(a)] The fund will only reimburse for one (1) environmental professional to assist during drilling activities in visual inspection of samples, logging of boreholes or monitoring wells or other task.	
13. Mobilization and demobilization of heavy equipment including backhoe, trackhoe and dump trucks, including labor, per event - \$200	
(h) [(g)] Sampling analysis, not including labor to take sample; including sampling materials, transportation of sample, and chain of custody:	
Soil Sample	
BTEX (benzene, toluene, ethylbenzene, xylene)	[\$50 to \$120]
Method 5030 in conjunction with SW 846 8240, 8260, 8020 or 8021	\$75 to \$88
Polynuclear Aromatic Hydrocarbons Method 3540 or 3550 in conjunction with SW 846 8100, 8270 or 8310	[\$150 to \$220]
Total recoverable oil and grease Method SW 3540 or 3550 in conjunction with 846 9071	\$155 to \$215
	\$37 to \$46
	[\$50 to \$60]
Total lead	
Method SW 846 7421 or 6010	\$23 to \$30

ADMINISTRATIVE REGISTER - 3763

Section 4. Certification of Contractor Costs. (1)(a) The fund [commission] may issue a request for proposals from individuals or companies engaged in the performance of corrective action for releases from petroleum storage tanks.

(b) The fund [commission] shall establish the date by which the proposals are to ~~(shall)~~ be submitted ~~[in its request for proposals]~~.

(2) The fund [commission] shall specify in the notice of the request for proposals the information to be submitted by the individual or company. At a minimum, the information to be supplied shall include:

(a) Verification that the submitter is a certified contractor, or a company employing certified contractors. A company shall include the name and position of its certified contractors;

(b) A statement of qualification of the individual or company, including a statement of relevant experience in the performance of corrective action for releases from petroleum storage tanks;

(c) A list of references, including the name, business address, and telephone number of at least three (3) persons for whom the individual or company has performed corrective action for a release from a petroleum storage tank. If the company has not performed corrective action for at least three (3) persons, a list of persons for whom the certified contractors employed by the company have performed corrective action may be submitted;

(d) A schedule of fees that the individual or company proposes to charge an owner or operator for the performances of corrective action for a release from a petroleum storage tank. The schedule of fees shall set forth a cost for each of the items listed in Section 1 of this administrative regulation. The schedule shall note any differences or variations in listed costs attributable to length of necessary transportation, or other factors. If subcontractors are to be used, the schedule shall specify the maximum cost to be charged by the individual or company for the corrective action activities to be performed by a subcontractor;

(e) A verification by the individual, or an authorized agent of the company, that the proposal is true and accurate, and that the schedule of fees shall be applicable for a period of one (1) year from the date by which proposals shall be submitted to the fund [commission];

(3) The fund [commission] shall review all proposals received after the date established ~~[by the commission]~~ for submittal of proposals. Proposals are to be submitted for the purpose of assisting the fund [commission] in the regulation of persons who contract to perform corrective action. These proposals shall not be made available for public inspection until after the date for submittal established by the fund [commission], since to do so would create an unfair advantage for competitors of the individual or company. Proposals may not be amended after the date for submittal, except as provided in subsection (6) of this section.

(4) ~~The [Commission]~~ staff shall review each proposal to verify that the individual or company complies with the requirements for contractor certification, is qualified to perform corrective action for releases from petroleum storage tanks, and the proposed costs comply with the requirements of Section 1 of this administrative regulation.

(5) If the fund [commission] verifies that the individual or company complies with the requirements of subsection (4) of this section, the individual or company shall be placed upon a list of approved contractors that shall be made available to owners or operators of petroleum storage tanks upon request. The list of approved contractors shall be sent to all fund applicants and owners or operators participating in the fund.

(6) If the fund [commission] verifies a proposal, the individual or company shall not charge the owner or operator more than the listed costs on the schedule of fees unless the individual or company demonstrates to the satisfaction of the fund [commission] that:

(a) The increase in costs was beyond the reasonable control of the contractor;

(b) The increase is due to an increase in costs to the contractor, such as an increase in disposal fees or equipment costs, and is supported by adequate documentation; and

(c) The increase is reasonable and necessary to cover the actual costs of performing corrective action.

(7) Claims submitted to the fund [commission] by an owner or operator for the costs of corrective action performed by an approved contractor shall be reviewed by the [commission] staff to determine that the costs were necessary.

Section 5. ~~[(1) "Bid Proposal Form (August, 1993)" is incorporated by reference.~~

~~(2) This form may be obtained, inspected, or copied at the Petroleum Storage Tank Environmental Assurance Fund Commission, 911 Leewood Drive, Frankfort, Kentucky, (502) 564-5981, 9 a.m. to 4:30 p.m., ET, Monday through Friday.~~

~~Section 6.]~~ The provisions of this administrative regulation shall apply to all cost incurred at facilities where the tank system is removed or closed in place on or after the effective date of this administrative regulation. ~~[be enforced beginning January 1, 1994.]~~

LAURA M. DOUGLAS, Secretary

ROBERT E. NICKEL, Executive Director

APPROVED BY AGENCY: January 8, 1997

FILED WITH LRC: January 9, 1997 at noon

COMPILER'S NOTE: The following three administrative regulations, 502 KAR 45:035, 502 KAR 45:055, and 502 KAR 45:150, were amended by the promulgating agency and the Interim Joint Committee on Judiciary. These three administrative regulations became effective on April 15, 1997.

JUSTICE CABINET Department of State Police (As Amended)

502 KAR 45:035. Application and selection process.

RELATES TO: KRS 16.040, 16.050(7), 16.080(1)

STATUTORY AUTHORITY: KRS 16.040, 16.050(7), 16.080(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040, ~~[and] 16.050(7) and 16.080(1) grant [provide that] the Commissioner of the Kentucky State Police the authority to establish criteria for the appointment of department officers. [and the State Police Personnel Board may adopt such administrative regulations as necessary to assure appointment of qualified officers to the department.]~~ This administrative regulation establishes eligibility requirements for applicants and the application form to be submitted by applicants. ~~[requires applicants to complete a written application form.]~~

Section 1. Eligibility Requirements for Testing ~~[applicant]~~. An applicant shall be eligible to take the written examination established by 502 KAR 45:045 and, if otherwise eligible, the Content Based Task Test established by 502 KAR 45:150 and the oral interview established by 502 KAR 45:055 if the applicant:

(1) Meets [An applicant shall meet] the requirements established by KRS 16.040(2)(b), (c) and (d);

(2) Is [An applicant shall be] at least twenty-one (21) years of age; and

(3) Possesses [An applicant shall possess] a valid driver's license against which not more than six (6) [demerit] points are currently [have been] assessed. [Applications shall be made on forms prescribed by the commissioner and provided by the department. The Application for Employment form was adopted May 1, 1994, and is hereby incorporated by reference. Application forms may

ADMINISTRATIVE REGISTER - 3765

(3) A panel member shall score each applicant in job related categories.

(4) For each category, an applicant shall be scored on a range from zero to six (6) with six (6) being the highest score and zero being the lowest score.

(5) The oral interview score shall constitute sixty (60) percent of an applicant's score.

(6) As soon as practicable after the oral interview, each applicant shall be advised of his score.

Section 4. Incorporation by Reference. (1) "Kentucky State Police Cadet Trooper Background Profile 02-97" is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department of State Police, Recruitment Office, 919 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [Each interview shall be structured so that all applicants are asked the same initial questions and rated in the same manner, although panel members may ask supplementary questions if they deem it necessary.

(2) Each applicant interviewed shall be scored in each of five (5) categories by each panel member. The categories shall be:

(a) Maturity, emotional stability and ego strength;

(b) Conscientiousness and persistence;

(c) Social boldness and venturesomeness;

(d) Self assuredness; and

(e) Self discipline.

For each category, the applicant shall be scored on a range from zero to six (6), with six (6) being the highest score and zero being the lowest score.

(3) The oral interview score shall constitute sixty (60) [forty (40)] percent of the overall score. As soon as practicable after the oral interview, each applicant shall be advised of his score and ranking, and may be requested to inform the department in writing as to whether the applicant wishes to continue to participate in the selection process by consenting to a background investigation.]

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: January 15, 1997

FILED WITH LRC: January 15, 1997 at 11 a.m.

JUSTICE CABINET Department of State Police (As Amended)

502 KAR 45:150. Content Based Task Test (CBTT).

RELATES TO: KRS 16.040

STATUTORY AUTHORITY: KRS 16.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.040 requires that persons appointed as officers be physically able to safely perform essential job tasks. This administrative regulation establishes the procedure to determine if the applicants are capable of performing the essential job tasks of an officer during basic cadet training.

Section 1. An applicant who has successfully completed the written examination shall take the Content Based Task Test. [An appropriate number of applicants who have completed the written examination shall be eligible to participate in the Content Based Task Test (CBTT).]

Section 2. (1) The Content Based Task Test shall be validated by an independent outside source with expertise in law enforcement training or employee selection.

(2) The Content Based Task Test shall consist of tasks simulating

the essential job tasks troopers are required to perform. [The CBTT shall consist of tasks simulating the essential job tasks cadet troopers will be required to perform during basic training either with or without reasonable accommodation, which may include but not limited to running, climbing stairs, fences and hillsides, overcoming violent physical resistance from persons arrested or detained, handcuffing persons arrested or detained, lifting and carrying or dragging incapacitated persons, firing and reloading a handgun with either hand and firing and reloading a shotgun, identifying and describing the physical characteristics of suspects of crimes, identifying and describing the physical characteristics of stolen vehicles or vehicles used in crimes, identifying and describing hazardous materials identifiers or placards affixed to vehicles hauling hazardous materials.]

Section 3. The Content Based Task Test [CBTT] shall be structured so that all applicants are required to perform the same tasks and be rated in the same manner.

Section 4. The Content Based Task Test score shall constitute forty (40) percent of an applicant's score.

Section 5. As soon as practical after the Content Based Task Test, an applicant shall be advised of:

(1) His score; and

(2) Whether he is eligible for the oral interview. [The CBTT score shall constitute forty (40) [thirty (30)] percent of the score. As soon as practical after the CBTT, each applicant shall be advised of his score and ranking, and may be requested to inform the department in writing as to whether the applicant wishes to continue to participate in the selection process and be scheduled for the oral interview.]

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: January 15, 1997

FILED WITH LRC: January 15, 1997 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (As Amended)

704 KAR 20:470. Principal Intern Program.

RELATES TO: KRS 161.020, 161.027, 161.028 [~~161.030~~]

STATUTORY AUTHORITY: KRS [~~166.070,~~] 161.027, 161.028

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.027 requires a certificate of legal credentials for each [any] public school position for which a certificate is issued. KRS 161.027 requires that [~~effective July 1, 1988,~~] an applicant [all applicants] for certification as school principal with less than two (2) years of appropriate service complete a one (1) year intern program. This administrative regulation establishes the procedures to implement the Principal Intern Program required under KRS 161.027.

Section 1. An applicant for principal certification requesting 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

~~furnish such~~) to the Kentucky Department of Education, Office ~~[Division]~~ of Teacher Education and Certification. Except in unforeseen circumstances, this confirmation form shall be received by the Kentucky Department of Education not later than July 1 of the employment year.

(2) If ~~[When]~~ a principal is employed after July 1, the confirmation of employment form shall be submitted not later than twenty (20) calendar days following employment.

(3) Upon receipt of the ~~["Statement of Eligibility and"]~~ confirmation of employment ~~[for the Principal Internship form]~~, the Kentucky Department of Education shall appoint the administrator educator member to the principal intern committee.

Section 9. ~~[8. (1) The Kentucky Department of Education shall prepare handbooks describing the Principal Intern Program which shall be distributed to principal interns and to members of principal intern committees.~~

(2) The superintendent of the employing school district shall provide an orientation meeting for each principal intern to clearly inform the intern of the requirements of the program. ~~[The orientation meeting should ordinarily be held prior to activities necessary to begin a new school year.]~~ At that time, or as soon as possible thereafter, the principal intern shall be provided the names of members of the principal intern committee.

Section 10. ~~[9.]~~ (1) The employing school district shall provide to the Kentucky Department of Education information related to the principal mentor and superintendent or designee who will serve as members of each principal intern committee as soon as these members are identified. ~~The [Such]~~ information shall include name, social security number, address, and telephone number.

(2) If a principal mentor is not available through the options specified in Section 5~~[(4)]~~ of this administrative regulation, the employing school district shall request that the Kentucky Department of Education, Office ~~[Division]~~ of Teacher Education and Certification, assist in the identification of a principal mentor.

Section 11. ~~[10.]~~ (1) The superintendent of the local school district employing the principal intern shall schedule a meeting of ~~the [all]~~ members of the principal intern committee to be held not later than fifteen (15) days following appointment of all committee members. At that time, the committee shall meet with the principal intern to clarify roles, procedures and expectations. The committee shall also select a chairperson who shall be responsible for scheduling all future visits and conferences and for the completion of required reports.

(2) The principal mentor shall spend a minimum of fifty (50) hours outside of scheduled school hours with the principal intern. The number of hours spent with the intern and the administrator standards and performance indicators addressed shall be reported to the principal intern committee at each committee meeting, and a final report of the total number of hours shall be made in writing by the committee to the superintendent of the local school district employing the principal intern. A copy of the committee's report confirming the number of hours spent by the principal mentor shall be submitted to the Kentucky Department of Education by the local school district in applying for reimbursement of funds as specified in Section 13 ~~[12]~~ (1) of this administrative regulation.

(3) Each [All] committee member [members] shall make a minimum of three (3) performance observations of the principal intern and conduct a review as described in subsection (4) of this section of the principal intern portfolio. Following each sequence of performance observations and portfolio review, all committee members shall meet to discuss observed performance and the portfolio. A conference shall then be held with the principal intern by committee members to provide information on the skill level on each administrator standard demonstrated and suggestions for professional growth.

(4) ~~[Except in unforeseen circumstances,]~~ The committee shall

follow these guidelines for scheduling a sequence of observations, portfolio review, meetings, and conferences:

(a) The sequence shall be conducted [only] on days that are included in the school calendar;

(b) There shall be a minimum of thirty (30) work days between each sequence; and

(c) Except for internships provided in Section 7(2), the three sequences shall be completed by May 15. ~~[The first sequence shall be completed during the period from July 1 through November 1. The second sequence shall be completed during the period from November 2 through March 1. The third sequence shall be completed during the period from March 1 through May 31.]~~

(5) The final meeting of the principal intern committee shall include a decision reached by a majority vote regarding ~~[the successful]~~ completion of the internship.

Section 12. ~~[11.]~~ (1) In arriving at a professional judgment of the ~~[successful]~~ completion of internship, the committee shall consider the progress of the principal intern throughout the entire school year, with particular emphasis on the progress demonstrated during the final months of the internship.

(2) At the completion of the internship experience ~~[as defined in Section 5 of this administrative regulation]~~, the chairperson shall report to the Kentucky Department of Education and to the superintendent of the employing local school district, if the superintendent is not a member of the committee, the committee's decision regarding the principal intern's ~~[successful]~~ completion of the intern program.

~~[(3) If a principal intern committee believes that an intern not successfully completing an internship could benefit from a second year of internship if the intern was employed as a principal or assistant principal by the same or another school district, the committee may attach to its decision a summary of the mitigating or extenuating circumstances.]~~

~~[(4) If a principal intern does not successfully complete the internship, the principal intern may repeat the intern program one (1) time if employed as a principal or assistant principal by the same or another local school district.]~~

~~[(5) If such employment is not obtained within the four (4) year period of eligibility for internship, the person must reestablish eligibility for internship by successfully completing the examination prerequisites in effect at that time.]~~

Section 13. ~~[12.]~~ (1) The Kentucky Department of Education shall reimburse the school district employing the principal intern for the payment to each principal mentor of mileage expenses in accordance with 200 KAR 2:006 [state travel administrative regulations] and for an amount not to exceed \$1,000 to each principal mentor as compensation for out-of-school time spent with the principal intern. ~~[A form to be used in submitting these expenses shall be included in the Handbook to be developed and disseminated by the Kentucky Department of Education. A copy of the committee's report of the number of hours spent by the principal mentor with the principal intern shall be attached to this form.]~~

(2) The Kentucky Department of Education shall contract with institutions of higher education to pay an amount of \$200 for each administrator educator and for mileage expenses in accordance with 200 KAR 2:006 [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 200 KAR 2:006 [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

(a) Be informed of the:

1. Entitlements available under this administrative regulation;
2. Right to appeal; and
3. Names and addresses of department individuals with whom an appeal shall be filed.

(b) Request an appeal:

1. In writing;
2. By telephone; or
3. On tape.

(3) The director of program services or a designee shall convene a hearing within forty-five (45) days from receipt of a request made pursuant to subsection (1) of this section. The hearing shall be conducted pursuant to:

(a) KRS Chapter 13B; and

(b) This administrative regulation. ~~[(1) An applicant or eligible individual who is dissatisfied with any action concerning the furnishing or denial of vocational rehabilitation services shall have the right to appeal that action. All applicants or eligible individuals shall be informed of entitlements available under this administrative regulation, including the names and addresses of department individuals with whom an appeal shall be filed. The request for appeal shall be made in writing, by telephone or on tape.~~

~~[(2)]~~ (4) Pending a final determination of a hearing or other final resolution, the department shall not suspend, reduce, or terminate services provided under the individualized written rehabilitation program unless, the:

(a) It has evidence that the service was obtained by an applicant or eligible individual through:

1. Misrepresentation;
2. Fraud;
3. Collusion; or
4. Criminal conduct;

~~[(1)] [(a)] Services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the applicant or client; or~~

~~[(2)] [(b)] Applicant or client, or an authorized representative, requests this [such] action.~~

Section 3. Client Assistance Program. The department shall advise an applicant or eligible individual of:

(1) The existence of the Client Assistance Program, created by KRS 151B.225;

(2) The services provided by the program; and

(3) How to contact a program representative. ~~[The department shall advise all applicants and eligible individuals of the existence of the Client Assistance Program, the services provided by the program, and how to contact the program representatives.]~~

Section 4. Appeal Time and Hearing Procedures. (1) Within sixty (60) days of becoming aware, through the exercise of due diligence, of agency action or inaction, an applicant or eligible individual may appeal by contacting the Director of Program Services, pursuant to Section 2(1) of this administrative regulation.

(2) An applicant or eligible individual shall, at the time of requesting an appeal hearing:

- (a) Identify accommodations required; and
- (b) Submit an issue statement for the hearing.

(3) The department shall randomly select a hearing officer from a pool of approved and trained hearing officers. ~~[Choice of Appeal Procedures and Time Frames. (1) Within sixty (60) days of becoming aware, through the exercise of due diligence, of agency action or inaction, an applicant or eligible individual may appeal.~~

~~[(2)] Applicants or eligible individuals may choose either an administrative review conducted by an agency staff member not involved in the agency action, or a more formal hearing conducted by an impartial hearing officer.~~

~~[(3) If an administrative review is chosen and the applicant or eligible individual is dissatisfied with the resolution, a hearing may be requested within thirty (30) days after the receipt of the administrative review decision.] [The hearing shall be held within forty-five (45) days of receipt of the hearing request. Reasonable time extensions may be made for good cause by the commissioner or hearing officer.]~~

Section 5. Conduct of the Hearing. (1) The rules of civil procedure shall not apply to a hearing conducted under the provisions of this administrative regulation.

(2) Order of proof.

(a) The department shall:

1. Present its case first;
2. Examine witnesses; and
3. Submit documentation, subject to cross examination.

(b) The applicant or eligible individual shall:

1. Present its case second;
2. Examine witnesses; and
3. Submit documentation, subject to cross examination.

(3) A party shall provide three (3) copies of a document that is to be introduced into evidence.

Section 6. Findings and Decision. (1) The hearing officer shall complete and submit to both parties and the commissioner the written recommended order within thirty (30) days of the completion of the hearing unless both parties agree to a time extension.

(2) If the commissioner decides to review the recommended order of the hearing officer, the commissioner shall:

(a) Notify the applicant or eligible individual within twenty (20) days of the mailing of the hearing officers order;

(b) Provide the applicant or eligible individual the opportunity to submit additional evidence or information relevant to the final decision;

(c) Not overturn or modify a decision unless it is concluded, based on clear and convincing evidence, that the decision is erroneous because it violates the:

1. State plan;
2. Federal vocational rehabilitation law or regulations; or
3. State administrative regulations or policies that are consistent with federal requirements.

(3) Within thirty (30) days of providing notice of intent to review the hearing officer's recommendation, the commissioner shall:

(a) Make a final decision; and

(b) Provide a full written report of the decision to the applicant or eligible individual, including:

1. Findings; and
2. Statutory, regulatory, or policy grounds for the decision.

(4) If the commissioner fails to provide notice of the intent to review the recommendation within twenty (20) days, the recommended order of the hearing officer shall become a final decision. ~~[Procedures for an Administrative Review. The following procedures shall be followed in an administrative review:~~

~~[(1) The Director of Program Services or a designee [regional administrator] shall [designate a branch manager from a district not involved in the action in question to] conduct the administrative review. The Director of Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC) shall designate a review officer who has not been involved in the action or inaction of the center that is being appealed for review.~~

~~[(2) The administrative review shall be held within fifteen (15) working days of receipt of the request. Reasonable time extensions may be made for good cause if agreed upon by both parties.~~

~~[(3) When practicable, the review shall be at a time and place convenient to the applicant or eligible individual requesting the review, and the individual shall be notified in writing as to the time and place~~

mendations.

(3) Within twenty (20) days of the mailing of the decision, the commissioner shall notify the applicant or eligible individual of the intent to review the recommended order in whole or in part.

(4) The decision of the commissioner to review any impartial hearing officer's decision shall be based on the following standards:

(a) Whether the hearing officer's decision was arbitrary, capricious, an abuse of discretion or otherwise unreasonable.

(b) Whether the hearing officer's decision was supported by facts in the record and applicable federal and state laws and administrative regulations.

(c) If the commissioner elects to review the decision, the applicant or eligible individual shall be provided an opportunity for the timely submission of additional evidence and information relevant to a final decision.

(d) The commissioner's review shall be limited to the findings with which the commissioner took issue and shall be a review of the record of evidence, the hearing officer's written recommended order, and any additional relevant written documentation submitted by the applicant or eligible individual.

(e) The commissioner shall not overturn or modify a decision of an impartial hearing officer, or part of a decision, that supports the position of the applicant or eligible individual unless the commissioner concludes, on the basis of clear and convincing evidence, that the decision of the independent hearing officer is clearly erroneous on the basis of being contrary to federal or state law or administrative regulation.

(f) A final decision shall be made in writing by the commissioner within thirty (30) days of the commissioner's decision to review the recommended order of the hearing officer. The commissioner may grant a reasonable time extension in order for the applicant or eligible individual to submit additional evidence relevant to the final decision.

(g) The commissioner's final decision shall state the findings and the grounds for the decision.

(h) The commissioner shall not delegate responsibility to make a final decision to any administrator or employee of the department.

(i) The decision of the commissioner shall be the final state agency action.

(j) The commissioner shall provide a copy of the final decision to both parties.

Section 9. [Legal Counsel. The department shall not provide legal counsel or reimburse the costs of legal counsel for an applicant or eligible individual who appeals an action concerning the furnishing or denial of services.]

SAM SERRAGLIO, Commissioner

RODNEY CAIN, Secretary

APPROVED BY AGENCY: December 27, 1996

FILED WITH LRC: January 9, 1997 at noon

WORKFORCE DEVELOPMENT CABINET

Department for the Blind

(As Amended)

782 KAR 1:040. Appeal procedures.

RELATES TO: KRS 163.450 to 163.470, 29 USC 701 [et seq.], 34 CFR Part 361

STATUTORY AUTHORITY: KRS 163.470(5) [29 USC 701 et seq., 34 CFR Part 361.48]

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 procedures so that an [any] applicant for or client of vocational rehabilitation services who is dissatisfied with determinations made by staff of the department concerning the furnishing or denial of services may request a timely review of those determinations.

Section 1. Impartial Hearing Officer. To conduct a hearing under this administrative regulation, an impartial hearing officer shall:

(1) Be trained with respect to the performance of official duties;

(2) Have knowledge of:

(a) The delivery of vocational rehabilitation services;

(b) Federal and state laws; and

(c) Administrative regulations governing the provision of vocational rehabilitation services;

(3) Not:

(a) Be an employee of a public agency other than an:

1. Administrative law judge;

2. Hearing examiner; or

3. Employee of an institution of higher education;

(b) Be a member of the Department for the Blind Advisory Council;

(c) Have been involved in a previous decision regarding the vocational rehabilitation of an applicant or eligible individual;

(d) Have a personal or financial interest that would conflict with the objectivity of the individual.

Section 2. Right of Appeal and Information. (1) An applicant or eligible individual shall have the right to appeal an action to the director of client services concerning the:

(a) Furnishing of benefits; or

(b) Denial of vocational rehabilitation services.

(2) An applicant or eligible individual shall:

(a) Be informed of the:

1. Entitlements available under this administrative regulation;

2. Right to appeal; and

3. Names and addresses of department individuals with whom an appeal shall be filed.

(b) Request an appeal:

1. In writing;

2. By telephone; or

3. On tape.

(3) The director of client services or a designee shall convene a hearing within forty-five (45) days from receipt of the request. The hearing shall be conducted pursuant to:

(a) KRS Chapter 13B; and

(b) This administrative regulation.

(4) Pending a final determination of a hearing or other final resolution, the department shall not suspend, reduce, or terminate a service provided under the individualized written rehabilitation program unless:

(a) It has evidence that the service was obtained by an applicant or eligible individual through:

1. Misrepresentation;

2. Fraud;

3. Collusion; or

4. Criminal conduct; or

(b) This action is requested by an:

1. Applicant;

2. Client; or

3. Authorized representative of an applicant or client.

Section 3. Client Assistance Program. The department shall advise an applicant or eligible individual of:

(1) The existence of the Client Assistance Program, created

the department.

(2) The following procedures shall be followed in an administrative review:

(a) The Director of Client Services or designee of the Director of Client Services shall conduct the administrative review;

(b) The administrative review shall be held within fifteen (15) working days of receipt of the request. Reasonable time extensions may be made for good cause by commissioner or hearing officer;

(c) The review shall be held at a time and place convenient to the applicant or eligible individual requesting the review;

(d) The applicant or eligible individual shall be notified in writing of:

1. The time and place of the review; and

2. The right to be represented at the review by counsel or designated advocate; and

(3)(a) The director shall send a written report of the findings and grounds for the decision shall be sent to the applicant or eligible individual within ten (10) working days of the day on which the review was completed.

(b) The written report shall also state that:

1. [The department shall be bound by the decision;

2.] If the applicant or eligible individual is dissatisfied with the decision, [a formal hearing may be requested within thirty (30) days after the receipt of administrative review decision;

3.] the request for a formal hearing shall be made by contacting the Director of Client Services of the department;]

[4. The name and address of the Director of Client Services;

5. The formal hearing shall be held within forty five (45) days of receipt of the hearing request;

6. Reasonable time extensions may be made for good cause by the commissioner or hearing officer;

7. Additional evidence, information, and witnesses may be presented by the applicant or eligible individual or, if appropriate, by his parent, guardian, or other representative;

8. The applicant or eligible individual may be represented by counsel or other appropriate advocate;

9. The applicant or eligible individual may examine all witnesses and other relevant sources of information and evidence.]

[2. The hearing shall be conducted pursuant to KRS Chapter 13B.]

(Section 5. Procedures for Impartial Hearings. (1) The hearing officer shall be selected by the applicant or eligible individual from the pool of approved and trained hearing officers maintained by the department.

(2) The department shall send a list of hearing officers to the applicant or eligible individual within five (5) working days from receipt of the hearing request.

(3) The applicant or eligible individual shall notify the department of the selected hearing officer within five (5) working days of receipt of the list.

(4) The notification from the applicant or eligible individual shall include any issue statement for the hearing and shall identify any accommodations required for the hearing (e.g., accessible formats for print materials or a sign language interpreter).

(5) The designated hearing officer may be disqualified by the department representative for a reasonable cause such as, personal knowledge or involvement with the case or the individual or a financial interest which would compromise the objectivity of the decision.

(6) If the commissioner determines that reasonable cause supports disqualification, the applicant or eligible individual shall be contacted to select another hearing officer.

(7) When the selected hearing officer agrees to conduct the hearing, the hearing officer shall be responsible for communication with each party concerning the hearing. If the applicant or eligible individual obtains legal counsel, communication with counsel shall constitute notice to the applicant or eligible individual.

(8) The hearing officer shall send written notification of the scheduled hearing to the applicant or eligible individual and the department representative which shall include:

(a) A statement of the date, time, place of the hearing;

(b) The names, official titles, mailing addresses, and phone numbers of all parties to the hearing, including the department representative and counsel for the individual if any;

(c) A statement of the issues involved, in sufficient detail to give the parties reasonable opportunity to prepare evidence and argument;

(d) A statement advising the applicant or eligible individual that he may be represented by counsel or other appropriate advocate;

(e) A statement of the parties' right to inspect any documentary or tangible evidence to be used at the hearing or any relevant records in the possession of the department.

(f) A statement that the applicant or eligible individual, or, if appropriate, his parent, guardian, or other representative, may present additional evidence;

(g) A statement that the applicant or eligible individual may examine all witnesses and other relevant sources of information and evidence; and

(h) A statement advising that if any party fails to attend or participate as required at any stage of the hearing process, a default judgment and recommended order against that party's interest may be entered.

(9)(a) The hearing officer may convene and conduct a prehearing conference upon request by either party or on his own with reasonable notice.

(b) The purpose of the prehearing conference shall to clarify the issues for the hearing, explore settlement possibilities, rule on any pending motions, or on other matters that will promote the orderly and prompt conduct of the hearing.

(c) The hearing officer shall issue a prehearing order prior to the hearing incorporating all matters determined at the prehearing conference.

(10) At least five (5) calendar days prior to the hearing:

(a) All documents which will be presented as evidence shall be disclosed between the parties; and

(b) A list of witnesses to be called to testify during the hearing shall be submitted to the hearing officer by each party with a copy submitted to the other party.

(11)(a) Depositions shall not be routinely available.

(b) The hearing officer may approve a request from either party to take the deposition of an unavailable witness.

(c) Videotape depositions may be approved by the hearing officer for introduction as evidence in lieu of a witness' appearance during the hearing if both parties agree.

(12)(a) While the proceeding is pending, the hearing officer shall not communicate off the record with any party to the hearing or other person who has a direct or indirect interest in the outcome of the hearing concerning any substantive issue.

(b) Ex parte communication concerning procedural or scheduling questions may be permitted to expedite the proceeding.

Section 6. Conduct of the Hearing. (1) The hearing officer shall:

(a) Preside over the conduct of the hearing;

(b) Make all decisions;

(c) Rule on all matters concerning the conduct of the hearing; and

(d) Require an orderly and proper decorum at the hearing.

(2) The applicant or eligible individual shall designate whether the hearing will be open or closed.

(3) The rules of civil procedure shall not apply.

(4)(a) The department shall present its case first, examine witnesses and submit documentation subject to cross examination.

(b) The applicant or eligible individual shall then present the case, examine witnesses and submit documentation subject to cross examination.

(5) Each party shall provide three (3) copies of any exhibit to be

Section 3. (1) The registration of a stallion that remains ~~[Stallions remaining]~~ in the state for more than one (1) breeding season shall be renewed annually.

(2) The "Standardbred Stallion Certification of Eligibility Renewal" ~~[A renewal form]~~ shall be filed by February 1 of the breeding season ~~[on forms provided by the commission]~~.

(3) The annual renewal fee for registration of stallions to the Kentucky Standardbred Development Fund shall be:

(a) One (1) full advertised stud fee for a stallion ~~[stallions]~~ with an annual book of twenty-five (25) or more mares; and

(b) Twenty (20) percent of the stud fee or a minimum of \$200 for stallions with an annual book of twenty-four (24) or less mares.

(4) The annual stallion registration fee shall follow the gait of the stallion. ~~[twenty (20) percent of the stud fee with a minimum of \$200.]~~

Section 4. ~~[3-]~~ An owner ~~[Owners]~~ of a standardbred stallion ~~[stallions]~~ registered with the commission shall submit by October 1 a report of each stallion and mares bred by each stallion during the preceding twelve (12) months. ~~[In addition, beginning with foals of 1985 owners shall submit to the Kentucky Standardbred Development Fund a copy of the Foaling Report Sheet sent to the United States Trotting Association of foals dropped.]~~

Section 5. ~~[4-]~~ [If the commission finds a registration to be incorrect, the registration may be cancelled and notice of the cancellation shall be sent to the owner of the horse.]

~~Section 6- [5- (1)]~~ In order to qualify for the Kentucky Standardbred Development Fund, a foal shall ~~[must]~~ be the product of the mating of a mare with a Kentucky registered and resident stallion.

~~[(2) A foal conceived by semen which is frozen or desiccated is not eligible for nomination to the Kentucky Standardbred Development Fund. Beginning in 1992, a foal conceived by fresh semen from a Kentucky registered and resident stallion, which is transported intrastate or interstate, is eligible to be nominated to the Kentucky Standardbred Development Fund.]~~

Section 6. ~~[7-]~~ [6-] (1) If an owner or a lessee of a registered stallion fails to furnish information the commission has requested relating to the registration or renewal of registration of a horse, the commission shall:

(a) Suspend or deny the registration of the stallion; and

(b) Schedule a hearing, pursuant to 810 KAR 1:029.

(2) After the hearing, the commission shall determine whether the failure to furnish information was willful and:

(a) Suspend the registration; or

(b) Rescind its suspension of the registration; or

(c) Deny or revoke the registration; or

(d) 1. Deny or revoke the registration; and

2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information. ~~[Upon failure of an owner or lessee of a registered stallion to furnish the commission requested information relative to the registration of a horse, the commission may suspend or cancel the registration.]~~

Section 7. ~~[8-]~~ [7-] (1) If the commission determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion contains false or misleading information, the commission shall:

(a) Suspend or deny the registration of the stallion; and

(b) Summon the person who executed the application, and any person who has knowledge relating to the application, to appear before the commission at a hearing pursuant to 810 KAR 1:029.

(2) After the hearing, the commission shall determine whether the person knew or had reason to know that the

information was false or misleading, and:

(a) Rescind its suspension or denial of the registration; or

(b) Suspend, deny, or revoke the registration; or

(c) 1. Deny or revoke the registration; and

2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information.

(3) If a person summoned by the commission fails to respond to the summons, the commission:

(a) Shall suspend or deny the registration of the stallion;

(b) Notify in writing the person of the action taken by the commission; and

(c) May:

1. Deny or revoke the registration; and

2. Bar from further registration, horses owned by the person who executed the application containing false or misleading information. ~~[If the commission determines that an application for registration or transfer contains false or misleading information, the commission may summon the person who executed the application and any other person who has knowledge of the information contained on or related to the application.]~~

~~[(2) The commission may suspend or cancel the registration of horses owned by a person who fails to respond to a summons.]~~

~~[(3) After a hearing, the commission may suspend, cancel, or bar from further registration, horses owned by the person who executed the false or misleading information.]~~

Section 8. ~~[9-]~~ [8-] An ~~[Any]~~ owner or lessee of a stallion eligible or the Kentucky Standardbred Development fund shall designate a resident of Kentucky as the ~~[an]~~ authorized agent who shall be responsible for:

(1) The registrations and records of the farm; and

(2) [for] Complying with the requirements of the Kentucky Standardbred Development Fund [on behalf of the owner or lessee].

Section 9. ~~[10-]~~ [9-] The "Authorized Agent" form ~~[application]~~ ~~[is]~~ ~~[provided by the Kentucky]~~ ~~[Harness]~~ ~~[Racing Commission]~~ ~~[and]~~ shall be filed ~~[together]~~ with the stallion registration.

Section 10. ~~[11-]~~ [10-] Sires stakes races in which any part of the purse is provided by the Kentucky Standardbred Development Fund shall be subject to ~~[the rules and]~~ administrative regulations promulgated by ~~[of]~~ the Kentucky ~~[Harness]~~ Racing Commission.

Section 11. ~~[12-]~~ [11-] A ~~[Each]~~ participant ~~[colt, gelding or filly participating]~~ in a Kentucky sires stakes race shall have:

(1) Been sired by a stallion registered with the Kentucky [Harness] Racing Commission; and

(2) Maintained eligibility for [to] the Kentucky Standardbred Development Fund.

Section 12. ~~[13-]~~ [12-] Each race shall be a one (1) mile dash.

Section 13. ~~[14-]~~ [13-] Post positions for the final, consolation, and elimination races shall be an open draw.

Section 14. (1) [15-] There shall be no more than:

(a) Nine (9) starters per final race on a mile track; and

(b) [no more than] Eight (8) horses on a one-half (1/2)-mile track.

(2) If more than nine (9) horses for a mile track or (8) eight horses for a one-half (1/2) mile track declare in, eliminations shall be held the week before the final race.

(3) All horses shall be on the gate for the final race. [13- The race will split if more than eleven (11) declare to start. No division shall contain more than nine (9) horses. In the case of a split the event will be raced as follows: The nominating, sustaining, stallion and starting fees shall be added to the purse and each division shall race for an

(b) The monies shall include:

- 1. Stake payments;**
- 2. Declaration fees;**
- 3. Purses provided by the Kentucky Standardbred Development Fund; and**
- 4. Added monies provided by the Commonwealth of Kentucky.**

[Section 23. [18.] Should circumstances prevent the racing of any event, if the race is not drawn, all stake payments shall be refunded to the eligible horses [added monies will be equally divided among horses eligible] for the uncontested event at the time the event is cancelled [of declaring off]. These eligible horses shall include only the horses that made the three (3) required payments as described in 811 KAR 1:215, Section 30. The added monies provided by the Commonwealth of Kentucky shall roll over into the following year to be distributed evenly between the races of each age, sex, and gait. In the event the race is drawn, the monies shall [will] be equally divided among the horses entered to start. This shall [will] include stake payments, declaration fees, and purses provided by the Kentucky Standardbred Development Fund, and added monies provided by the Commonwealth of Kentucky.]

Section 23. [24.] [49.] Starters shall ~~[will]~~ declare in at each track at the time specified and advertised by the association conducting the event.

Section 24. [25.] [20.] (1) At ~~[the time of]~~ the declaration a started shall:

(a) ~~[must]~~ Show at least one (1) charted race line with no breaks ~~[within the last six (6) starts and]~~ within forty-five (45) ~~[thirty (30)]~~ days prior to the day of the race; and

(b) ~~[In addition, the starter must]~~ Have satisfied the following time requirements:

1. ~~[(a)]~~ A ~~[-]~~ two (2) year old trotter shall ~~[must]~~ have been timed in 2:14 or faster;

2. ~~[(b)]~~ A two (2) year old pacer shall ~~[must]~~ have been timed in 2:12 or faster;

3. ~~[(c)]~~ A three (3) year old trotter shall ~~[must]~~ have been timed in 2:10 or faster; and

4. ~~[(d)]~~ A three (3) year old pacer shall ~~[must]~~ have been timed in 2:08 or faster.

(2)(a) If [A broken equipment break or an interference break will not be considered a break as stated in this section.

~~[(3)]~~ an eligibility certificate or a clear photocopy of the eligibility certificate is not ~~[must be]~~ on deposit with the race secretary at the time of declaration, ~~[or]~~ the declaration shall ~~[will]~~ be rejected.

(b) A horse shall be scratched from a race if the:

1. Horse has a start subsequent to the sending of the eligibility certificate or photocopy; and

2. Declarer has not advised the race secretary of the commitment to race.

(c) The requirements of this subsection shall apply to wagering and nonwagering races.

[(4)] If the horse has a start subsequent to the eligibility certificate or photocopy being sent, the declarer shall advise the race secretary of the commitment to race or the horse may be scratched from the race.

[(6)] This rule shall be in effect for wagering and nonwagering races.

Section 25. (1) At a scheduled meeting of the commission, the commission:

(a) Shall establish the following year's distribution of funds for stake races; and

(b) Authorize expenditures at a time it designates.

(2) The racing dates for sires stakes shall be issued after the track's race dates are set. [26. [21.] The Kentucky Standardbred Development Fund will be distributed by the Kentucky [Harness] Racing Commission on an equitable basis to promote the purposes expressed in KRS 230.770. The commission may authorize expenditures at any time; however, the commission may at a [its] scheduled meeting [each November], make provisions for the following year's distribution of funds for stake races. The Sires Stakes racing dates shall be issued after the tracks' race dates are set.]

Section 26. [27.] [22.] The Kentucky Standardbred Development Fund shall provide a trophy for each event. ~~[In the case of division races each division shall receive a trophy.]~~

Section 27. (1) [28.] [23.] After payment of the nomination fee, foals shall remain eligible for events each year by making the required sustaining and declaration payments for that year.

(2) The two (2) year old March 15 payment shall be made in order to remain eligible as a three (3) year old.

Section 28. [29.] [24.] ~~[All]~~ Nomination and sustaining payments shall be made to the Kentucky Standardbred Development Fund in U.S. funds.

Section 29. (1) Yearlings of 1998 and before shall be nominated by May 15.

(2) A fee payment required by this section shall be postmarked no later than the due date that is specified for the fee by this section.

(3) Fees shall be twenty (20) dollars each.

(4) Beginning with the yearlings of 1999 (breeding season of 1997), the yearling nomination fee shall be:

(a) Forty (40) dollars each; and

(b) Due by May 15 of the yearling year.

(5) A nomination shall be accompanied by a photocopy of the United States Trotting Association registration certificate.

(6)(a) If the May 15 deadline to nominate a yearling is missed, a late supplemental payment of \$350 shall be required.

(b) The late supplemental payment shall be accepted if:

1. It is received by April 1 of the two (2) year old; and

2. The two (2) year old March 15th payment has been made.

(7) A fee shall be payable to the Kentucky Standardbred Development Fund in U.S. funds.

(8) Sustaining payments shall be as follows: [30. [25.] Payments. All yearlings of 1998 and before shall [will] be nominated by [on] May 15 and fees shall [will] be twenty (20) dollars each. All payments must be postmarked by the date specified. Beginning with the yearlings of 1999 (breeding season of 1997), the yearling nomination fee will be forty (40) dollars each and due by May 15 of the yearling year. All payments must be postmarked by the date specified. Each nomination must be accompanied by a photocopy of the USTA registration certificate. [For foals of 1987, a late payment of \$100 will be accepted to nominate a yearling if the May 15 deadline is missed. Beginning with foals of 1988 and thereafter,] A late supplemental payment of \$350 shall [\$200 will] be accepted to nominate a yearling if the May 15 deadline is missed. This supplemental payment of \$350 must be received by April 1 of the two (2) year old year provided that the two (2) year old March 15th payment has been made. [may be made at any time prior to the two (2) year old March 15 payment.] Fees are payable to the Kentucky Standardbred Development Fund in U.S. funds. Sustaining payments shall be as follows:]

[TWO (2) YEAR-OLD PAYMENTS]

Foals of 1987 (To be raced in 1988)

March 15th	\$ 40
May 15th	\$200

COMPILER'S NOTE: The following administrative regulation, 902 KAR 17:040, was amended by the promulgating agency and the Interim Joint Committee on Health and Welfare. 902 KAR 17:040 became effective on March 19, 1997.

CABINET FOR HEALTH SERVICES
Department for Health Services
(As Amended)

902 KAR 17:040. Data reporting by health care providers.

RELATES TO: KRS 216.2921 [216.2920] to 216.2929

STATUTORY AUTHORITY: KRS [216.2901] 216.2925, [Ky. Acts ch. 374] 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 216.2925 [and 216.2901] [1996 Ky. Acts ch. 374] mandates [mandate] the Cabinet for Health Services to promulgate administrative regulations requiring specified health care providers to provide the cabinet with data on cost, quality and outcomes of health care services provided in the Commonwealth. This administrative regulation sets forth the data elements, forms, and timetables the cabinet requires to carry out this mandate.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Health Services.

(2) "Hospitalization" means the inpatient medical episode identified by a patient's admission date, length of stay and discharge date, and further identified by a provider-assigned patient control number unique to that inpatient episode. Excluded from this definition are inpatient services a hospital may provide in swing, dual licensed, nursing facility, skilled, intermediate or personal care beds, hospice, and major ambulatory procedures notwithstanding that these may occur in hospitals.

(3) ~~["Major ambulatory procedure" means the provision to an ambulatory patient of any ambulatory surgery, any cardiac catheterization, or any patient service using lithotripsy, magnetic resonance imaging or megavoltage radiation by linear accelerator or cobalt 60. Major ambulatory procedures may be related or unrelated to hospitalizations, may involve the use of either fixed or mobile medical equipment, and may occur in a physician office, a clinic, a hospital emergency, ambulatory or outpatient department by any name, or any other noninpatient situation or location where a major ambulatory procedure is provided.~~

(4) "Selected ambulatory surgery" means the following specific surgeries:

Dilation and curettage	Myringotomy with or without ventilation tubes
Hernia repair	Colonoscopy
Gastroscopy	Cystoscopy with or without retrograde urography
Bronchoscopy	Tubal ligation
Vasectomy	Cataract surgery
Laser surgery (eye)	Arthroscopy
Angioplasty	Septoplasty
Hemorrhoid surgery	Lymph node biopsy
Colposcopy with or without conization	Breast biopsy
Laparoscopic cholecystectomy	Carpal tunnel release
Arteriogram with or without angioplasty	Tonsillectomy

(4) ~~[(6)]~~ "UB-92" means the uniform billing form identified by the federal Health Care Financing Administration as HCFA Form 1450, as recommended by the National Uniform Billing Committee and adopted by the Kentucky Uniform Billing Committee for use by hospitals and other providers in billing for hospitalizations and 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

ADMINISTRATIVE REGISTER - 3781

the cabinet the names and telephone numbers of a designated working contact person and a back-up person to facilitate technical staff follow-up in dealing with daily working details by employees of the cabinet or its agent. A provider's designated contact and back-up may not be the chief executive officer unless no other person(s) employed by the provider has the requisite technical expertise. The designated working contact shall also be the person responsible for review of the provider's data for accuracy prior to the publication by the cabinet.

(2) If the chief executive officer, designated contact person or back-up person changes during the year the name of the replacing person shall be reported immediately to the cabinet.

Section 7. Required Data Elements. (1) UB-92 data. Providers shall ensure that each copy of UB-92 data submitted to the cabinet contains at least the following data elements as provided for on the UB-92 form. Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications.

Field #	Data Element Label
[2]	* Ethnicity
3	* Provider Assigned Patient Control Number
4	* Type of Bill (inpatient, outpatient or other)
5	* Federal Tax Number or Employer Identification Number (EIN)
6	* Statement Covers Period
11	Patient Birth Weight (state-reserved field)
13	* Patient City and Zip Code
14	* Patient Birth date
15	* Patient Sex
16	Patient Marital Status
17	* Admission/Start of Care Date
18	Admission Hour
19	* Type of Admission
20	* Source of Admission
[21]	Discharge Hour
22	* Patient Status (at end of service or discharge)
23	* Provider Assigned Medical Record Number
32-35	Occurrence Codes & Dates
[36]	Occurrence Span Codes & Dates
39-41	Value Codes and Amounts
42	* Revenue Codes/Groups
46	Units of Service
47	* Total Charges by Revenue Code Category
50	* Payor Identification - Payor Name
[56]	KenPAC Authorization (Provider) Number
67	* Principal Diagnosis Code
68-75	Secondary and Other Diagnosis Codes
[76]	* Admitting Diagnosis Code
77	External Cause of Injury Code (E-code)
[78a]	Unusual Occurrence: Readmission
[78b]	Unusual Occurrence: Nosocomial Infection
79	* Procedure Coding Method Used
80	Principal Procedure Code & Date
81	Secondary and Other Procedure Codes & Date
82	* Attending Physician Unique Physician Identification Number (UPIN) or alternate number
83	Other Physician UPIN or alternate number

(2) HCFA-1500 data. Providers shall ensure that each copy of HCFA-1500 data submitted to the cabinet contains at least the following data elements as provided for on the HCFA-1500 form. Asterisks identify elements that shall not be blank and shall contain data or a code as specified in the cabinet's coding and transmission specifications.

Field #	Data Element Label
1	* Payor Identification
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 HEALTH SERVICES Department for Medicaid Services Division of Administration and Development (As Amended)

907 KAR 1:019. Pharmacy services.

RELATES TO: KRS 205.520, 314.011, 320.210

STATUTORY AUTHORITY: KRS 194.050, ~~[314.011, 320.210]~~ 42 CFR 440.120, 447.331, 447.332, 447.333, 42 USC 1396a-d, r-8 [e], 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

Health Services, Department for Medicaid Services, [Human Resources] has the responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 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 dental services for which payment shall be made by the Medicaid Program in behalf of both the categorically needy and the medically needy.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Participating" is [as] defined in 907 KAR 1:002.

(3) "Providers" is [as] defined in 907 KAR 1:002.

Section 2. Out-of-hospital Services. Payment for out-of-hospital services shall be limited to those procedures listed in the [cabinet's] Dental Manual [benefit schedule which are included] in the following categories:

- (1) Diagnostic;
- (2) Preventive;
- (3) Oral surgery;
- (4) Endodontics;
- (5) Orthodontics;
- (6) Prosthetics;
- (7) Operative;
- (8) [Crown]; and
- (9) Other services.

[Section 2. Dental Services Manual. (1) The policies and methods by the cabinet in covering dental services are specified in the cabinet's "Dental Services Manual" dated June 1, 1994, which is incorporated by reference in this administrative regulation.

(2) The Dental Services Manual may be reviewed during regular working hours of 8 a.m. to 4:30 p.m. eastern 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 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, 1989, 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 an oral surgeon [surgeons] subject to the general physician limitations established [shown] in 907 KAR 3:005 [4:009], Physicians' services.

(2) Payment shall be provided for covered services rendered by a general dentist [dentists] for hospital inpatient care for a patient [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 [retarded, 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.

~~requires that these programs [to] be in place for Medicaid participating nursing facilities, when the program is approved by the state in which the nursing facility is located.]~~

(7) ~~(6)~~ "State approved program" means the nurse aide training and competency evaluation program requirements established by ~~[shown in] the [manual entitled] "Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program [Manual]" [revised November 1, 1992 which is hereby incorporated by reference]. [Nurse aide training and competency evaluations shall be performed by or for nursing facilities located in the Commonwealth [state] of Kentucky in accordance with the terms, conditions, and criteria specified for a state approved program as designated in the manual specified in this subsection for the state approved program.]~~

(8) ~~(6)~~ "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse.

Section 2. [Material Incorporated by Reference. (1) The "Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program", dated January 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, Third Floor East, 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 in-state 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 which approximates cost in accordance with KRS 61.872.

Section 3. [2.] General Requirements. (1) A participating nursing facility shall not use an individual as a nurse aide on a permanent basis for more than four (4) months if the individual:

(a) Has not completed the:

1. Nurse aide training and competency evaluation program;

or

2. The competency program, if the individual was used by the facility prior to October 1, 1989 as a nurse aide; or

(b) Has not met the competency evaluation prior to January 1, 1989. [A participating nursing facility shall not use an individual as a nurse aide on a permanent basis, as follows: (a) on or after October 1, 1990]

(a) [(1)] For more than four (4) months unless the nurse aide has completed the:

(b) [(a)] Nurse aide training and competency evaluation program;
[or]

(c) [(b)] The competency program if the individual was used by the facility prior to October 1, 1989 as a nurse aide; or

(d) [(c)] is deemed to meet the competency evaluation prior to January 1, 1989, as specified in the manual for the approved state program.]

(2) A facility shall not use an individual as a nurse aide on a temporary, per diem, leased or [any] other nonfull-time basis if [unless] the person has not completed the:

(a) Nurse aide training and competency evaluation program; or

(b) Competency evaluation program.

Section 3. [4.] [3.] Regular In-service Education and Ongoing Staff Development. Following successful completion of the nurse aide competency evaluation program, each nursing facility shall be [is] required to provide and document, [f]as specified in the Medicaid Services [state approved program] Manual for Nurse Aide Training and Competency Evaluation Program, [b] twelve (12) hours of ongoing

staff development annually for each nurse aide.

Section 4. ~~[6.] [4.]~~ Minimum Curriculum and Content Requirements. (1) The nurse aide training program shall, at a minimum, consist of no less than seventy-five (75) hours, which includes a minimum of sixteen (16) hours of supervised practical training.

(2) Criteria for primary instructors, program coordinators, trainers, resource people, and curriculum content shall be ~~[are]~~ shown in the Medicaid Services Manual for the Nurse Aide Training and Competency Evaluation Program ~~[state approved program]~~.

Section 5. ~~[6.] [5.]~~ Approval, Initial Postapproval Review, and Ongoing Review of Nurse Aide Training Programs. (1) The nurse aide training program shall ~~[may]~~ be conducted by:

(a) The [means of a] Department for [of Adult and] Technical Education [program];

(b) Nursing facility program;

(c) Community college; [or]

(d) University program; [or]

(e) A licensed proprietary education program;

(f) A licensed health care facility offering a nurse aide training program to its own employees; or

(g) A nonprofit, church related or tax supported program that is not identified in the above categories.

(2) Each entity specified in subsection (1) of this section that wishes ~~[agency wishing]~~ to provide nurse aide training shall request and receive approval of the agency's training program by the department ~~[for Medicaid Services]~~ prior to operating the nurse aide training program in accordance with the criteria shown in the Medicaid Services Manual for Nurse Aide and Competency Evaluation Program ~~[the state approved program]~~.

(3) After initial approval of the training program, each program shall be monitored as follows:

(a) [(4)] An approved nurse aide training program [programs] conducted by a nursing facility [facilities] shall be monitored on site by the department [Division of Licensing and Regulation, Office of the Inspector General] during the regularly scheduled annual survey for compliance with conditions of participation. A self-evaluation shall be submitted to the department every two (2) years.

(b) [(2)] An approved nurse aide training program [programs] conducted by the Department for [of Adult and] Technical Education shall be monitored on site by the Cabinet for Workforce Development monitoring system at least every two (2) years. A self-evaluation shall be submitted by the training program to the on-site review agency each year that an on-site review is not performed. The results of these reviews shall [will] be compiled by the Department for [of Adult and] Technical Education and forwarded to the department for Medicaid Services on an annual [quarterly] basis.

(c) [(3)] The department [for Medicaid Services] shall conduct an on-site review of all other approved nurse aide training programs at least every two (2) years, and the training program provider shall submit to the department [for Medicaid Services] a self-evaluation in each year that an on-site review is not performed.

Section 6. ~~[7.] [6.]~~ Termination of Nurse Aide Training Programs. (1) The department ~~[for Medicaid Services]~~ shall terminate ~~[from]~~ participation in the training program for a ~~[these]~~ previously approved nurse aide training program that does not:

(a) Meet [programs not meeting] minimum requirements; and

(b) [which do not] Submit an acceptable plan of correction.

(2) [In addition,] A nurse aide training program [programs] offered by or in a nursing facility shall not be approved if the facility falls within any of the prescribed clauses described in 42 USC 1396(r)(f)(2) (B)(iii)(I)(a), (b), and (c).

Section 7. ~~[8.] [7.]~~ Final Examination and [A] Competency Evaluation. The Department for ~~[of Adult and]~~ Technical Education or other

(4) "Home infusion therapy" means the parental administration of a premanufactured or sterile compounded product for intravenous, intramuscular, subcutaneous or intraspinal infusion to a patient in a nonacute alternative site setting.

(5) "POS" means on-line real time point of sale claims electronically transmitted to the department.

(6) ~~[(6)]~~ "ProDUR" means prospective drug use review in accordance with 201 KAR 2:210.

(7) ~~[(6)]~~ "Provider" means as defined in 907 KAR 1:002, Section 1.

(8) ~~[(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).

(9) ~~[(8)]~~ ~~[(6)]~~ "Recipient" means as defined by KRS 205.8451(9).

(10) ~~[(9)]~~ ~~[(6)]~~ "Services" means as defined in 907 KAR 1:671, Section 1.

(11) ~~[(10)]~~ ~~[(7)]~~ "Unacceptable practice" means as defined in 907 KAR 1:671, Section 1.

(12) ~~[(11)]~~ ~~[(8)]~~ "Withholding" means as defined in 907 KAR 1:671, Section 1.

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. ~~[on:~~

1. A paper form;
2. An electronic billing process; or
3. Any form approved by the department.]

(c) A provider shall submit additional clarifying documentation for claims processing if ~~[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 shall be ~~[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. A provider type fifty-four (54) who files ~~[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 require-

ment.

4. A provider type fifty-four (54) who dispenses ~~[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) [4-] The information required to pay the claim is complete;
- (b) [2-] The claim is not under review for medical necessity;
- (c) [3-] The provider has submitted all reports and information relevant to the claim ~~[claims]~~ required by the department; and
- (d) [4-] The department is not withholding the provider's payments in accordance with 907 KAR 1:671.

(2) ~~[(b)]~~ The department may audit a claim ~~[claims]~~ paid to determine if any unacceptable practices have occurred that may result in a sanction ~~[sanctions]~~.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: February 13, 1997

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

COMPILER'S NOTE: The following administrative regulation, 907 KAR 1:705, was amended by the promulgating agency and the Interim Joint Committee on Health and Welfare. 907 KAR 1:705 became effective on March 19, 1997.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(As Amended)

907 KAR 1:705. Demonstration project: services provided through regional managed care partnerships (1115 Waiver).

RELATES TO: KRS 205.520, 205.6334

STATUTORY AUTHORITY: KRS Chapter 47, Appendix A, Part 1, Sec. G, ~~GB~~, 51b, ~~[50e]~~ 194.025, 194.030, 194.050, 205.520, ~~[205.560]~~ 205.6320, 205.6332, 205.6334, 205.6336, 205.8453, 42 USC 1315, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 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 terms and conditions under which the Department for Medicaid Services shall provide Medicaid services pursuant to a waiver granted by the Secretary, United States Department of Health and Human Services following a request made by the department pursuant to ~~[and authorized under]~~ KRS 205.6334. The waiver provides for the development of a statewide system of capitated, comprehensive risk managed care partnerships and establishes standards for access and quality in accordance with KRS 205.6320.

Section 1. Definitions. (1) "Behavioral health services" means clinical, rehabilitative, and support services in inpatient and outpatient settings to treat a mental illness, emotional disability, or substance

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 illness, ~~[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~~

(b) If there are no partnership participating primary care providers in the member's county of residence or an adjoining county, during the initial enrollment period ~~[and until the partnership enrolls a primary care provider that meets this criteria]~~, a primary care provider who:

1. ~~[participates in the partnership and is located within the member's partnership region or an adjoining region]; or~~

2. ~~[Does not participate in the partnership, but is located within the partnership region].]~~

(4) ~~[(3)]~~ If voluntary selection of a primary care provider is not made by the member, the member's partnership shall assign the member to a primary care provider who ~~[or the member refuses to select a primary care provider]~~:

(a) Has historically provided services to the member and meets the criteria of subsection (2) of this section and is a participating provider in the member's assigned partnership;

(b) Participates in the partnership and ~~[The partnership shall assign a primary care provider, who]~~ is within thirty (30) miles or thirty (30) minutes from the member's residence or place of employment in an urban area or within forty-five (45) miles or forty-five (45) minutes from the member's residence or place of employment in a rural area, ~~[if possible]~~; or

(c) ~~[(b)]~~ If there is no participating primary care provider that meets the criteria listed in paragraphs (a) and (b) of this subsection, ~~[participates in the partnership [shall assign a participating primary care provider from any participating primary care providers] in [the member's county of residence or] a(n adjoining) county adjoining the member's county of residence or within the partnership region or an adjoining region.]; or~~

(e) ~~[If there is no participating primary care provider meeting the criteria of paragraph (a) or (b) of this subsection, the partnership shall assign the nearest participating primary care provider.]~~

(5) Upon request of the member or the ~~[With approval of the partnership medical director, a]~~ member's primary care provider, the partnership may reassign ~~[shall be allowed to transfer]~~ the member to another participating primary care provider who meets the criteria in subsection (2) of this section following the completion of the member's due process and appeal procedures in accordance with KRS Chapter 13B.

(6) ~~[(4)]~~ A member shall have an initial six (6) months guaranteed eligibility to receive partnership services regardless of loss of ~~[technical]~~ eligibility for Medicaid during the six (6) month period, except in circumstances set forth in subsection (10)(a) of this section, provided the member resides in a partnership region and is not an inmate in a penal institution in accordance with 907 KAR 1:011. ~~[A new six (6) month guaranteed eligibility period shall not begin until the individual has been ineligible for Medicaid for ninety (90) consecutive days.]~~

(7) ~~[(5)]~~ Upon enrollment in a partnership, a member shall have the right to change the primary care provider after the initial visit and once a year regardless of reason, and ~~[or]~~ at any time for any reason as approved by the member's partnership ~~[department]~~.

(8) ~~[(6)]~~ A member who receives ~~[seeks]~~ health services from

providers not participating with ~~[outside]~~ the member's assigned partnership without prior approval of the partnership or the department in accordance with complaint, grievance and appeal rights in Section 9 of this administrative regulation shall be responsible for the payment of expenses incurred except for emergency services provided in accordance with 42 CFR 431.52. ~~[as shown in Section 7(2) of this administrative regulation.]~~

(9) Only the department shall have the authority to disenroll a member from a partnership pursuant to this subsection and subsections (10) and (11) of this section and 907 KAR 1:675. ~~[(7) The department shall be responsible for]~~ Disenrollment of members ~~[from partnerships]~~ shall:

(a) ~~[Be the responsibility of the department]~~

~~[(b)]~~ Become effective on the first day of the month following the disenrollment procedure; and

~~[(c)]~~ Occur if the member:

1. No longer resides in the assigned partnership region;

2. Becomes incarcerated or deceased;

3. Resides in a nursing facility for more than thirty-one (31) days;

or

4. No longer qualifies for partnership services under one (1) of the aid categories as provided ~~[shown]~~ in subsections (1) and (6) of this section.

(10) A partnership may recommend to the department that a member be disenrolled, ~~[(d) Be recommended by the partnership]~~ if the partnership becomes aware that a member:

(a) ~~[(1)]~~ Is found guilty of fraud in a court of law or administratively determined to have committed fraud related to the Medicaid Program;

(b) ~~[(2)]~~ Is abusive or threatening as defined ~~[described]~~ by and reported in accordance with the Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers ~~[(1996)]~~, published by and available from the United States Department of Labor, Occupational Safety and Health Administration, Publication OSHA 3148;

(c) ~~[(3)]~~ Becomes deceased; or

(d) ~~[(4)]~~ No longer resides in the assigned partnership region or Kentucky.

(11) A member shall ~~[(e)]~~ not be disenrolled ~~[recommended]~~ by the department, nor shall the partnership recommend disenrollment of a member due to ~~[partnership for]~~ adverse changes in a member's health.

(12) 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, a parent, custodial parent, person exercising custodial control or supervision, or an agency with legal responsibility for a child by virtue of voluntary commitment or emergency or temporary custody orders shall be allowed to act on behalf of a child member, prospective member, or former member. A legal guardian appointed pursuant to KRS 387.500 to 387.70 shall be allowed to act on behalf of a ward as defined in that statute, and a person authorized to make health care decisions pursuant to KRS 311.629 and 311.631 shall be allowed to act on behalf of a member, prospective member, or former member.

(13) A member, as specified in subsection (1)(h)(i) of this section, shall be phased into the Partnership Program as a plan of care for the member is developed and implemented by the partnership.

Section 4. Recipient Exclusions. A recipient may be excluded from participation in partnerships if he is required to ~~[shall be individuals who must]~~ spend down to meet eligibility income criteria or is an individual ~~[individuals]~~ who is ~~[are]~~:

(1) ~~[Currently]~~ Medicaid eligible and have been in a nursing facility as defined in 907 KAR 1:022 for more than thirty-one (31) days;

(2) Determined eligible for Medicaid due to a nursing facility admission;

(3) Served under the alternative ~~[alternate]~~ intermediate services for individuals with mental retardation or developmental disabilities

(e) Immediately notify the department of anticipated or projected failure to meet partnership financial insolvency reserve requirements as established ~~(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 establishes ~~(support)~~ that services and service sites, as required by ~~(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 established ~~(shown)~~ in Section 7(5)(a), (b), (f), and (g) 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 established ~~(shown)~~ in subsection (6)(b) of this section and on the quality and access recipient advisory committee as established ~~(shown)~~ in Section 10(1)(c) of this administrative regulation.

(12) If a partnership as defined in Section 1(10) of this administrative regulation is not established in a partnership region and the Cabinet for Health Services arranges for the provision of health services through a partnership formed as a result of the competitive bid process in accordance with KRS Chapter 45A, the resultant partnership shall meet all requirements as established in this administrative regulation except for requirements specified in subsections (1) and (6)(b), (c), and (d) of this section.

(13) Be required to establish a program integrity (fraud) unit to identify and refer to the Cabinet for Health Services, Office of Inspector General any suspected fraud activities concerning the health care services of members. The functions of this unit shall include, but not be limited to, the following:

(a) Identify Partnership Program vulnerabilities;

(b) Take appropriate remedial action; and

(c) Report actions taken concerning identified situations involving possible fraud to the Cabinet for Health Services, Office of Inspector General.

(14) Public requests for financial information concerning partnership operations shall be submitted to the department.

Section 6. Partnership Payments. (1) The department shall provide each partnership a per month, per member capitation payment, except as established ~~(shown)~~ in subsection (2) of this section, whether or not the member receives services during the period covered by the payment. The payment shall be based on a standard rate setting methodology that complies with the Health Care Financing Administration's upper payment limit requirements. The department's rates negotiated with the partnership in accordance with KRS Chapter 45A ~~(development)~~ shall ~~(use actuarial principles and)~~ be based on computations of a certified actuary using national actuarial standards, principles and appropriate actuarial factors which may include category of aid, geographic area, category of service and

other demographic and administrative factors such as age, gender, and service trends. The payment shall be adjusted by the department if the scope of ~~(additional)~~ Medicaid services is increased or decreased as ~~(are)~~ mandated by Health Care Financing Administration. Written notification of any increase or decrease in coverage shall be provided to the partnership by the department prior to implementation.

(2) The department may also contract with a partnership for payment of Medicaid services provided to recipients prior to the actual enrollment of these individuals in the partnership on a capitated or other basis as part of the partnership contract, or for other Medicaid services as designated by the department in accordance with KRS Chapter 45A.

(3) If a member's total acute care hospital ~~(inpatient)~~ costs exceed \$75,000 in one (1) contract year, the department shall ~~(may)~~ provide, upon request of the responsible partnership, seventy-five (75) percent of the costs over this threshold, and the partnership shall provide the remaining twenty-five (25) percent of the costs.

(4) The department shall provide financial incentive payments to partnerships upon ~~(based on the)~~ achievement of ~~(established)~~ ~~(benchmarks related to improved)~~ health care ~~(status)~~ ~~(outcomes, measured by key performance indicators designated by)~~ The department shall provide on an annual basis an updated list of these ~~(benchmarks based on health care)~~ outcomes as specified ~~(shown)~~ in Section 10(1)(a)2 of this administrative regulation. These outcomes shall be selected in collaboration with each partnership and based upon the demographic characteristics and health status of members in the partnership region. The incentive payment shall be an amount up to one (1) percent of the capitation payment and made annually by the department.

(5) Payment provisions established ~~(shown)~~ in Medicaid payment administrative regulations 907 KAR Chapters 1 and 3, ~~(which apply to Medicaid provider payments for services provided under the regular Medicaid Program)~~ shall not be applicable for partnership services.

Section 7. Covered and Noncovered Services Under Partnerships. (1) Each partnership shall provide, or arrange for the provision of, medically necessary health services, including emergency ~~(and urgent care)~~ services as established ~~(shown)~~ in subsection (2) of this section, to the extent the services are covered ~~(as of January 1, 1997)~~, for recipients under the ~~(current)~~ Kentucky State Medicaid Plan, as established ~~(designated)~~ by 907 KAR Chapter 1 and 907 KAR 3:005, ~~(the department in administrative regulations adopted in accordance with KRS Chapter 13A)~~ and as required by federal and state laws. The department shall consider medically necessary health services as those which are 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, in accordance with 42 CFR 440.230 and including services for children authorized under 42 USC 1396d(r), ~~(and in accordance with 42 CFR 431.52)~~ The department shall provide a listing of these services, including services of federally qualified health centers (FQHCs), public health departments and the Commission for Children with Special Health Care Needs, to each partnership.

(2) Emergency ~~(or urgent)~~ care services provided to members shall be covered by each partnership even though the services may be received outside the member's regional partnership in accordance with 42 CFR 431.52.

(3) Medical detoxification services shall be covered by partnerships for members.

(4) Partnerships shall not be required to provide, or arrange for the provision, of:

(a) Health care services to any member who resides in a nursing facility after disenrollment from the partnership.

(b) Behavioral health services except for those psychiatric services covered for current enrolled, nonpsychiatrist Medicaid physi-

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 ~~provided that (-Appeals shall be processed by) partnerships and (or) the department process complaints, grievances or appeals in a time frame that shall (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 established ~~(shown)~~ in this subsection.

Section 10. Quality Improvement. (1) The department shall:

(a) Establish a quality improvement program which evaluates, on a continuing basis, access, continuity of care, health care outcomes, and services provided, or arranged for, by partnerships to members. The evaluation shall be based on information related to the partnership population and shall address the following subjects:

1. The quality improvement program of the partnership as established ~~(shown)~~ in subsection (4) of this section.

2. Health care outcomes, including members' risk factors, functional status, morbidity and mortality, readmission to health care facilities, satisfaction with care, and effect of education programs. The health care outcomes shall be based on the performance indicators and standards set forth in specified portions of the Health Plan Employer and Data Information Set (HEDIS) ~~(January 1997 edition, published by and available from the National Committee on Quality Assurance and incorporated by reference in Section 20 of this administrative regulation)~~. To achieve these health outcomes, the department shall develop a list of benchmarks for which financial incentive payments may be received by the partnership and a list of benchmarks that partnerships shall be required to meet or show progress toward meeting. The lists of incentive benchmarks shall be provided by the department in collaboration with each partnership on an annual basis.

3. Utilization of all health care services in all settings provided by the partnership and its subcontractors;

4. Services and health care outcomes of all subpopulations, including member's category of Medicaid, type of disability and chronic ~~illness (illnesses)~~, race, ethnicity, gender and age;

5. Access to and coordination of care based on requirements as established ~~(shown)~~ in Section 7(6) of this administrative regulation;

6. Clinical treatments and procedures that are high risk to members which are demonstrated through morbidity and mortality data;

7. Adverse incidents, including complications and iatrogenic disease;

8. Member and provider satisfaction; and

9. Early and periodic screening, diagnosis and treatment (EPSDT) services as defined in 907 KAR 1:034.

(b) Establish a quality improvement ~~(and access)~~ advisory council ~~(committee)~~, composed of individuals who represent:

1. Behavioral health providers;

2. Kentucky Commission for Children with Special Health Care Needs;

3. Medicaid recipients and advocates ~~(Consumers)~~;

~~financial statements and reports. [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 KRS Chapter 45A ~~[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 established [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 specified [shown] in Section 5(7) [(5)(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 specified ~~[shown] in Section 10(1)(c) of this administrative regulation, who [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 medical records, and prevent unauthorized disclosure of this information for any reason in accordance with KRS 194.060, ~~[and]~~ 434.840 to 434.860 and 42 CFR 431, Subpart F.

Section 19. Partnership Performance. (1) A partnership shall be required to:

(a) Provide, or arrange for the provision of, all medically necessary health services to members as specified ~~[shown] in Section 7 of this administrative regulation and to adhere to all other requirements designated herein; and~~

(b) Report to the department the ~~[all members' health services']~~ delivery of health services to members and maintain documentation as required by federal and state laws to substantiate Medicaid services' delivery, or support the nondelivery of members' health services in those unique cases where services are neither authorized, nor provided.

(2) Upon failure of a partnership to adhere to the requirements as established ~~[shown] in this administrative regulation, the department [shall result in the department's]:~~

(a) Shall take action necessary to preserve and maintain access to member services and program integrity; and

(b) May take one (1) or more of the following actions:

1. Recoup payments;

2. Assess liquidated damages; or

3. Terminate participation in the Partnership Program.

~~[(a) Recoupment of payments;~~

~~(b) Assessment of liquidated damages;~~

~~(c) Taking necessary action to preserve and maintain access to member services and program integrity; or~~

~~(d) Termination of participation in the Partnership Program.]~~

(3) The department shall require a corrective action plan on the part of the partnership if:

(a) Any report, survey or audit indicates that the partnership or any subcontractor, or supplier, failed to adhere to partnership requirements; or

(b) The department receives a substantiated complaint regarding the quality of health care provided.

ADMINISTRATIVE REGULATIONS AMENDED AFTER HEARING
OR RECEIPT OF WRITTEN COMMENTS

COUNCIL ON HIGHER EDUCATION
(Amended After Hearing)

13 KAR 2:045. Determination of residency status for admission and tuition assessment purposes.

RELATES TO: KRS 164.020, 164.030

STATUTORY AUTHORITY: KRS 164.020

NECESSITY, FUNCTION, AND CONFORMITY: Public institutions of higher education were established and are maintained by the Commonwealth of Kentucky primarily for the benefit of qualified residents of Kentucky. The substantial commitment of public resources to higher education is predicated on the proposition that the state benefits significantly from the existence of an educated citizenry. As a matter of policy, access to higher education is provided so far as feasible at reasonable cost to bona fide residents of the state. It is the long-standing practice of the Council on Higher Education to require students who are neither domiciled in Kentucky nor who are residents to meet higher admission standards and to pay a higher level of tuition than resident students. The Commonwealth of Kentucky uses residency requirements to determine items such as voting rights, income tax liability, and employment in certain occupations. The requirements for residency vary in form and substance for each of these uses. The purpose of this administrative regulation is to establish a process and corresponding guidelines for the determination of residency status for students seeking admission to, or who are enrolled in, public institutions of higher education. The administrative regulation applies to all student residency determinations regardless of circumstances, including programs such as the Southern Regional Education Board Contract Spaces and academic common market programs. Furthermore, it is the intent of the Council on Higher Education that this administrative regulation be interpreted and applied in a uniform manner, as described herein, in determining whether students shall be classified as residents or nonresidents for admission and tuition assessment purposes. [Public institutions of higher education were established and are maintained by the Commonwealth of Kentucky primarily for the benefit of qualified residents of Kentucky. The substantial commitment of public resources to higher education is predicated on the proposition that the state benefits significantly from the existence of an educated citizenry. As a matter of policy, access to higher education is provided so far as feasible at reasonable cost to residents of the state. It is the long-standing practice of the Council on Higher Education to require students who are not Kentucky residents to meet higher admission standards and to pay a higher level of tuition than resident students. The Commonwealth of Kentucky uses residency requirements to determine items such as voting rights, income tax liability, and employment in certain occupations. The requirements for residency vary in form and substance for each of these uses. The purpose of this administrative regulation is to establish a process and corresponding guidelines for the determination of residency status for students seeking admission to, or who are enrolled in, public institutions of higher education. Furthermore, it is the intent of the Council on Higher Education that this administrative regulation be interpreted and applied in a uniform manner, as described herein, in determining whether students shall be classified as residents or nonresidents 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 (18) of this section.

(2) "Continuous enrollment" means a person is enrolled in a state-supported college or university [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 due to [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) "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, dentistry or "Pharm. D"; or

(c) Enrollment in courses or programs which result in a professional degree in law, medicine, dentistry, or "Pharm. D".

(4) "Demonstration of Kentucky domicile and residency" means the presentation of documented information and evidence sufficient to prove by a preponderance of the evidence that a person is domiciled in Kentucky and is a resident of Kentucky.

(5) "Dependent person" means a person who is unable to meet all of the criteria listed in subsection (11) of this section.

(6) "Determination of residency status" means the decision of a college or university and a subsequent decision by the Council on Higher Education including an administrative hearing, if appropriate, that results in the classification of a person as a Kentucky resident or as a nonresident for admission and tuition assessment purposes.

(7) "Documentation" means source documents, such as official letters, papers, or sworn statements.

(8) "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 when absent without intending to establish a new domicile elsewhere.

(9) "Full-time employment" means employment for at least forty-eight (48) weeks at an average of at least thirty (30) hours per week.

(10) "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.

(11) "Independent person" means a person who demonstrates financial independence from parents or persons other than a spouse and who can meet the criteria in Section 4 of this administrative regulation.

(12) "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.

(13) "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.

(14) "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.

(15) "Preponderance of the evidence" means the greater weight of evidence, or evidence which is more credible and convincing to the mind.

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.

(b) The domicile and residency of a dependent person whose parents are divorced, separated, or otherwise living apart shall be a resident of Kentucky if either parent is domiciled in and is a resident of Kentucky [resident] regardless of which parent has legal custody or is entitled to claim that person as a dependent pursuant to Kentucky income tax provisions.

(c) 1. When the parent or parents of a dependent person are Kentucky residents and [~~whose parent or parents~~] are domiciled in Kentucky but [~~and whose parents are residents of Kentucky and~~] subsequently move from the [this] state, the dependent person shall be considered a resident of Kentucky [resident] while in continuous enrollment at the degree level in which currently enrolled.

2. When continuous enrollment is broken or the current degree level is completed, the dependent person's residency status shall be reassessed when the circumstances detailed in subparagraph 1 of this paragraph are present.

(2) If an independent person, the sole parent, or both parents of a dependent person moves out of state, Kentucky domicile and residency, having been previously established, are retained until steps are taken to establish domicile and residency elsewhere.

Section 6. Member of Armed Forces of the United States, Spouse and Dependents; Effect on a Determination of Residency Status. (1) A person, spouse, or dependent of a person whose domicile and residency was Kentucky at the time of induction into the Armed Forces of the United States, and who maintains Kentucky as home of record and permanent address, shall be entitled to Kentucky residency status during the time of active service.

(2) A person, as described in subsection (1) of this section, who returns to this state within six (6) months of the date of discharge from active duty, shall retain Kentucky residency status as shall the spouse and dependents of that person.

(3)(a) A member, spouse or dependent of a member of the Armed Forces of the United States stationed in Kentucky on active military orders shall be considered a Kentucky resident while the member is on active duty in this state pursuant to such orders; and

(b) A member, spouse or dependent of a member, shall not lose Kentucky residency status when the member is thereafter transferred on military orders while the member, spouse or dependent requesting such status is in continuous enrollment [attendance] at the degree level in which currently enrolled.

(4) A person's residency status established pursuant to this section shall be reassessed when the qualifying condition is terminated.

(5) The provisions of subsection (3) of this section shall not apply if a person is stationed in Kentucky for the purpose of enrollment at an institution of higher education or is on temporary assignment of less than one (1) year.

Section 7. Status of Nonresident Aliens; Visas and Immigration. (1)(a) A person holding a permanent residency visa or classified as a political refugee shall establish domicile and residency in the same manner as any other person.

(b) Time spent in Kentucky and progress made in fulfilling the conditions of domicile and residency prior to obtaining permanent status may be considered in establishing Kentucky domicile and residency.

(2) A person holding a nonimmigrant visa with designation A, E, G, H, I, L, N, O, P, R, S, TD or TN shall establish domicile and residency the same as any other person.

(3)(a) A person holding a nonimmigrant visa with designations B, C, D, F, J, K, M, or Q does not have the capacity to remain in Kentucky indefinitely and may not attain Kentucky residency status.

(b) A person holding a visa as described in paragraph (a) of this subsection, but who is a dependent of a parent holding a visa as described in subsection (2) of this section, shall be considered as holding the visa of the parent.

Section 8. Beneficiaries of a Kentucky Educational Savings Plan Trust. Pursuant to KRS 164A.330 and 200 KAR 16:040, beneficiaries of a Kentucky Educational Savings Plan Trust shall be granted residency status for tuition purposes if:

(1) The beneficiary is covered under a vested participation agreement;

(2) The beneficiary has been a continuous resident of the Commonwealth of Kentucky during the eight (8) year vestment period; and

(3) The beneficiary enrolls in an institution of higher education in Kentucky prior to enrollment in any other educational institution.

Section 9. Criteria Used in a Determination of Residency Status.

(1) A determination of Kentucky domicile and residency shall be based upon verifiable circumstances or actions. No single fact is paramount, and each situation shall be evaluated to identify those facts which are essential to the determination of domicile and residency.

(2) The following facts, although not conclusive, shall have probative value in their entirety and shall be individually weighted, appropriate to the facts and circumstances in each determination of residency; [support of a claim for Kentucky residency and shall be given significant weight in their entirety in a determination of residency:]

(a) Acceptance of an offer of full-time employment or transfer to an employer in Kentucky or contiguous area while maintaining domicile in Kentucky;

(b) Continuous physical presence in Kentucky while in a nonstudent status for the twelve (12) months immediately preceding commencement of the academic term for which a classification of Kentucky residency is sought;

(c) 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;

(d) Full-time employment of at least one (1) year while living in Kentucky;

(e) 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;

(f) 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;

(g) Obtaining licensing or certification for professional and occupational purposes in Kentucky;

(h) Payment of real property taxes in Kentucky;

(i) [Payment of intangible personal property taxes in Kentucky;

[(4)] 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;

[(j)] [(4)] Long-term lease of at least twelve (12) consecutive months of noncollegiate housing; and

[(k)] [(4)] Marriage of an independent student to a Kentucky resident;

[(l)] [;

(3) The following facts, while not conclusive, shall have some probative value and shall be given limited weight in a determination

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.

(c) ~~[Provided, however, that]~~ Applications for a review of residency status which are not submitted in a timely manner, shall result in a determination of residency status consistent with an initial determination of residency status. In the event of a failure to provide the required documentation in a timely manner, the student shall be notified as set forth in Section 13(3) of this administrative regulation.

(6) The decision of the designated office or person, or of the Residency Review Committee shall include but not be limited to the following information:

(a) Findings of fact;

(b) Determination of whether the applicant is deemed to be a "dependent person" or "independent person"; and

(c) Whether the applicant is a resident or nonresident, and the reasons consistent with institutional policy and this administrative regulation.

(7) The student shall be notified in writing, by registered or certified mail of the decision of the administrative officer designated by the institution or the Residency Review Committee, as appropriate, within forty-five (45) calendar ~~[working]~~ days after receipt of a person's application for a change.

(8) A change in a determination of residency shall not be made retroactive beyond the academic term in which the request for a change is made.

(9) A student shall have the right to appeal a decision of the Residency Review Committee to the Council on Higher Education pursuant to Sections 15, 16 and 17 of this administrative regulation.

(10) An institution shall, by written policy, establish deadlines for the submission of written documentation by a person seeking an initial determination of residency status and shall not consider appeals which do not conform to the timetable, requirements for documentation and processes set forth in the institution's policy.

Section 15. Procedure for Appeal to the Council on Higher Education and Intermediate Review by the Council on Higher Education Appeals Officer. (1) The Executive Director of the Council on Higher Education shall designate a person on the staff of the Council on Higher Education to serve as an appeals officer.

(2) The appeals officer review of institutional determinations of residency status is to determine whether the Residency Review Committee's written decision is supported by a **preponderance of** ~~[clear and convincing]~~ evidence and conforms to this administrative regulation.

(3) Upon receipt of notice from the Residency Review Committee of the decision by certified or registered mail, the student has fourteen (14) calendar days in which to appeal that decision to the Council on Higher Education by giving notice in writing to the office or person designated by the institution to administer this administrative regulation.

(4) An appeal shall be filed in a timely manner if it is received in the office designated by the institution in Section 11 of this administrative regulation within the time established in subsection (3) of this section.

(5) Appeals filed more than fourteen (14) calendar days after

receipt of the decision of the Residency Review Committee shall be dismissed and the decision of the Residency Review Committee shall be final.

(6) The office or person designated by the institution pursuant to Section 11 of this administrative regulation shall be responsible for forwarding to the Council on Higher Education a complete copy of the student's file within fourteen (14) calendar days of the receipt of a notice of appeal. The student may review the content of the file before it is forwarded to the Council on Higher Education.

Section 16. Determination of the Council on Higher Education Appeals Officer. (1) The appeals officer shall make a determination, based solely on the written record submitted, to affirm or reverse the Residency Review Committee's decision.

(2) The appeals officer may order the appeal remanded to the Residency Review Committee for further proceedings before the appeals officer renders a final determination based on a finding that the Residency Review Committee:

(a) Failed to consider all information and evidence submitted; or

(b) Failed to follow institutional policies and procedures.

(3)(a) New information provided by the student that was not available to the institution at the time of the institution's determination of residency status shall result in a decision by the appeals officer to remand the case to the Residency Review Committee for further action.

(b) A remand by the appeals officer because of information not available at the time of the determination of residency status shall require the Residency Review Committee to reconsider the determination of residency status in light of the new information.

(c) The Residency Review Committee shall consider the new information or evidence and shall forward a written recommendation to the appeals officer within twenty-one (21) calendar days after receipt of the notice of remand.

(d) A copy of the Residency Review Committee recommendation shall be provided to the student.

(e) A remand is considered to be part of the appeal to the Council on Higher Education and does not constitute a determination by the appeals officer.

(4) The determination of the appeals officer shall be in writing and shall state the reason for the decision.

(5) Within twenty-one (21) calendar days after receipt of the student's file, the recommendation of the appeals officer shall be forwarded to the student by certified or registered mail with a copy to the office or person designated by the institution to administer this administrative regulation but a remand shall halt the twenty-one (21) day requirement.

(6) The student shall have ten (10) calendar days after receipt of the appeals officer's recommendation to file a written appeal by registered or certified mail with the Council on Higher Education requesting a formal adjudicatory hearing pursuant to KRS Chapter 13B and 13 KAR 2:070.

Section 17. Administrative Hearing to be Held When Requested by Student. (1) An administrative hearing on a request for a change in a determination shall be held in accordance with the provisions of KRS Chapter 13B and 13 KAR 2:070.

(2) 13 KAR 2:070 shall set forth the procedures for the conduct of the request for an administrative hearing including deadlines and timetables.

(3) The recommendation of the hearing officer shall be received by the Executive Director of the Council on Higher Education who shall issue a final decision on the appeal.

(a) The decision of the executive director shall be in writing and shall set forth the basis on which the decision is based including exceptions to the findings of the administrative hearing officer.

(b) The decision of the executive director shall be provided to the student within **twenty-one (21) calendar** ~~[fourteen (14)]~~ days after

~~(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 with this administrative regulation.~~

~~(c) An independent person who provides clear and convincing evidence of Kentucky domicile and residency shall be so classified as shall that person's spouse or dependent children, notwithstanding the provisions of paragraph (d) of this subsection.~~

~~(d) A person who moves to Kentucky primarily for the purpose of enrollment of either self, spouse, or a dependent in an institution of higher education shall not be granted Kentucky residency unless such person can demonstrate establishment of Kentucky domicile and residency.~~

~~(e) If an independent person or the sole parent or both parents of a dependent person moves out of state, domicile and Kentucky residency, having been established is retained until steps are taken to establish domicile and residency elsewhere.~~

~~(f) 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.~~

~~(g) A person is presumed to have lost Kentucky domicile and residency upon a one (1) year continuous absence from the state unless the person asserting Kentucky domicile and residency can establish that Kentucky domicile and residency are maintained.~~

~~(h) 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 subject to the provisions for continuous enrollment.~~

~~(i)1. An individual or the spouse or dependent of an individual whose domicile and residency was Kentucky at the time of induction into the armed forces of the United States, and who maintains Kentucky as home of record and permanent address, shall be entitled to Kentucky residency status during the time of active service; or~~

~~2. If the individual returns to this state within six (6) months of the date of discharge from active duty having met the provisions of subparagraph 1 of this paragraph, the student, spouse, and dependents shall retain Kentucky residency status.~~

~~(j)1. A member or the spouse or dependent of a member of the armed forces of the United States stationed in Kentucky on active military orders shall be considered a Kentucky resident while the member is on active duty in this state pursuant to such orders.~~

~~2. A member or the spouse of the member, while in continuous attendance at the degree level in which currently enrolled, shall not lose Kentucky residency status when the member is thereafter transferred on military orders.~~

~~3. Individuals classified under this section shall be reassessed in accordance with the appropriate sections of this administrative regulation when the qualifying condition is terminated. The provision of this paragraph shall not apply if the individual is stationed in Kentucky for the purpose of enrollment at an institution of higher education or is on temporary assignment of less than one (1) year.~~

~~4. The student, while in continuous attendance at the degree level in which currently enrolled, shall not lose Kentucky residency status when the parent is thereafter transferred on military orders.~~

~~5. If continuous attendance is broken or the current degree level~~

~~is completed, a person's residency status shall be reassessed in accordance with the appropriate sections of this administrative regulation. This paragraph is not applicable if the parent is stationed in Kentucky for the purpose of enrollment at an institution of higher education or is on a temporary assignment of less than one (1) year.~~

~~(k)1. A person holding a permanent residency visa or classified as a political refugee shall establish domicile and residency in the same manner as any other person.~~

~~2. Time spent in Kentucky and progress made in fulfilling the conditions of domicile and residency as stated in this section prior to obtaining permanent status may be considered in establishing Kentucky domicile and residency.~~

~~(l) A person holding a nonimmigrant visa with designation A, E, G, H, I, L, or TN shall establish domicile and residency the same as any other person.~~

~~(m)1. A person holding a nonimmigrant visa with designations B, C, D, F, J, K or M does not have the capacity to remain in Kentucky indefinitely and may not attain Kentucky residency status for admission and tuition assessment purposes.~~

~~2. A person holding a visa as described in subparagraph 1 of this paragraph, but who is a dependent of a parent holding a visa as described in paragraph (l) of this subsection, shall be considered as holding the visa of the parent for the purpose of residency status.~~

~~3. If a person requesting a change in residency status becomes independent or if the status of the parent of a dependent person changes, the institution shall reassess residency.~~

~~(n) Pursuant to KRS 164A.330 and 200 KAR 16:040, beneficiaries of a Kentucky Educational Savings Plan Trust shall be granted residency status for tuition purposes if:~~

~~1. The beneficiary is covered under a vested participation agreement;~~

~~2. The beneficiary has been a continuous resident of the Commonwealth of Kentucky during the eight (8) year vestment period; and~~

~~3. The beneficiary enrolls in an institution of higher education in Kentucky prior to enrollment in any other educational institution.~~

~~(o) Kentucky residency status shall not be conferred by the performance of acts which are auxiliary to fulfilling educational objectives or by acts which are performed as a matter of convenience. Mere physical presence in Kentucky including living with relatives or friends is not sufficient evidence of domicile and residency.~~

~~(4) The types of documentation and evidence used in a determination of residency status shall include but shall not be limited to the following:~~

~~(a)1. 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.~~

~~2. 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. In such cases, domicile may be inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.~~

~~3. The domicile and residency of a dependent person whose parents are divorced, separated, or otherwise living apart shall be presumed to be Kentucky if either parent is domiciled in and is a Kentucky resident regardless of which parent has legal custody or is entitled to claim that person as a dependent pursuant to Kentucky income tax provisions.~~

~~(b)1. A person claiming independent status shall document independent status consistent with this administrative regulation and shall demonstrate by clear and convincing evidence that Kentucky domicile and residency have been established.~~

~~2. No independent person classified as a nonresident shall be presumed to have gained Kentucky residency status while being~~

(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.

(5) 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 change in an initial determination of residency status or a change in the 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.

(6) A student shall be responsible for ensuring that all necessary documentation as required by the institution is submitted with the affidavit. Incomplete applications may be returned to the student for completion at the discretion of appropriate institutional officials. The time limit set forth in subsection (2) of this section shall apply to the date an application is received in the office designated to administer this administrative regulation.

(7)(a) Applications shall be first reviewed by the office or person designated by the institution pursuant to Section 4 of this administrative regulation.

(b) Upon a written request by a student appealing the decision of the designated office or person, the residency review committee shall review, evaluate, and act upon that appeal.

(c) The student shall be notified in writing, by registered or certified mail of the decision of the administrative officer designated by the institution or the residency review committee as appropriate within forty-five (45) working days after receipt of a person's application for a change.

(8) The residency review committee's written decision on residency shall include but not be limited to the following information:

(a) Findings of fact;

(b) Determination of whether the applicant is deemed to be a "dependent person" or "independent person"; and

(c) Whether the applicant is a resident or nonresident, and the reasons consistent with institutional policy and this administrative regulation.

(9) An application resulting in a change in a determination of residency from nonresident to resident shall not be made retroactive beyond the academic term in which the request for a change in a determination of residency status is made.

(10) If a request for a change in a determination of residency status is denied by the institution, the student shall have the right to appeal such decision to the Council on Higher Education in accordance with Sections 6, 7, and 8 of this administrative regulation.

Section 6. Procedure for Appeal to the Council on Higher Education. (1) The Executive Director of the Council on Higher Education shall designate a person on the staff of the Council on Higher Education to serve as an appeals officer.

(2) The appeals officer shall review institutional determinations of residency status to determine if the residency review committee's

written decision is supported by clear and convincing evidence and is in conformity with this administrative regulation.

(3) Upon receipt of notice from the residency review committee of the decision by certified or registered mail, the student has fourteen (14) calendar days in which to appeal that decision to the Council on Higher Education by giving notice in writing to the office or person designated by the institution to administer this administrative regulation.

(4) An appeal shall be filed in a timely manner if it is received in the office designated by the institution in Section 4 of this administrative regulation within the time established in Section 6 of this administrative regulation.

(5) Appeals filed more than fourteen (14) calendar days after receipt of the decision of the residency review committee shall be dismissed and the decision of the residency review committee shall be final.

(6) The office or person designated by the institution pursuant to Section 4(2) of this administrative regulation shall be responsible for forwarding to the Council on Higher Education a complete copy of the student's file within fourteen (14) calendar days of the receipt of a notice of appeal. The student may review the content of the file before it is forwarded to the Council on Higher Education.

(7)(a) The appeals officer shall consider the written record alone.

(b) New information provided by the student that was not available at the time of the determination of residency status by the institution shall result in a decision by the appeals officer to remand the case back to the residency review committee for further action.

(c) A remand by the appeals officer because of information not available at the time of the determination of residency status shall require the residency review committee to reconsider the determination of residency status in light of the new information.

(d) The residency review committee shall consider the new information or evidence and shall forward a written recommendation to the appeals officer within twenty-one (21) calendar days after receipt of the notice of remand.

(e) A copy of the residency review committee recommendation shall be provided to the student.

(f) A remand is considered to be part of the appeal to the council and does not constitute a final determination by the appeals officer.

Section 7. Determination of the Council on Higher Education Appeals Officer. (1) The appeals officer shall review the written record including the residency review committee's written decision and shall make a determination to affirm, modify, or reverse the residency review committee's decision.

(2) The appeals officer may order the appeal remanded to the residency review committee for further proceedings before the appeals officer renders a recommendation based on a finding that the residency review committee:

(a) Failed to consider all information and evidence submitted; or

(b) Failed to follow institutional policies and procedures.

(3) The determination of the appeals officer shall be in writing and shall state the reason for the decision.

(4) Within twenty-one (21) calendar days after receipt of the student's file, the recommendation of the appeals officer shall be forwarded to the student by certified or registered mail with a copy to the office or person designated by the institution to administer this administrative regulation but a remand shall halt the twenty-one (21) day requirement.

(5) The student shall have ten (10) calendar days after receipt of the appeals officer's recommendation to file a written appeal by registered or certified mail with the Council on Higher Education requesting a formal adjudicatory hearing.

Section 8. Hearing on Exceptions Filed by Student. (1) An administrative hearing on a request for a change in a determination shall be held in accordance with the provisions of KRS Chapter 13B

ADMINISTRATIVE REGISTER - 3807

time the practitioner or practitioner's agent communicates any information other than the authorization for the refill, the technician immediately shall inform the pharmacist to receive the communication.

Section 3. All technicians whether working under general or immediate supervision of a pharmacist at all times shall wear an identification badge that clearly identifies the technician by ~~full~~ name and either "pharmacy technician" or "certified pharmacy technician."

Section 4. The delegation of any duties, tasks or functions by a pharmacist to either a certified pharmacy technician or a pharmacy technician must be performed subject to the continuing review and ultimate professional and personal responsibility of the pharmacist who directed the certified pharmacy technician or pharmacy technician to perform the duty, task or function.

MICHAEL B. WYANT, President

APPROVED BY AGENCY: March 19, 1997

FILED WITH LRC: March 20, 1997 at 1 p.m.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Michael A. Moné

(1) Type and number of entities affected: Only those technicians who choose to become certified and those pharmacists who determine that they will delegate duties, tasks or functions to technicians who are not within their immediate supervision.

(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 for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Appropriated budget from the Kentucky Board of Pharmacy Trust 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: 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: The public should accrue a benefit in that this administrative regulation should provide greater efficiency within pharmacy practices by enabling pharmacists to delegate tasks and therefore enabling them to intervene in patient care to effect positive outcomes of drug therapy.

(b) State whether a detrimental effect on environment and public

health would result if not implemented: The failure to adopt this proposed administrative regulation would result in the under-use of the skills and knowledge of pharmacists when applied to the integrated health care systems in place today and expected to be developed in the future. The public might not receive the degree of benefit from the knowledge and skill of pharmacists unless this implementing administrative regulation were adopted.

(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:

(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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. KRS Chapter 315 requires the board to adopt qualifications and identify tasks. KRS Chapter 315 sets forth the distinction between the classes as the degree of supervision that a pharmacist may exercise with regard to a delegated task.

GENERAL GOVERNMENT CABINET Kentucky Board Of Pharmacy (Amended After Hearing)

201 KAR 2:220. Collaborative care agreements.

RELATES TO: KRS 315.010(4), 315.040(4), 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the development and maintenance of collaborative care agreements between an individual pharmacist and an individual practitioner.

Section 1. A collaborative care agreement between an individual pharmacist and an individual practitioner shall meet the following requirements:

(1) The agreement shall be in writing, signed and dated by the individual practitioner and the individual pharmacist;

(2) The agreement shall provide for notification to the patient of the existence of the agreement and the extent of the authority conferred by the individual practitioner upon the individual pharmacist;

(3) The agreement shall provide for notification by the individual practitioner or the individual pharmacist to the patient of termination of the agreement;

(4) The agreement shall provide for ~~written~~ notification by the individual practitioner and individual pharmacist of termination of the agreement and shall include a provision establishing the method by which the agreement may be terminated;

(5) The agreement shall provide for the incorporation by reference of the specific method (e.g., protocols, criteria, standing orders) by which the individual practitioner authorizes the individual pharmacist to perform a service permitted by KRS 315.010(4); and

(6) The fully executed agreement shall be maintained at the pharmacist's practice site.

Section 2. Every pharmacist who establishes a collaborative care agreement with an individual practitioner shall maintain individual, patient-specific pharmaceutical care records. Patient-specific pharmaceutical care records at a minimum shall contain:

~~(1) The full name of the patient;~~

~~(2) The address and telephone number of the patient;~~

~~(3) The patient's contact for emergency notification;~~

~~(4) The patient's date of birth, weight, height and gender;~~

~~(5) The patient's current prescription regimen;~~

System Operators; and provisions relating to the issuance and renewal of certificates; disciplinary actions; and other provisions necessary for the certification of operators. The Safe Drinking Water Act Amendments of 1996, enacted August 6, 1996 (PL 104-182), include a provision for the certification of operators of public water systems. The regulations to implement the federal law are required no later than thirty (30) months after enactment of the federal law. Therefore, there are no federal regulations and this administrative regulation is not more stringent than the federal law or regulation.

Section 1. General Provisions. (1)(a) Each public water system shall ensure that each component of the system is operated according to the provisions of KRS Chapters 223 and 224 and the administrative regulations of this chapter.

(b) ~~[Direct responsible charge.]~~ Each public water system shall operate its water treatment plant and water distribution system ~~[be operated]~~ under the supervision of a certified operator who is in ~~[direct]~~ responsible charge of the system. Certified operators are not required for semipublic water systems.

(c) All [The] certified operators in [direct] responsible charge shall hold a valid certificate in a class equal to or higher than that required for the system under his supervision. A [The] certified operator [in direct responsible charge] may be an individual who has been assigned [sole] responsibility for the operational procedures performed at the plant [operation of the system], or may be a person who is supervising [has been delegated the direct responsibility to supervise] others in the performance of operational procedures at the plant. [their duties in operating the system. The certified operator in direct responsible charge shall be physically on the premises of the water treatment facility or otherwise performing system-related duties within the system during the shifts for which the operator is responsible, except as provided in subsection (2) of this section. System related duties include but are not limited to attending local government meetings, having parts repaired, purchasing supplies and maintenance of distribution system appurtenances.]

(2) Staffing requirements.

(a) [Shifts.

~~(a) Water treatment systems. Public water systems shall employ a certified operator in direct responsible charge as specified in subparagraphs 1 through 4 of this paragraph:~~

~~1. Class I. Operational procedures performed at Class IA-D or IB-D water treatment systems shall be conducted under the supervision of, or by, a certified operator.~~

~~2. Class II.~~

~~a. Operational procedures performed at Class IIA water treatment systems serving a population less than 500 shall be conducted under the supervision of, or by, a Class IIA, IIIA or IVA certified water treatment plant operator. Class IIA water treatment systems serving a population equal to or greater than 500 and less than 3,000 shall be staffed with a Class IIA, IIIA or IVA certified water treatment plant operator in direct responsible charge during the daytime shift. Operational procedures conducted during other shifts shall be conducted under the supervision of, or by, a Class IIA, IIIA or IVA certified water treatment plant operator.~~

~~b. Operational procedures performed at Class IIB-D water treatment systems shall be conducted under the supervision of, or by, a Class IIA, IIB-D, IIIA, IIIB or IVA certified operator.~~

~~c. Operational procedures performed at Class IIC-D water treatment systems shall be conducted under the supervision of, or by, a Class IIA, IIB-D, IIC-D, III or IV certified operator.~~

~~3. Class III.~~

~~a. Class IIIA water treatment systems shall be staffed with a Class IIIA or IVA certified water treatment plant operator in direct responsible charge of shifts where water is treated.~~

~~b. Class IIIB and IIIC water treatment systems shall be staffed by a Class III or IVA certified water treatment plant operator in direct responsible charge during the daytime shift. Operational procedures~~

~~conducted during other shifts shall be conducted under the supervision of, or by, a Class III or IVA certified water treatment plant operator.~~

~~4. Class IV. Class IVA water treatment systems shall be staffed with a Class IVA certified water treatment plant operator in direct responsible charge for shifts where water is treated.~~

~~(b) Water distribution systems. Operational procedures performed within water distribution systems shall be conducted by or under the supervision of, or by, a distribution system operator certified in a class equal to or higher than the class of the system. [Furthermore, water distribution systems having booster chlorination or other treatment capabilities shall be staffed with a certified distribution operator in direct responsible charge in a class equal to or higher than the class of the distribution system during the daytime weekday shift.]~~

(b) Combination water treatment plants and water distribution systems. Operational procedures at all Class IA-D, IB-D, and IIB-D water systems shall be conducted by or under the supervision of a certified water system operator who holds a valid combination or separate water treatment and distribution system operator certificate of the appropriate class and who is in responsible charge of the system.

(c) Water treatment plants.

1. Class IIA. Operational procedures at a Class IIA water treatment plant shall be conducted by a certified water treatment plant operator who holds a valid certificate in a class equal to or higher than Class IIA who is in responsible charge of the plant and is physically located on the premises of the water treatment plant during the daytime shift or is otherwise performing system-related duties. Operational procedures conducted during other shifts shall be conducted by or under the supervision of a Class IIA, IIIA, or IVA certified water treatment plant operator.

2. Class IIIA. Operational procedures at a Class IIIA water treatment plant shall be conducted by a certified water treatment plant operator who holds a valid certificate in a class equal to or higher than Class IIIA who is in responsible charge of the plant and is physically located on the premises of the water treatment plant when water is being treated or is otherwise performing system-related duties.

3. Class IIIB. Operational procedures at a Class IIIB water treatment plant shall be conducted by or under the supervision of a certified water treatment plant operator who holds a valid certificate in a class equal to or higher than Class IIIB who is in responsible charge of the system.

4. Class IVA. Operational procedures at a Class IVA water treatment plant shall be conducted by a certified water treatment plant operator who holds a valid Class IVA certificate who is in responsible charge of the plant and is physically located on the premises of the water treatment plant when water is being treated or is otherwise performing system-related duties.

5. Class IVB. Operational procedures at a Class IVB water treatment plant shall be conducted by or under the supervision of a certified water treatment plant operator who holds a valid certificate in a class equal to or higher than Class IVB who is in responsible charge of the system.

(3) Certifiable personnel. Persons who are under the supervision of the operator in [direct] responsible charge are encouraged to and may become certified by the cabinet if they meet the [appropriate education and experience] requirements of Section 8 of this administrative regulation and pass the appropriate examination of the requested class. This provision shall apply only to personnel who have hands-on drinking water treatment or distribution system experience.

(4) Production personnel. On-site laboratory or distribution personnel and others who have significant routine input into the treatment [production] or distribution of potable water may be certified if they demonstrate to the satisfaction of the cabinet that they meet

ble for preparation of the examinations which shall be used in determining knowledge, ability and judgment of the applicants. The cabinet shall administer written exams unless the cabinet and board grant a waiver to allow an oral exam. Oral exams may be administered to applicants who meet the minimum qualifications outlined in Section 8 of this administrative regulation. The cabinet shall grade the examinations and notify the applicant of the outcome. Applicants shall achieve a score of at least seventy (70) percent to pass the examination. Examinations shall not be returned to the applicant, but results may be reviewed with a member of the board or cabinet upon written request by the applicant.

(3) Scheduling examinations. Examinations shall be conducted at least semiannually at places and times set by the cabinet. The cabinet shall provide advance announcement of these examinations.

(4) Examination content. The cabinet will prepare examinations to address the basic differences in the duties and responsibilities of certified operators, treatment processes, [types of facilities,] drinking water standards, surface and groundwater source characteristics and other pertinent matters.

(5) Applicant's conduct. Applicants found cheating shall be subject to disciplinary action including, but not limited to, a final score of zero on the examination, denial of future applications for certification, or the provisions of Section 5 of this administrative regulation.

(6) Confidentiality of examinations. Examination questions are confidential. Any person who copies questions, removes all or part of any examination, or reveals all or part of any examination for unauthorized use may be denied certification, be subjected to the sanctions identified in Section 5 of this administrative regulation, or be liable for civil and criminal penalties pursuant to KRS 223.991 or 224.99-010.

(7) Qualified applicants, other than those specified in subsection (5) or (6) of this section, who fail to pass an examination may register to take the examination on [at] a regularly scheduled examination date.

Section 4. Issuance of Certificates. (1) Certification. Upon satisfactory fulfillment of the requirements of this administrative regulation and upon recommendation of the board, the cabinet shall issue a certificate to the applicant designating the classification of the water treatment plant or water distribution system for which the operator has demonstrated competency. ~~[If information related to the operator's employment or mailing address changes from the application filed for certification, the certified operator shall provide written notification to the division within thirty (30) days. If a certified operator becomes permanently incapacitated while employed by a water treatment plant or distribution system, the employer shall notify the division.]~~

(2) Duration and renewal of certificates.

(a) Certificates for all certified operator classes, except the limited classification as identified in Section 6(5) [(4)] of this administrative regulation, shall be issued with a common expiration date of June 30 of even-numbered years, and shall remain valid until that date ~~[valid for up to two (2) years after each renewal],~~ unless suspended or revoked for cause. Certificates issued between January 1 and June 30 of an even-numbered year will be issued to include the next two (2) year renewal period. ~~[or replaced by one of a higher and similar classification.]~~

(b) Certificates shall expire on June 30 of even-numbered years if not renewed. Operators with expired certificates shall not be in responsible charge of a public water system.

(c) Renewals. Certificates may be renewed without examination, if the certified operator is in good standing; upon completion of the required, board-approved continuing education hours outlined in subsection (7) of this section and upon submittal of a complete renewal application and applicable fees specified in 401 KAR 8:050, Section 3. Operators desiring renewal shall apply on a form provided by the cabinet and incorporated by reference in Section 9 of this

administrative regulation by June 30 of even-numbered years. Expired certificates shall continue in force pending administrative processing of a renewal, if the certified operator is in good standing and has complied with all the renewal requirements of this subsection and subsection (7) of this section by June 30 of the renewal year. Certificates continued under this paragraph remain fully effective and enforceable.

(d) ~~[(b)]~~ Limited certificates shall expire on June 30 of each year. The cabinet may renew the limited certificate upon receipt of the renewal application if the certified operator has complied with all requirements for proper operation of the facility under his responsible charge and has submitted a written application and applicable fees specified in 401 KAR 8:050, Section 3.

(3) Certification for a higher classification. Certified operators who desire to become certified in a higher classification shall satisfactorily complete the requirements of Sections 3 and 8 of this administrative regulation for the higher classification ~~[before submitting a new application. Experience earned under a limited certificate shall not count toward fulfillment of qualifications for other classifications].~~

(4) Certificates shall be valid only while the holder uses reasonable care, judgment, and application of his knowledge in the performance of his duties. Certificates shall not be issued or valid if obtained through fraud, deceit or the submission of inaccurate data on qualifications.

(5) Termination of a certificate.

(a) If a certified operator fails to renew his certificate, the certificate shall terminate one (1) year after its expiration date ~~[after two (2) consecutive renewal periods].~~ Limited certificates shall terminate on December 31 of the renewal year [immediately after the expiration date] if they are not renewed. Once a certificate has terminated, an operator shall apply, pay applicable fees and pass an examination in the classification for which he is qualified to be certified.

(b) Operators holding a certificate with an expiration date of June 30, 1994, on October 7, 1996 [the effective date of this emergency administrative regulation] may renew the certificate by fulfilling the renewal requirements specified in subsections (2)(c) and (7) of this section for each renewal period by June 30, 1997.

(6) Reciprocity. Certificates may be issued in a comparable classification, without examination, to a person who holds a valid certificate in a state, territory, or possession of the United States, or a country, if:

(a) The applicant filed a complete application as required in Section 3(1) of this administrative regulation;

(b) The certificate was earned by passing an examination in the reciprocal state;

(c) The requirements for certification ~~[of operators]~~ under which the ~~[person's]~~ certificate was issued are no less stringent than the provisions of KRS Chapters 223 and ~~[KRS Chapter] 224~~ and this administrative regulation; and

(d) Reciprocal privileges are granted to certified operators of the commonwealth.

(7) Training requirements.

(a) Certified operators shall accumulate continuing education credits approved by the cabinet or board, prior to applying for certificate renewal.

~~[1. This subparagraph shall apply to operators whose certification expires on or before June 30, 1992. Class I operators shall complete six (6) hours of training for renewal. Class II, III, and IV operators shall complete twelve (12) hours of appropriate cabinet-approved training for certificate renewal. Such training may include, but is not limited to, correspondence courses, short courses, trade association meetings, and on-the-job training courses. Training hours accumulated in excess of the minimum number required for renewal may be carried forward for two (2) years. No training is required for operators with limited certificates.~~

~~2. This subparagraph shall apply to operators whose certification~~

sanction should be lifted or whether additional action is necessary against the certified operator.

(6) ~~(5)~~ Appeal procedures. An operator who considers himself aggrieved by the disciplinary action may file a petition for hearing with the cabinet pursuant to KRS 224.10-420(2).

Section 6. Classification of Water Treatment Plants and Water Distribution Systems. The classification system is structured with four (4) classes of water treatment plants, Class I, II, III, or IV, which includes two (2) subclasses of treatment types, A or B, and four (4) classes of water distribution systems, Class I, II, III, or IV. Class IV is the highest class and subclass A is the highest subclass. Combined treatment and distribution classifications also exist for Class I and II systems: Class IA-D, IB-D, and IIB-D. The class structure relates to and corresponds with the operator classifications outlined in Section 7 of this administrative regulation. Operators with separate treatment and distribution certifications may supervise a facility with a combined classification if the certifications are equal to or higher than the system classification.

(1) Public water system classifications ~~[- Classification]~~ shall be established in accordance with the classes listed in subsections (2) and (3) ~~[subsection (2)]~~ of this section. However, the cabinet may make changes in system classifications in accordance with needs created by particular complexities of a public water system by reason of special features of design, or by reason of a source of supply that has characteristics that may make operation more difficult than normal, or a combination of these conditions. Due notice of a change shall be given to the owner of the public water system.

(2) Water treatment plants or systems shall be classified as one (1) of four (4) classes, based on the cabinet-assigned design capacity for finished water production that the treatment plant is able to produce in twenty-four (24) continuous hours of production, taking all limiting factors into consideration, and the treatment process employed. Public water systems with more than one (1) treatment plant shall have each treatment plant classified in accordance with this section, and each plant shall be operated in accordance with Section 1 of this administrative regulation.

(a) The treatment plant classifications and designated capacities shall be:

1. Class I: all treatment plants which have an assigned design capacity of less than 50,000 gallons of water per day;

2. Class II: all treatment plants which have an assigned design capacity of 50,000 or more gallons of water per day but less than 500,000 gallons per day;

3. Class III: all treatment plants which have an assigned design capacity of 500,000 or more gallons of water per day but less than 3,000,000 gallons per day; and

4. Class IV: all treatment plants which have an assigned design capacity of 3,000,000 or more gallons of water per day.

(b) Each class shall be subdivided according to the type of treatment used by the plant. The subclasses shall be:

1. A: water treatment plants which use gravity filtration, except slow sand filtration as described in 401 KAR 8:150, as a part of their treatment scheme; and

2. B: water treatment plants which use treatment processes other than gravity filtration. This includes the use of slow sand filtration as described in 401 KAR 8:150 for Class I and II water treatment plants.

(c) Combination treatment and distribution system classifications. Class IA-D, IB-D, and IIB-D systems shall be classified as combined treatment and distribution systems.

(3) Water treatment plant or system classifications.

(a) Class I.

1. Class IA-D. Systems which have an assigned design capacity of less than 50,000 gallons of water per day using gravity filtration, except for slow sand filtration, as a part of their treatment scheme and are responsible for the distribution of treated water. ~~[Plants using only physical treatment and disinfection, if the treatment plant operator is~~

~~also responsible for the distribution system, and which serve a population less than 500.]~~

2. Class IB-D. Systems which have an assigned design capacity of less than 50,000 gallons of water per day using slow sand filtration or treatment processes other than gravity filtration, and are responsible for distribution of treated water. ~~[Plants using only disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population less than 500.]~~

(b) Class II:

1. Class IIA. Plants which have an assigned design capacity of 50,000 or more gallons of water per day but less than 500,000 gallons per day using gravity filtration, except slow sand filtration, as a part of their treatment scheme. ~~[physical and chemical treatment, including disinfection, and serving a population less than 3,000.]~~

2. Class IIB-D. Systems which have an assigned design capacity of 50,000 or more gallons of water per day but less than 500,000 gallons per day using slow sand filtration or treatment processes other than gravity filtration, and are responsible for the distribution of treated water. ~~[Plants using only physical treatment and disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population equal to or greater than 500 but less than 3,000.]~~

3. Class IIC-D. ~~Plants using only disinfection, if the treatment plant operator is also responsible for the distribution system, and which serve a population equal to or greater than 500 but less than 3,000.]~~

(c) Class III:

1. Class IIIA. Plants which have an assigned design capacity of 500,000 or more gallons of water per day but less than 3,000,000 gallons of water per day using gravity filtration, except slow sand filtration, as a part of their treatment scheme. ~~[physical and chemical treatment, including disinfection, and serving a population equal to or greater than 3,000 and less than 15,000.]~~

2. Class IIIB. Plants which have an assigned design capacity of 500,000 or more gallons of water per day but less than 3,000,000 gallons of water per day using treatment processes other than gravity filtration. ~~[only physical treatment and disinfection, and serving a population equal to or greater than 3,000 and less than 15,000.]~~

3. Class IIIC. ~~Plants using only disinfection, and serving a population equal to or greater than 3,000 and less than 15,000.]~~

(d) Class IV.

1. Class IVA. Plants which have an assigned design capacity of 3,000,000 or more gallons of water per day using gravity filtration, except slow sand filtration, as a part of their treatment scheme.

2. Class IVB. Plants which have an assigned design capacity of 3,000,000 or more gallons of water per day using treatment processes other than gravity filtration. ~~[serving a population equal to or greater than 15,000.]~~

(4) ~~(3)~~ Water distribution systems. Populations shall be determined as specified in 401 KAR 8:200.

(a) Class ID. Distribution systems serving a population less than 1,500.

(b) Class IID. Distribution systems serving a population equal to or greater than 1,500 and less than 15,000.

(c) Class IIID. Distribution systems serving a population equal to or greater than 15,000 and less than 50,000.

(d) Class IVD. Distribution systems serving a population equal to or greater than 50,000.

(5) ~~(4)~~ Limited. A limited classification is available to water treatment facilities for schools and semipublic water systems.

(6) ~~(5)~~ Special. Special designations may be added to any certificate if necessary to show competency of the operator for a parameter of treatment or operation not covered by the basic requirements for standard classification set forth in this section.

(7) Public water systems which were reclassified pursuant to this administrative regulation as in effect on October 7, 1996 shall comply with the requirements of Section 1 of this adminis-

considered equivalent to one (1) year of treatment experience.

2. Experience gained in drinking water treatment plant operation may be credited as specified in paragraph (a) of this subsection toward fulfillment of the distribution system experience requirements as follows: one (1) year of drinking water treatment experience [in a related field] may be considered equivalent to one (1) year of distribution experience.

3. Partial credit, as determined by the board, may be given for operating experience in maintenance, laboratories, other work of drinking water treatment or distribution systems and allied trades.

(d) Substitutions for formal education may be as follows: training earned at [credits for] board-approved operator training schools, seminars, and technical courses may be substituted for high school and college requirements upon approval of the board. One (1) year of college work shall equal thirty (30) semester hours or forty-five (45) quarter hours. Six (6) classroom hours of board-approved courses shall equal one (1) training credit, and forty-five (45) training credits shall equal eighteen (18) semester hours of college or one (1) year of high school. One (1) continuing education unit (CEU) shall equal ten (10) classroom [training credit] hours.

Section 9. Documents Incorporated by Reference. The following documents are incorporated by reference and are available for public inspection and copying, subject to the copyright laws, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601:

(1) "Drinking Water or Wastewater Operator Certification Application", "DEP 6047 (8/96)", available from the Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water, Frankfort, Kentucky, [January 1992].

(2) "Application for Certificate Renewal", "DEP 6007 (8/96)", available from the Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water, Frankfort, Kentucky, [January 1992].

JAMES E. BICKFORD, Secretary

APPROVED BY AGENCY: April 9, 1997

FILED WITH LRC: April 10, 1997 at 9 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation establishes the program for the certification of water treatment plant and water distribution system operators. The regulation is being amended to change the basis for the classification of water treatment plants and to allow facilities an extension of time to meet staffing requirements if certain conditions are met. The amendments to this regulation will affect approximately 770 public water systems, and 3,029 certified operators of those public water systems. This amendment will also affect all future applicants for certification. Approximately 300 new applicants test for drinking water treatment or distribution certifications annually. The cabinet requested input from various impacted groups during the development of this regulation, including representatives of the Kentucky Rural Water Association, Kentucky Water and Wastewater Operators Association, Kentucky Board of Certification of Drinking Water Treatment and Distribution System Operators, Kentucky Board of Wastewater System Operators, American Water Works Association, and Kentucky League of Cities.

(2) Direct and indirect costs or savings on the affected entities: The most significant revision to this regulation changes the classification of public water treatment plants from a population/treatment techniques based system to one based on the treatment plant's design capacity and filters utilized for treatment. Every effort has been made to avoid disruption of the current classification system, however, some facility classifications may change. Of the 770 public

water systems, approximately 106 systems will be reclassified to a lower level and 41 systems will receive a higher classification. Those receiving a higher classification will be given until October 7, 1997 to comply with the staffing requirements. In addition, they may request approval of a provisional staffing plan which allows up to a two year extension for securing properly certified staff. The regulation has also been amended to reduce the qualifications of Class IV operators. This change should ultimately allow public water systems to have operators qualified and on staff at an earlier date, thereby impacting their compliance with this regulation and the rest of 401 KAR Chapter 8.

(a) Effect on the cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This regulation is implemented statewide. The regulation currently specifies certified operator staffing levels for each class of water treatment plant and distribution system. The changes proposed actually relax the staffing requirements for certain facility classes. Since certified operators command higher wages due to education and operational experience within a drinking water or wastewater system, the changes imposed could result in a net reduction in the number of operators employed, thus resulting in additional savings. No specific comments regarding the cost of living and employment in the geographical area were received during the comment period.

(b) Effect on the cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: If a system does not currently employ a staff sufficient to meet the regulatory staffing requirements, additional certified staff will need to be hired. This will increase the operation and maintenance costs of the facility. This should not be an unanticipated cost, however, due to the current regulatory standards for staffing and the assumption that treatment facilities cannot operate "automatically." The changes proposed actually relax the existing staffing requirements for certain facility classes, thus resulting in additional savings. General comments were received that the cost of business will increase due to the fact that the provisional staffing plan proposed will not provide any relief to systems in need of operators and that civil service requirements could preclude participation. No cost figures were given. During the second public hearing the cabinet received those comments again, but the comments did not include cost estimates. The cabinet determined that there are 41 facilities which could incur additional costs due to the fact that their plant classifications were made higher, thus necessitating operators with higher classifications. However, the cabinet maintains that the statewide effect of this regulation should be minimal given that 106 facilities were reclassified to a lower classification, systems may request a provisional staffing plan, and the experience required for Class IV operators is being reduced to one year from three years. Taking into consideration the classification changes identified in this regulation, the cabinet has determined that the required number of operators will decrease by approximately 41. Assuming a statewide annual salary of \$21,000, the cabinet has determined that this amendment could potentially result in a statewide decrease of \$861,000 in the cost of doing business. In addition to the reduction in number of operators required, facilities will be able to defer part of the cost of an operator for up to two years under a provisional compliance plan.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the: During the second public hearing the cabinet received comments that the cost of doing business and therefore the cost of compliance would go up, but the comments did not include cost estimates. See also the response to (b) above. The reporting requirements referenced below require extra time and effort on the part of public water systems but the information requested should be readily available within the system and the costs should be

ADMINISTRATIVE REGISTER - 3817

(a) Necessity of proposed regulation if in conflict: No conflict exists.

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

(11) Any additional information or comments: None

(12) TIERING: Is tiering applied? Yes, tiering is applied. Different operator classifications require varying levels of education and experience for certification. Also, the plant classifications are tiered to reflect the design capacity of the treatment plant, the complexity of the treatment process, and the water source. The facility classification also establishes the operator coverage required taking into consideration the number of hours drinking water is treated. Depending on storage capacity, a higher class facility may be required to employ more operators than a smaller system to maintain coverage.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State what unit, part or division of local government this administrative regulation will affect. This regulation affects public water systems, many of which are owned or controlled by local government.

3. State the aspect or service of local government to which this administrative regulation relates. This regulation affects public water systems. It requires such systems to have their water treatment plant and/or distribution system operated by properly certified operators.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendments to this administrative regulation generally provide cost savings and regulatory relief to systems which are not in compliance with the regulatory staffing requirement, however some systems may experience cost increases in that the facility classifications may change to higher levels. The costs saved or increased will depend on many factors including the geographic area of the state in which the facility is located, facility classification, and hours of water treatment. However, to ease the impact on the 41 systems whose classifications are increased, the cabinet has amended the regulation to allow the systems until October 7, 1997 to secure a properly certified staff. In addition, all systems are eligible for provisional certification (see below) that allows qualified systems time to obtain new operators or train and certify their existing operators. It should be noted, however, that the overall effect of the classification changes will result in the need for 41 fewer certified operators. As an example, the regulation requires Class IIIA and IVA water treatment plants, which represent the largest, full chemical treatment plants, to have a properly certified operator on-site when water is being treated. Assuming that a system does not have any properly certified operators and treats water 24 hours per day, seven days a week, the system would need five operators working 40 hours to maintain shift and backup coverage. Assuming that the system must hire five operators hired at an annual salary of \$21,000, the base cost to a local government would be \$105,000. Class IIA facilities require operator coverage of the daytime shift which requires two operators at a cost of \$42,000 if water is treated seven days a week. Class IA-D, IB-D, IIB-D, IIIB, and IVB systems which serve smaller populations and/or physically treat the water require an operator to be in responsible charge of the system but not necessarily on-site, all day, everyday. This allows for a part-time operator as long as the water quality standards of 401 KAR Chapter 8 are maintained.

Revenues (+/-): None

Expenditures (+/-): Public water systems are already required to have properly certified operators. If the system does not have

sufficient staff or will be changed to a higher classification, additional operators may need to be certified and/or employed. The regulation allows for approval of a provisional staffing plan, however, which will allow facilities which are currently in compliance with drinking water standards up to two years to secure the appropriate staff.

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Safe Drinking Water Act Amendments of 1996, enacted August 6, 1996 (PL 104-182), include a provision for the certification of operators of public water systems. The regulations to implement this section are required no later than 30 months after enactment of the law. Therefore, although there is a federal statute (42 USC 300g-8), presently there is no federal regulation relating to the certification of operators.

2. State compliance standards. N/A

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? N/A

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. N/A

TRANSPORTATION CABINET

Department of Administrative Services

Division of Fleet Management

Division of Purchases

(Amended After Hearing)

-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

ADMINISTRATIVE REGISTER - 3819

necessary documentation shall be provided to each user agency.

(c) The Transportation Cabinet has adopted the procedures to govern the operation of the statewide motor pool in 600 KAR 1:070.

(3) An agency shall not lease a motor vehicle from a private individual or business without prior written approval of the Secretary of the Finance and Administration Cabinet ~~Governor's Executive Cabinet~~.

Section 8. Maintenance of Motor Vehicles. (1) It shall be the responsibility of the agency to which a motor vehicle from the statewide motor pool has been permanently assigned to maintain it properly and in accordance with the manufacturer's instructions.

(2)(a) Nonexempt motor vehicle repair and ~~[f]~~ maintenance shall be the responsibility of the Transportation Cabinet.

(b) The cabinet shall repair and ~~[f]~~ maintain vehicles in the most economical means possible.

(3) A record of maintenance history and costs for each exempt motor vehicle shall be kept by each agency and submitted to the Transportation Cabinet on an annual basis or as requested.

Section 9. Disposal of Motor Vehicles. (1) An agency may advise the Transportation Cabinet of its desire to dispose of a motor vehicle which meets at least one (1) of the following criteria:

(a) Is at least five (5) years old;

(b) Has been driven at least 90,000 miles; or

(c) Is inoperable, unsafe, or in need of substantial repair.

(2) All proceeds from the sale of nonexempt surplus motor vehicles shall be deposited into the Transportation Cabinet motor pool agency fund except where federal law or regulations, or state law or administrative regulations, preclude this deposit.

(3)(a) The disposal of an exempt motor vehicle shall be the responsibility of each individual agency.

(b) For inventory control purposes, the agency shall immediately notify the Transportation Cabinet [shall be immediately notified] of the disposal of an exempt vehicle [for inventory control purposes].

ED ROBERTS, Commissioner

JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: April 9, 1997

FILED WITH LRC: April 9, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis, Staff Assistant

(1) Type and number of entities affected: All state agencies which participate in the statewide motor pool or use state-owned motor vehicles.

(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 discussed at hearing or anticipated.

(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 discussed at hearing or anticipated.

(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 agency must submit monthly vehicle inventory reports to the Transportation Cabinet. In addition, they must request, in writing, permission to purchase a new motor vehicle or to operate one without the state seal and official license plate. As a result of the public comment hearing, a mechanism was established for the Finance Cabinet to notify the Transportation Cabinet for inventory purposes of additional motor vehicles purchased by the Finance Cabinet.

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 (Amended After Hearing)

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~~

ADMINISTRATIVE REGISTER - 3821

application amount for that county established by subsection (2) ~~((3))~~ of this section divided by the total amount of the eligible applications received for all counties pursuant to subsection (2) ~~((3))~~ of this section.

JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: April 7, 1997

FILED WITH LRC: April 9, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: 120 county fiscal courts.

(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: Public hearing not held, but no anticipated effect.

(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: Public hearing not held, but no anticipated effect.

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

1. First year following implementation: Minimal administrative cost of passing resolution by the eligible counties, supplying the Transportation Cabinet with copies of contracts, resolutions, and proof of payments made.

2. Second and subsequent years: Second year only is the same as the first year. There is no subsequent year funding.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The minimal administrative cost of evaluating the applications from the fiscal courts and issuing the reimbursement checks. The \$2 million each year of the biennium was included in the executive budget and is available for this purpose only.

1. First year: \$2 million from special account plus administrative costs.

2. Continuing costs or savings: Same for the second year. There are no continuing costs after the second year unless there is a continuing legal challenge to the administrative regulation.

3. Additional factors increasing or decreasing costs: If there is a legal challenge to the administrative regulation there will be an increased cost to state government.

(b) Reporting and paperwork requirements: N/A

(4) Assessment of anticipated effect on state and local revenues: No effect on state revenues. However, the program will allow a maximum of \$4 million to be reimbursed to counties for the cost they incur in the transportation of non public school students.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There is no enforcement 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 non public 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 non public 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 non public 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 non public 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

(Amended After Hearing)

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~~

or obtained from the Permits Branch, 501 High Street, Mail Code 11-1, Frankfort, Kentucky 40622. Its telephone number is (502) 564-4105. Its hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays.]

Section 4. Location and Erection of Specific Information Panels.

(1) A specific information panel bearing separately attached business signs shall not be erected less than 800 feet (244 meters) in advance of the exit direction sign at the interchange where motorist services are available.

(2) Spacing between each specific information panel shall be at a minimum of 800 feet (244 meters) and shall be spaced at least 800 feet (244 meters) from any other highway guide signs in existence or proposed for that area.

(3) A specific information panel shall not be erected if there is insufficient space between the previous interchange and the interchange where the motorist services are available for the required highway guide signs and a specific information panel.

(4) A specific information panel shall not be erected at an interchange or intersection which intersects another limited access facility.

(5) A specific information panel shall not be erected at any interchange or intersection which does not have a convenient reentry in the same direction of travel.

(6)(a) Except as allowed in subsection (9) of this section, not more than one (1) specific information panel for "GAS," "FOOD," "LODGING," "CAMPING," or "TOURIST ACTIVITIES" shall be erected in each direction for an interchange or intersection.

(b) Not more than four (4) specific information panels shall be erected in one (1) direction of travel for an interchange or intersection.

(c) In one (1) direction of travel, the successive panels shall be erected in the order of "TOURIST ACTIVITIES" or "CAMPING," "LODGING," "FOOD," and "GAS" unless a combination specific information sign is erected in accordance with Section 5(9) or (10) [or (11)] of this administrative regulation.

(d) At an interchange [interchanges] with insufficient space available in a single direction for four (4) specific information panels, or at an interchange [interchanges] with requests for all five (5) type services, service signing preference shall be in the order "gas," "food," "lodging," "camping," and "tourist activities," with "gas" having the highest priority.

(7) The specific information panels shall be located to:

- (a) Take advantage of natural terrain;
- (b) Have the least impact on the scenic environment; and
- (c) Avoid visual conflict with other signs within the highway right-of-way.

(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) If [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) At a [For] double exit interchange [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 four (4) [three (3)] business signs for each service per exit, with the total number of signs not to exceed six (6).

(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) [(40)] 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 four (4) [three (3)] business signs may be displayed for a [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 not 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) [(40)] 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 combination.

(11) [(12)](a) Except at an unnumbered exit [exits], the exit number shall be displayed above the name of the type of service [names of the types of services]; and

(b) At an unnumbered exit [exits], the legend "NEXT RIGHT" or "NEXT LEFT" shall be displayed above the name of the type of service [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

traveling public.

(d) ~~(4)~~ To qualify for a "LODGING" business sign, a facility shall:
 1. ~~(a)~~ Be licensed in accordance with KRS Chapter 219;
 2. ~~(b)~~ Have a minimum of two (2) rooms available for sleeping accommodations; and
 3. ~~(c)~~ Have a telephone available for use by the persons staying at the facility.

(e) ~~(5)~~ To qualify for a "CAMPING" business sign, a facility shall:
 1. ~~(a)~~ Be licensed in accordance with KRS Chapter 219; and
 2. ~~(b)~~ Have a minimum of ten (10) parking accommodations which have modern sanitary facilities and drinking water.

(f) ~~(6)~~ To qualify for a "TOURIST ACTIVITIES" business sign, a facility shall:

1. ~~(a)~~ Be an activity or location that is one (1) or more of the following:

a. ~~(1)~~ Natural phenomena;

b. ~~(2)~~ Historic site;

c. ~~(3)~~ Cultural site;

d. ~~(4)~~ Scientific site;

e. ~~(5)~~ Educational site;

f. ~~(6)~~ Religious site;

g. ~~(7)~~ Area of natural beauty; or

h. ~~(8)~~ Area naturally suited for outdoor recreation.

2. ~~(b)~~ Maintain regular hours for that type of establishment;

3. ~~(c)~~ Be licensed in accordance with KRS Chapter 219, if applicable;

4. ~~(d)~~ Have restroom facilities available for use by the traveling public;

5. ~~(e)~~ Have drinking water available for the traveling public;

6. ~~(f)~~ Have an on-premise or nearby public telephone available for use by the traveling public; and

7. ~~(g)~~ Have adequate parking to accommodate its traffic with a minimum of ten (10) spaces.

(2) ~~(7)~~(a) The eligible business making application for a logo of a specific service which is located ~~[Qualifying businesses]~~ nearest to the interchange or intersection shall receive first priority ~~[preference]~~ in the selection process.

(b) Subsequent proximities to the interchange or intersection shall establish subsequent priorities.

(c) A business further than fifteen (15) miles (24.15 kilometers) from the interchange shall not be eligible to qualify for placement of a business sign. However, any business at a distance greater than fifteen (15) miles (24.15 kilometers) from the interchange with a business sign in place on January 1, 1994, may continue to display the business sign until the business fails to meet another criterion of this administrative regulation or is bumped pursuant to Section 9 of this administrative regulation.

(3)(a) A qualifying food business which is open sixteen (16) hours a day beginning no later than 7 a.m. each day shall have priority over another qualifying food business which does not provide service for this entire time period.

(b) Distance from the interchange shall only be considered in determining priority after the business hours for a qualifying food business have been considered.

(4) A business with 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.

(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 **specific information** 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 its ~~[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 **damage to its business sign** ~~[damages to business signs]~~ caused by an act ~~[acts]~~ of vandalism or natural causes requiring repair or replacement of a business sign ~~[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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: The experimental use of the "Tourist Attraction" logos has been expanded statewide.

1. First year following implementation: Same
2. Second and subsequent years: Same
3. Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Slight increase in the revenue anticipated to be collected from the "Tourist Attraction" fifth legend logo.

1. First year: Less than \$5000 per year.
2. Continuing costs or savings: Same
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: Fees generated from the subscribers to the Logo program.

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

(a) Geographical area in which administrative regulation will be implemented: The Kentucky is implementing the fifth legend tourist attraction logo on an experimental basis with FHWA. The experiment has been expanded to encompass all interstate and parkway highways in Kentucky.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The do-nothing alternative was rejected because both the Transportation and Tourism Cabinets want the experiment on the "tourist attraction" fifth legend logo to succeed. Expanding it statewide as we are now allowed to do by the Federal Highway Administration will benefit more businesses and more of the traveling public.

(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: 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

(Amended After Hearing)

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 career development [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.]

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 176 local school districts.

**WORKFORCE DEVELOPMENT CABINET
Department of Vocational Rehabilitation
(Amended After Hearing)**

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. (1) Vocational rehabilitation services may be ~~provided~~ subject to economic need.

(2) The commissioner may exempt services from the economic needs test only if the department is able to provide services to all eligible individuals with severe disabilities pursuant to Section 3 of this administrative regulation, [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.]~~

(3) [(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.

(5)(a) Except as provided in subsection (2) of this section and paragraph (b) of this subsection, residential students at the Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC) who receive an individual government maintenance subsidy or who have monthly excess household income shall contribute monthly an amount not to exceed the presumed monthly value of in-kind support and maintenance for recipients residing in nonmedical institutions as defined by the Social Security Administration.

(b) The Director of the Carl D. Perkins Comprehensive Rehabilitation Center or a designee may make a hardship exception to the maintenance contribution if agreed upon with the referring counselor.

(6) [(4)] Ninety (90) percent of the 1990 Kentucky median gross income as adjusted to family size shall be used as the criterion for the agency economic needs test in figuring the excess monthly household income.

Section 3. Order of Selection. If the commissioner determines that the agency shall be unable to provide services to all eligible appli-

CABINET FOR FAMILIES AND CHILDREN
Department for Social Insurance
Division of Management and Development
(Amended After Hearing)

904 KAR 2:410. Child support collection and distribution.

RELATES TO: KRS 205.710-205.800, 403.215, 405.450, 405.465, 405.467, 405.490, 405.520, 45 CFR 302.32, 302.37, 302.38, 302.51-302.54, 302.60, 303.6, 303.100-303.102, 15 USC 1673(b)

STATUTORY AUTHORITY: KRS 186.570, 194.050, 205.710 to 205.800, 213.046, 405.430, 405.520, 406.021, 406.025, 406.027, 42 USC 651 et seq., EO 96-862 [95-79]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children shall administer the Child Support Enforcement Program [(CSEP)] in accordance with KRS 205.710 to 205.800. KRS 205.712 provides for the child support agency to receive and process all child support payments. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Social Insurance and the Division of Child Support Enforcement under the Cabinet for Families and Children. This administrative regulation sets forth the procedures for collection and distribution of child support payments.

Section 1. Collection of Maintenance. Agency efforts shall include collecting maintenance if it meets the definition of "duty of support" in KRS 205.710(5).

Section 2. Methods of Collection. (1) Wage withholding.

(a) As specified in KRS 403.215, 405.465 and 405.467, the cabinet shall use this method:

1. As the primary tool for child support collection; and
2. As necessary to facilitate enrollment of a child through an employer in an available health insurance plan.

(b) For all cases, the child support agency shall provide for wage withholding without necessity of an amendment or court action to the child support order.

(c) If a noncustodial [an-absent] parent, or obligor, has more than one (1) child support wage assignment against him, the child support agency shall allocate and distribute child support as specified by KRS 405.467. ~~[amounts available for withholding, giving priority to the current child support obligation amount due each family.]~~

(d) If current support and an arrearage amount is owed and is to be paid through a wage withholding order, and no specified arrearage payment amount is ordered by the court, the cabinet shall determine the arrearage payment by multiplying the current court or administratively ordered obligation amount by twenty-five (25) percent.

(e) If the noncustodial [absent] parent, or obligor, no longer owes a current child support payment, the cabinet shall determine:

1. The arrearage payment to be equal to the last court or administratively ordered obligation amount; and ~~[amount to be paid by wage withholding.]~~

2. The frequency of the arrearage payment; and

~~2. The arrearage payment to be equal to the last court or administratively ordered obligation amount.]~~

(f) A noncustodial [An-absent] parent, or obligor, shall not be obligated to pay current support when parental rights have been terminated or when all children of a particular order are emancipated.

(g) No amount of an employee paid share of the cost of health insurance shall be deducted if, after child support and maintenance are deducted:

1. The total monthly amount of health care coverage exceeds the Federal Consumer Credit Protection Act limits; or
2. Only a portion of the monthly amount needed to purchase health insurance is available.

(h) If amounts are improperly withheld, the cabinet shall promptly refund those amounts.

(i) To comply with the advance notice requirements of KRS 405.467(4), when the address of the noncustodial parent, or obligor, is known, the agency shall send written notification to ~~[the agency shall notify]~~ the noncustodial ~~[absent]~~ parent, or obligor, within fifteen (15) calendar days of the:

1. Request for wage withholding; or

2. The date the arrearage of the noncustodial parent, or obligor, is equal to the monthly obligation amount. ~~[in writing that:]~~

(j) If the address of the noncustodial parent, or obligor, is unknown, the cabinet shall provide advance notice within fifteen (15) calendar days of locating the noncustodial parent, or obligor.

(k) The advance notice shall inform the noncustodial parent, or obligor:

1. He has ten (10) days to contest the withholding; and
2. Failure to contest the withholding within the specified time shall result in the child support agency notifying the employer within five (5) working days to begin withholding; and
3. Withholding shall apply to the current and any subsequent employer.

(l) ~~[(k)]~~ In addition to the requirements of KRS 405.467(5)-(11), the employer shall be notified, within fifteen (15) days of the request for wage withholding, of the following:

1. The employer shall forward collected child support amounts to the child support agency and collected medical insurance premiums to the health insurance carrier within ten (10) working days of the date the amount is withheld from the noncustodial [absent] parent's, or obligor's wages;

2. The employer shall include on the transmittal to the child support agency the name and Social Security number of the noncustodial [absent] parent, or obligor, the child support agency assigned case number and the date the money was withheld;

3. The employer may combine amounts due the child support agency into one (1) payment if the employer identifies by the name, Social Security number, and the child support agency assigned case number the amount attributable to each noncustodial [absent] parent, or obligor;

4. The employer shall implement withholding no later than the first pay period that occurs after fourteen (14) work days following the date the notice was mailed; and

5. The employer shall notify the child support agency promptly when the noncustodial [absent] parent, or obligor, terminates employment and provide information to the agency as required by KRS 405.465.

(m) ~~[(l)]~~ The following information:

a. The absent parent's last known address; and

b. The name and address of the new employer, if known.

(k) The noncustodial [absent] parent, or obligor, shall keep the child support agency informed of his current employer, if he has access to health insurance coverage at a reasonable cost, and the health insurance policy information.

(n) ~~[(k)]~~ 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, or obligor, 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, or obligor's employer [absent parent's employer] shall:

- a. Send notice to the noncustodial [absent] parent, or obligor,

family up to the first fifty (50) dollars shall be distributed to the AFDC family within fifteen (15) days of the date of initial receipt by the agency.

(a) If the collected amount is less than fifty (50) dollars, the collected amount shall be sent to the family within fifteen (15) days of the end of the month in which it is collected.

(b) If the collected amount exceeds fifty (50) dollars, only fifty (50) dollars shall be paid to an AFDC family receiving support.

(c) If the collected amount represents payments from two (2) or more absent parents, only the first fifty (50) dollars shall be paid to the AFDC family.

(d) If the amount collected represents a payment for a prior month and is received by the child support agency in the month it is due, up to the first fifty (50) dollars shall be paid to the family.

(e) If the amount collected represents a payment for a prior month and is received by the child support agency in the month in which it is due, but the collection is less than fifty (50) dollars, the collected amount shall be sent to the family within fifteen (15) days of the end of the month in which it is collected.]

Section 4. Distribution of Foster Care Accounts. A child support payment collected on behalf of a foster care recipient shall be:

(1) Made payable to the child support agency; and

(2) Upon receipt by the child support agency, shall be disbursed to the foster care agency for distribution.

Section 5. Tax Refund Intercept. (1) Public assistance accounts.

(a) Amounts collected in public assistance cases shall be applied to assigned arrearages.

(b) If no assigned arrearages remain, the collections shall be forwarded to the K-TAP [AFDC] family or foster care agency within thirty (30) calendar days of the date of initial receipt by the agency.

(c) If a timely appeal is filed by a noncustodial [an absent] parent, or obligor, and the appeal is resolved, payment shall be made to the family or refunded to the noncustodial [absent] parent, or obligor, within fifteen (15) calendar days of the resolution date.

(d) If a joint return has been filed, tax refund intercept collection shall be held by the child support agency for six (6) months prior to being distributed.

(2) Nonpublic assistance accounts. For a nonpublic assistance account, if no assigned arrearage remains, an amount collected which represents an arrearage amount shall be sent to the family within thirty (30) calendar days of the initial receipt date.

(3) If the noncustodial [absent] parent, or obligor, contests the accuracy of a past due amount, he may request an administrative review in accordance with specifications in 904 KAR 2:400, Section 4.

Section 6. Treatment of Excess Payments. (1) Collection of child support payments shall be applied to the required obligation amount for the month in which the support was collected.

(2) After the current obligation amount is satisfied, any excess amount shall be treated as payment on previous unpaid arrearage.

Section 7. Wage Withholding Distribution. (1) A child support or medical support payment made through wage or other withholding shall use the date the income is withheld for the date of collection for distribution to meet the support obligation.

(2) Distribution of wage withholding collections shall be made according to specification in Sections 3, 4, 6 or 8 of this administrative regulation.

Section 8. Interstate Case Payment Distribution. Child support payments that are collected by a responding state on behalf of an initiating state shall be forwarded to the initiating state within fifteen (15) calendar days of initial receipt by the responding state.

(1) If the collected amount is less than fifty (50) dollars, the

responding state shall send the amount collected to the location specified by the child support agency in the initiating state within fifteen (15) calendar days of the date of initial receipt in the responding state.

(2) The initiating state upon receipt of collection made by the responding state shall retain the collections to reimburse the assistance payment for the month it was received or the next month if the amount collected exceeds the required support obligation for the month and is in excess of the K-TAP [AFDC] assistance payment.

(3) Collection of child support in the month after the month the family receives its last K-TAP [AFDC] assistance payment shall be distributed and sent to the family within fifteen (15) calendar days of the date of initial receipt in the state.

Section 9. Additional Administrative Enforcement Remedies. (1) When the cabinet determines that the obligor owes an arrearage, the cabinet may implement administrative enforcement remedies listed below to collect the delinquent support amounts:

(a) Filing of liens on personal or real property when an arrearage is equal to or greater than one month's obligation;

(b) Report to credit bureaus; and

(c) Notifying the Transportation Cabinet to deny or revoke motor vehicle driver's license.

(2) The Cabinet for Families and Children shall:

(a) Provide information to consumer [credit] reporting agencies as specified by KRS 205.768; and [Within the context of the provisions of KRS 205.768, the Cabinet for Families and Children:

(a) Shall inform the credit reporting agency of a child support arrearage in each case referred for federal tax refund intercept; and

(b) May inform the credit reporting agency of a child support arrearage in any case which did not meet criteria for federal tax refund intercept because the parent's Social Security number is unknown.]

(b) Provide [(3)] advance written notice to the noncustodial parent, or obligor, of the release of the information required by KRS 205.768(2) [shall be given to the absent parent in the preoffset letter of information concerning the federal tax refund intercept].

(c) The name of the noncustodial parent, or obligor, shall be:

1. Deleted from the list provided to consumer [credit] reporting agencies when the advance notice is returned as undeliverable, and subsequent location efforts are unsuccessful; or

2. Added to the list provided to the consumer [credit] reporting agencies when subsequent location efforts are successful.

[(4) An absent parent whose case shall not be certified for federal tax refund intercept but may be reported to a consumer reporting agency shall receive prior notice of the past due amount of child support and of the right to request an administrative review within thirty (30) days of the receipt of the notice.

(a) If the preoffset letter is returned and location services are unsuccessful, that individual shall be deleted from the list sent by the child support agency.

(b) If location services are successful, his name may be added to an updated list.

(c) An identifying list of absent parents is forwarded to the credit reporting agency the January following the certification year.]

(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

support obligations, as provided by KRS 405.467; (c) Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting; and (d) The end of the mandate for states to pass through the first \$50 of child support was deleted as a result of 42 USC 651 et seq. Individuals in approximately 20,000 IVA/IVD cases received a pass-through payment during SFY 96. Since the federal match is no longer available, Kentucky has opted not to continue making the \$50 pass-through payments due to the inability to offset the loss of federal participation. It is estimated that approximately the same number of individuals will be affected by the elimination of the pass-through payments; (e) At the request of the Health and Welfare Committee the phrase "or obligor" will be added following each "noncustodial parent" phrase.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received.

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 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 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.: A public hearing was held as a result of the Notice of Intent being filed. However, comments received both orally and written were not relevant to the cost of living and employment.

5. The addition of "or obligor" following "noncustodial parent." No fiscal impact is anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented to the extent available from public comments received.

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 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.: A public hearing was held as a result of the Notice of Intent being filed. However, comments received, both orally and written were not relevant to the cost of doing business.

5. The addition of "or obligor" following "noncustodial parent." No fiscal impact is anticipated.

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

1. First year following implementation:

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 method by which 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 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.: There should be no compliance, reporting or paperwork requirement on the part of IVA/IVD individuals due to the elimination of the pass through payment.

e. The addition of "or obligor" following "noncustodial parent." No fiscal impact is anticipated.

2. Second and subsequent years:

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 method by which 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 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.: See item #1.

e. The addition of "or obligor" following "noncustodial parent." No fiscal impact is anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

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 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. Based on SFY 96 pass through costs, the state share of the pass through payments totaled \$1.8 million. The \$6.0 million total pass through includes both the federal and state share. SFY 97 enacted

(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.: The amendments to this administrative regulation will eliminate the pass through payments as a result of the implications of 42 USC et seq.: The state funds previously used to fund the state portion of pass through will aid in implementation of the IVD mandates of 42 USC 651 et seq.: which will benefit all IVD clients and is expected to far outweigh pass through payments previously awarded to the approximately 20,000 cases. Normal child support program administrative costs are paid with 66% federal funds and 34% state funds effective October 1, 1996.

(e) The addition of "or obligor" following "noncustodial parent." No fiscal impact is anticipated.

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

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

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 fiscal 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 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.: Comments received both orally and in writing at the public hearing indicated some concern that the pass through payments would have an economic impact on some Kentucky communities. The cabinet believes that self-sufficiency mandates of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 should eventually outweigh any economic impact caused by the elimination of pass through payments. The Personal Responsibility and Work Opportunity Act of 1996 requires recipients to work, thereby infusing more monies into the community.

5. The addition of "or obligor" following "noncustodial parent." No fiscal impact is anticipated.

(b) Kentucky:

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 fiscal 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 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.: Comments received both orally and in writing at the public hearing indicated some concern that the pass through payments would have an economic impact on some Kentucky communities. The Cabinet believes that self-sufficiency mandates of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 should eventually

outweigh any economic impact caused by the elimination of pass through payments. The Personal Responsibility and Work Opportunity Act of 1996 requires recipients to work, thereby infusing more monies into the community.

5. The addition of "or obligor" following "noncustodial parent." No fiscal impact is anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected:

(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: This amendment allows the Division of Child Support Enforcement to harmonize with 1994 KRS provisions.

(b) The distribution of wage withheld child support obligations, as provided by KRS 405.467: No alternatives were possible because the Omnibus Budget Reconciliation Act of 1993 mandates this process of distribution of multiple wage with holding. This amendment was developed to harmonize with 1996 KRS amendments.

(c) Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: No alternatives methods were considered as these amendments will not change the method by which 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 continuation of a pass through of the state share of the first \$50 is not prohibited by the 1996 welfare reform legislation, the federal government will no longer share in the cost of the pass through effective October 1, 1996. State fiscal year 1997 enacted budgets do not contain funds to offset the loss of federal participation. Should funding become available, it will be used in implementing the IVD mandates of 42 USC 651 et seq.: which is designed to be beneficial to all clients.

(e) The addition of "or obligor" following "noncustodial parent." No other alternatives were considered as this change was requested by the Interim Joint Committee on Health and Welfare.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky:

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.: While the cabinet understands that the elimination of the pass through payments may create hardships for some individuals who had previously received payments, it is the hope that the hardships will be lessened with the extended state share payments for six months that will allow those recipients to adjust their budgets. The initiatives in 42 USC 651 et seq.: are intended to benefit all clients and expected to outweigh the effects of abolishing pass through.

5. The addition of "or obligor" following "noncustodial parent." None

(b) State whether a detrimental effect on environment and public health would result if not implemented:

1. The removal of the last resort provisions for the denial or

None

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 collection and distribution of child support payments, and does not differ from federal mandates.

(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.: 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.

(e) The addition of "or obligor" following "noncustodial parent." None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by 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: No

(b) The distribution of wage withheld child support obligations, as provided by KRS 405.467: No.

(c) Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: No

(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.: No

(e) The addition of "or obligor" following "noncustodial parent." No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements.

(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: None

(b) The distribution of wage withheld child support obligations, as provided by KRS 405.467: None

(c) Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: None

(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

(e) The addition of "or obligor" following "noncustodial parent." None.

FISCAL NOTE ON LOCAL GOVERNMENT

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

(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: Yes

(b) The distribution of wage withheld child support obligations, as provided by KRS 405.467: No

(c) Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: No

(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.: No

(e) The addition of "or obligor" following "noncustodial parent." No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government.

(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: No

(b) The distribution of wage withheld child support obligations, as provided by KRS 405.467: No

(c) Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: No

(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.: No

(e) The addition of "or obligor" following "noncustodial parent." No

3. State the aspect or service of local government to which this administrative regulation relates.

(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: None

(b) The distribution of wage withheld child support obligations, as provided by KRS 405.467: None

(c) Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: None

(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

(e) The addition of "or obligor" following "noncustodial parent." No

4. How does this administrative regulation affect the local government or any service it provides?

(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: None

(b) The distribution of wage withheld child support obligations, as provided by KRS 405.467: None

(c) Clarification of the addition or deletion of a noncustodial's name to the listing for credit bureau reporting: None

(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

(e) The addition of "or obligor" following "noncustodial parent." No

COMPILER'S NOTE: The material incorporated by reference in this administrative regulation, 907 KAR 1:008, was amended due to comments received at the public hearing held on March 21, 1997. However, the body of the administrative regulation was not amended, and no changes are reflected here.

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development (Amended After Hearing)

907 KAR 1:008. Ambulatory [Outpatient] surgical center services and reimbursement [clinics].

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services [Human Resources] has responsibility to administer the Medicaid Program [of medical assistance in accordance with Title XIX of the Social Security Act]. 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 coverage provisions and

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(Amended After Hearing)

907 KAR 1:011. Technical eligibility requirements.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435, 45 CFR 233.100, 42 USC 402, 416, 423, 1382c, 1395i, 1396a, b, c, d, e, PL 99-603, PL 104-193, PL 104-208, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [~~Human Resources~~] has responsibility to administer the Medicaid Program [~~of Medicaid 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 [~~referred to as MA~~], to Kentucky's indigent citizenry. This administrative regulation sets forth the technical eligibility requirements of the Medicaid [~~MA~~] Program.

Section 1. Definitions. (1) "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 age nineteen (19)), who is not self-supporting or a member of the armed forces of the United States. Included within this definition is an individual meeting the age requirement specified above, previously emancipated by marriage, who has returned to the home of his parents, or to the home of another relative.

(2) "Kentucky Transitional Assistance Program (K-TAP)", means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF) Program, a money payment program for children who are deprived of parental support or care due to:

- (a) Death;
- (b) Continued voluntary or involuntary absence;
- (c) Physical or mental incapacity of one (1) parent or step-parent; if two (2) parents are in the home; or
- (d) Unemployment of one (1) parent if both parents are in the home.

(3) "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.

(4) "Qualified alien" is defined in Section 431 of the Personal Responsibility and Work Opportunities Act of 1996, PL 104-193, as amended by Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, PL 104-208.

(5) "Veteran" is defined in Section 101 of Title 38 of the United States Code.

Section 2. The Categorically Needy. All individuals receiving [~~Aid to Families with Dependent Children~~] Title IV-E benefits, Supplemental Security Income, [~~or~~] Optional or Mandatory State Supplementation shall be eligible for MA as categorically needy individuals. In addition, the following classifications of needy persons shall be included in the program as categorically needy and thus eligible for Medicaid [~~MA~~] participation.

- (1) Children in foster family care or private nonprofit child caring institutions dependent in whole or in part on a governmental or private agency;
- (2) Children in psychiatric hospitals, psychiatric residential treatment facilities, or medical institutions for the mentally retarded;

- (3) Pregnant women;
- (4) Children of unemployed parents;
- (5) Children in subsidized adoptions dependent in whole or in part on a governmental agency;

(6) Families who correctly received K-TAP for three (3) of the last six (6) calendar months and are terminated from receipt of K-TAP as a result of new or increased collection of child or spousal support shall be eligible for extended Medicaid coverage for four (4) consecutive calendar months beginning with the first month of ineligibility for K-TAP.

(7) Families terminated from K-TAP assistance [~~the Aid to Families with Dependent Children (AFDC) program~~] because of increased earnings, hours of employment or loss of earnings disregards;

(8) [(7)] Children (but not their parents) who would have been financially eligible for [meet the income and resource requirements of the] Aid to Families with Dependent Children benefits using the AFDC methodologies in effect on July 16, 1996 [program], who were born after September 30, 1983 and who are under the age of five (5); and effective July 1, 1987, children (but not their parents) who would have been financially eligible for [meet the income and resource requirements of the] Aid to Families with Dependent Children benefits using AFDC methodologies in effect on July 16, 1996 [Program], who are under eighteen (18) years of age (or under age nineteen (19) if a full-time student in a secondary school or the equivalent level of vocational or technical training and if expected to complete the program before age nineteen (19));

(9) [(8)] A child[(ren)] born to a woman eligible for and receiving Medicaid if [~~medical assistance, so long as~~] the child[(ren)] has not reached his first birthday, resides in the household of the woman, and the woman remains (or would remain if pregnant) eligible for the [~~such~~] assistance. In this situation, an application shall be [~~ie~~] deemed to have been made and the child found eligible for Medicaid [~~MA~~] as of the date of birth;

(10) [(9)] Individuals in institutions meeting appropriate patient status criteria who (if not institutionalized) would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income, shall be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income. Eligibility for similar hospice participants and similar participants in the waiver projects of home and community based services for the mentally retarded and the aged, blind or disabled shall also be determined under this provision. Eligibility of an individual whose gross income exceeds 300 percent of the previously specified SSI benefit amount shall not be determined in accordance with this provision;

(11) [(10)] Qualified severely impaired individuals as specified in 42 USC 1396a(a)(10)(A)(i)(II) and Sections 2, 3 and 4 of PL 99-643 (to the extent the [~~such~~] coverage is mandatory in this state);

(12) [(11)] Individuals who lose SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in child's insurance benefits based on disability as specified in Section 6 of PL 99-643;

(13) [(12)] Individuals specified in Section 9116 of PL 100-203 who lose SSI or state supplementation payments as a result of receipt of benefits under 42 USC 402(e) or (f), would be eligible for SSI or SSP except for these [~~such~~] benefits, and are not entitled to hospital insurance benefits under the Medicare program;

(14) [(13)] Women during pregnancy (and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy), and infants and children under six (6) years of age, as specified in 42 USC 1396a(1)(l), shall be [subject to the following:

- (a) Pregnant women, infants and children are required to meet the income requirements for this eligibility group as specified in 907 KAR 1:640, Income standards for Medicaid [1:004, Resource and income standard of medically needy]; [and]

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 former dependent child~~(ren)~~ determined in accordance with usual program requirements.

3. If the reporting requirements are not met, the Medicaid ~~[medical assistance]~~ benefits shall be denied for the second transitional six (6) month benefit period.

(b) To continue to receive Medicaid ~~[medical assistance]~~ for the optional second transitional six (6) month benefit period, the family shall meet the following conditions: received medical assistance for the entire first transitional six (6) month period and met the reporting requirements; have a dependent child living in the home; gross income minus child care cost is less than 185 percent of the federal poverty income level; meet the reporting requirements no later than the 21st day of the fourth month, the seventh month, and the tenth month; and during the immediately preceding three (3) months the caretaker relative was employed or if unemployed in any one (1) or more months, it was due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid program. When a family no longer has a dependent child living in the home, Medicaid ~~[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 the eligibility for the former dependent child~~(ren)~~ determined in accordance with usual program requirements. If the family's income exceeds the income standard or does not meet the reporting requirements, except for good cause established to the satisfaction of the Medicaid program, the medical assistance shall be terminated the last day of the appropriate reporting month.

(c) Good cause exists under the following circumstances: the specified relative was out-of-town for the reporting month; an immediate family member living in the home was institutionalized or died during the reporting month; the assistance group was the victim of a natural disaster such as flood, storm, earthquake or serious fire; or the assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form.

(9) Parents may be included for assistance in the cases of families with children including natural and adoptive parents. If parents are not included in the case, one (1) other caretaker relative may be included ~~[Other relatives who may be included in the case (one (1) only) are caretaker relatives]~~ to the same extent they would have been ~~[may be]~~ eligible in the Aid to Families with Dependent Children Program using the AFDC methodology prior to July 16, 1996.

(a) These include:

1. Grandfather;

2. Grandmother;

3. Brother;

4. Sister;

5. Uncle;

6. Aunt;

7. Nephew;

8. Niece;

9. First cousin; and

10. First cousin once removed;

11. A relative of the half-blood;

12. Preceding generations denoted by prefixes of:

a. Grand;

b. Great;

c. Great-great; or

d. Great-great-great;

13. A stepfather, stepmother, stepbrother, stepsister; stepgrandmother, stepgrandfather.

(10) An applicant who is deceased shall have eligibility determined in the same manner as if he were ~~[was]~~ alive, in order to pay medical bills during the terminal illness.

(11) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member~~(s)~~ is pregnant, the unborn child~~(ren)~~ shall be considered as a family member~~(s)~~ for budgeting purposes.

(12) The following citizenship and residency requirements shall be applicable:

(a) To be eligible, an applicant or recipient shall be a citizen of the United States or effective January 1, 1997, a qualified alien ~~[or an alien legally admitted to this country or an alien who is residing in this country under color of law (except as specified in paragraph (b) of this subsection)]~~. An alien shall have been admitted for permanent residence except as shown in paragraph (b) ~~[paragraphs (b), (c) and (d)]~~ of this subsection. The applicant or recipient shall also be a resident of Kentucky. Generally, this means the individual must be residing in the state for other than a temporary purpose; however, there are exceptions with regard to recipients of a state supplementary payment and institutionalized individuals. The conditions for determining state residency are specified in federal regulations at 42 CFR 435.403.

(b) A nonqualified alien ~~[An alien not legally admitted to this country or residing in this country under color of law]~~ shall be eligible for medical assistance under the following circumstances and conditions:

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

2. The alien shall ~~[must]~~ have (or have had within the usual period for retroactive eligibility) an emergency medical condition not related to an organ transplant procedure, defined as a medical condition (including severe pain) in which ~~[such that]~~ the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

3. Approval of eligibility shall be for a time limited period, with that ~~[such]~~ period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibility period shall be extended for an appropriate period of time upon presentation to the department ~~[cabinet]~~ of acceptable documentation that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period; and

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

~~[(c) Select groups of aliens who are illegally residing in this country may qualify for legalization of residence status under Section 201 of PL 90-603. These aliens are prohibited from Medicaid eligibility for a period of five (5) years (beginning on the date temporary resident status is granted) except as follows:~~

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

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

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

~~4. All these aliens may qualify for emergency services to the~~

ADMINISTRATIVE REGISTER - 3845

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: April 2, 1997
FILED WITH LRC: April 3, 1997 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick, Trish Howard, Karen Doyle

(1) Type and number of entities affected: Potentially all new applicants for Medicaid; and an estimated 40 aliens who are currently eligible.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$129,715 (savings)

2. Continuing costs or savings: \$129,715 (savings)

3. Additional factors increasing or decreasing costs: None identified at this time other than usual phased-in implementation 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: Federal and state matching funds. Federal matching funds of 70.09% equaling \$90,917.24 (savings) and state matching funds of 29.91% equaling \$38,797.75 (savings). See additional comments in (10).

(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: Implementation of the managed care waiver is expected to improve public health.

(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: No conflict identified.

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

(10) Any additional information or comments: The addition of the

specified low-income Medicare beneficiaries and those individuals who lose K-TAP coverage due to new or increased spousal or child support do not impact the budget as coverage for these groups of individuals was previously budgeted.

(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.

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (Amended After Hearing)

908 KAR 2:100. Kentucky Early Intervention Program definitions.

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth definitions of terms used by the cabinet in administrative regulation pertaining to First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Definitions. (1) "Assessment" means activities completed to develop a service plan for an eligible child and his family;

(2) "Assistive technology device" means any item, piece of equipment, or product system that is needed to increase, maintain, or improve the functional capabilities of a child with a disability and which is necessary to implement the individualized family service plan;

(3) "Child find" means as defined in KRS 200.654(3);

regulation.

(4) Assessment of anticipated effect on state and local revenues: No effect by this regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No effect by this regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: Not applicable to this regulation.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have 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: No effect by this regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented. No effect by this regulation.

(c) If detrimental effect would result, explain detrimental effect: No effect from this regulation.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation 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, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing definitions.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (Amended After Hearing)

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

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the point of entry provisions pertaining to First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Point of Entry. (1) The point of entry (POE) staff shall coordinate child-find efforts with local education agencies in order to insure compliance with child find mandates with each party.

(2) The POE staff shall coordinate child find efforts with other state and federal programs serving this population, including maternal and child health programs, early and periodic screening, diagnosis, and treatment programs, Head Start, Supplemental Security Income Program, and programs authorized through the developmental disabilities assistance and Bill of Rights Act.

(3) [(2)] The POE staff shall develop a child-find activity plan to be conducted in each district that includes:

(a) Completing a minimum of two (2) face-to-face contacts per month to potential referral sources in the district to explain First Steps services.

(b) Utilizing the materials developed by the Interagency Coordinating Council Public Awareness Committee by making them available to the community upon request in cooperation with the district technical assistance team and the district early intervention committee (DEIC).

(4) [(3)] The POE staff shall maintain accessibility and provide public awareness activities in each district by:

(a) Having a district toll free telephone number;

(b) Having a dedicated local telephone number to be answered by person or machine twenty-four (24) hours a day, seven (7) days a week as First Steps; and

(c) Utilizing the Image Consistency Kit developed by the Inter-

ADMINISTRATIVE REGISTER - 3849

(c) The POE staff shall send all future assessment reports to the primary service coordinator.

(13) [(+2)] The POE staff shall coordinate and ensure completion of the initial individualized family service plan (IFSP) meeting within federally mandated time line of forty-five (45) calendar days from receipt of referral.

(a) The POE staff shall assist the family in identifying the IFSP team members and discuss a potential primary service coordinator.

(b) Once a potential primary service coordinator has been suggested, the POE staff shall contact that person and confirm his willingness to function as the primary service coordinator.

(c) After releases of information signed by the parent have been obtained, the POE staff shall send copies of the following information to the requested primary service coordinator:

1. Initial referral information;
2. Developmental and social history;
3. Any available evaluation reports; and
4. Any available assessment reports.

(d) The POE staff shall send notices to all identified IFSP team members of the upcoming IFSP meeting date, time, and location.

(e) If a telephone is available, the POE staff shall call the family at least three (3) working days prior to the IFSP meeting to:

1. Confirm the time and place of the meeting;
2. Determine whether transportation is needed;
3. To reiterate the purpose of meeting; and
4. To answer questions.

(f) If the developmental and medical evaluators, family, and POE agree that the child is not eligible prior to the IFSP meeting, a meeting shall not be held unless any one (1) member disagrees or still has concerns, a meeting shall be held.

(g) The POE staff shall facilitate the initial IFSP meeting by:

1. Leading introductions;
2. Reviewing the purpose of the meeting;
3. Explaining the family rights and the array of services; and
4. Discussing and leading the IFSP team to verify eligibility based on collected documentation.

a. If the child is not eligible, the POE staff shall discuss other options and make the family aware they can recontact the POE anytime.

b. If the child is eligible but the family is not interested in services, the POE staff shall document the refusal of services and make the family aware they can recontact the POE any time for reevaluation.

c. If the child is eligible and the family is interested in services the POE staff shall:

(i) Develop an IFSP ensuring that all IFSP components are included; and

(ii) Determine the primary service coordinator.

(h) The POE staff shall ensure that the written IFSP is developed and recorded at the meeting.

(i) The POE staff shall send the completed IFSP to the family within five (5) working days of the IFSP meeting;

(j) The POE staff shall within five (5) working days of the IFSP meeting, make available, through appropriate releases, to the primary service coordinator the following:

1. The completed IFSP;
2. Any evaluation reports not previously sent; and
3. Any assessment reports not previously sent.

(k) The identified primary service coordinator shall send copies of the IFSP to other IFSP team members and to the parties requested by the family within ten (10) working days of the IFSP meeting.

(l) The POE staff shall send the necessary documentation of service decisions to the billing agent within five (5) working days after the IFSP meeting.

(m) The identified primary service coordinator shall be responsible for referrals to services identified on the IFSP.

(14) [(+3)] The POE staff shall:

(a) Provide consultation and support to the primary service

coordinator as requested;

(b) Keep on file copies of all IFSP and reviews sent from the primary service coordinator;

(c) Assist primary service coordinators in transition of children from First Steps services to future services; and

(d) Track and notify the primary service coordinator that a transition conference shall be completed within federal time frame of no less than ninety (90) days prior to child's third (3) birthday by:

1. Sending notification, no later than the child's 30th month of age, to the primary service coordinator that the transition conference is due and the date by which it shall be held.

2. Receiving from the primary service coordinator the revised IFSP which incorporates the transition plan no later than one (1) week, five (5) working days, after the meeting has been held. This plan should include at least:

- a. Basic demographic information;
- b. A listing of family priorities;
- c. Family resources and concerns; and
- d. Documentation of the transition meeting and outcomes.

(15) [(+4)] The POE staff shall function as the primary service coordinator to ensure that the transition conference and plan are completed in the event that the primary service coordinator resigns and no other primary service coordinator can be assigned in time, or referral is received within forty-five (45) days of child's third birthday.

(a) The POE staff shall be responsible for knowing the following transition procedure that include:

1. Ensuring all potential agencies and programs that could provide services to a particular child after the age of three (3), are included.

2. Processing the referrals of all children who are less than the age of two (2) years ten and one-half (10 ½) months for evaluation and First Steps services.

(b) For all children who are two (2) years and ten and one-half (10 ½) months old to age three (3), the POE shall facilitate the transition conference which would include representatives of available next referrals.

(c) The POE staff shall be responsible for conducting the transition conference and development of the plan when assuming the role of primary service coordinator.

(16) [(+5)] In the event the family refuses service coordination, the POE shall coordinate and facilitate all IFSP meetings.

(17) [(+6)] The POE staff shall maintain a complete record on all children referred through the POE by:

(a) Keeping on file all records generated by the POE or sent to the POE from all other service providers;

(b) Ensuring that all POE contacts shall be documented in the child's record;

(c) Notifying the billing agent of all changes in the status of the child or family within seven (7) working days of notification of changes to the POE or at least every six (6) months in conjunction with IFSP six (6) month reviews; and

(d) Providing data to the lead agency as requested.

(18) [(+7)] The POE shall provide a written data report to the DEIC. The POE shall complete the district data report monthly. The information to be included in the report is:

- (a) Number of referrals per quarter;
- (b) Sources of referrals;
- (c) Number of eligible children;
- (d) Eligibility categories and number of children in each category;
- (e) Number of children not eligible;
- (f) Number of children or families refusing services;
- (g) Number of IFSP's completed; and
- (h) Number of children who received primary, intensive and tertiary evaluations.

(i) Age of child at time of referral.

(19) [(+8)] The POE shall collect and maintain the District Service Provider Directory.

ADMINISTRATIVE REGISTER - 3851

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for intake through the point of entry.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child-find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (Amended After Hearing)

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

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations.

This administrative regulation sets forth the provisions for evaluation and eligibility policies pertaining to First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective, July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Evaluation. (1) Every child shall have an evaluation or assessment as a part of his permanent record;

(a) A primary evaluation shall occur within forty-five (45) days after receipt of the referral; or

(b) If primary evaluation does not occur within forty-five (45) days due to illness of the child or a request by the parent, the delay circumstances shall be documented.

(2) The primary level evaluation is the first level in a multi-level system that shall be utilized to determine eligibility:

(a) The primary level is used when there are no existing evaluations available within the allowed time limits;

(b) Primary level evaluations shall provide evaluation in all five (5) developmental areas;

(c) The primary evaluation shall be provided by an approved team consisting of a physician or nurse practitioner and a developmental evaluator;

(d) Primary evaluation shall be multidisciplinary and shall minimally include:

1. A medical component completed by a physician or a nurse practitioner that includes:

a. A history and physical examination; and

b. A hearing and vision screening; and

c. A child's medical evaluation that shall be current according to the following:

(i) For children under twelve (12) months of age, the medical evaluation shall have been performed within three (3) months prior to referral to First Steps; and

(ii) For children twelve (12) months to three (3) years of age, the medical evaluation shall be performed within six (6) months prior to referral;

2. A developmental component completed by a qualified developmental evaluator that utilizes standardized measures and the results interpreted to the family.

(3) Verification of a child's eligibility for services shall be based upon the review by parents and professionals at the initial IFSP meeting;

(4) Reevaluations shall be provided when a child's eligibility warrants review or a new condition is suspected or becomes apparent;

(a) The need for reevaluation is determined by the IFSP team;

(b) Reevaluations shall be obtained at the level of evaluation determined to be needed by the IFSP team [~~and initial evaluation provider~~].

(5) An intensive evaluation is the second level in a multi-level system that shall be utilized to determine eligibility:

(a) A child shall be referred for an intensive level evaluation when:

1. A primary evaluator identifies a need for further developmental testing necessary to clarify a diagnosis or further define the child's developmental status.

2. A child doesn't meet eligibility guidelines at the primary level, but a primary evaluator or the family still have concerns that the child is developing atypically and a determination of professional judgement is needed.

3. When a concern of the child's condition warrants the review of records of the primary evaluation.

(b) An intensive level evaluation shall be provided by an approved team consisting of:

1. A board certified developmental pediatrician; or

ADMINISTRATIVE REGISTER - 3853

premature birth;

(b) Correction for prematurity is not appropriate for children born prematurely whose chronological age is twenty-four (24) months or greater.

(c) Documentation of prematurity shall include a physician, or nurse practitioner, report of gestational age and a brief medical history.

(d) Evaluation reports on premature infants and toddlers shall include test scores calculated with the use of both corrected and chronological ages.

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: March 20, 1997

FILED WITH LRC: March 21, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: The provision of First Steps services will affect over 3,000 children and families. It is estimated that 2 1/2 per cent of children under 3, or approximately 3800, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health/mental retardation boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

(2) Direct and indirect cost 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 have been received relevant to cost of living. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

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

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

(a) Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds and \$4,000,000 in federal funds in the Department for Mental Health and Mental Retardation Services, and \$930,700 in state general funds in the Department for Public Health, to implement First Steps, Kentucky's early intervention system. In addition, federal funds will be available through title V agreements. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are considered available unless this is changed by Congress. The amount

of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

(b) Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have 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: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation 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, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for evaluations and by establishing the definition of eligibility.

3. Minimum or uniform standards contained in the federal

more frequently if:

- (a) The family requests such a review; or
- (b) The child's conditions change; or
- (c) The service providers change;
- (5) A meeting shall be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and to revise if changes have occurred;
- (6) With the approval of the family, the primary service coordinator shall arrange a conference to discuss the possible transition of the child. The conference shall be conducted at least ninety (90) days before the child's third birthday and shall include:
 - (a) The family;
 - (b) A representative of the local education agency and representatives of other potential settings;
 - (c) The primary service coordinator as a representative of the First Steps Program;
 - (d) Others identified by the family;
- (7) The IFSP shall include:
 - (a) Information about the child's present level of developmental functioning. Information shall cover the following domains:
 1. Physical development that includes:
 - a. Vision;
 - b. Hearing;
 - c. Fine and gross motor skills; and
 - d. Health status and immunization of the child;
 2. Cognitive development that include skills related to a child's mental development and includes basic sensorimotor skills, as well as preacademic skills;
 3. Communication development that includes skills related to exchanging information or feelings', including receptive and expressive communication and communication with peers and adults;
 4. Social or emotional development that include skills related to the ability of infants and toddlers to successfully and appropriately select and carry out their interpersonal goals. This includes:
 - a. Interactions with peers and adults;
 - b. Play skills;
 - c. Self-concept development; and
 - d. Bonding with family members;
 5. Adaptive development that includes self-help skills necessary for independent functions, that include:
 - a. Self-feeding;
 - b. Toileting; and
 - c. Dressing and grooming;
 - (b) Performance levels to determine strengths which can be used when planning instructional strategies to teach skills;
 - (c) A description of:
 1. Underlying factors that may affect the child's development;
 2. What motivates the child, as determined on the basis of observation, child interaction and parent report;
 - (d) With concurrence of the family, a statement of the family's resources, priorities and concerns related to enhancing the development of the child;
 - (e) A statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary. Outcome and strategy statements shall:
 1. Be functionally stated;
 2. Be representative of the family's own priorities;
 3. Fit naturally into the family's routines or schedules;
 4. Reflect the use of the family's own resources and social support network;
 - (f) The specific First Step services necessary to meet the unique needs of the child and family to achieve the outcomes. Services shall:
 1. Be stated in frequency, intensity, duration, location and method of delivering services; and in the payment arrangements, if any;

2. Unless prior authorization is granted, based on individual needs of the child, the frequency and intensity for therapeutic intervention for each child shall:

a. Not exceed three (3) hours per discipline per week for the following disciplines:

- (i) Audiologist;
- (ii) Family therapist;
- (iii) Nurse;
- (iv) LPN;
- (v) Health aide;
- (vi) Nutritionist;
- (vii) Dietician;
- (viii) Occupational therapist;
- (ix) Occupational therapist assistant;
- (x) Orientation and mobility specialist;
- (xi) **Physician;**
- (xii) Physical therapist;
- (xiii) ~~(xiii)~~ Physical therapist assistant;
- (xiv) ~~(xiii)~~ Psychologist;
- (xv) ~~(xiv)~~ Speech language pathologist;
- (xvi) ~~(xv)~~ Speech language pathologist assistant;
- (xvii) ~~(xvi)~~ Licensed social worker;
- (xviii) **Teacher of the visually impaired;**
- (xiv) **Teacher of the deaf and hard of hearing.**

b. Not exceed five (5) hours per discipline per week for the following:

- (i) Developmental interventionist; or
- (ii) Developmental associate; or
- (iii) Developmental assistant;

3. To the maximum extent appropriate early intervention services shall be provided in natural environments, including the home and community settings, in which children without disabilities participate;

(g) The projected dates for initiation of the services, and the anticipated duration of those services;

(h) Other services that the child needs, such as medical services or housing for the family, but that are not required under early intervention. The funding sources to be used for those services or the steps that will be taken to secure those services through public or private resources shall be identified;

(i) The name of the primary service coordinator chosen to represent the child's or family's needs. The Primary Service Coordinator will be responsible for the implementation of the IFSP and coordination with other agencies and persons;

(j) The steps to be taken to support the transition of the child to preschool services provided by the public educational agency, to the extent that those services are considered appropriate, or to other services that may be available, if appropriate;

1. With approval of the family, a transition conference shall occur at least ninety (90) days prior to the child's third birthday;

2. The transition conference shall involve staff from the First Steps Program, the primary service coordinator, the family, staff from the local public educational agency, and other agencies per family request;

3. The conference shall be held to review program options for the child at age three (3) and to write a plan, through the IFSP, for transition. This meeting shall be chaired by the primary service coordinator;

(8) Families shall be encouraged to discuss their child's activities, strengths, likes and dislikes, exhibited at home;

(9) The IFSP shall highlight the child's abilities and strengths, rather than focusing just on the child's deficits;

(10) Every attempt shall be made to explain the child assessment process by using language the family uses and understands;

(11) The families may agree, disagree, or refute the assessment information;

(12) The family's interpretation and perception of the assessment results shall be ascertained and the families wished and desires shall

required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (Amended After Hearing)

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

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of Primary Service coordination as it relates to First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Primary Service Coordination. (1) The primary service coordinator shall coordinate and assist in child find efforts with the local POE;

(2) The primary service coordinator shall make referrals to the POE within forty-eight (48) hours upon identification of a child that may be eligible for First Steps services. Referral shall be made after discussing the benefits of early intervention with the family and acquiring verbal permission to make the referral;

(3) The primary service coordinator shall utilize the Image Consistency Kit developed by the Interagency Coordinating Council Public Awareness Committee for public awareness activities and materials;

(4) The primary service coordinator shall serve as the single point of contact in helping families obtain the services and assistance they

need;

(5) The primary service coordinator shall have a caseload of:

(a) ~~Up to ten (10); with a maximum of fifteen (15) if five (5) children are ninety (90) days away from their third birthday; if he is providing other First Steps services to those children and families or has a caseload in another program;~~

~~(b) Up to forty (40); with a maximum of fifty (50) if ten (10) children are ninety (90) days away from their third birthday; if he is not providing any other First Steps services, or is not carrying a caseload in another program; or~~

(b) If he is providing other First Steps services to children and families or has a caseload in another program, up to the prorated equivalency of no more than a combined total of 100 percent of a position's time, with a forty (40) caseload being 100 percent in First Steps services, and the equivalent to forty (40) in another program. A caseload of ten (10) in First Steps would represent twenty-five (25) percent of a position's time, leaving the equivalency of seventy-five (75) percent available in another program.

(6) The primary service coordinator shall:

(a) Attend the First Steps Primary Service Coordination and IFSP training prior to facilitating, coordinating, or implementing any IFSP's, and attend communicating with families training within six (6) months of completing primary service coordination and IFSP training;

(b) Attend the initial IFSP meeting, if identified as primary service coordinator choice or if invited as a potential option for primary service coordinator, and help the POE facilitate that plan;

(c) Notify all the IFSP team members, in writing, of the upcoming IFSP or review date and location no less than thirty (30) calendar days prior to IFSP or review date;

(d) In the event of cancellation, notification of the rescheduling of the IFSP meeting shall be sent to the IFSP members within five (5) working days of the cancelled meeting;

(e) Facilitate the annual IFSP or six (6) months reviews. This includes:

1. Documenting outcomes that have been achieved, as well as, documenting those that have not been achieved;

2. Assisting families in identifying new outcomes, the service providers, frequency and location of all services; and

3. Resolving any conflicts during the IFSP or review by having the team come to consensus on any issue where differences occur;

(f) Refer the family to appropriate agencies for services identified on the IFSP and coordinating those services;

(g) Send copies of the initial and subsequent IFSP reviews to the other team members within ten (10) working days of the IFSP meeting;

(h) Send copies of the IFSP to those persons identified by the family as needing copies;

(i) Notify the POE of any changes in the child's or family status and new IFSP services within five (5) working days of changes on the IFSP;

(j) Facilitate the development of a transition plan;

(7) The primary service coordinator shall inform and assist the family of their rights and procedural safeguards by:

(a) Summarizing the family rights handbook any time the family requests;

(b) Familiarizing him with the procedural safeguards and due process rules;

(c) Ensuring that all materials are given to the family in a format they can understand in their native language; and

(d) Assisting the family, at their request, with resolving conflicts among service providers;

(8) The primary service coordinator shall assist the family in identifying available service providers by:

(a) Assisting the POE in maintaining a current directory of available First Steps service providers;

(b) Keeping current on all available services in the district,

ADMINISTRATIVE REGISTER - 3859

4. Information regarding equipment or device request;
- (b) Be reviewed by the coordinator for completeness and forwarded to a regional monitoring committee; and
- (c) Complete process within ten (10) working days of receiving all information;
- (4) The decision of the monitoring committee may be appealed to the state First Steps coordinator who shall:
 - (a) Consult with the appeal committee; and
 - (b) Issue final decision.
- (5) The decision of the First Steps coordinator may be appealed pursuant to 908 KAR 2:170.**

ELIZABETH REHM WACHTEL, Commissioner
JOHN H. MORSE, Secretary

APPROVED BY AGENCY: March 20, 1997
FILED WITH LRC: March 21, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: The provision of First Steps services will affect over 3,000 children and families. It is estimated that 2 1/2 per cent of children under 3, or approximately 3800 children, are eligible for the program. The provision of First Steps services will affect over 200 providers statewide, including: mental health and mental retardation boards; private and public home health agencies; private, nonprofit early childhood agencies; hospital outpatient clinics; and private practice professionals.

(2) Direct and indirect cost 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 have been received relevant to cost of living. The cost of living will not be affected by this administrative regulation. Existing providers will be used. However, there will be an increase in employment as additional children are identified and the need for services increases, and new providers are identified.

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

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

1. First year following implementation: Routine record keeping for the provision of services will not increase over existing requirements for service provision. Billing and data requirements will not dramatically increase, but will require some changes in the first year. A minimal cost to the programs for the changes will occur.

2. Second and subsequent years: After changes in the first year, no additional demands will occur other than general updates and maintenance of the system.

(3) Effects on the promulgating administrative body: Requires time and effort in developing, publishing and justifying this administrative regulation.

(a) Direct and indirect costs or savings:

1. First year: The 1996 session of the General Assembly allocated \$5,665,495 in state general funds and \$4,000,000 in federal funds in the Department for Mental Health and Mental Retardation Services, and \$930,700 in state general funds in the Department for Public Health, to implement First Steps, Kentucky's early intervention system. In addition, federal funds will be available through Title V agreements. It is anticipated that the cost of services will not exceed the available revenue.

2. Second and subsequent years: The same amount of state funding is available for subsequent years. The federal funds are

considered available unless this is changed by Congress. The amount of the federal may vary depending on the formula, but no dramatic changes are anticipated.

3. Additional factors increasing or decreasing cost: No additional factors are anticipated.

(b) Reporting and paperwork requirements: Nearly all data will be gathered by means of provider contracts, service plans and through the reporting of the bills. Some additional minimal data will be required from the district intake offices on a monthly basis.

(4) Assessment of anticipated effect on state and local revenues: Funding has been allocated to offset the cost of implementation of the program.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State general funds, Medicaid, and federal Individuals with Disabilities Education Act funds. Some local charity and nonprofit agency fund raising contribute some funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on: No public comment.

(a) Geographical area in which administrative regulation will be implemented: The provision of over \$15 million dollars in services will have a positive impact.

(b) Kentucky: Same as geographical area.

(7) Assessment of alternative methods; reason why alternatives were rejected: No alternative methods were considered because of the necessity to have 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: In so much as early intervention addresses the health of infants and toddlers, there will be a significant impact on children with disabilities' health, and in the reduction of the need future educational service needs.

(b) State whether a detrimental effect on environment and public health would result if not implemented. There is no environmental impact. The health and developmental needs of infants and toddlers with disabilities will be dramatically impacted if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Very young children with disabilities who do not receive necessary health and developmental services early deteriorate and require extensive physical, medical and developmental supports later in life. In addition to the high financial cost of waiting, there is the long term detrimental effect on the child's potential and the stress on the family.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None known.

(a) Necessity of proposed regulation 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, tiering was not appropriate in this administrative regulation, because this regulation applies equally to all individuals or entities regulated by it.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate that requires Kentucky to implement early intervention services. However, if Kentucky chooses through application to participate in the federal early intervention program Kentucky is then required to implement early intervention according to 34 CFR 303.

2. State compliance standards. This regulation sets forth the requirements for implementing First Steps, Kentucky's early intervention system, by establishing requirements for primary service coordination.

ADMINISTRATIVE REGISTER - 3861

KRS 334A.050:

1. A master's degree; and
 2. A certificate and license from the Kentucky Board of Speech-Language Pathology and Audiology.
- (o) A teacher of children who are deaf and hard of hearing shall have in accordance with KRS 161.030:
1. A bachelor's degree; and
 2. A provisional certificate for teaching the deaf and hard of hearing, K-12 issued by the Kentucky Department of Education, Division of Certification.
- (p) A teacher of the visually impaired shall have in accordance with KRS 161.020-030:
1. A bachelor's degree; and
 2. A certificate for teaching of the visually impaired, K-12 issued by the Kentucky Department of Education, Division of Certification.
- (2) The qualification for paraprofessionals providing early interventions services shall be:
- (a) A developmental associate shall have:
1. An associate degree in the area of early childhood; or
 2. A child development associate certificate for infant and toddlers caregiver or home visitor; or
 3. A postsecondary vocational education diploma in child development or child care; or
- 4. Be employed in the developmental associate role in an approved program by October 1, 1997, and have a high school diploma or GED and be working toward one (1) of the qualifications stated in subparagraphs 1, 2, and 3 of this paragraph by:**
- a. Be enrolled in an approved program granting one (1) of the above stated qualifications; or**
- b. Have an individual professional development plan approved by the department for developing the skills necessary to acquire one (1) of the above stated qualifications; and**
- 5. Be indirectly supervised by a developmental interventionist.**
- (b) A developmental assistant shall have:
1. A high school diploma; or
 2. A GED; and
- 3. Be directly supervised by a developmental interventionist or developmental associate.**
- (c) A certified occupational therapy assistant shall have in accordance with KRS 319A.110:
1. An OTA degree; and
 2. A certificate and license from the Kentucky Occupational Therapy Board.
- (d) A physical therapy assistant shall have in accordance with KRS 327.040(12):
1. An associate degree in physical therapy assistance; and
 2. A license from the Kentucky Board of Physical Therapy.
- (e) A speech-language pathology assistant shall have in accordance with KRS 334A.030:
1. A bachelor's degree; and
 2. A license from the Kentucky Board of Speech-Language Pathology and Audiology.
- (f) A licensed practical nurse shall have in accordance with KRS 314.051:
1. A high school diploma or a GED;
 2. Have completed a state approved LPN education program; and
 3. A license from the Kentucky Board of Nursing.
- (3) The qualifications for recognized service positions providing services in First Steps shall be:
- (a) An initial service coordinator shall be approved by the cabinet based on the following qualifications:
1. Meeting minimum highest entry-level requirement for one (1) of the professions delineated in this administrative regulation; or [and]
 2. Have a bachelor's degree and [Having] the equivalency of two (2) years' experience in working with young children ages birth through five (5) years in a position in which the following skills and

competencies have been demonstrated:

- a. Communication skills in interviewing, negotiating and mediating, and providing informal support;
 - b. Problem-solving by finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;
 - c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and
 - d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.
- (b) A primary service coordinator shall be approved by the cabinet based on the following qualifications:
1. Meeting minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation; or
 2. Meeting requirements for one (1) of the paraprofessionals delineated in this administrative regulation; or
 3. Have a bachelor's degree and the equivalency of two (2) years' experience in working with young children ages birth through five (5) years in a position in which the following skills and competencies have been demonstrated:
- a. Communication skills in interviewing, negotiating and mediating, and providing informal support;
 - b. Problem-solving: finding and utilizing services and resources, resolving conflicts, integrating services using formal and informal channels, and enabling families to use problem-solving;
 - c. Organization by maintaining accurate data collection and resource information, exhibiting flexibility in scheduling, and developing plans; and
 - d. Collaboration and leadership through developing relationships with families, enabling families to develop their decision-making skills, and establishing collaborative relationships with service providers.
- (c) A developmental evaluator shall be approved by the cabinet by:
1. Meeting minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation; and
 - a. Having a bachelor's degree in a related field; and
 - b. Having two (2) years experience working directly with young children birth through two (2) years of age, including children with disabilities or atypical development; and
 2. Having had one (1) year of experience in using standardized instruments and procedures to evaluate infants and toddlers birth through two (2) years of age, completed as part of formal training or in supervised practice, or completes a mentorship during the first year of providing services in First Steps as approved by the cabinet.
- (d) An assistive technology specialists shall be approved by the cabinet based on the following qualifications:
1. Meeting minimum highest entry-level requirements for one (1) of the professions delineated in this administrative regulation;
 2. Having extensive knowledge, training, and experience in the field of assistive technologies for infants and toddlers with disabilities; or
 3. Meeting the qualifications in subparagraph 2 of this paragraph and be employed by an agency that currently provides assistive technology services in First Steps, and be approved by the cabinet.
- (e) A respite provider shall:
1. Meet all license, regulations, and other requirements applicable to the setting in which respite is provided;
 2. Be approved by the individualized family service planning team.
- ELIZABETH REHM WACHTEL, Commissioner
JOHN H. MORSE, Secretary
APPROVED BY AGENCY: March 20, 1997
FILED WITH LRC: March 21, 1997 at 11 a.m.

forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services Division of Mental Retardation (Amended After Hearing)

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

RELATES TO: 20 USC 1471-1485

STATUTORY AUTHORITY: KRS 200.650-676, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is directed by KRS 200.650 to 200.676 to administer all funds appropriated to implement provisions, to enter into contracts with service providers, and to promulgate administrative regulations. This administrative regulation sets forth the provisions of covered services under First Steps, Kentucky's Early Intervention Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Mental Health and Mental Retardation and First Steps, Kentucky's Early Intervention Program, under the Cabinet for Health Services.

Section 1. Covered Services. (1) Services are covered when included and authorized in the individual's IFSP developed by an IFSP team which shall include, at least, the family and two (2) disciplines:

(a) At least two (2) disciplines shall be from separate agencies or represent different approved providers; and

(b) One (1) discipline shall be a licensed medical professional.

(2) Services covered are:

(a) Service coordination as provided in accordance with 908 KAR 2:110 and 908 KAR 2:140:

1. A child shall have only one (1) designated service coordinator at a given time; and

2. Service coordination shall be provided by those identified in 908 KAR 2:150;

(b) Primary evaluation as provided in accordance with 908 KAR 2:120:

1. Primary evaluation shall be considered the first level of a trilevel system of evaluation; and

2. Primary evaluation shall be provided by those identified in 908 KAR 2:120 and 908 KAR 2:150;

(c) Intensive team evaluation as provided in accordance with 908 KAR 2:120:

1. Intensive team evaluation shall be considered the second level

of a trilevel system of evaluation;

2. Intensive team evaluation shall be provided by those identified in 908 KAR 2:120 and 908 KAR 2:150;

(d) Tertiary team evaluation as provided in accordance with 908 KAR 2:120:

1. Tertiary team evaluation shall be considered the third level of evaluation in a trilevel system of evaluation.

2. Tertiary team evaluation shall be provided by those identified in 908 KAR 2:120 and 908 KAR 2:150;

(e) Service assessment as provided in accordance with 908 KAR 2:130;

(f) Therapeutic intervention.

1. Therapeutic intervention includes three (3) types of service:

a. Individual home or community services which includes intervention provided to the child by a First Steps qualified professional to an eligible child at the child's home or other natural setting in which children under three (3) years of age are typically found (including non-First Steps provider day care centers and family day care homes); or

b. Individual office or center-based service which includes intervention provided by First Steps qualified professionals to an eligible child at the professionals office or center site; or

c. Group intervention which includes the provision of early intervention services by First Steps qualified personnel to an eligible child in a group at an early intervention professional's site, office, center, home or other community based setting where children under three (3) years of age are typically found. The group may also include children without disabilities.

2. Disciplines providing therapeutic intervention shall be qualified in accordance with 908 KAR 2:150, and shall include the following:

a. An audiologist; or

b. A family therapist; or

c. A developmental interventionist; or

d. A developmental associate; or

e. A developmental assistant; or

f. A nurse; or

g. A LPN; or

h. A health aide; or

i. A nutritionist; or

j. A dietician; or

k. An occupational therapist; or

l. An occupational therapy assistant; or

m. An orientation and mobility specialist; or

n. A physical therapist; or

o. A physical therapist assistant; or

p. A psychologist; or

q. A speech language pathologist; or

r. A speech language pathologist assistant; or

s. A licensed social worker; or

t. A teacher of the visually impaired; or

u. A teacher of the deaf and hard of hearing.

(g) Integrated disciplines center-based service is an intervention provided by an agency which offers services by at least three (3) of the following disciplines who qualify in accordance with 908 KAR 2:150:

1. Developmental interventionist; or

2. Developmental interventionist associate; or

3. Occupational therapist; or

4. Physical therapist; or

5. Speech therapist.

(h) Collateral service is the provision of consultation directed toward the needs of the child with parents, legal guardian, other persons in a position of custodial control, developmental professionals, or other clinicians responsible for the health of the child in accordance with the IFSP. These services shall include:

1. Professionals attending the IFSP meeting; and

2. Transdisciplinary consultation; and

ADMINISTRATIVE REGISTER - 3865

3. Minimum or uniform standards contained in the federal mandate. The federal regulation requires the states to have the following components: state definition of developmental delay; central directory; public awareness program; child find system; evaluation and assessment procedures; individualized family service plans; personnel standards and training; procedural safeguards; administrative procedures for financial management, monitoring, and disputes; and data.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal requirements establish the components that must be in the early intervention system. These regulations establish specific requirements and standards within the component areas, and therefore are more strict and comprehensive.

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. The state is allowed to implement the program according to the standards it sets forth. The federal regulations are broader, and less specific than state regulations.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGISTER - 3867

Suite 210, Frankfort, Kentucky 40601-8204, Phone: (502) 573-1580.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Michael A. Moné

(1) Type and number of entities affected: Only those pharmacies who cease operation within the Commonwealth.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, 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 for the:

1. First year following implementation: None, as this amendment merely places into the administrative regulation the board's interpretation of its own administrative regulation.

2. Second and subsequent years: None, as this amendment merely places into the administrative regulation the board's interpretation of its own administrative regulation.

(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, as pharmacies that close are currently required to notify the Board of Pharmacy.

(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: Appropriated budget from the Kentucky Board of Pharmacy Trust 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: 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: 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:

(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:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All permitted pharmacies are treated equally. There is no classification that would warrant disparate treatment.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 2:140. Seasons for wild turkey.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170(3), 150.175(4), 150.305, 150.360, 150.365, 150.390, 150.990(11), 1996 Ky. Acts ch. 380, Part IX, 48.b., Commonwealth Budget Final Budget Memorandum, FB 94-96, page 537

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620, 1996 Ky. Acts ch. 380, Part IX, 48.b., Commonwealth Budget Final Budget Memorandum, FB 94-96, page 537

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. The function of this administrative regulation is to assure the continued protection and conservation of wild turkey populations, and a permanent and continued supply for present and future residents of the state.

Section 1. Definitions. (1) "Baited area" means an area where feed, grains or other substances capable of luring wild turkeys have been placed.

(2) "Crossbow" means a bow capable of holding an arrow at full or partial draw without human aid.

(3) "Modern gun deer season" means the five (5) or ten (10) day period, as specified in 301 KAR 2:172, when deer hunting with modern firearms is permitted.

(4) "Quota hunt" means a hunt whose participants register in advance and are selected by a drawing.

(5) "Statewide seasons" mean the provisions of Sections 1 through 8 of this administrative regulation.

(6) "Youth hunt" means a hunt open to persons at least ten (10) years old but who have not reached their 16th birthday by the day of the hunt.

Section 2. Wild Turkey Hunting Statewide Seasons and Shooting Hours. (1) A person shall not take wild turkeys:

(a) Except on the dates and during the times specified:

1. In this section;

2. In Section 9 of this administrative regulation; or

3. In 301 KAR 2:111.

(b) By means other than those specified in this administrative regulation.

(2) Spring gun and archery season. A person may take wild turkeys:

(a) For twenty-one (21) consecutive days beginning on the Monday closest to April 15.

(b) From: one-half (1/2) hour before sunrise until 1 p.m.

(c) Using firearms or archery equipment subject to the restrictions of Section 6 of this administrative regulation.

(3) Fall archery season. A person may take wild turkeys:

(a) From the third Saturday in September [~~October 4~~] through December 31, except during the modern gun deer season.

(b) From one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(c) Using archery equipment subject to the restrictions of Section 6 of this administrative regulation.

Section 3. Permit Requirements. Unless exempted by KRS 150.170, a person hunting wild turkeys:

(1) During the spring season shall possess a spring turkey hunting permit.

(2) During the fall season shall possess a fall turkey hunting permit.

Section 4. Bag and Possession Limits. Except as specified in

2. Shall not take more than one (1) turkey.

(8) Green River Wildlife Management Area.

(a) This area shall be open during statewide spring and fall seasons.

(b) Quota youth hunt, the Saturday and Sunday before the Monday closest to April 15.

(c) An applicant for the quota youth hunt shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(d) Shooting hours for the youth hunt shall be one-half (1/2) hour before sunrise until noon.

(e) A person participating in the youth hunt shall:

1. Check in and out daily.

2. Not take more than one (1) turkey.

(9) Higginson-Henry Wildlife Management Area. Statewide seasons apply except that a person:

(a) Shall not use firearms to hunt turkeys or possess firearms while turkey hunting.

(b) May hunt wild turkeys during the modern gun deer season.

(c) Shall not hunt wild turkeys on days when the area is open to gun deer hunting.

(c) Shall check in and check out daily.

(10) Land Between the Lakes.

(a) Seasons.

1. Quota hunts of no more than six (6) days beginning on or after the first Saturday in April.

2. Up to sixteen (16) days between the first Saturday in April and the second Saturday in May.

(b) A person shall:

1. Check in and out.

2. Hunt in assigned areas.

3. Check turkeys at a Land Between the Lakes check station before leaving Land Between the Lakes.

4. Affix a Land Between the Lakes game check card and the carcass tag portion of the turkey permit to the carcass.

5. Not take more than one (1) turkey in the spring.

(c) Shooting hours shall be from one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset.

(11) Pioneer Weapons Wildlife Management Area. Statewide seasons apply except that a person:

(a) Shall not use breech-loading shotguns.

(b) May use crossbows with working safety devices.

(12) Reelfoot National Wildlife Refuge.

(a) Season: quota hunt, the Friday closest to April 1 for three (3) consecutive days.

(b) A person shall:

1. Not take more than one (1) turkey.

2. Obtain written permission from the area manager before hunting.

(13) Swan Lake Wildlife Management Area shall be closed to turkey hunting.

(14) West Kentucky Wildlife Management Area shall be closed to turkey hunting.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: March 7, 1997

FILED WITH LRC: April 14, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 attending this hearing shall notify this agency in writing by May 15, 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: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 15,000 persons hunt wild turkey 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: No public comments received. The amendment to this administrative regulation will have no impact on 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: No public comments received. The amendment to this administrative regulation will have no impact on cost of doing business.

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

1. First year following implementation: No additional paperwork requirements.

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.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional reporting or paperwork requirements.

(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: 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: Implemented statewide.

(b) Kentucky: No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 150.360 specifies that a person shall not take wildlife unless the department opens a season for a particular species; there is no alternate way of opening a season on wild turkey except by administrative regulation. Alternatives to the specifics contained within this administrative regulation were considered and rejected because they would not provide the desired combination of protection for Kentucky's wild turkey flock and optimal recreational opportunities for hunters.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Requiring tags to be cut or marked so they cannot be reused is a conservation measure that will help keep the harvest of wild turkey within acceptable limits.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Possibly

(c) If detrimental effect would result, explain detrimental effect:

five (5) days.

(3) Zone 3: any deer the first two (2) days; antlered deer the last eight (8) days.

(4) Zone 4: antlered deer the first eight (8) days; any deer the last two (2) days.

(5) Zones 5 and 6: antlered deer for the entire ten (10) day season.

(6) Zone 7: antlered deer for the entire five (5) day season.

Section 8. Youth Hunt. (1) In 1997, for two (2) consecutive days beginning on the fourth Saturday in October, a person [persons] under the age of sixteen (16) may use a firearm [firearms] to take:

(a) Any deer in Zones 1 through 5 [4].

(b) Antlered deer in Zones 6 and [5 through] 7.

(2) In 1998 and subsequent years, the youth hunt shall be for two (2) consecutive days beginning on the third Saturday in October.

(3) An adult [Adults] accompanying a juvenile [juveniles] during the youth hunt shall:

(a) Not carry firearms; and

(b) ~~shall~~ Comply with the hunter orange provisions of Section 12 of this administrative regulation.

Section 9. Use of Tags. A deer hunter:

(1) ~~[Hunters]~~ Shall not tag an antlered deer with an "antlerless deer" tag.

(2) ~~[Hunters]~~ May tag either antlered or antlerless deer with the "any deer" tag.

Section 10. Illegal Hunting Equipment. (1) A person [Deer hunters] shall not use or possess while deer hunting:

(a) A device capable of taking a deer except [devices other than] firearms, archery equipment or crossbows.

~~[(2) Firearm hunters shall not use:]~~

~~(b) [(a)] Rimfire ammunition.~~

~~(c) [(b)] Fully automatic firearms.~~

~~(d) [(c)] Firearms with a magazine capacity greater than ten (10) rounds.~~

~~(e) [(d)] Steel jacketed ammunition.~~

~~(f) [(e)] Tracer bullet ammunition.~~

~~(g) [(f)] Shotshells.~~

~~[(g) Muzzle-loading rifles smaller than .40 caliber.~~

~~(h) Muzzle-loading handguns smaller than .44 caliber.~~

~~[(3) Archery or crossbow hunters shall not use:]~~

~~(h) A broadhead [(a) Broadheads] smaller than seven-eighths (7/8) inch wide.~~

~~(i) A barbed broadhead [(b) Barbed broadheads].~~

~~(j) A crossbow [(c) Crossbows] without a working safety device.~~

~~(k) A [(d)] chemically treated arrow [arrows].~~

~~(l) An arrow [(e) Arrows] with a chemical attachment. [chemical attachments.]~~

~~(2) [(4)] Except when firearms are permitted for deer hunting, a person hunting deer with archery equipment or a crossbow [archery or crossbow deer hunters] shall not carry firearms.~~

Section 11. Season Limits. Except as provided in 301 KAR 2:178, 2:111 or 2:176 [2:244], a person shall not take in one (1) license year more than:

(1) One (1) antlered deer.

(2) Two (2) deer [per license year, which shall not include more than one (1) antlered deer].

Section 12. Hunter Orange. (1) During the modern gun deer season, muzzle-loader seasons or the youth hunt, a person [persons] hunting any species, and a person [persons] accompanying a hunter [them], shall display solid, unbroken hunter orange visible from all sides on the head, back and chest:

(2) Subsection (1) of this section shall not apply to a person:

(a) ~~[Persons]~~ Hunting migratory birds; or

(b) ~~[Persons]~~ Hunting at night.

(3) The hunter orange portions of a garment [garments] worn to fulfill the requirements of this section:

(a) May display a small section of another color.

(b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.

(4) A camouflage pattern hunter orange garment [garments] worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.

Section 13. Hunter Requirements, Shooting Hours, and Taking of Other Species. (1) An adult shall:

(a) Accompany a person [firearm deer hunters] under sixteen (16) years old; and

(b) ~~shall~~ Remain in a position to take immediate control of the juvenile's firearm.

(2) An adult [Adults] accompanying a juvenile hunter [hunters] shall not be required to possess a hunting license or deer permit if the adult is not hunting.

(3) A deer hunter: [Hunters]

(a) May be in the woods or stands before or after daylight hours, but shall not take deer except during daylight hours.

~~(b) [(4) Deer hunters] May take wild hogs.~~

~~(c) [Hunters] Shall check wild hogs at an official wildlife [deer] check station.~~

~~(d) [(5) Deer hunters] Shall not use dogs [or other domestic animals].~~

~~[(6) Hunters in vehicles or boats shall not take deer.]~~

~~(e) [(7) Hunters] Shall not take swimming deer.~~

(4) A hunter in a vehicle or boat, or on horseback, shall not take deer.

Section 14. License and Deer Permit Requirements. (1) Unless exempted by KRS 150.170(3), a person [460.176, persons] shall have a deer permit in his [their] possession while hunting:

(a) Deer;

(b) Wild hogs; or

(c) Coyotes during seasons or wildlife management area hunts where firearms are allowed for deer hunting.

~~(2) A person possessing an adult hunting license [Holders of deer permits shall sign them before hunting.~~

~~[(3) Persons possessing adult hunting licenses] shall use no more than one (1) two (2) tag deer permit per license year.~~

~~[(3) A person possessing a valid junior statewide hunting license [(4) Persons possessing valid junior statewide hunting licenses] shall not use more than:~~

~~(a) Two (2) individual junior deer hunting permits; or~~

~~(b) One (1) two (2) tag permit.~~

~~(4) A juvenile hunter [(5) Juvenile hunters] shall use the tag accompanying a junior deer hunting permit as either the "antlerless" or "any deer" tag as appropriate to the season and zone.~~

~~(5) [(6)] A person whose name does not appear on the permit shall not use any portion of the deer permit.~~

~~[(7) Persons who have lost their deer permit may purchase replacements pursuant to 301 KAR 5:030.]~~

Section 15. Tagging Deer. (1) A person exempt from purchasing a deer permit by KRS 150.170(3) shall tag a deer removed from the property where it was taken by:

(a) Writing on a card the date when, and the county where, the deer was taken;

(b) Signing the card; and

(c) Attaching the tag to the carcass:

1. While transporting the carcass by vehicle; or

2. Whenever the hunter is not in physical possession of the carcass. [Resident landowners, tenants and their dependents shall:

(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 applies to all geographical areas of the Commonwealth.

(b) Kentucky: Deer hunters expend money for equipment, transportation, food and lodging. These expenditures average approximately \$25 per hunter, for a positive direct economic impact of \$5,300,000.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative to regulated hunting is closing the season. This alternative was rejected because white-tailed deer are a renewable natural resource and their numbers are at levels which can sustain regulated harvest by hunters.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Regulated hunting controls deer populations and prevents the environmental damage to the landscape caused by deer overpopulation. Deer hunting provides outdoor recreation for over 200,000 Kentuckians annually.

(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 hunting, deer populations grow unchecked, creating increasing levels of deer-vehicle collisions, crop depredations, and destruction of habitat.

(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: None

(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 DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:174. Deer hunting zones.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: 150.025(1) [~~150.170, 150.175, 150.340, 150.370~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) gives the department the authority to make administrative regulations apply to a limited area or to the entire state. This administrative regulation zones the state for the purposes of controlling deer harvest and populations, and providing optimum opportunity for deer hunters. ~~[To establish zones for deer hunting to control deer harvest and populations, and to provide optimum opportunity for deer hunters. This amendment is necessary to make zone assignments for the 1996 hunting season.]~~

Section 1. Definitions. "Zone" means counties or portions of counties grouped for deer hunting season dates and limits.

Section 2. Zone Assignments. (1) Zone 1 shall consist ~~(consists)~~ of Boone, Christian, Crittenden, Hopkins, ~~and~~ Jefferson, Livingston, Logan, Muhlenberg, Ohio, Oldham, Todd and Webster Counties.

(2) Zone 2 shall consist of Allen, Ballard, Barren, Butler, Caldwell, Carlisle, ~~(consists of)~~ Carroll, ~~(Christian)~~ Gallatin, Hancock, Hardin, Lyon, Owen, and ~~(Hopkins, Logan, Muhlenberg, Ohio, Oldham, Todd)~~ Trimble ~~and Webster~~ Counties.

(3) Zone 3 shall consist of Boyd, ~~(consists of Allen, Barren)~~ Breckinridge, Carter, Daviess, Elliott, Grant, Graves, ~~(Butler, Caldwell, Crittenden)~~ Grayson, Greenup, Henderson, Lawrence, McLean, ~~(Hardin, Livingston, Lyon)~~ Meade, Metcalfe, Monroe, Morgan, Rowan, Shelby, Simpson, ~~and~~ Trigg, Union and Warren Counties.

(4) Zone 4 shall consist ~~(consists)~~ of Adair, Anderson, ~~(Ballard)~~ Bracken, Bullitt, Calloway, Campbell, Casey, Clinton, ~~(Carlisle)~~ Cumberland, Edmonson, ~~(Daviess)~~ Fulton, ~~(Graves)~~ Green, Harrison, Hart, ~~(Henderson)~~ Henry, Hickman, Kenton, Larue, ~~(McLean)~~ McCracken, Marion, Marshall, Nelson, ~~(Metcalfe, Monroe)~~ Pendleton, Robertson, Russell, ~~(Shelby)~~ Spencer, Washington ~~(Taylor, Union, Warren)~~ and Woodford Counties.

(5) Zone 5 shall consist of Bath, ~~(consists of Anderson, Boyd)~~ Boyle, ~~(Carter, Casey, Clinton, Edmonson, Elliott)~~ Fleming, Franklin, Jessamine, Johnson, Lewis, Martin, ~~(Grant, Greenup, Hart, Larue, Lawrence, Marion, Marshall)~~ Mason, Menifee, Mercer, ~~(Morgan, Nelson)~~ Nicholas, ~~(Owen)~~ Pulaski, ~~(Rowan, Russell)~~ Scott, Taylor ~~(Washington)~~ and Wayne Counties.

(6) Zone 6 shall consist of ~~(consists of Bath)~~ Bourbon, Breathitt, Clark, Fayette, Floyd, Garrard, Jackson, Jessamine, Johnson, Knott, Laurel, Lee, ~~(Lewis)~~ Lincoln, Madison, Magoffin, ~~(Martin, McCreary, Menifee)~~ Montgomery, Powell, Whitley and Wolfe Counties.

(7) Zone 7 shall consist ~~(consists)~~ of Bell, Clay, Estill, ~~(Floyd)~~ Harlan, Knox, ~~(Lee)~~ Letcher, McCreary, ~~(Magoffin)~~ Owsley, ~~(Perry)~~ Pike and Rockcastle Counties.

Section 3. Leslie and Perry Counties shall be ~~(County is)~~ closed to deer hunting.

C. THOMAS BENNETT, Commissioner
ANN R. LATTA, Secretary
MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: March 7, 1997

FILED WITH LRC: April 14, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 attending this hearing shall notify this agency in writing by May 15, 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: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: An estimated 212,000 hunters will participate in white-tailed deer seasons provided for by this administrative regulation.

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

period.

(d) Shall plainly mark the portable stand with his ~~[portable stands with their]~~ name and address.

(e) Shall not use existing permanent tree stands.

(4) Limits.

(a) A hunter may take two (2) deer from the West Kentucky WMA ~~[and Higginson-Henry WMAs]~~.

(b) A hunter shall not take more than one (1) deer from each of the other WMAs listed in Section 5 of this administrative regulation.

(5) The owner of a private inholding or his guest:

(a) ~~[Owners of private inholdings or their guests]~~ May hunt on the owner's lands without application;

(b) ~~[but]~~ Shall follow all other requirements for the WMA which surrounds the inholding.

(6) A person ~~[Persons]~~ shall not hunt on private inholdings when deer hunting is not allowed on the surrounding WMA.

(7) Except to travel through a WMA on established public roads or to use areas designated open by signs, a person ~~[persons]~~ without a valid quota hunt permit shall not enter a WMA during quota hunts on that area.

(8) A person ~~[Persons]~~ hunting any species or a person ~~[persons]~~ accompanying a hunter ~~[them]~~ shall wear hunter orange:

(a) Meeting the requirements specified in 301 KAR 2:272 ~~[2:274]~~.

(b) On a WMA ~~[WMAs]~~ when firearms are permitted for deer hunting.

(9) A person ~~[Persons]~~ shall not:

(a) Enter portions of WMAs marked by signs as closed to public access; or

(b) Hunt in portions of WMAs marked by signs as closed to hunting.

Section 3. Quota Hunt Applications. (1) A person ~~[Persons]~~ whose name is ~~[names are]~~ not drawn shall not hunt during quota hunts.

(2) A person ~~[Persons]~~ wishing to participate in quota hunts shall apply on forms furnished by the department.

(3) More than one (1) person ~~[hunter]~~ shall not apply per form.

(4) Four (4) or fewer persons may apply as a party by stapling their applications together and mailing them in the same envelope.

(5) A person ~~[Hunters]~~ over sixteen (16) years old shall not apply to more than one (1) quota hunt.

(6) A person ~~[Persons]~~ at least ten (10) but not yet sixteen (16) years old by the scheduled hunt date may apply for:

(a) One (1) quota hunt;

(b) One (1) Ballard WMA youth hunt; and

(c) One (1) other youth hunt.

(7) An applicant who submits ~~[Applicants who submit]~~ multiple applications or ~~[fails]~~ ~~[fail]~~ to meet application requirements shall be disqualified.

(8) An applicant ~~[Applicants]~~ shall stamp and self-address the application ~~[applications]~~.

(9) An application ~~[Applications]~~ shall be postmarked no later than June 30 ~~[August 31]~~.

(10) The commissioner may extend the application deadline if the production or distribution of forms is delayed.

Section 4. Quota Hunt Procedures. (1) A person selected by random drawing for a quota hunt:

(a) ~~[Persons]~~ Shall hunt on assigned dates and in assigned areas.

(b) ~~[(2) Hunters]~~ May use firearms, archery equipment or crossbows during the quota hunt ~~[quota hunts]~~.

(c) Unless otherwise specified in Section 5 of this administrative regulation, a person ~~[(3) Hunters]~~ shall check in before, and check out at the completion of, the quota hunt.

(d) If checking out is not required for a quota hunt, a person shall check his deer in accordance with the provisions of Section 16 of 301 KAR 2:172.

(2) ~~[(4)]~~ When checking in, a person ~~[persons required to possess]~~

~~hunting licenses and deer permits]~~ shall show:

(a) A hunting license, unless exempted from license requirements by KRS 150.170;

(b) A valid quota hunt permit;

(c) Proof of identify, including Social Security number; and

(d) A current deer permit with an unfiled tag valid for the hunt; or

(e) For youth hunts, a completed hunter's portion of a current deer season game check card.

(3) ~~[(5)]~~ A person whose name does not appear on a quota hunt permit shall not use that permit.

(4) ~~[(6)]~~ The youth hunt permit shall admit the person whose name appears on the permit and one (1) adult. The adult shall not be required to:

(a) Possess a hunting license or deer permit; or

(b) Apply in advance.

(5) A ~~[(7)]~~ quota youth hunt participant ~~[participants]~~ shall tag deer with WMA tags issued during ~~[when they]~~ check in.

(6) ~~[(8)]~~ Deer taken during quota youth hunts do not count toward season limits specified in 301 KAR 2:172. ~~[statewide deer requirements]~~

(7) A person ~~[(9) Persons]~~ drawn for quota hunts on Ballard, Higginson-Henry, Kleber, Taylorsville Lake and Yellowbank WMAs shall not apply to the same area quota hunt for the next three (3) seasons.

Section 5. WMA Hunting Dates and Requirements. (1) Ballard WMA.

(a) Quota youth hunts, any deer ~~[antlered]~~ or antlerless deer as determined by a random drawing at check in ~~[specified on permit]~~: two (2) consecutive days ~~[Saturdays and Sundays]~~ beginning:

1. The third Saturday in October.

2. The fourth Saturday in October.

(b) Quota hunt, any deer or antlerless deer as determined by a random drawing at check in: the first Saturday and Sunday of November.

(c) ~~[(b)]~~ Statewide deer requirements apply to the 300 acre tract south of Terrell Landing Road.

(d) A person shall not hunt after 5:30 p.m.

(2) Beaver Creek WMA.

(a) Archery hunt, antlered deer: the third Saturday in September through January 15, ~~[October 1 through December 31]~~ except during the quota hunt.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November.

(3) Buckhorn Lake WMA shall be closed to deer hunting.

(4) Cane Creek WMA.

(a) Archery hunt, ~~[antlered deer]~~: Zone 6 archery season dates and harvest restrictions apply. ~~[October 1 through December 31]~~

(b) Gun hunt, antlered deer: the second Saturday in November.

(5) ~~[(4)]~~ Central Kentucky WMA.

(a) Archery hunt, any deer:

1. Wednesdays between the fourth week in September through December 17, except during scheduled field trials as posted on the area bulletin board.

2. December 18 through January 15.

(b) A deer hunter ~~[Deer hunters]~~ shall check in and check out.

(6) ~~[(5)]~~ Clay WMA.

(a) Archery hunt, any ~~[antlered]~~ deer: October 15 through the day before the modern gun season, except during the quota hunt.

(b) Quota hunt, antlered deer: the first Saturday and Sunday in November.

(c) Deer hunters shall check in and check out.

(7) ~~[(6)]~~ Cyprus AMAX-Robinson Forest WMA.

(a) A person ~~[Persons]~~ shall not hunt deer:

1. On the main block of Robinson Forest.

2. With a firearm ~~[firearms]~~ during the modern gun season.

(b) Archery and muzzle-loader seasons shall correspond to

through January 15, except during the quota hunts.

(c) Quota hunters may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader and youth hunt seasons.

(21) ~~[(18)]~~ Obion Creek WMA.

(a) Quota hunt, any deer: two (2) ~~three (3)~~ consecutive days beginning the first Saturday ~~Friday~~ in November.

(b) Archery hunt, any deer: the third Saturday in September through January 15 ~~October 1 through December 31~~, except during the quota hunt.

(22) ~~[(19)]~~ Paintsville Lake WMA.

(a) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November.

(b) Archery hunt, any deer: the third Saturday in September through January 15 ~~October 1 through December 31~~, except no archery hunting during the quota hunt ~~or the modern gun deer season~~.

(c) A deer hunter ~~Deer hunters~~ shall check in and check out.

(23) ~~[(20)]~~ Peabody WMA.

(a) Quota hunt ~~hunts~~, any deer: ~~four (4)~~ five (5) consecutive days beginning the second Saturday in November. Quota hunters may hunt without checking in or out.

(b) Gun hunt, any deer:

~~two (2)~~ five (5) consecutive days beginning the day after the last day of the ~~first~~ quota hunt.

(c) ~~[(b)]~~ Muzzleloader hunt, any deer: seven (7) ~~two (2)~~ consecutive days beginning the second ~~third~~ Saturday in December ~~October~~.

(d) ~~[(a)]~~ Archery hunt, any deer: the third Saturday of September ~~October 1~~ through January 15, except during quota hunt ~~hunts~~.

(e) The youth hunt shall be open under statewide requirements.

(24) ~~[(21)]~~ Pennyrite WMA.

(a) Quota hunt, antlered or antlerless deer as determined by a random drawing at check in ~~any deer~~: two (2) consecutive days beginning the first Saturday in November.

(b) Archery hunts: ~~hunt, any deer: October 1 through January 15, except during quota hunts.~~

1. Antlerless deer, the third Saturday in September through October 15.

2. Any deer, October 16 through January 15, except during the quota hunt.

(c) Quota hunters shall check out by 6 p.m. daily.

(d) Archery hunters shall check in and check out.

(25) ~~[(22)]~~ Pioneer Weapons WMA. Statewide requirements apply except that a person:

(a) ~~Hunters~~ Shall not use a breech-loading gun;

(b) May use a crossbow during the entire archery season. ~~modern guns.~~

~~(b) Crossbows may be used during the entire archery season.~~

(26) ~~[(23)]~~ Redbird WMA.

(a) Archery hunt, antlered deer: the third Saturday in September through January 15, except during the gun hunt.

~~1. October 1 through the day before the modern gun season.~~

~~2. The third Thursday in November through December 31.~~

(b) Gun hunt, antlered deer: two (2) consecutive days beginning the second Saturday in November.

(c) Gun deer hunters shall check deer at the Redbird Ranger District Office.

(27) ~~[(24)]~~ Stewart Island WMA.

(a) Quota hunt, any deer: two (2) consecutive days beginning on the last Saturday in October.

(b) Quota hunt applicants shall be present at 10 a.m. central daylight time on the third Saturday of September in downtown Smithland to participate in a public drawing.

(c) Archery hunt, any deer: the third Saturday in September through October 14.

(28) ~~[(25)]~~ Swan Lake WMA: closed to deer hunting.

(29) R. F. Tarter.

(a) Quota hunts, Zone 4 harvest restrictions apply:

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days beginning the day after the first quota hunt ends.

(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.

(c) Quota hunters may hunt without checking in or out.

(d) Statewide deer requirements shall apply for muzzle-loader and youth hunt seasons.

(30) ~~[(26)]~~ Taylorsville Lake WMA.

(a) Archery hunt, any deer: the third Saturday in September through January 15 ~~October 1 through December 31~~, except during the quota hunts.

(b) Quota hunt, any deer:

1. Two (2) consecutive days beginning the first Saturday in November.

2. Two (2) consecutive days beginning the first Saturday in December.

(c) Hunters shall check in and check out daily.

(31) ~~[(27)]~~ Tradewater WMA.

(a) Quota hunt, antlered or antlerless deer as determined by a random drawing at check in ~~any deer~~: two (2) consecutive days beginning the first Saturday in November.

(b) Archery hunts: ~~hunt, any deer: October 1 through January 15, except during the quota hunt.~~

1. Antlerless deer, the third Saturday in September through October 15.

2. Any deer, October 16 through January 15, except during the quota hunt.

(c) Quota hunters shall check out by 6 p.m. daily.

(d) Archery hunters shall check in and check out.

(32) ~~[(28)]~~ Twin Knobs Campground. Quota hunt, any deer: ~~two (2) consecutive days beginning~~ the second Saturday in December for persons with a disability which impairs their mobility.

~~[(29) West Kentucky National Guard Training Unit.~~

~~(a) Shotgun quota hunt any deer: two (2) consecutive days beginning the first Saturday in December.~~

~~(b) Bow and muzzle-loader quota hunt, any deer: five (5) consecutive days beginning the third Monday of December.~~

(33) ~~[(30)]~~ West Kentucky WMA.

(a) Archery hunts, any deer, except that a person ~~persons~~ shall not archery hunt for nine (9) ~~eight (8)~~ consecutive days beginning the Saturday following Thanksgiving, or the day before and during quota hunts:

1. The third Saturday in September through December 11 ~~October 1 through December 12~~ on tracts one (1) through seven (7).

2. December 15 ~~16~~ through January 15 on tracts one (1) through seven (7) and in designated posted zones.

(b) Quota hunts, any deer.

1. Two (2) consecutive days beginning the third Saturday in November.

2. Two (2) consecutive days beginning the second Saturday in December.

(c) Youth quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November.

(d) Crossbow hunt, any deer: the day following the first quota ~~youth~~ hunt for twelve (12) consecutive days.

(e) Gun hunters shall not use rifles or handguns.

(f) Persons shall not carry firearms in posted zones.

(g) A person shall not take more than two (2) deer from this WMA.

1. Two (2) deer may be taken by archery:

a. One (1) deer shall be antlerless and shall be tagged with a ~~the~~ statewide tag.

b. ~~2.~~ The other deer may be antlered or antlerless and shall be

health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Without hunting, deer populations grow unchecked, creating increasing levels of deer-vehicle collisions, crop depredations, and destruction of habitat.

(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: None

(11) TIERING: Is tiering applied? Tiering is applied in this administrative regulation to the extent that each wildlife management area was examined for hunter density, deer population levels and other biological or social factors before applying specific season dates or other hunter requirements on these areas.

TOURISM DEVELOPMENT CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 2:251. Hunting and trapping seasons and limits for furbearers and small game.

RELATES TO: KRS 150.025(1), ~~[150.010, 150.170, 150.175, 150.340, 150.360, 150.365, 150.370(1), 150.399, 150.399, 150.400, 150.410, 150.990]~~

STATUTORY AUTHORITY: KRS 150.025(1) ~~[150.350, 150.015, 150.021, 150.170, 150.175]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) gives the department authority to establish hunting seasons and to regulate bag and possession limits for, and the methods of taking and the devices use to take wildlife. This administrative regulation is necessary to insure the permanent and continued supply of small game and furbearer species by protecting them from overharvest. [This amendment is necessary to specify separate opening dates for quail and rabbit hunting in western Kentucky.]

Section 1. Definitions. (1) "Conibear-type trap" means a commercially manufactured spring-loaded trap designed to kill the animal upon capture.

(2) "Dry land set" means a trap not set to drown an animal upon capture.

(3) "Foot-hold trap" means a commercially manufactured spring-loaded trap with smooth, metallic jaws which close upon an animal's foot.

(4) "Furbearers" means mink, muskrat, beaver, raccoon, opossum, gray fox, red fox, weasels or striped skunk.

(5) "Hunter" means a person hunting small game or furbearers with gun, gun and dog, bow and arrow, dog, or by falconry.

(6) "Modern gun deer season" means the five (5) or ten (10) day period beginning on the second Saturday of November during which hunters may take deer with breech-loading firearms.

(7) "Nonlocking snare" means a wire, cable or string loop without a device to keep the loop from loosening.

(8) "Padded trap" means a commercially manufactured foot-hold trap with metal jaws padded with a soft, nonmetallic substance.

(9) "Small game" means squirrels, rabbits, quail or grouse.

(10) "Squirrels" means gray squirrels and fox squirrels in any combination.

(11) "Water set" means a trap set to drown an animal upon capture.

Section 2. Hunting and Trapping Seasons. Except as otherwise allowed by 301 KAR 2:049 or 301 KAR 2:125, a person shall not take the following wildlife except during the dates specified in this section:

(1) Squirrels: the third Saturday in August through ~~January~~ ~~[December]~~ 31. The season shall be closed during the modern gun deer season.

(2) Rabbits and quail: November 1 through January 31 except:

(a) The day after the modern gun deer season closes through January 31 in the first and second wildlife districts as stipulated in 301 KAR 4:010.

(b) The season shall be closed during the modern gun deer season in the third through ninth wildlife districts as stipulated in 301 KAR 4:010.

(3) Grouse: the day after the modern gun deer season closes through the last day in February in Adair, Bath, Bell, Boyd, Bracken, Breathitt, Campbell, Carter, Clark, Clay, Clinton, Cumberland, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Lincoln, McCreary, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Wayne, Whitley, and Wolfe Counties.

(4) Raccoon and opossum hunting: November 1 through noon on the day after the modern gun deer season.

(a) A person ~~[Persons]~~ shall not trap during this period.

(b) During the modern gun deer season, a raccoon or ~~[and]~~ opossum hunter ~~[hunters]~~ shall not:

1. Hunt during daylight hours; or

2. Carry a firearm except a ~~[other than]~~ .22 caliber rimfire firearm ~~[firearms]~~.

(5) Furbearers, hunting and trapping: from noon the day after the modern gun deer season through noon, February 1.

(6) Extended beaver season: the month of February.

(7) Small game and furbearers taken by falconry: September 1 through February 15.

(8) There shall not be a closed season on:

(a) Chasing red and gray foxes and rabbits during daylight hours for sport and not to kill.

(b) Chasing raccoons or opossums for sport and not to kill.

(9) Bobcats shall be taken only according to the provisions of 301 KAR 2:240.

Section 3. Small Game Bag and Possession Limits.

	Daily	Possession
Squirrels	6	12
Rabbits	4	8
Quail	8	16
Grouse	4	8

Section 4. Furbearer Hunter Limits. (1) There shall not be a limit on furbearers except raccoons.

(2) A hunter shall not take more than one (1) raccoon within a twenty-four (24) hour period from noon to noon.

Section 5. Limits by Falconry. A falconer ~~[Falconers]~~ hunting within the falconry season but outside the dates specified in Section 2(1) through (6) of this administrative regulation shall not take ~~[take]~~ more than two (2) of any small game or furbearer species, singly or in the aggregate per day.

Section 6. Shooting Hours. A person shall not take small game or furbearers except during the times specified in this section.

(1) Small game or furbearers, except opossum and raccoon: daylight hours only.

(2) Raccoon and opossum: day or night, except night hunting only during the modern gun deer season.

Section 7. Use of Calls. A hunter ~~[Hunters]~~ may use hand- or mouth-operated calls or attracting devices.

ADMINISTRATIVE REGISTER - 3881

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: The provisions of this administrative regulation apply statewide.

(b) Kentucky: Small game hunters annually spend over \$50 million for equipment, transportation, food and lodging in Kentucky. This administrative regulation, by allowing for the continuance of hunting seasons, assures the perpetuation of this economic benefit.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only available alternative is closure of hunting seasons. This alternative was rejected because small game and furbearer populations are at levels which can sustain hunter or trapper harvest and provide recreational and economic benefits to the Commonwealth.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Hunting and trapping seasons help limit the population growth of some species, which could pose both environmental and public health problems if allowed to grow unchecked.

(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 hunting or trapping, populations of some animals, particularly furbearers, could grow to levels that would pose threats to agricultural crops, increase the incidence wildlife diseases, or cause damage to ecosystems.

(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 used in setting different seasons dates for various species, taking into account both biological concerns and hunter preference.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

301 KAR 3:030. Year-round season for some birds and animals.

RELATES TO: KRS 150.010, 150.025, ~~[450.170]~~ 150.330, 150.360, 150.370, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360(1), ~~150.170, 150.360~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.360(1) stipulates that a person shall not take wildlife except during the open season prescribed by the department; KRS 150.025(1) grants the department authority to establish seasons and other administrative regulations necessary to carry out the purpose of KRS Chapter 150. This administrative regulation is necessary to establish hunting requirements for species that can be taken year-round, and to specify species that are unprotected. The purpose of this amendment is to eliminate the closed season on certain species from November 1 through the gun deer season and to bring this administrative regulation into compliance with the formatting and wording requirements of KRS Chapter 13A.

Section 1. ~~[Year-round Season]~~ (1) A person may take ~~[The hunting season for]~~ coyotes, woodchucks, English sparrows or

starlings ~~[ie]~~ year round.

(2) A person taking coyotes, woodchucks, English sparrows or starlings:

(a) Unless exempted by KRS 150.170, shall possess:

1. A hunting license; and

2. A deer permit if he is hunting; [Unless exempted by KRS 150.170, persons taking these species shall possess a hunting license.]

~~(3) Persons who are not legal deer hunters shall not take these species;~~

a. ~~[(a)]~~ During modern gun deer season in a county or portion of a county ~~[counties or portions of counties]~~ open to deer hunting; or

b. ~~[(b)]~~ During a wildlife management deer hunt ~~[hunts]~~ where modern, breech-loading firearms are allowed.

~~[(4) Persons hunting these species may use:]~~

(b) May use a ~~[(a)]~~ hand or mouth operated call ~~[calls]~~.

(c) Shall not use an ~~[(b)]~~ electronic or mechanical call except ~~[calls]~~ during daylight hours ~~[only]~~.

Section 2. ~~[Unprotected Wildlife.]~~ (1) Except for rare, threatened or endangered species protected by ~~[state and]~~ federal laws, a person ~~[persons]~~ may take or possess ~~[all species of]~~:

(a) Moles, mice, rats or shrews.

(b) Snakes, except the copperbelly water snake (Nerodia erythrogaster neglecta), for which there shall be no open season.

(c) Lizards.

~~(d) ~~[or lizards]~~.~~

~~(e) Terrestrial invertebrates.~~

(2) A person may take or possess the species listed in subsection (1) of this section without:

(a) A hunting license; or

(b) A pet permit. ~~[Hunting licenses or pet permits are not required.]~~

Section 3. Nothing in this administrative regulation shall prohibit landowners or tenants from taking the species listed in Section 1(1) of this administrative regulation which are posing an immediate threat to body or other persons, or causing damage to property which they own or where they reside.

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: March 7, 1997

FILED WITH LRC: April 14, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 attending this hearing shall notify this agency in writing by May 15, 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: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4338, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

sero positive must be [testing on said positive mares must have been] conducted no sooner than November 1 of the previous calendar year for the following breeding season.

Section 3. Sero Positive Nonshedding Stallions. (1) Previously classified shedding stallions which have become nonshedders.

(a) The first breeding season following the stallions classification as a nonshedder, the first five (5) sero negative mares covered by the stallion shall have a blood sample collected for an EVA test twenty-eight (28) days post breeding.

(b) For the stallions second breeding season, semen may be collected and cultured for EAV or the stallion may be bred to two (2) mares negative for EAV antibodies. If the culture report is negative for EAV and if blood test report is negative for EAV antibodies, additional restrictions for future breeding seasons may not be required.

(2) Sero positive vaccinated (arvac) stallions that did not have an EVA negative test prior to vaccination shall be eligible for breeding by complying with one (1) of the following:

(a) Semen shall be collected and cultured for EAV and culture shall be reported as negative; or

(b) Prior to entering the breeding shed the stallion shall be bred to two (2) mares negative for EAV antibodies. The two (2) mares shall have blood collected for an EVA test twenty-eight (28) days post breeding. Test results shall be reported as negative for EAV antibodies.

(3) Nonvaccinated sero positive stallion. (stallions reported as vaccinated (arvac) but vaccination can not be documented by a vaccination certificate and stallions with unknown exposure to EAV).

(a) Semen shall be collected and cultured for EAV; or

(b) Prior to entry into the breeding shed the stallion shall be bred to two (2) mares negative for EVA antibodies. The two (2) mares shall have blood collected for an EVA test twenty-eight (28) days post breeding. Test results shall be reported as negative for EVA antibodies.

1. The first two (2) sero negative mares covered by the stallion shall have a blood sample collected for an EVA test twenty-eight (28) days post breeding.

2. The Kentucky State Veterinarian may monitor any sero negative mare covered by the stallion during a breeding season by having a blood sample collected for an EVA test twenty-eight (28) days post breeding.

(4) To determine that a stallion is not a shedder shall be accomplished by using scientific procedures approved by the state veterinarian. The procedures shall be conducted in the presence of the chief livestock health officer or his designee.

Section 4. EVA Classification Category. [(d) All mares bred to shedding stallions shall be classified as either Category One Mares or Category Two Mares for the breeding season and the following shall apply to each category of mares:]

(1) [-] Category One Mares. Category One Mares shall include mares bred to a shedding stallion for the first time.

(a) [-] Category One Mares shall be vaccinated a minimum of twenty-one (21) days prior to the first cover by a [the] shedding stallion and shall be isolated a minimum of twenty-one (21) days after the first cover.

1. [(#)] For purposes of clause a of this subparagraph isolation shall mean physical separation from other equine in a separate isolation area approved by the chief livestock health official or designated personnel.

2. [(#)] Following the completion of the isolation period the Category One Mares may move without [further] restriction.

(b) [-] Category One Mares that do not conceive after being bred to a shedding stallion [stallions] and [who] have completed the twenty-one (21) day isolation period following the first cover shall be reclassified as Category Two Mares for the remainder of the breeding season.

(2) [-] Category Two Mares. Category Two Mares shall include mares bred to a shedding stallion [stallions] within the previous two (2) years. Mares previously classified as Category One Mares that [who] have completed the twenty-one (21) day isolation period set out in subsection (1)(a) of this section may be classified as [clause a of this subparagraph] Category Two Mares and may move without restrictions following being covered by a shedding stallion [stallions].

(3) [(#)] Mares bred to a shedding stallion [stallions] shall return [be returned] to the farm of origin by being the only horse on the van or may be transported with equine known to be sero positive for EVA. [in a separate van or other mode of transportation.] Upon returning to the farm of origin the van or other transport vehicles and equipment [mode of transportation] used to move the mare [transport said mare] shall be immediately cleaned and disinfected.

(4) [(#)] Mares bred to a shedding stallion shall be bred only to shedding stallions during that estrus cycle. These mares may be bred to a nonshedding EVA vaccinated stallion on subsequent estrus cycles during the breeding season. [stallions vaccinated for the current breeding season in subsequent estrus cycles.]

(5) [(2)] It shall be the responsibility of the chief livestock health official in cooperation with the stallion owner/manager to determine that a stallion is not shedding EAV prior to the stallion being permitted to breed. Except when breeding the stallion to designated EVA sero negative [other than to] test mares.

[(a) Sero positive nonshedding stallions shall be required to be monitored as follows:

1. All of the sero negative mares bred to these stallions shall be sero monitored at twenty-eight (28) days following breeding for the first breeding season following the classification of the stallion as a sero positive, nonshedding stallion.

2. The first two (2) sero negative mares shall be sero monitored at twenty-eight (28) days following breeding to sero positive nonshedders during the stallions second season following classification as a sero positive, nonshedding stallion.

3. No mares are required to be sero monitored following the second season after classification as a sero positive nonshedding stallions.

(b) The procedure for determining that a stallion is not a shedder shall be accomplished in the presence of the chief livestock health official or his designee using a scientifically acceptable procedure prescribed by the state veterinarian and approved for use by the Kentucky State Board of Agriculture.

(c) Owners or agents of mares booking or seeking to book to sero positive stallions classified under this subsection shall be notified in writing by the owner or agent of the stallion as to the classification of the stallion at the time of booking and a copy of the written notification sent to the chief livestock health official.

(3) Sero positive, vaccinated stallions shall have been sero negative prior to vaccination and a statement presented by the owner or agent of the stallion and his veterinarian that the stallion had no known contact with EVA infected or exposed equine prior to vaccination nor during the twenty-one (21) days post vaccination.]

Section 5. [-] Stallions or mares [becoming] infected with EAV during the breeding season shall immediately cease breeding and the chief livestock health official shall be immediately notified. [All] Owners or agents with [having] mares booked or have bred mares [previously bred] to stallions that became [becoming] infected with EAV during the breeding season shall be immediately notified in writing by the stallion's owner or agent. [of the stallion and] A copy of the written notification shall be sent to the chief livestock health official. Any stallion [becoming] infected with EAV during the breeding season shall be classified as a shedder and shall be handled accordingly. Following the stallions classification as a shedder, the chief livestock health official may reclassify the stallion as a nonshedder under Section 4 of this administrative regulation. [may be subsequently determined by the chief livestock health official to be 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 thoroughbred stallions standing in Kentucky are required to meet the requirements set forth in this administrative regulation. All are treated the same.

DEPARTMENT OF AGRICULTURE
Division of Markets
(Amendment)

302 KAR 40:010. Standard organic agricultural product requirements.

RELATES TO: KRS 260.010

STATUTORY AUTHORITY: KRS 260.036

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.036 authorizes the Department of Agriculture to promote the sale of agricultural products in the state by operating, maintaining and administering a standard grading program for evaluating agricultural products. This administrative regulation sets forth the definitions and procedures for certification of organically produced foods pursuant to the provisions of the Act.

Section 1. Definitions. Whenever used in this administrative regulation the following terms shall have the meaning as set forth herein:

(1) The term "department" means the Kentucky Department of Agriculture.

(2) The term "organic farming" means a system of ecological soil management that relies on building humus levels through crop rotations, recycling organic wastes and applying balanced mineral amendments and that uses, when necessary, mechanical, botanical or biological controls with minimum adverse effects on health and the environment.

(3) The term "organic food" means food for human or livestock consumption and aquaculture production that is produced under a system of organic farming and that is processed, packaged, transported and stored so as to retain maximum nutritional value without the use of artificial preservatives, coloring or other additives, ionizing radiation or synthetic pesticides.

(4) The term "producer" means a person responsible for growing or raising organic food or any other agriculture crop.

(5) The term "certification" means the verification of authentic organic practices in the production, handling, or processing of organic food and is an annual process by which the producer, handler, or processor of agricultural products [of food] receives verification.

(6) The term "synthetic" means a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes. [reaction or chemical synthesis to create a product that does not ordinarily occur in nature and does not include products produced solely by biological degradation of a natural material, biological propagation of a natural material, physical manipulation of a natural material by process such as crushing, mixing, washing, drying, cooking and genetically engineering and physical manipulation of a natural material through extraction.]

(7) The term "pesticide" means any substance or mixture of substances which is intended for preventing, destroying, repelling or mitigating a plant or nonplant pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant or

desiccant.

(8) The term "fertilizer" means any substance containing nitrogen, phosphorus or potassium or any recognized plant nutrient element or compound that is used for its plant nutrient content or for compound-ing mixed fertilizers.

(9) The term "plant amendment" means an inoculant or foliar substance applied to seeds or plants which is intended to facilitate nitrogen fixation, germination, growth, yield, product quality, reproduction, flavor or other desirable characteristics of plans.

(10) The term "soil amendment" means an aggregate, additive or microbiological substance which is a naturally occurring substance, a nonsynthetically modified natural substance or a nontoxic manufacturing by-product that is permissible - see allowable list.

(11) The term "micronutrients" means trace or minor elements in soil that are essential for normal plant growth.

(12) The term "biological control" means a natural parasite, predator or pathogen that maintains a pest population at a lower average density than would otherwise occur.

(13) The term "allelochemic" means a naturally occurring substance significant to organisms of a species different from that of its sources, ~~for reasons other than food as such.~~

(14) The term "pheromone" means a substance secreted by an organism to be outside and causes a specific reaction in a receiving organism of the same species.

(15) The term "cover crop" means a crop planted primarily to prevent soil erosion, recover nutrients from the subsoil, increase water infiltration, and increase the levels of nitrogen and organic matter in the soil. [cover the soil surface, prevent erosion and recover nutrients from the subsoil.]

(16) The term "green manure crop" means a crop planted primarily to be plowed under to increase soil tilth and fertility.

(17) The term "raw manure" means animal excrement, both solid and liquid, that has not been aged, aerated, composted, fermented, aerobically digested or otherwise humified or processed to improve its value as a biological activator.

(18) The term "toxin" means a chemical, drug, radiological agent or biological agent that is present in an amount sufficient to cause significant adverse effects in humans, crops, livestock or the environment.

(19) The term "semiochemical" means a pheromone, allelochemic or other naturally occurring substance involved in the chemical interaction between organisms.

(20) The term "allelopathic" means the ability of a plant to produce substances that are toxic to certain plants.

(21) The term "annual crop" means a crop which reaches maturity during a specific seasonal growing period and is harvested at maturity.

(22) The term "biological control" means the use of parasites, predators, or pathogens to suppress pest populations.

(23) The term "botanical pesticide" means natural pesticide derived from plants.

(24) The term "certified organic farm" means a farm, or portion of a farm, or site where agricultural products or livestock are produced, that is certified by the Kentucky Department of Agriculture or, an organic certification agent, as utilizing a system of organic farming as described by these rules.

(25) The term "commingled" means inseparably mixed or interspersed with other agricultural products and not distinguishable from them.

(26) The term "contaminated" as applied to organic agriculture products, means unfit for use, because of the presence of illegal quantities of toxic, synthetic, or other prohibited substances.

(27) The term "farm" means all agricultural land that is owned or otherwise held by and under the management of a certified producer.

(28) The term "farm plan" means all documents relevant to the previous three (3) years, current, and future management of an organic farm, including but not limited to written plans to rotate crops,

3. Urea;

4. Ammonium sulfate.

(e) The following nitrogen sources shall not be used:

1. Anhydrous ammonia;
2. Ammonium nitrate;
3. Sewage sludge;
4. Contaminated organic materials;
5. Leather byproducts.

(c) ~~(d)~~ Sources of phosphorus may include the following:

1. Colloidal phosphate;
2. Hard-rock phosphate;
3. Soft-rock phosphate;
4. Bone meal.

~~(e) A one (1) time application of phosphorus may be used on fields that are in the first year of a transition from conventional production practices to organic practices.~~

(d) ~~(f)~~ The following sources of phosphorus shall not be used;

1. Superphosphate;
2. Triple superphosphate;
3. Acidifying materials with a high salt index.

(e) ~~(g)~~ Sources of potassium may include the following:

1. Wood ashes;
2. Rock dusts, greensand, granite, etc.;
3. Sulfate of potash magnesia;
4. Natural potassium sulfate;
5. Kanite;
6. Recycled potassium-rich organic matter.

~~(h) A one (1) time application of potassium may be used on fields that are in the first year of a transition from conventional production practices to organic practices.~~

(f) ~~(h)~~ The following sources of potassium shall not be used:

1. Muriate of potash potassium chloride;
2. Sources with excessive solubility, high salt index and chloride content.

(g) ~~(i)~~ Sources of calcium may include the following:

1. Agricultural limestone;
2. Agricultural gypsum;
3. Kiln dust;
4. Calcified seaweed;
5. Corn calcium;
6. Calcium oxide.

(h) ~~(k)~~ The following sources of calcium shall not be used:

1. Quicklime;
2. Slaked lime;
3. Hydrated lime;
4. Calcium oxide.

(i) ~~(l)~~ The following sources of magnesium may be used:

1. Dolomitic limestone;
2. Kieserite;
3. Sulfate of potash magnesia langbeinite.

(j) ~~(m)~~ Elemental sulfur from mined sources may be used as application to soil.

(k) ~~(n)~~ The following sources of micronutrients may be used:

1. Liquid or powdered seaweed extract that is not chemically fortified;
2. Kelp meal;
3. Rock powders.

4. If supplemental micronutrients are needed, the following may be used in the context of an overall farm plan: fish emulsions, acid treated (sulfate or oxide) zinc, boron, copper, iron, manganese, or molybdenum.

(l) ~~(o)~~ The following sources of micronutrients shall not be used:

1. Chemically fortified liquid;
2. Excessive doses of any micronutrient. ~~[Powdered seaweed extract.]~~

(m) ~~(p)~~ The following sources of growth regulators, growth promoters, activators and inoculants may be used:

1. Dry or liquid seaweed extract;
2. Natural enzymes;
3. Herbal preparations;
4. Biodynamic preparations;
5. Rhizobial inoculants;
6. Free-living nitrogen-fixing bacteria;
7. Blue-green algae;
8. Cellulolytic bacteria;
9. Natural rooting hormones;
10. Humates;
11. Approved adjuvants and wetting agents for foliar applications.

(n) ~~(q)~~ The following sources of growth regulators and growth promoters shall not be used:

1. Synthetic growth promoters;
2. Synthetic growth regulators.

(o) ~~(r)~~ Where irrigation is necessary, an initial application for certification shall identify planned sources for irrigation and must include an analyses of water quality. ~~[include analyses of water quality and soil salinization and shall identify planned sources for irrigation.]~~

(p) Irrigation management shall conform to recognized organic practices and water conservation principles. Use of irrigation water that is known to be contaminated with toxic substances is prohibited. A producer shall apply for, and the department or an organic certifying agent may grant, a written exception to this paragraph if no other water is available and no toxic residues from contaminated water are present in certified crops, as determined by a tissue test per farm or field until no residue from contamination is found in the crop and at least every third year thereafter.

~~(e) Irrigation water contaminated with toxic substances shall not be used, except for the following exceptions:~~

1. No other water is available;
2. No toxic residues from contaminated water are present in certified crops, as determined by at least one (1) tissue test per field per year until no residue from contaminated water is found in the crop.

(3) Seeds and seedlings are under the following guidelines:

(a) Producers shall use plant materials produced without synthetic pesticides.

(b) Producers may use the following:

1. Untreated seeds and seedlings, bulbs, sets, and other plant material;
2. Nontoxic seed treatments such as hot water and food grade hydrogen peroxide;
3. Legume inoculants;
4. Fungicide-free pelletization.

(c) With written permission from the department or other certifying agency, producers may use the following:

1. A producer may use insecticide treated seed for food or fiber if it is required by state or federal quarantine requirements, or if it is the only seed available in current commercial stock and is used for a one (1) time only planting. ~~[Plant materials produced without the use of synthetic fungicides or pesticides, but fertilized nonorganically.]~~

2. Commercial soil mixes, vermiculite or other media containing small amounts of soluble fertilizers for farm-produced seedlings;

3. Plant materials to which a synthetic pesticide has been applied, provided these plant materials produce no crop that is harvested or sold within thirty-six (36) months of transplanting.

(d) Producers shall not use:

1. Synthetic fungicides, pesticides or soil-fumigants on ~~(or)~~ any seedlings or plant materials produced for organic production;
2. Sterilization of greenhouse soils at temperatures higher than 180°F;
3. Materials or practices that are prohibited elsewhere in these standards.

(4) Weed control is under the following guidelines:

(a) The following weed control practices may be used:

(b) Chill perishable crops by means of uncontaminated water baths, cold rooms, or icing, and maintain constant low temperatures at every stage of transportation and distribution;

(c) Use controlled-atmosphere (carbon dioxide or nitrogen) storage;

(d) Disinfect crops of spoilage organisms or fruit flies by hot-water dipping or vapor-heat treatments;

(e) Repel storage pests with nontoxic materials such as rock powders, diatomaceous earth, herbal preparations, or natural biological controls;

(f) Approved sanitized containers must be used in contact with all food products; [Monitor tissue nitrate levels in leafy crops grown under low light conditions; and]

(g) Apply food grade hydrogen peroxide.

(2) The following shall not be used in postharvest handling:

(a) Synthetic fumigants;

(b) Sprouting inhibitors, ripeners or growth regulators;

(c) Preservatives;

(d) Coloring agents;

(e) Ionizing radiation;

(f) Waxes;

(g) Oils.

(3) All packaging material shall be free of fungicides, preservatives and other chemical additives.

(4) Storage areas for organic products ~~[feed]~~ shall be ventilated and sealed or otherwise protected from encroachment by birds, rodents or other pests.

(5) Products may not be transported in a fashion that may compromise the organic integrity.

(6) Products may not be stored with noncertified products unless packaged, labeled or otherwise segregated in a fashion that will insure the organic integrity.

(7) Products must be stored in a manner to minimize contamination by pollution and prohibited substances and must be stored in a fashion that will preserve the organic integrity of the commodity.

Section 6. Recordkeeping and Issuing Records and Labels Pertaining to Certified Organic Agricultural Products [Feeds]. (1) Producers of agricultural products [feed] certified by the department as organic shall submit to the department information required on the following documents devised and distributed by the department:

(a) A producer application including farm plan;

(b) A producer affidavit;

(c) Regulated materials list; [A field inspection report.]

(d) Off farm inputs list;

(e) Involuntary control form;

(f) Soil test including, but not limited to, P, K, pH, buffer pH, calcium-magnesium, zinc, boron, and organic matter;

(g) Irrigation water test.

(2) Records of field-by-field fertilization, cropping and pest-management histories shall be kept for each farm, farm unit, field, greenhouse, or other production unit relating to an application for certification. Upon request, these records shall be provided to the department.

(3) A yearly soil-test analysis shall be performed and the results submitted to the department for each farm, farm unit, field or other production unit relating to an application for certification. The department may require additional soil tests.

(4) The department may also require producers to submit at their expense, the results of any additional water, residue and plant-tissue tests deemed necessary.

(5) The department shall maintain all certification records for a period of three (3) years and certification records shall be subject to the Kentucky Open Records Law.

(6) Any certification granted under this administrative regulation shall be for a period of one (1) year.

(7) The department shall conduct at least one (1) inspection per

year of every farm, farm unit, field or other production entity relating to the certification of organic agricultural products. ~~[feed under the following guidelines:]~~

(a) Within sixty (60) days of receipt of an application for certification, the Director of the Division of Market Services shall schedule an inspection of the applicant's operation. No inspections shall be scheduled on a farm unless there are crops in the field or greenhouse that are to be certified.

(b) The department inspector shall complete a field inspection report~~[which includes a soil test analysis report submitted by the applicant, for each farm, farm unit, field or other production unit relating to an application for certification]~~. The applicant must be present during the initial inspection.

(8) Upon receipt of a field inspection report, the department shall within thirty (30) days determine whether certification is granted and shall notify the applicant in writing, setting forth the reasons for approval or denial.

(9) The department may conduct additional inspections of farms, farm units, fields, or other production entities including handling facilities relating to the certification of organic agricultural products ~~[feed]~~ including unannounced inspections in cases of suspected violations of standards.

Section 7. Certification of Livestock and Associated By-products.

(1) Living conditions to be as follows:

(a) Management of the environment of the animals (housing, hedges, etc.) must take into account the behavioral needs of the animal and provide for the following:

1. Sufficient free movement.

2. Sufficient fresh air and natural daylight according to the needs of the animal.

3. Protection against excessive sunlight, temperatures, rain and wind according to the needs of the animal.

4. Enough laying or resting area will be provided, adequate bedding must be provided when housed. For all large farm animals (including, but limited to, sheep, goats and pigs) natural bedding materials must be provided when housed.

5. Ample access to fresh water and feed according to the needs of the animal must be provided.

(b) When the natural daylight is prolonged by artificial lighting, this must not lead to a day length which is longer than twenty (20) hours unless it endangers the well-being of the animal.

(2) Feed.

(a) Slaughter animals must be fed certified (Kentucky Department of Agriculture or other approved certifying agency) organic feed.

(b) Plastic roughage, urea intentional manure refeeding and similar practices are prohibited.

(c) Early weaning (under four (4) weeks for piglets, three (3) months for beef and two (2) months for sheep and goat) or feeding of milk replacer are prohibited.

(d) White veal production cannot be considered as organic.

(e) In certain critical years where organic forage crops are unavailable or in short supply, the department may grant a written exemption on a case-by-case basis to purchase organically grown transitional feed. These inputs must be sufficiently documented and approved by the review and advisory committee, as well as, the department.

(3) Supplements.

(a) Any source of feed salt is acceptable.

(b) Calcium phosphate materials such as bonemeal, or calcium carbonate materials such as limestone or dolomite, that is on allowable list.

(c) Magnesium oxide, greensand, seaweed natural minerals and other free-choice elements that are allowable.

(d) Selenium at recommended doses.

(e) Vitamins should be provided from sprouted grains, fish liver oils, brewers yeast, or other allowable natural sources. Synthetic

ADMINISTRATIVE REGISTER - 3891

propose amendments as necessary.

(4) The committee shall be made up of seven (7) members, of which three (3) are farmers, and the balance is made up of consumers, advisors, handlers, or processors.

(5) Members of the committee must be familiar with both organic production methods and the department's standards.

Section 10. Accreditation of Organic Certifying Agents. (1) Organic certifying agents shall be accredited by the department by submitting an application (certifying policies and procedures), and a nonrefundable annual fee prescribed by the department.

(2) The department may issue a certificate of accreditation under this chapter only if it determines that the applicant's:

(a) Certification standards are equivalent to the department certification standards.

(b) Policies and procedures are in compliance with the provisions of the department.

(3) An organic certifying agent accredited under this chapter shall provide a copy of all certification documents to the department within thirty (30) days of certification of each certified producer, processor or handlers in Kentucky.

Section 11. [8-] Methods of Enforcement and Penalties for Violations of these Administrative Regulations. (1) Any person with cause to believe that any provision of this administrative regulation has been violated may file a written or oral complaint with the department setting forth the facts of the alleged violation.

(2) The department shall investigate each written ~~(or oral)~~ complaint related to certified organic agricultural products ~~(feed)~~ and provide the complainant with the results of the investigation and any remedial actions taken.

(3) The department shall maintain for four (4) years records of all complaints, investigations, and remedial actions. These records shall become part of the reviewing record of any proceeding involving a certified person or applicant for certification.

(4) The department may inspect at reasonable times any area where agricultural products ~~(feed)~~ certified as organic is processed, manufactured, stored or sold.

(5) The department may revoke certification of any product sold, labeled or advertised in violation of this administrative regulation.

(6) The department shall refuse certification to persons found to have sold, labeled or advertised products in violation of this administrative regulation.

Section 12. [9-] Fees. A producer of food certified under the provisions of this administrative regulation shall pay a fee of ten (10) dollars each calendar certification is requested. The department shall require payment of the ten (10) dollar fee at the time application for certification is made.

BILLY RAY SMITH, Commissioner

APPROVED BY AGENCY: April 10, 1997

FILED WITH LRC: April 14, 1997 at noon

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Wednesday, May 21, 1997, at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Wednesday, May 14, 1997, five (5) days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on 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 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: Mark Farrow, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696.

REGULATORY IMPACT ANALYSIS

Contact Person: Kathy Aman, Program Coordinator

(1) Type and number of entities affected: The Department of Agriculture routinely oversees the importation and required testing and treatment of approximately 200 mares and 35 stallions imported annually from other countries.

(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.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments 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 amended regulation requires a fee be paid by the broker of the department for receiving and inspecting imported animals which arrive on weekends, at nights or on state recognized holidays. While this may appear to be an added expense it is actually a savings because brokers must now elect to either pay USDA employees a higher rate than that proposed in the amended regulation or to leave the animals in the USDA quarantine station over the weekend at a cost in excess of \$100 per day.

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

ADMINISTRATIVE REGISTER - 3893

21.9 Education and Life Management
 21.10 Auxiliary Services
 21.11 Offenses and Penalties
 22.1 Privilege Trips
 23.1 Religion
 25.1 Gratuities
 25.2 Public Official Notification of Release of an Inmate
 25.3 Prerelease Program
 25.4 Inmate Furloughs
 25.6 Community Center Program
 25.7 Expedient Release
 25.8 Extended Furloughs
 25.10 Administrative Release of Inmates
 25.11 Victim Notification
 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 Modification
 27-12-05 Releasee's Report
 27-12-06 Grievance Procedures for Offenders
 27-12-07 Employment, Education/Vocational Referral
 27-12-08 Supervision Plan
 27-12-09 Casebook
 27-12-10 Guidelines for Monitoring Supervision Fee
 27-12-11 Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
 27-12-12 Other Financial Obligations (Not Ordered by Releasing Authority)
 27-12-13 Community Service Work
 27-12-14 Client Travel Restrictions
 27-13-01 Drug and Alcohol Testing of Offenders
 27-13-02 Alcohol Detection
 27-14-01 Interstate Compact Transfers
 27-14-02 Interstate Compact Out-of-state Probation and Parole Violation
 27-15-01 Supervision Report; Violations, Unusual Incidents
 27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence
 27-17-01 Absconder Procedures
 27-18-01 Probation and Parole Issuance of Detainer/Warrant
 27-19-01 Preliminary Revocation Hearing
 27-20-01 Division of Probation and Parole Controlled Intake Program
 27-20-02 Prisoner Intake Notification
 27-20-03 Prisoner Status Change
 27-21-01 Apprehension and Transportation of Probation and Parole Violators
 27-22-01 Fugitive Unit - Apprehensions
 27-22-02 Fugitive Unit - Transportation of Fugitives
 27-23-01 In-state Transfer
 27-24-01 Closing Supervision Report
 27-24-02 Reinstatement of Clients to Active Supervision
 27-25-01 Application for Final Discharge from Parole
 27-26-01 Assistance to Former Clients and Dischargees
 27-27-01 Restoration of Civil Rights
 27-28-01 Firearms/Explosives: Application for Relief from Disability

27-29-01 Parole Review Dates Modification
 28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
 28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
 28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
 28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
 28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
 28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
 28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
 28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
 28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
 28-02-01 Expedient Release Program
 28-03-01 Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
 28-04-01 Furlough Verifications
 28-05-01 Out-of-state Investigations.

DOUG SAPP, Commissioner

APPROVED BY AGENCY: April 7, 1997

FILED WITH LRC: April 14, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on May 21, 1997 at 9 a.m. in the Fifth Floor Conference Room of the State Office Building. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 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. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, telephone number (502) 564-2024, facsimile number (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

(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: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: 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

ADMINISTRATIVE REGISTER - 3895

GRCC 13-12-01 Infirmiry Care
 GRCC 13-13-01 Inmate Self-administration of Medication [~~Added 10/14/96~~]
 GRCC 13-15-01 Health Education Program and Detoxification [~~Added 10/14/96~~]
 GRCC 14-01-01 Inmate Rights and Responsibilities
 GRCC 14-02-01 Legal Services Program
 GRCC 15-01-01 GRCC Adjustment Program and Procedures
 GRCC 16-01-01 Inmate Visiting [~~Amended 10/14/96~~]
 GRCC 16-02-01 Inmate Correspondence and Privilege Mail
 GRCC 16-03-01 Inmate Telephone Communications
 GRCC 16-04-01 Inmate Packages
 GRCC 17-01-01 GRCC Inmate Property Control
 GRCC 17-02-01 GRCC Inmate Receiving and Orientation Process
 GRCC 17-03-01 Procedure for Sending Televisions to Outside Dealer for Repair
 GRCC 18-01-01 Inmate Classification
 GRCC 18-02-01 Meritorious Housing (Amended 4/14/97)
 GRCC 18-02-02 Meritorious Visitation Program
 GRCC 19-01-01 Inmate Work Programs [~~Amended 10/14/96~~]
 GRCC 19-01-02 Unassigned Status (Added 4/14/97)
 GRCC 20-01-01 Educational Programs
 GRCC 21-01-01 Library Services
 GRCC 22-01-01 Recreation Programs
 GRCC 22-02-01 Inmate Organizations
 GRCC 22-05-01 Inmate Photo Project
 GRCC 23-02-01 Death or Hospitalization of an Inmate's Family Member and Notification of Inmates
 GRCC 24-01-01 Social Services and Counseling Program
 GRCC 25-01-01 Prerelease Program
 GRCC 25-01-02 Inmate Release Program [~~Added 10/14/96~~]
 GRCC 25-02-01 Parole Hearing Procedure

DOUG SAPP, Commissioner

APPROVED BY AGENCY: April 7, 1997

FILED WITH LRC: April 14, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 21, 1997, at 9 a.m. in the State Office Building Auditorium. Individuals interested in attending this hearing shall notify this agency in writing by May 14, 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 cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on this administrative regulation. Any disabled person desiring to attend or participate in this public hearing will be provided reasonable accommodation, if requested, at the time of notification of intent to attend. A transcript of the public hearing will not be made unless a written request for a transcript is made, with cost therefore to be borne by the requesting party. If you do not wish to be heard at the public hearing, you may submit comments on the proposed administrative regulation. Send written notification to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, FAX: (502) 564-6494.

REGULATORY IMPACT ANALYSIS

Contact person: Tamela Biggs

(1) Type and number of entities affected: 213 employees of the correctional institutions, 614 inmates, and all visitors to state correctional institutions.

(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: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(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 is the funds budgeted for this 1996-1998 biennium.

(6) 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

(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: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed administrative 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. 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.

JUSTICE CABINET

Kentucky Department of Corrections (Amendment)

501 KAR 8:010. Execution hearings, ~~procedures, disposition~~.

RELATES TO: KRS Chapters 196, 197, 431

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.240

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035 and 197.020 authorize the commissioner to promulgate administrative regulations for the proper administration of the department or any division therein. [The Secretary of the Kentucky Corrections Cabinet is authorized by KRS 196.035, 197.020 to adopt, amend or rescind administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein.]

Section 1. Definitions. (1) "Condemned person" means a person

(2) The notice of hearing shall include:

- (a) Statement of the time and place of the hearing.
- (b) The name and address of the assigned hearing officer.
- (c) The name and address of the parties and legal counsel, if any.
- (d) Statement of the legal authority and jurisdiction under which the hearing is held.

Section 7. Continuance of Hearing. (1) Continuance of a hearing ordinarily will not be allowed.

(2) Except in the case of an extreme emergency or in unusual circumstances, no such request will be considered unless received in writing at least two (2) days in advance of the time set for the hearing. The request for continuance must include the reasons therefor.

(3) Continuance of hearing not in excess of three (3) days may be granted in the discretion of the hearing officer. No additional continuance may be granted without approval of the secretary.

Section 8. Failure to Appear. (1) Subject to the provisions of subsection (3) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the hearing officer.

(2) Requests for a newly scheduled hearing must be made in the absence of extraordinary circumstances within one (1) day after receipt of the notice of the scheduled hearing date.

(3) The hearing officer, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

Section 9. Service. (1) At the time of filing pleadings or other documents a copy thereof shall be served by the filing party on every other party.

(2) Service upon a party who has appeared through a representative shall be made only upon such representatives.

(3) Unless otherwise ordered, service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed effective at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(4) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

(5) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

Section 10. Statement of Position. At any time prior to the commencement of the hearing before the hearing officer, any person entitled to appear as a party may file a statement of position with respect to any or all issues to be heard.

Section 11. Response to Motions. Any party upon whom a motion is served shall have two (2) days from service of the motion to file a response.

Section 12. Failure to File. Failure to file any pleading pursuant to these rules when due, may, in the discretion of the hearing officer, constitute a waiver of right to further participation in the proceedings.

Section 13. Withdrawal of Notice of Hearing. At any stage of a proceeding, a party may withdraw his notice of hearing, subject to the approval of the hearing officer.

Section 14. Prehearing Conference. (1) At any time before a hearing, the hearing officer, on his own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.

(2) The hearing officer may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be a part of the record.

Section 15. Requests for Admissions. (1) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within three (3) days after service of the request, or within such shorter or longer time the hearing officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission of a specific written response.

(2) Copies of all requests and responses shall be served on all parties in accordance with the provisions of these rules and filed with the secretary within the time allotted and shall be a part of the record.

Section 16. Discovery Depositions and Interrogatories. (1) Except by special order of the hearing officer, discovery depositions of parties, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

(2) In the event the hearing officer grants an application for the conduct of such discovery proceedings, the order granting the same shall set forth appropriate time limits governing the discovery.

Section 17. Failure to Comply with Orders for Discovery. If any party fails to comply with an order of the hearing officer to permit discovery in accordance with the provisions of these rules, the hearing officer may issue appropriate orders.

Section 18. Reporter's Fees. Reporter's fees shall be equally shared by all parties. This shall include the reporter's per diem costs and the cost of the original transcript. All other copies will be paid by the requesting party unless the condemned party is determined a needy person pursuant to KRS 31.110.

Section 19. Transcript of Testimony. All hearings shall be videotaped. A copy of the video tape taken at the hearing, duly certified by the reporter, shall be filed with the hearing officer before whom the matter was heard. The hearing officer shall promptly serve notice upon each of the parties of such filing. Participants desiring copies of such video tapes may obtain the same from the official reporter upon payment of fees fixed therefor.

Section 20. Duties and Powers of Hearing Officers. It shall be the duty of the hearing officer to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The purpose of the hearing is to determine whether the petitioner does not have the mental capacity to understand the nature of the death penalty and why it is to be imposed on him, as pled in the petition. The hearing officer shall have authority with respect to cases assigned to him between the time he is designated and the time he issues his decision, subject to the rules and administrative regulations of the cabinet; to:

- (1) Administer oaths and affirmations;
- (2) Rule upon offers of proof and receive relevant evidence;
- (3) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
- (4) Hold conferences for the settlement or simplification of the issues;
- (5) Dispose of procedural requests or similar matters, also to dismiss petition or portions thereof, and to order hearings reopened prior to issuance of this final decision;
- (6) Examine witnesses and to introduce into the record documentary or other evidence;
- (7) Request the parties at any time during the hearing to state

applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

TRANSPORTATION CABINET
Department of Highways
Division of Right-of-way and Utilities
Division of Aeronautics
(Amendment)

600 KAR 3:010. Relocation assistance payments of the Transportation Cabinet.

RELATES TO: KRS 56.610 to 56.760, 49 CFR Part 24

STATUTORY AUTHORITY: KRS 56.690, ~~[474.080]~~ 183.024, 49 CFR Part 24

NECESSITY, FUNCTION, AND CONFORMITY: The Transportation Cabinet is required to adopt administrative regulations and procedures to implement the provisions of KRS 56.610 to 56.760 with regard to providing for uniform relocation assistance services and compensation to persons displaced by the land acquisition programs of the Transportation Cabinet. This is accomplished in this administrative regulation. The provisions of the federal uniform relocation assistance and real property acquisition policies act are applicable to land acquisition projects funded with federal monies. This administrative regulation expands the relocation assistance program to include the land acquisition projects of the Transportation Cabinet which are funded exclusively with state funds. This has been done so that the same benefits will be provided to all persons being relocated by the Transportation Cabinet regardless of the source of funding.

Section 1. Definitions. (1) "Advertising sign" means a billboard.

(2) "Average annual net earnings" means one-half (1/2) of the net earnings of the business or farm operation before federal, state, and local income taxes during the two (2) taxable years immediately prior to the taxable year in which it was displaced. If the business or farm operation was not in operation for the full two (2) taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two (2) taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when it is determined by the Transportation Cabinet to be more equitable.

(3) "Business" means any lawful activity, except a farm operation, conducted:

- (a) Primarily for the purchase, sale, lease, or rental of personal or real property, or for the manufacture, processing, or marketing of products, commodities, or any other personal property; or
- (b) Primarily for the sale of services to the public; or
- (c) Primarily for outdoor advertising display purposes, when the display is required to be moved as a result of the project; or
- (d) By a nonprofit organization.

(4) "Comparable replacement dwelling" means a dwelling which is:

- (a) Decent, safe, and sanitary;
- (b) Functionally equivalent to the displacement dwelling;
- (c) Adequate in size to accommodate the occupants;
- (d) In an area not subject to unreasonable adverse environmental conditions, and is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities and reasonably accessible to the person's place of employment;
- (e) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site

need not include special improvements such as outbuildings, swimming pools, or greenhouses;

(f) Currently available to the displaced person on the private market; and

(g) Within the financial means of the displaced person.

(5) "Contributes materially" means that during the two (2) taxable years prior to the taxable year in which displacement occurs the business or farm operation:

(a) Had average annual gross receipts of not less than \$5,000; or

(b) Had average annual net earnings of not less than \$1,000; or

(c) Contributed at least one-third (1/3) of the owner's or operator's average annual gross income from all sources.

(6) "Control of the property" means that the Transportation Cabinet has paid the owner for the property to be acquired or if acquisition is by condemnation, the Transportation Cabinet has posted the purchase price of the property with the circuit court.

(7) "Decent, safe, and sanitary dwelling" means a dwelling which meets local housing and occupancy codes, but at a minimum shall:

(a) Be structurally sound, weather-tight, and in good repair;

(b) Contain a safe electrical wiring system adequate for lights and other electrical devices;

(c) Contain a heating system capable of sustaining a healthful temperature of approximately seventy (70) degrees for a displaced person;

(d) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink and a toilet, all in good working order and properly connected to a source of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system and adequate space and utility service connections for a stove and refrigerator;

(e) Contain unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor shall have at least two (2) means of egress; and

(f) If the displaced person is an individual with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by the displaced person.

(8) "Displaced person" means a person who moves from the real property or moves his personal property from the real property, including a person who occupies the real property prior to its acquisition but who does not meet the length of occupancy requirements:

(a) As a direct result of a written notice of intent of the Transportation Cabinet to acquire, or the initiation of negotiations for, or the acquisition of, the real property in whole or in part; or

(b) As a direct result of a written notice of intent of the Transportation Cabinet to acquire, or the acquisition of, in whole or in part, other real property on which the person conducts a business or farm operation. However, eligibility under this subsection applies only for the purpose of obtaining relocation assistance advisory services and moving expenses.

(9) "Dwelling" means the place of permanent or customary and usual residence of a person including a single-family house; a single-family unit in a two (2) family, multifamily, or multipurpose property; a unit of a condominium or cooperative housing project; a nonhousekeeping unit; a mobile home; or any other residential unit.

(10) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

(11) "Family" means two (2) or more individuals living together in a single-family dwelling unit who:

(a) Are related by blood, adoption, marriage, or legal guardianship

Section 3. Relocation Notices - General. (1) Each relocation notice provided by the Transportation Cabinet shall be personally delivered or sent by certified or registered mail, return receipt requested.

(2) As soon as feasible, a person scheduled to be displaced shall be notified of the possibility of his displacement. He shall also be furnished with a general written description of the relocation program which gives at least the following information:

(a) Informs the person that he may be displaced because of the project and generally describes any relocation payment for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment;

(b) Indicates that any person displaced shall be given reasonable relocation advisory services to help the person relocate successfully including housing referrals, help in filing payment claims and other necessary assistance;

(c) Informs any displaced person lawfully occupying the property that he shall not be required to move without at least ninety (90) days advance notice except under the most unusual of circumstances;

(d) Describes the person's right to appeal the determination of eligibility for, or the amount of, any relocation payment for which the person may be eligible;

(e) Informs the person that in order to be eligible for benefits he is required to occupy the property at the time of initiation of negotiations and includes a definition of initiation of negotiations; and

(f) Informs the displaced person that he cannot be required to move permanently unless at least one (1) comparable replacement dwelling has been made available.

(3) Eligibility for relocation assistance shall begin on the date of initiation of negotiations for acquisition of the occupied property. At this time the Transportation Cabinet shall notify each occupant or family to be displaced in writing of his eligibility for relocation assistance.

(4) A lawful occupant shall not be required to move unless he has received at least ninety (90) days advance written notice of the earliest date by which he may be required to move. Only in unusual circumstances, such as a substantial danger to the person's health or safety, shall an occupant be required to vacate the property on less than ninety (90) days advance written notice.

(5)(a) At the initiation of negotiations the Transportation Cabinet shall give the displaced person a ninety (90) day notice.

(b) The notice shall be either:

1. A specific date which is the earliest date by which he shall be required to move; or

2. A statement that before the displaced person is required to move from the property, he shall be given a thirty (30) day written notice specifying the date by which the property shall be vacated.

(6)(a) The Transportation Cabinet may issue a notice to a displaced person specifying the date by which he is required to vacate the acquired property, if:

1. The Transportation Cabinet has gained control of the property to be acquired;

2. Sixty (60) or more days have passed since the issuance of a ninety (90) day notice; and

3. Comparable replacement housing has been made available to the displaced person.

(b) The required vacation date shall be at least thirty (30) days after the notice is issued.

Section 4. Notice at Initiation of Negotiations. (1) The Transportation Cabinet shall furnish an owner-occupant of 180 days or more no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The maximum amount of his replacement housing computation and eligibility requirements to receive the payment;

(b) The address of comparable housing used to compute the replacement housing payment;

(c) The possibility of his eligibility to receive an increased interest payment, or payment of incidental expenses incurred in the purchase of replacement housing;

(d) His option to rent rather than purchase replacement housing;

(e) The availability of relocation assistance advisory services and how they may be obtained;

(f) A ninety (90) day notice; and

(g) His right to appeal.

(2) The Transportation Cabinet shall furnish an owner-occupant of less than 180 days no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The maximum amount of a rental replacement housing payment and the maximum amount of a down payment for the purchase of replacement housing, as well as the requirements to receive these payments;

(b) The address of comparable housing used to compute the replacement housing payment;

(c) The requirements to receive reimbursement for incidental expenses;

(d) The availability of relocation assistance advisory services and how they may be obtained;

(e) A ninety (90) day notice; and

(f) His right to appeal.

(3) The Transportation Cabinet shall furnish a tenant-occupant of ninety (90) days or more, no later than seven (7) working days after the fair market value offer for the property, the following written information:

(a) The amount of rental and purchase replacement housing payments and the eligibility requirements to receive these payments;

(b) The address of the comparable housing used to compute the rental and replacement housing payments;

(c) The requirements to receive reimbursement for incidental expenses;

(d) The availability of relocation assistance advisory services and how they may be obtained;

(e) A ninety (90) day notice;

(f) His right to appeal; and

(g) The date of the initiation of negotiations for the property.

(4) The Transportation Cabinet shall furnish in writing to a subsequent tenant-occupant within seven (7) working days from the date the cabinet acquires the property the following information:

(a) His eligibility to receive moving expense payments;

(b) The availability of relocation advisory services and how they may be obtained;

(c) Assurance that comparable replacement housing is available within his financial means; and

(d) The ninety (90) day notice to vacate. This notice shall specify the date by which the property shall be vacated, and shall not be issued until comparable housing is available.

Section 5. Alternate Notices. (1) The Transportation Cabinet may specify an alternative notification procedure to those established in Sections 3 and 4 of this administrative regulation if there are insufficient rental units available for the tenant-occupants of the acquired property.

(2) If the Transportation Cabinet determines that an alternative notification procedures will be used, it shall not be required to make the replacement housing payment offer to the displaced tenants within the seven (7) working days specified in Section 4(3) of this administrative regulation.

(3) The alternate notification procedure used by the Transportation Cabinet shall be as follows:

(a) Contact the owner and make the fair market value offer for the property;

(b) Within seven (7) working days, contact the tenants and give each a written statement which shall include:

(3) The Transportation Cabinet may offer relocation advisory services to a person occupying property adjacent to the real property acquired if that person is caused substantial economic injury because of the cabinet's acquisition of the real property.

(4) The Transportation Cabinet shall coordinate relocation activities with project work and other displacement-causing activities to ensure that persons displaced receive consistent treatment and duplication of functions is minimized.

Section 8. Claims for Relocation Assistance Payments. (1)(a) Any claim for relocation assistance payment shall be accompanied by documentation to support expenses incurred.

(b) A displaced person shall be provided reasonable assistance in completing and filing a claim for payment.

(c) The Transportation Cabinet shall review claims in an expeditious manner and promptly notify the claimant if additional documentation is required.

(d) Payment for a relocation assistance claim shall ordinarily be made only after:

1. The displaced person has moved or after closing; and

2. As soon as feasible following receipt of sufficient documentation to support the claim.

(e) The payment for a claim may be processed in advance of a move or closing but shall not be made until it can be reasonably expected that the objective of the payment has been or is to be accomplished.

(2) All claims for a relocation payment shall be filed based on the following unless the time limits have been waived for good cause by the Transportation Cabinet:

(a) For tenants, within eighteen (18) months after the date of displacement; or

(b) For owners, within eighteen (18) months of the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(3) If two (2) or more occupants of one (1) household of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a prorated share of all relocation payments that would have been made if the occupants had moved together to a comparable replacement dwelling. However, if it is determined that two (2) or more occupants maintained separate households within the same dwelling, the occupants shall have separate entitlements to relocation payments.

(4) If a person to be displaced owes rent to the Transportation Cabinet, the amount owed may be deducted from his relocation assistance payment unless the deduction would prevent the displaced person from obtaining comparable replacement housing. The Transportation Cabinet shall not withhold any part of a relocation assistance payment to a displaced person to satisfy an obligation to any other creditor.

(5) By written agreement between the displaced person, the mover and the Transportation Cabinet, the displaced person may present an unpaid moving bill to the Transportation Cabinet for direct payment to the mover. The displaced person shall initially make this request on forms prescribed and furnished by the Transportation Cabinet.

(6) If the Transportation Cabinet denies a claim of eligibility for or the amount of a payment, the claimant shall be promptly notified in writing of the reason for denying the claim and of his right to appeal pursuant to Section 31 of this administrative regulation.

Section 9. Moving and Related Expense Payments - General. Moving and related expense payments are types of relocation assistance payments. Any eligible individual, family, business, farm operation, or nonprofit organization displaced by a Transportation Cabinet project and who qualifies as a displaced person is entitled to payment of his actual moving and related expenses as the Transportation Cabinet determines to be reasonable and necessary.

(1) To be eligible for moving and related expense payments the displaced person shall:

(a) Be in legal occupancy at the initiation of negotiations for the real property or at the time the property is acquired, in whole or in part by the Transportation Cabinet or at the time he is given a written notice by the Transportation Cabinet of intent to acquire the real property; and

(b) Move from the real property, or move his personal property from the real property subsequent to the dates established in paragraph (a) of this subsection.

(2) If the acquisition of real property used for a business, farm operation, or nonprofit organization causes a person to vacate a dwelling or other real property not acquired by the Transportation Cabinet, the additional moving cost shall be eligible for reimbursement. Also, if it is necessary to move personal property that is legally located within the acquired property, the cost shall be eligible for reimbursement.

(3) A second move for a displaced person shall not be automatically authorized, nor generally eligible for payment. However, under exceptional circumstances, a second moving payment may be made. Prior to authorizing a second move, the Transportation Cabinet shall consider all special circumstances.

(4) The displaced person shall be informed in writing as soon as possible after the initiation of negotiations of the following requirements:

(a) The displaced person shall provide the Transportation Cabinet reasonable advance notice of the approximate date of the start of the move or disposition of his personal property and a list of the items to be moved; and

(b) The displaced person shall allow the Transportation Cabinet to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and allow the cabinet to monitor the move.

Section 10. Moving and Related Expense Payments for Residential Moves. (1) A displaced person, owner-occupant or tenant of a dwelling who qualifies as a displaced person:

(a) Is entitled to receive payment for the actual, reasonable and necessary moving expenses of his personal property, himself, and his family.

(b) Has the option to receive reimbursement on the basis of actual, reasonable expenses, or from the fixed-rate schedule listed in subsection (7) of this section which is based on the number of rooms of personal property.

(2) An owner-occupant of a multiple-family dwelling may be entitled to a moving payment for a residential move for himself and moving payments for his personal property located in other units.

(3) In order to determine that more than one (1) household exists in a single dwelling unit, each family unit shall have separate baths, kitchen areas and bedrooms.

(a) Two (2) or more families occupying the same dwelling unit, who are required to relocate into separate dwelling units because a single comparable dwelling unit is not available, may elect to be reimbursed either on an actual cost basis or from the fixed-rate schedule.

(b) Two (2) or more families occupying the same dwelling unit, who relocate into separate dwelling units on a voluntary basis when a single comparable dwelling unit is available, may elect to be reimbursed either on an actual cost basis or from the fixed-rate schedule. A fixed-rate schedule move payment shall be based on the number of rooms actually occupied by each family, plus community rooms utilized by each family.

(c) Two (2) or more individuals who occupy the same dwelling unit are considered to be a single family and payments shall be made accordingly.

(4) When an owner retains his dwelling, the cost of moving it onto a different site is not eligible for reimbursement as a part of the cost

(a) Obtain a certified inventory of the personal property to be moved. The displaced person shall certify that the items actually are to be moved to the replacement site. If there is any significant deviation from the list of items actually relocated the amount to be paid shall be revised accordingly. If the business, farm operation, or nonprofit organization has a fluctuating inventory, the cabinet may require a reinventory just prior to authorizing the move; and

(b) Obtain two (2) bids from qualified movers after a replacement property has been found. The move may be authorized only on the basis of the lower of the bids. The Transportation Cabinet shall pay to the displaced person the amount of the lower bid once it is determined that all property was moved to the new location.

(4) If the cost of the move is not likely to exceed \$5,000, a single estimate may be prepared by a qualified staff employee of the Transportation Cabinet other than the person preparing the claim.

(5) When the Transportation Cabinet obtains bids for a business, farm operation, or nonprofit organization move, the bidder shall be instructed in writing that the amount of his bid shall be the property of the Transportation Cabinet and shall be considered confidential information. The bidder shall state in his letter transmitting his bid to the cabinet that he shall not divulge the amount of his bid to any other person, including the displaced person. Any bidder who does not adhere to these requirements shall not be permitted to submit future bids.

(6) If it is necessary to reprint available stationery because the business, farm operation, or nonprofit organization, has been relocated, the Transportation Cabinet shall pay the actual cost for reprinting the number and type of item to be replaced. Payment shall be made for only the number of each item approved in advance of the reprinting by the Transportation Cabinet. The claim for payment shall be documented by receipted bills from the provider.

(7)(a) If it is necessary to reletter a sign that has been made obsolete as a result of the move:

1. If possible, only that portion of the sign which changes shall be eligible to be relettered; or

2. ~~[-However,]~~ If necessary, the cost of relettering the complete sign shall be an eligible expense.

(b) The payment request shall be documented by receipted bills from the provider.

(c) Approval of the relettering shall be obtained from the Transportation Cabinet in advance of work being performed.

(8)(a) The Transportation Cabinet shall reimburse the displaced business, farm operation, or nonprofit organization actual and reasonable expenses in searching for a new location.

(b) Payment shall be limited to \$1,000.

(c) The items for which an invoice may be submitted include:

1. Transportation;

2. Lodging and meals away from home;

3. Time spent in searching, based on reasonable salary or earnings, of the person conducting the search; and

4. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(d) The claim for payment shall be documented by receipted bills for meals and lodging when away from home and an affidavit shall be required for mileage and time. The affidavit shall show:

1. Persons contacted;

2. Places visited;

3. Activity involved; and

4. Basis for the hourly rate charged for time.

(9)(a) Payment of actual direct losses of tangible personal property may be made when the business, farm operation, or nonprofit organization owner moves or discontinues his operation. Payment for actual direct losses of tangible personal property may be made only after a bona fide effort has been made by the owner to sell the items involved. The payment shall consist of the lesser of:

1. The fair market value of the item for continued use at the

displacement site less the proceeds from its sale.

a. The claimant shall make a good faith effort to sell the personal property, unless the Transportation Cabinet determines that the effort is not necessary.

b. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price; or

2. The estimated cost of moving the item, with no allowance for storage. If the business, farm operation, or nonprofit organization is discontinued, the estimate shall be based on a move of fifty (50) miles;

(b) The prompt purchase of substitute personal property to replace an item not to be moved in a business, farm operation, or nonprofit organization move, yet which performs a comparable function at the replacement site. Payment shall be the lesser of:

1. The cost of the substitute item, including installation costs at the replacement site, less any proceeds from the sale or trade-in of the replaced item; or

2. The estimated cost of moving and reinstalling the replaced item, with no allowance for storage. If the estimated cost for the move is \$5,000 or less, the estimated cost may be based on a single estimate prepared by a qualified Transportation Cabinet employee.

(c) If no offers are received for the property at the sale and the property is abandoned, payment for the actual direct loss of that item shall not be more than the fair market value of the item for continued use at its location prior to displacement or the estimated cost of moving the item fifty (50) miles, whichever is less, plus the reasonable costs of the attempted sale, irrespective of the cost to the Transportation Cabinet of removing the item.

(d) If personal property is abandoned with no effort made by the owner to dispose of the property by sale, the owner shall not be entitled to moving expenses, or losses, for the item involved.

(e) The cost of removal by the Transportation Cabinet of personal property shall not be considered as an offsetting charge against other payments to the displaced person.

(f) The sale price, if any, and the actual reasonable costs of advertising and conducting the sale shall be supported by a copy of the bill of sale or similar documents, and by copies of any advertisements, offers to sell, auction records, and other data which support the sale.

(10) A small business, farm operation, or nonprofit organization is entitled to receive a payment not to exceed \$10,000 for expenses actually incurred in relocating and reestablishing the small business, farm operation, or nonprofit organization at the replacement site. Eligibility for this payment shall be contingent upon the following:

(a) Eligible expenses shall be reasonable and necessary as determined by the Transportation Cabinet and may include:

1. Repairs or improvements to the replacement real property as required by federal, state, or local law, code, regulation, or ordinance.

2. Modification to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

3. Construction and installation costs for exterior signing to advertise the business.

4. Provision of utilities from the right-of-way to improvements on the replacement site.

5. Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting.

6. Licenses, fees, and permits when not paid as a part of moving expenses.

7. Feasibility surveys, soil testing, and marketing studies.

8. Advertisement of the replacement location.

9. Professional services in connection with the purchase or lease of a replacement site.

10. Increased cost of operation during the first two (2) years at the replacement site for items such as lease or rental charges, personal or real property taxes, insurance premiums, and utility charges,

following:

- (a) The depreciated reproduction cost of the sign less the proceeds from its sale; or
- (b) The estimated cost of moving the sign as determined by the Transportation Cabinet but with no allowance for storage.

Section 13. Miscellaneous Moves. There are entities to be relocated that meet none of the definitions of a business, a farm operation, or a nonprofit organization. The moving expenses in these instances shall usually be paid as a self-move. Examples of moves of this type are:

- (1) Partial taking of a farm or residential lot on which only a shed, barn, or garage contains personal property;
- (2) Acquisition of a tenant-occupied residence if the owner has some personal property in the building; or
- (3) Acquisition of a tenant-occupied service station where the owner or distributor has personal property to be moved.

Section 14. Ineligible Moving and Related Expenses. A displaced person shall not be entitled to payment for the following:

- (1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership;
- (2) Interest on a loan to cover moving expenses;
- (3) Loss of good will;
- (4) Loss of profits;
- (5) Loss of trained employees;
- (6) Any additional operating expenses of a business or farm operation incurred because of operating in a new location (except as provided for under reestablishment expenses);
- (7) Personal injury;
- (8) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Transportation Cabinet;
- (9) Expenses for searching for a replacement dwelling;
- (10) Physical changes to the real property at the replacement location of a business, farm, or nonprofit organization except as provided for under actual reasonable moving expenses and reestablishment expenses; or
- (11) Costs for storage of personal property on real property already owned or leased by the displaced person.

Section 15. Fixed Payments In Lieu of Payments for Moving and Related Expenses, Including Reestablishment Expenses, to Businesses, Farms, and Nonprofit Organizations. (1) An eligible owner of a discontinued or relocated business may choose to receive a fixed payment in lieu of all payments for moving and related expenses, including reestablishment expenses, which are set forth in Section 11 of this administrative regulation.

(a) The amount of the fixed payment shall equal the average annual net earnings for the business but not less than \$1,000 and not more than \$20,000.

(b) For an owner of a business to be entitled to this fixed payment, the Transportation Cabinet shall determine that the business meets all of the following:

- 1. It owns or rents personal property which has to be moved in connection with the displacement and for which an expense would be incurred in the move;
- 2. It vacates or relocates from the displacement site;
- 3. It cannot be relocated without a substantial loss of patronage (clientele or net earnings). A business is assumed to meet this test unless it is determined by the Transportation Cabinet that it will not suffer a substantial loss of its existing patronage;
- 4. It is not part of a commercial enterprise having more than three (3) other entities which are not being acquired, and which are under the same ownership and engaged in the same or similar business activities;
- 5. It is not operated at a displacement dwelling solely for the

purpose of renting the dwelling to others;

6. It is not operated at the displacement site solely for the purpose of renting the site to others; and

7. It contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement.

(c) The displaced owner of a business shall furnish proof of net earnings through income tax returns.

(d) The payment amount of the fixed payment shall be determined by adding the annual net earnings before federal, state and local income taxes for the two (2) taxable years immediately preceding the taxable year in which the enterprise is relocated (or that two (2) year period deemed more representative by the Transportation Cabinet), and dividing that amount by two (2).

(e) In determining whether two (2) or more displaced legal entities constitute a single business which is entitled to only one (1) fixed payment, all pertinent factors shall be considered, including the extent to which:

- 1. The same premises and equipment are shared;
- 2. Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
- 3. The entities are held out to the public, to those customarily dealing with them, as one (1) business; and
- 4. The same person or closely related persons own, control, or manage the affairs of the entities.

(2) An eligible owner of a displaced farm operation may choose to receive a fixed payment in lieu of all payments for moving and related expenses, including reestablishment expenses, as set forth in Section 11 of this administrative regulation.

(a) The amount of the fixed payment shall equal the average annual net earnings for the farm operation, but not less than \$1,000 and not more than \$20,000.

(b) In the case of partial acquisition of land which was a farm operation prior to the acquisition, a fixed payment shall be made only if the Transportation Cabinet determines that:

- 1. The partial acquisition caused the operation to be displaced from the farm operation on the remaining land; or
- 2. The partial acquisition caused a substantial change in the nature of the farm operation.

(c) For an owner of a farm operation to be entitled to this fixed payment, the farm operation shall have contributed materially to the income of the displaced person during the two (2) taxable years prior to displacement.

(d) The displaced owner of a farm operation shall furnish proof of net earnings through income tax returns.

(e) The amount of the fixed payment shall be determined by adding the annual net earnings before federal, state and local income taxes for the two (2) taxable years immediately preceding the taxable year in which the enterprise is relocated (or that two (2) year period deemed more representative by the Transportation Cabinet), and dividing that amount by two (2).

(3) An eligible displaced nonprofit organization may choose a fixed payment in lieu of all payments for moving and related expenses, including reestablishment expenses, as set forth in Section 11 of this administrative regulation.

(a) The fixed payment shall not be less than \$1,000 nor more than \$20,000.

(b) Any request for payment in excess of \$1,000 shall be supported with financial statements for the two (2) twelve (12) month periods prior to the acquisition.

(c) The amount to be used in determining the fixed payment is the average of two (2) years annual gross revenues less administrative expenses.

(d) Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales or other fundraising activities.

(e) Administrative expenses include rent, utilities, salaries, advertising and fund raising expenses but shall not include operating

occupancy within the prescribed one (1) year period.

(b) Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment.

(c) A displaced owner-occupant who originally rents a replacement dwelling and receives a rent supplement payment is eligible to receive a replacement housing payment, if he purchases and occupies a dwelling within the prescribed one (1) year.

(14)(a) A replacement housing payment is personal to the displaced person and upon his death, the undisbursed portion of any payment shall not be paid to the heirs or assigns, except that the amount attributable to the displaced person's period of actual occupancy of the replacement housing shall be paid.

(b) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family members continue to occupy a decent, safe, and sanitary replacement dwelling.

(c) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

(15) In order to avoid duplicate compensation, the amount of any insurance proceeds received by a displaced person in connection with a loss to the displacement dwelling shall be included in the acquisition cost of the displacement dwelling when the Transportation Cabinet computes the replacement housing payment.

Section 17. Replacement Housing Payments - Partial Tract Acquisition. (1)(a) If the acquired dwelling is located on a tract typical in size for residential use in the area and if only a portion of the tract is acquired by the Transportation Cabinet, the maximum replacement housing payment shall be the probable selling price of a comparable replacement dwelling on a tract typical in size for the area, less the difference in the before and after values of the residential property.

(b) This difference represents the acquisition price and shall include any damages to the portion of the tract not acquired by the Transportation Cabinet.

(2) If the acquired dwelling is located on a tract larger in size than typical for residential use in the area and if only a portion of the tract is acquired by the Transportation Cabinet, the cabinet shall only consider that portion of the tract which is a typical size for computation of the maximum replacement housing payment. The maximum housing payment shall be the probable selling price of a comparable replacement dwelling and tract typical in size for residential use in the area, less the difference in the before and after value of the typical size residential property which was carved out of the total tract.

(3)(a) If the acquired dwelling is located on a farm and if only a portion of the farm is acquired by the Transportation Cabinet, the cabinet shall only consider that portion of the farm which is a typical size tract for a residential property in the area for computation of the maximum replacement housing payment.

(b) The maximum replacement housing payment shall be the probable selling price of a comparable replacement dwelling and tract typical in size for residential use in the area, less the difference in the before and after value of the typical size residential property which was carved out of the total farm.

(4) If an outbuilding is located on the tract to be acquired and if the outbuilding is used for nonresidential purposes such as corncribs or implement storage, its value shall not be included in the computation of the replacement housing payment.

(5) If the acquired dwelling is located on a tract where the fair market value is established on a use higher and better than residential and if only a portion of the tract is acquired by the Transportation Cabinet, the maximum amount payable is the probable selling price of a comparable replacement dwelling on a tract typical in size for residential use in the area, less the difference in the before and after value of the typical size homesite using the value indicated by the higher and better use, or if larger than typical, the difference in the value before and after a portion is carved out. This difference shall

represent the acquisition price.

Section 18. Replacement Housing Payments - Multiple Occupancy of Same Dwelling Unit. (1)(a) If two (2) or more eligible families occupy the same single-family dwelling unit, and a comparable replacement dwelling is available, the occupants are entitled to only one (1) replacement housing or rent supplement payment.

(b) If a comparable replacement dwelling is not available, a replacement housing or rent supplement payment for each family shall be based on housing which is comparable to the quarters privately occupied by each family plus community rooms which have been shared with other occupants.

(c) For owner-occupants the acquisition price to be used as the basis for replacement housing payment computations is that amount each owner received from the total payment for the property to be acquired.

(2)(a) If two (2) or more eligible individuals occupy the same single-family dwelling unit, they are considered one (1) family for replacement housing payment or rent supplement purposes.

(b) If all individuals do not relocate to decent, safe, and sanitary housing, the Transportation Cabinet shall determine and pay those individuals who do relocate into decent, safe, and sanitary housing a proportional share of the payment that would have been received if all individuals had relocated together in the same ownership or rental status as they had at the time of initiation of negotiations.

(3) If a displaced individual or family occupies living quarters on the same premises as a displaced business, farm, or nonprofit organization, the individual or family is a separate displaced person for purposes of determining entitlement to relocation payments. The Transportation Cabinet shall compute the replacement housing payment for joint residential and business use properties as follows:

(a) If the owner occupies living quarters in the building the replacement housing payment shall be determined by establishing the difference in the before and after value of the land using the appraised value (if acquiring the entire tract the cabinet shall use the total land value) adding the value of the living quarters portion of the building and then subtracting the total from the most comparable property to the living quarters available for sale on the market.

(b) If a tenant occupies living quarters in the building to be acquired, the replacement housing payment shall be determined by subtracting the base monthly rent of the displaced tenant in the acquired dwelling as determined in Section 24(2) of this administrative regulation from the amount the displaced person actually pays per month for a rental replacement dwelling including the estimated average monthly utilities or, if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities. That amount shall be multiplied by forty-two (42) to establish the replacement housing payment.

(c) A displaced person eligible for a rental replacement housing payment under Section 24(1) of this administrative regulation may receive a down payment assistance payment not to exceed \$5,250. In order to receive this payment, the full amount of the payment shall be applied toward the purchase price of the replacement dwelling and related incidental expenses.

(4) The procedure for computing replacement housing payment amounts to an owner of a multifamily dwelling who occupies one (1) unit is as follows:

(a) The comparable dwellings considered in the computation shall be the same as that acquired, that is, if the property is a triplex, then the comparable dwellings shall be triplexes. If comparable dwellings are not available, structures of the next lowest density shall be used. If there are not any available comparable multifamily structures to be found, the comparison of the owner's living unit shall be to a single-family residence. A higher density structure shall never be used as a comparable structure.

(b)1. The value of the owner's unit shall be used as the basis for

amount determined by the cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the fair market rent including monthly utilities of the acquired dwelling as determined by the cabinet, then multiply that amount by forty-two (42).

(12) The rental payment authorized by subsection (11) of this section may only exceed \$5,250 if the payment to purchase for an owner-occupant of 180 days could have been authorized as a last resort housing payment under Section 30 of this administrative regulation and therefore, could have exceeded \$22,500.

Section 20. Replacement Housing Payments - Owner-Occupants of Less Than 180 Days. (1)(a) A displaced owner-occupant who has owned and occupied the dwelling for less than 180 days and who elects to rent a replacement dwelling is eligible for a rental replacement housing payment not to exceed \$5,250.

(b) To compute the rental payment, from the amount the displaced person actually pays for a rental replacement dwelling including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable dwelling including the estimated average monthly utilities the Transportation Cabinet shall subtract the monthly fair market rent of the acquired dwelling as determined by the cabinet, then multiply that amount by forty-two (42).

(2) A displaced owner-occupant who has owned and occupied the dwelling for less than 180 days, may elect to receive an amount to enable him to make a down payment on the purchase of a replacement dwelling including the actual expenses incidental to the purchase, not to exceed \$5,250, or for additional costs to relocate his retained dwelling in accordance with the following:

(a) The full amount of the payment shall be applied toward the purchase of the replacement dwelling and related incidental expenses and the displaced person shall purchase and occupy the dwelling within the time frame specified in Section 24(1) of this administrative regulation;

(b) The displaced person may be eligible for the entire \$5,250 for a down payment including incidental expenses, when the amount of the rental replacement housing computation is less than \$5,250 or is zero, except either payment shall not exceed the amount the displaced person would receive if he were an owner-occupant of 180 days or more.

(3)(a) If an owner-occupant of less than 180 days retains his dwelling, then the replacement housing payment, if any, shall be determined in accordance with the provisions of Section 19(10) of this administrative regulation, but the payment shall not exceed \$5,250.

(b) If an owner-occupant of less than 180 days has received a rental replacement housing payment, the amount of the rental payment shall be deducted from the amount to which he is entitled.

(c) The combined payments shall not exceed \$5,250.

Section 21. Revisions to Replacement Housing Payment. (1) If the comparable housing used in the Transportation Cabinet's computation is not available at the time of the relocation offer, a new replacement housing payment shall be computed based on available housing which is equal to or better than the dwelling acquired and meets the other comparable criteria.

(2) When an adjustment is made in the fair market value offer to the owner-occupant because of an administrative settlement, an appeal from the commissioners' award, jury award or similar reason the replacement housing payment shall be recomputed based on the new acquisition price.

Section 22. Replacement Housing Payments - Increased Interest Payments. Increased interest payments are provided to compensate a displaced person for the increased interest costs he is required to pay for financing a replacement dwelling.

(1)(a) The increased interest payment shall be allowed only when

the dwelling acquired by the Transportation Cabinet was encumbered by a mortgage which was made in good faith without fraud or deceit and which was a valid lien on the dwelling for not less than 180 days prior to initiation of negotiations for the acquisition of the real property, in whole or in part, or at the time a written notice is given of the Transportation Cabinet's intent to acquire the property and the displaced person obtains a mortgage on his replacement dwelling at a higher interest rate than the mortgage rate on the dwelling acquired by the Transportation Cabinet.

(b) All mortgages on the dwelling acquired by the Transportation Cabinet shall be considered in computing the increased interest cost portion of the replacement housing payment.

(c) In the case of a home equity loan, the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) In determining the amount of the increased interest payment, the computation shall be based on the monthly payment of the old mortgage, the remaining term of the old mortgage or term of new mortgage, whichever is shorter, and the old and new interest rates. Most increased interest payments shall also be based on the unpaid mortgage balance on the displacement dwelling. However, if the new mortgage amount is less, the payment shall be reduced accordingly.

(3) Documentation of the terms, amount, and interest rate for the existing and new mortgages shall be submitted on a form prescribed and furnished by the Transportation Cabinet. This form shall be completed for the existing and new mortgages and signed by a representative of the lending agency. When a loan is included in a land contract, a copy of the contract may be used for documentation.

(4) Payment for purchaser's points, loan origination fees or assumption fees but not seller's points, shall be paid to the extent that:

(a) They are not paid as incidental expenses;

(b) They do not exceed rates normal to real estate transactions in the area; and

(c) They are determined to be necessary; and

(d) The points and fees are based on the unpaid mortgage balance on the displacement dwelling, less the amount of the mortgage payment computed in this section.

(5) To document these charges in subsection (4) of this section, the Transportation Cabinet shall be provided a copy of the lending agency's closing statement.

(6) The interest rate on the mortgage for the replacement dwelling to be used in the computation shall be the actual interest rate but shall not exceed the prevailing fixed interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(7) Increased interest payments normally shall be made directly to the displaced person. However, upon written request from the displaced person the payment may be made directly to the mortgagee of the replacement dwelling or may be paid into escrow prior to the displaced person's moving.

(8)(a) If the dwelling acquired is located on a tract normal for residential use in the area and only a portion of the tract is acquired by the Transportation Cabinet, the mortgage balance shall be reduced by the percentage ratio the acquisition price bears to the before value of the total tract. The reduction shall not apply when the mortgagee requires the entire mortgage balance to be paid because of the acquisition and it is necessary to refinance.

(b) If a dwelling is located on a tract larger than normal for residential use in the area and only a portion of the tract is acquired by the Transportation Cabinet, the total mortgage balance shall be reduced to the percentage ratio that the value of the residential portion bears to the before value. This reduction shall apply whether or not it is required that the entire mortgage balance be paid.

(9) The interest payment on multiuse properties shall be reduced to the percentage ratio the residential value of the multiuse property bears to the before value.

Section 27. Mobile Homes - General. (1) The general provisions for moving expense payments to owners and tenants of conventional dwellings shall be applicable to owners or tenants of mobile homes.

(2) If it is determined that a sufficient portion of a mobile home park is taken that the remainder is not sufficient to continue the operation, and a mobile home in the remaining part of the park is required to be moved as a result of the project, the owner and any tenant shall each be considered a displaced person. A mobile home may be considered a replacement dwelling provided it is substantially a decent, safe and sanitary dwelling.

(3) The ownership or tenancy of the mobile home (not the land on which it is located) shall determine the occupant's status as an owner or a tenant. The length of ownership and occupancy of the mobile home or the mobile home site shall determine the occupant's status as a 180 day or ninety (90) day owner or tenant. The mobile home shall have been occupied on the same site (or in the same mobile home park) for the requisite 180 days or ninety (90) days to make the occupant eligible for a replacement housing payment or rent supplement.

(4) A nonoccupant-owner of a mobile home is eligible for an actual cost moving expense payment.

(5) If the person is displaced from a mobile home park, a nonreturnable mobile home park entrance fee is reimbursable provided it does not exceed the fee at a comparable park or if the Transportation Cabinet determines that it is necessary to pay the fee to effect relocation.

(6) There is no limit to the distance of the move of the displaced person. However, a relocation assistance moving expense payment shall be computed on a move of a distance of no more than fifty (50) miles, except when it is determined that the relocation cannot be accomplished within a fifty (50) mile radius. Beyond the fifty (50) mile radius, approval for a distance payment shall be limited to the nearest available mobile home site.

(7)(a) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a comparable conventional dwelling.

(b) If it is determined that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the cost of a comparable replacement dwelling shall be assumed to be:

1. The sum of the value of the mobile home;
2. The cost of any necessary repairs or modifications; and
3. The estimated cost of moving the mobile home to a replacement site.

(c) If a mobile home is not actually acquired, but the occupant is considered displaced under this administrative regulation, the initiation of negotiations shall be the date of the initiation of negotiations to acquire the land, or, if the land is not acquired, the date the occupant is notified in writing that he is a displaced person for the purpose of these procedures.

(d) If the owner is reimbursed for the cost of moving the mobile home under this administrative regulation, he is not eligible for a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(8) There may be other combinations of ownership or occupancy relating to mobile homes not covered in these procedures. In these cases, the Transportation Cabinet shall make every effort to treat the displaced person in a manner consistent with the other provisions of this section.

Section 28. Mobile Home Moving Expense Payments. (1)(a) The general provisions for moving expense payments to owners and tenants of conventional dwellings shall also be applicable to owners and tenants of mobile homes.

(b) A displaced individual or family [~~Displaced individuals or families~~] occupying a mobile home may receive payment for the actual, reasonable expense of moving their personal property.

(c)1. If an owner-occupied mobile home is considered personal property, the cost of moving the mobile home shall be ~~is~~ reimbursable.

2. A reasonable payment may be made to the occupant for packing and securing personal property within a mobile home prior to its move.

(d) If the owner chooses to move the mobile home, it shall be moved by an entity granted authority as a Kentucky for-hire motor carrier [~~a commercial mobile home carrier licensed~~] by the Department of Vehicle Regulation.

(e) The owner may choose the mover, and receive reimbursement for the actual, reasonable expenses. Request for payment of actual cost moving expenses shall be supported by receipted bills.

(f) Prior to authorizing a move of a mobile home, the Transportation Cabinet shall determine:

1. The items of personal property to be moved, including the mobile home and any items stored in accessory buildings; and

2. Determine that the mobile home mover holds authority from the Department of Vehicle Regulation as a for-hire motor [~~is a licensed commercial mobile home~~] carrier and obtain from him an estimate of the moving costs.

a. This estimate shall include any necessary utility service connections.

b. If this estimate is not reasonable, the cabinet may approach another mobile home mover or renegotiate the price.

(2) If the mobile home is not acquired, but the mobile home owner-occupant obtains a replacement housing payment under one (1) of the circumstances described in Section 29(2)(c) of this administrative regulation, the owner shall not be eligible for payment for moving the mobile home, but may be eligible for payment for moving personal property from the mobile home.

(3) However, the following expenses shall be eligible for an actual cost moving expense payment:

(a) The reasonable cost of disassembling, moving, and reassembling any attached appurtenance, such as a porch, deck, skirting, or awning; anchoring of the unit; and utility hookup charges; and

(b) The reasonable cost of repairs or modifications if a mobile home requires repairs or modifications so that it can be moved or made decent, safe and sanitary, and it is determined that it would be economically feasible to incur the additional expense.

(3) Arrangements may be made between the Transportation Cabinet, the displaced person, and the mover so that the displaced person may present an unpaid moving bill to the Transportation Cabinet for direct payment to the mover.

(4) An application for moving expense payments may be submitted in advance of the move so that payment is made available immediately upon completion of the move. In some unusual circumstances, and with prior approval of the Transportation Cabinet, moving expense payments may be made prior to the actual move.

(5)(a) If a mobile home is considered real property, acquired by the Transportation Cabinet and included in the appraised value of the site, and if the owner repurchases the mobile home from the Transportation Cabinet, the cost of moving the mobile home shall not be eligible for moving expense payments.

(b)1. If the owner uses the mobile home to move personal property, the cost of moving the personal property shall be considered eligible for reimbursement.

2. Payment shall be computed from the fixed-rate residential move schedule set forth in Section 10 of this administrative regulation.

(6) If the landowner occupies the mobile home and the mobile home is acquired by the Transportation Cabinet or if a tenant-occupant of a mobile home is displaced, the displaced person shall move his personal property from his mobile home by one (1) of the following methods:

(a) The displaced person may elect to move his personal belongings by the use of a commercial mover as prescribed in

\$5,250.

(b) If the owner elects to rent a replacement mobile home, the rent supplement payment shall be computed by subtracting the actual or fair market rent, including utilities as determined by the Transportation Cabinet from the amount the displaced person pays for a rental mobile home and site, including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and site including the estimated average monthly utilities. The Transportation Cabinet shall then multiply that amount by forty-two (42) to compute the actual payment.

(7) If the Transportation Cabinet acquires the site where the owner-occupant of 180 days of a mobile home described in subsection (2) of this section rents the site but the cabinet does not acquire the mobile home, the replacement housing payment shall be determined as follows:

(a) If the owner of the mobile home elects to purchase a replacement site, the replacement housing payment shall be a down payment assistance payment not to exceed \$5,250 if the owner of the mobile home purchases and occupies the replacement site within one (1) year. The full amount of the payment shall be applied to the purchase of a replacement mobile home site and related expenses.

(b) If the owner of the mobile home elects to rent a replacement site, the rental replacement housing payment shall be determined by subtracting the actual or fair market rent including utilities as determined by the Transportation Cabinet from the amount the owner pays for a rental mobile home site including the estimated average monthly utilities, or if less, the amount determined by the cabinet as necessary to rent a comparable mobile home site including utilities. The Transportation Cabinet shall then multiply that amount by forty-two (42).

(8)(a) A displaced owner-occupant of a mobile home who has occupied for less than 180 days the mobile home on the site from which he is being displaced, and who is otherwise eligible under the provisions of Section 19 of this administrative regulation is eligible for a replacement housing payment not to exceed \$5,250.

(b) The replacement housing payment may enable him to make a down payment on the purchase of replacement housing in accordance with the provisions of paragraph (a) of this subsection and reimburse him for the actual expenses incidental to the purchase.

(c) If he elects to rent, a rental replacement housing payment shall be determined as provided in paragraph (b) of this subsection. The payment is to be computed and disbursed in accordance with the provisions of Section 24 of this administrative regulation.

(d) When the cabinet is acquiring both the mobile home and site from the owner-occupant, the displaced person eligible for a rental replacement housing payment may receive a down payment assistance payment not to exceed \$5,250 only if the full amount of the payment is applied to the purchase price of the replacement dwelling and related incidental expenses. The amount for which he is eligible shall be limited to the amount he would receive if he were an owner-occupant of 180 days or more.

(e) If the Transportation Cabinet acquires the mobile home and site from the less than 180 days owner-occupant, a rental replacement housing payment shall be computed by subtracting the monthly fair market rent of the mobile home and site including utilities as determined in by the cabinet from the amount the owner actually pays for a rental mobile home and site including the estimated average monthly utilities or if less, the amount determined by the Transportation Cabinet as necessary to rent a comparable mobile home and site, including the estimated average monthly utilities. To compute the actual payment the Transportation Cabinet shall multiply this amount by forty-two (42).

(9) If the Transportation Cabinet acquires the site but not the mobile home from the owner-occupant described in subsection (2) of this section except that he had occupied the mobile home for less than 180 days, the replacement housing payment shall be determined

as follows:

(a) If the owner purchases conventional replacement housing or purchases a site to which the mobile home is moved, the replacement housing payment shall be determined as in subsection 8(a) of this section.

(b) If the owner elects to rent replacement housing, a rental replacement housing payment shall be computed by subtracting the monthly fair market rent of the acquired site, including utilities as determined by the cabinet from the amount the displaced person actually pays for a rental replacement mobile home site, including the estimated average monthly utilities, or if less, the amount determined by the Transportation Cabinet as necessary to rent comparable mobile home site including the estimated average monthly utilities. To compute the actual payment the Transportation Cabinet shall then multiply this amount by forty-two (42).

(10) A displaced tenant of a mobile home who has occupied for at least ninety (90) days the mobile home on the site from which he has been displaced and who is otherwise eligible under the provisions of Section 24(1) of this administrative regulation, is eligible for a replacement housing payment, not to exceed \$5,250. The rental replacement housing payment shall be determined in accordance with the provisions of Section 24 of this administrative regulation. If the displaced person elects to purchase a replacement dwelling, he shall receive a payment in accordance with Section 25 of this administrative regulation.

Section 30. Last Resort Housing. The last resort housing procedures of this section shall be implemented when it is determined that a Transportation Cabinet project cannot proceed to actual construction because comparable replacement sale or rental housing, within the monetary limits is not available and the housing cannot otherwise be made available. A person cannot be required to move from his dwelling unless at least one (1) comparable replacement dwelling is made available to the person.

(1) If comparable decent, safe, and sanitary housing is not available, any decision to provide last resort housing assistance shall be justified either:

(a) On a case-by-case basis, during which consideration has been given to:

1. Availability of comparable housing in the area of the project;
2. Resources available to provide comparable housing; and
3. Individual circumstances of the displaced person; or

(b) It is determined that:

1. There is little, if any, comparable replacement housing available to a displaced person within an entire project area. Therefore, a case-by-case justification for last resort housing assistance is not necessary;

2. A project cannot be advanced to completion in a timely manner without last resort housing assistance; and

3. The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project costs.

(2) A displaced person shall not be deprived of any rights the person may have under KRS 56.610 to 56.760. A displaced person shall not be required, without the person's written consent, to accept a dwelling provided by the Transportation Cabinet under the procedures described in subsection (3) of this section in lieu of any acquisition payment or any relocation payment for which the person may be eligible;

(3) The methods of providing last resort housing include, but are not limited to:

(a) A replacement housing payment in excess of the limits set forth in Sections 19 and 24 of this administrative regulation. Rental assistance subsidy in last resort housing may be provided in installments or in a lump sum as determined by the Transportation Cabinet;

(b) Rehabilitation of or addition to an existing replacement

(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: Kentucky Road 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: No public comment hearing was held. However, no effect is anticipated.

(b) Kentucky: No public comment hearing was held. However, no effect is anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The "no change" alternative was rejected because the cost of relocation has increased. Therefore, the Transportation Cabinet had requested approval from the U.S. Department of Transportation to increase the fixed-rate relocation cost. When the requested increase was approved, it was necessary to amend the administrative regulation.

(8) Assessment of expected benefits: The cabinet believes that it will be more equitable to the public when this change is made.

(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: 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: DNA

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? The entire administrative regulation is a tiering of the level of payments to relocated persons, businesses and farms.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 213, Uniform Relocation Assistance and Real Property Acquisition Action of 1970, PL 91-646 as amended. 49 CFR PART 24.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations are applicable to all property acquired using federal funds. The Federal Highway Administration left many parts of the assistance to the discretion of the individual states. The federal minimum standards relate to general relocation requirements, payments for moving and related expenses, replacement housing payments, and mobile homes.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The Transportation Cabinet has made the program applicable to both state and federal projects.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. State law allows an agency to adopt the program for nonfederally funded projects as well as federally funded ones. In the instance of a highway construction project part federally funded and the remainder not, it is unfair to provide this benefit some but not to others. The reasoning why part of the residents of a displaced neighborhood would receive extra funds from the state to make their relocation easier but the others wouldn't is impossible to explain to the participants.

TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Enforcement (Amendment)

601 KAR 1:025. Transporting hazardous materials by air or highway.

RELATES TO: KRS 174.400 through 174.425, 49 CFR 107, 130, 171-173, 175, 177, 180

STATUTORY AUTHORITY: KRS 174.410(2), 49 CFR Parts 130, 171-173, 175, 177, 180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Human Resources (now Health Services), shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.425 relating to the transportation of hazardous materials by air or highway. This administrative regulation implements these statutory provisions.

Section 1. The hazardous materials transportation regulations adopted and issued by the United States Department of Transportation relating to the following subjects shall govern the transportation of hazardous materials within Kentucky if the transportation of hazardous material is by air or highway:

(1) 49 CFR Part 107, effective October 1, 1996 as amended at 62 Fed. Reg. 2970, January 21, 1997 [1996, as amended at 60 Fed. Reg. 49106, September 21, 1995; 61 Fed. Reg. 7178, February 26, 1996; at 61 Fed. Reg. 18926, April 29, 1996; at 61 Fed. Reg. 21084, May 9, 1996; and at 61 Fed. Reg. 27048, June 3, 1996]. Part 107 sets forth the requirements for a national registration of the transporters of hazardous materials.

(2) 49 CFR Part 130 effective October 1, 1996 [1996, as amended at 61 Fed. Reg. 30533, June 17, 1996]. Part 130 sets forth general information, regulations and definitions applicable to oil spill prevention and response plans;

(3) 49 CFR Part 171 effective October 1, 1996 [1996], as amended at 61 Fed. Reg. 65958, December 16, 1997; 61 Fed. Reg. 68952, December 30, 1996; 62 Fed. Reg. 1208, January 8, 1997; 62 Fed. Reg. 1217, January 8, 1997; 62 Fed. Reg. 2970, January 21, 1997; 62 Fed. Reg. 7638, February 19, 1997 [60 Fed. Reg. 49106, September 21, 1995; 60 Fed. Reg. 50292, September 28, 1995; at 61 Fed. Reg. 7958, February 29, 1996; at 61 Fed. Reg. 18926, April 29, 1996; at 61 Fed. Reg. 21084, May 9, 1996; at 61 Fed. Reg. 25940, May 23, 1996; at 61 Fed. Reg. 26418, May 24, 1996; at 61 Fed. Reg. 26750, May 29, 1996; at 61 Fed. Reg. 27166, May 30, 1996; at 61 Fed. Reg. 28666, June 5, 1996; and at 61 Fed. Reg. 33250, June 26, 1996]. Part 171 sets forth general information, regulations and definitions applicable to all hazardous materials transportation;

(4) 49 CFR Part 172 effective October 1, 1996 [1996], as amended at 62 Fed. Reg. 1217, January 8, 1997 and 62 Fed. Reg. 14334, March 26, 1997 [60 Fed. Reg. 49106, September 21, 1995; at 60 Fed. Reg. 50292, September 28, 1995; at 61 Fed. Reg. 18926, April 29, 1996; at 61 Fed. Reg. 20747, May 8, 1996; at 61 Fed. Reg. 27166, May 30, 1996; and at 61 Fed. Reg. 28666, June 5, 1996]. Part 172 lists and classifies those materials which the United States Department of Transportation has designated as hazardous materials for purposes of transportation and prescribes the requirements for the following:

(a) Shipping papers;

(b) Package marking; and

(c) Labeling and transport vehicle placarding applicable to the shipment and transportation of those hazardous materials;

(5) 49 CFR Part 173 effective October 1, 1996 [1996], as

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal Highway Administration funding through the Motor Carrier Safety Assistance Program Grant.

(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 comment hearing was not held. However, no economic impacts are anticipated.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Only one alternative exists to the administrative regulation amendment as proposed. The do-nothing alternative was rejected because of the requirement in KRS Chapter 174 that the federal regulations be adopted. Therefore, the new federal regulations are proposed to be adopted because all changes are currently allowed by US DOT. A motor carrier should not be cited for complying with the new federal requirements.

(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 should be an added measure of safety in the transportation of hazardous materials, particularly on public highways.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Possibly, since the list of hazardous materials covered under this administrative regulation has been revised to include several additional materials, they will now have to be packaged, labeled, shipped and placarded in accordance with the safety procedures established in this administrative regulation. There should be fewer air or highway problems with the transportation of these hazardous materials if the administrative regulation is promulgated.

(c) If detrimental effect would result, explain detrimental effect: Without the safest and most up-to-date shipping and transportation procedures being implemented and enforced, it is possible that highway crashes could cause more environmental problems due to spills, leakage, or explosions.

(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 proposed amendment adopts changes to the 49 CFR Parts which govern the transportation of hazardous materials by air or highway and are included in this administrative regulation. These changes were published in the "Federal Register" during the last several months. The changes of significance are as follows:

1. An update of references in the hazardous materials regulations to include the most recent amendments to international standards. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code) and the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), these amendments are necessary to facilitate the continued transport of hazardous materials in international commerce by vessel and aircraft when these international regulations become effective.

2. RSPA is prohibiting the transportation of oxygen generators as cargo on board passenger-carrying aircraft. This rule applies to both foreign and domestic passenger-carrying aircraft entering, leaving or operating in the transportation on any passenger-carrying aircraft.

3. This final rule requires that all intrastate shippers and carriers comply with the hazardous materials regulations (HMR) with certain exceptions. This action is necessary to comply with amendments to the federal hazardous materials transportation law mandating that

DOT regulate the transportation of hazardous materials in intrastate commerce. The intended effect of this rule is to raise the level of safety in the transportation of hazardous materials by applying a uniform system of safety regulations to all hazardous materials transported in commerce throughout the United States.

4. An amendment to the hazardous materials regulations (HMR) to better identify hazardous materials in transportation. Changes include adding a new "POISON INHALATION HAZARD" (PIH) label and placard to enhance the ready identification of materials which are poisonous if inhaled, lowering the quantity for specific hazard class placarding from 2,268 kilograms (5,000 pounds) to 1,000 kilograms (2,205 pounds) of one class or division of material loaded on a transport vehicle, expanding requirements for transport vehicles and freight containers that have been fumigated, and other enhancements to the hazard communication system. Improved identification of, and information about, hazardous materials in transportation assists emergency response personnel in responding to and mitigating the effects of incidents involving the transportation of hazardous materials, and improves safety to transportation workers and the public. The remainder of the changes are technical or clarifying in nature or are an attempt by the US Department of Transportation to restructure the hazardous materials regulations to reduce repetitive statements.

(11) TIERING: Is tiering applied? Yes. The adopted federal regulations are tiered based on the amount and type of hazardous material being transported.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 350 encourages each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance. The states may apply for a Motor Carrier Safety Assistance Program Grant to implement this federal policy. To be eligible for such a grant the state must adopt and assume responsibility for enforcement of the federal motor carrier safety regulations found in 49 CFR Parts 107, 130, 171 - 173, 177, 178, and 180.

2. State compliance standards. Kentucky has been a participant in the Motor Carrier Safety Assistance Program since its inception in the 1980's. The Transportation Cabinet has adopted all of the federal regulations contained in 49 CFR Parts 107, 130, 171 - 173, 177, 178, and 180.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

- The listing of the materials and their minimum quantities which require a material to be treated as a hazardous material;
- Establishes the emergency response information requirements for each transporter of a hazardous material;
- Defines the general requirements for shipping and packaging of each type of hazardous material;
- Defines the unacceptable hazardous material shipments on a highway;
- Establishes requirements for the transportation of hazardous materials that are unique to highway transportation;
- Establishes shipping container specifications for the transportation of hazardous materials;
- Establishes the qualification and maintenance requirements for cargo tanks which are used in the transportation of hazardous materials; and
- Establishes an oil spill prevention and response plan for all transporters of oils.

4. Will this administrative regulation impose stricter requirements,

hours of graduate credit. The certificate shall be issued for a five (5) year period and subject to the renewal schedule of three (3) years of successful teaching experience or completion by September 1 of the year of expiration of at least six (6) semester hours of additional credit or the equivalent in PSDU's or CEU's for each five (5) year period.

(3) ~~[(e)]~~ An applicant who has held a regular Kentucky teaching certificate which has lapsed for failure to meet renewal requirements, but who otherwise qualifies for the reissuance of a Kentucky teaching certificate, shall not be required to take the written tests or to participate in the beginning teacher internship program.

(4)(a) An out-of-state applicant having completed two (2) or more years of successful teaching experience within the last ten (10) years, [outside of the Commonwealth of Kentucky,] who otherwise qualifies for certification, shall not be required to take the written tests ~~[or to participate in the beginning teacher internship program].~~

(b) Successful experience shall be in a position directly corresponding to the type of teaching certificate for which the application is being made and shall be ~~[further]~~ defined as follows:

1. Employment shall be [is] at least on a half-time basis.
2. A full year of experience shall include at least 140 days of employment performed within the academic year.
3. A half year of experience shall include at least seventy (70) days of employment performed within an academic semester.

(5) Prerequisites for the issuance of a one (1) year certificate for the beginning teacher internship shall include:

(a) The completion of an approved program of preparation which corresponds to the certificate desired;

(b) The successful completion of the written tests designated by the Education Professional Standards Board [State Board of Education] for:

1. General knowledge;
2. Communications skills;
3. Professional education concepts; and
4. Knowledge in the specific teaching field of the applicant, with minimum scores in each test as identified in 704 KAR 20:305 and as established [set] by the Education Professional Standards Board; and [State Board of Education].

(c) Evidence of employment in a Kentucky school as identified in KRS 156.160. [attested by the employer in a school that is accredited by the State Board of Education.]

(6) Upon successful completion of an [the] approved program of preparation and upon completion of the designated tests with acceptable scores, the Education Professional Standards Board [Department of Education] shall issue a statement of eligibility for employment which shall serve as evidence of eligibility for the one (1) year certificate once a teaching position is secured. The statement of eligibility shall be issued in accordance with 704 KAR 20:055 and shall be valid for a five (5) [four (4)] year period. If the teacher internship is not completed [begun] within the five (5) [four (4)] year period, the individual shall [must] requalify for another statement of eligibility by retaking and passing the designated written tests with acceptable scores. The individual may requalify for a statement of eligibility by presenting six (6) new semester hours of graduate credit from a Planned Fifth-year Program. This option may only be used on the first requalification for a statement of eligibility.

(7) For a person who attains [persons who attain] the statement of eligibility, but who is [are] not appropriately employed, the Certificate for Substitute Teaching may be issued as provided in 704 KAR 20:210, Section 1.

(8)(a) The employment of a teacher intern shall not begin earlier than the effective date shown on the statement of eligibility.

(b) The one (1) year certificate for the beginning teacher internship shall be issued in accordance with 704 KAR 20:055, "Dating of Certificates." If the teacher's first year performance is judged to be less than satisfactory, the teacher shall be provided with an opportunity to repeat the internship one (1) time through the reissuance of another one (1) year certificate if the teacher is employed by a school

district.

Section 4. Fees. (1) The following fees for teaching certificates shall apply:

- (a) Statement of eligibility for internship - no charge;
- (b) Limited one (1) year certificate - no charge;
- (c) Issuance, reissuance, or renewal of a regular certificate - fifty (50) dollars, this shall include all previously approved certifications and endorsements;
- (d) Issuance of a five (5) year substitute certificate - fifteen (15) dollars;
- (e) Reissuance of limited four (4) year certification - thirty-five (35) dollars;
- (f) A duplicate copy of the certificate - twenty-five (25) dollars.
- (2) A refund of the certification fee shall be provided to an unsuccessful certification applicant, less a ten (10) dollar processing fee.
- (3) Appropriate fees shall accompany the application. Fees shall be received in the form of a certified check or money order made payable to the Kentucky State Treasurer.

ROSA WEAVER, Chair

APPROVED BY AGENCY: January 27, 1997

FILED WITH LRC: March 25, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on May 21, 1997, at 10 a.m., in the First Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 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, Executive Secretary, Education Professional Standards Board, 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 all certificate holders.

(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: Candidates for issuance, reissuance and renewal of certificates will incur certification costs.

2. Second and subsequent years: Same as above.

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: 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: The Division of

ADMINISTRATIVE REGISTER - 3923

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, Executive Secretary, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky, 40601, (502) 573-4606, Fax (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact Person: Ronda Tamme

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(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: Routine reporting.

2. Second and subsequent years: Same as above.

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None additional.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Routine reporting.

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

None

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

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None. No comments received.

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Education Professional Standards Board can establish teacher certificate standards only by administrative regulation.

(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? No. Certification requirements are uniformly applicable to all individuals.

EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (Amendment)

704 KAR 20:070. Certification for teaching in the secondary grades. [Provisional high school certificate]

RELATES TO: KRS 161.020, 161.028, ~~[161.025,]~~ 161.030

STATUTORY AUTHORITY: KRS 161.028, ~~[166.070,]~~ 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.028

requires that a teacher [161.020, 161.025, and 161.030 require that teachers] and other professional school personnel hold a certificate [certificates] of legal qualification [qualifications] for his or her [their] respective position [positions] to be issued upon completion of a program [programs] of preparation prescribed by the Education Professional Standards Board. Additionally, KRS 161.020 requires that a [Kentucky Council on Teacher Education and Certification and approved by the State Board for Elementary and Secondary Education; furthermore, the] teacher education institution [institutions are required to] be approved for offering the preparation program [programs] corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board [recommended by the council and approved by the state board]. This administrative regulation establishes the professional [an appropriate] certificate for teaching in the secondary grades and relates to the corresponding standards and procedures for program approval as included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005.

Section 1. (1) The professional [provisional high school] certificate for teaching in the secondary grades shall be issued in accordance with the pertinent Kentucky statutes and [State Board for Elementary and Secondary Education] administrative regulations of the Education Professional Standards Board. The [to an] applicant shall have [who has] completed the [approved] program of preparation which has been [corresponds to the certificate at a teacher education institution] approved under the standards and procedures included in the Kentucky Standards for the Preparation-Certification of Professional School Personnel as adopted in 704 KAR 20:005[. TEC 40.0, 40.1, 40.2, and 40.3].

(2) The professional [provisional high school] certificate for teaching in the secondary grades shall be issued and renewed in accordance with the provisions of KRS 161.030 and 704 KAR 20:045.

(3) The professional [Except as hereinafter provided, the provisional high school certificate shall be valid for teaching in grades seven (7) through twelve (12).

(4) The certificate described in this administrative regulation shall be renamed the provisional certificate for teaching in the secondary grades [0-12, and this new certificate] shall be valid [only] for teaching in grades seven (7) [nine (9)] through twelve (12) [and for a departmentalized assignment in grades seven (7) and eight (8) in the major, minor, or area of concentration designated on the teaching certificate]. The provisional certificate for teaching in the secondary grades shall be valid for teaching in grades seven (7) through twelve (12). The professional and provisional certificate for teaching in the secondary grades shall be valid for grade six (6), when the grade configuration of the school includes grade six (6).

ROSA WEAVER, Chair

APPROVED BY AGENCY: January 27, 1997

FILED WITH LRC: March 25, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on May 21, 1997, at 10 a.m., in the First Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 1997, five work days

ADMINISTRATIVE REGISTER - 3925

tion Professional Standards Board, 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 all certificate holders.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: None

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on promulgating administrative body: None

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Division of Certification must maintain records and issue certificates.

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

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

(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 in Kentucky. The Education Professional Standards Board can establish teacher certification standards only by administrative regulation.

(8) Assessment of expected benefits: None

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky:

(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: None

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Certification requirements are uniformly applicable to all individuals.

LABOR CABINET

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

803 KAR 2:301. Adoption and extension of established federal standards.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

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

(a) 29 CFR 1910.11-.19 of the Code of Federal Regulations revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration are incorporated by reference.

(b) The revision to 29 CFR 1910.17, "Effective Dates", as published in the Federal Register, Volume 61, Number 46, March 7, 1996.

(c) 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.

(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. (ET), Monday through Friday.

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
(Amendment)

803 KAR 2:306. Occupational health and environmental control.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910
 STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

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) "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. Occupational Noise Exposure. (1) The language relating to audiometric test requirements for occupational noise exposure in subsection (2) of this section shall apply in lieu of 29 CFR 1910.95(h)(1).

(2) 29 CFR 1910.95(h)(1) is amended to read: Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz must be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests must include 8,000 Hz after January 15, 1985.

(3) The language relating to audiometric test requirements for occupational noise exposure in subsection (4) of this section shall apply in lieu of 29 CFR 1910.95(h)(4).

(4) 29 CFR 1910.95(h)(4) is amended to read: Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: Audiometric Test Rooms. When an audiometric test room is located in a mobile test van, background

sound pressure level measurements shall be taken at each testing location.

(5) The language relating to audiometric test requirements for occupational noise exposure in subsection (6) of this section shall apply in lieu of 29 CFR 1910.95(h)(5)(ii).

(6) 29 CFR 1910.95(h)(5)(ii) shall read: Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this check. Deviations of fifteen (15) decibels or greater require an exhaustive calibration.

(7) The language relating to audiometric test requirements for occupational noise exposure in subsection (8) of this section shall apply in lieu of 29 CFR 1910.95(h)(5)(iii).

(8) 29 CFR 1910.95(h)(5)(iii) is amended to read: An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this calibration.

(9) 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).

(10) 29 CFR 1910.95(l)(1) is amended to read: The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(11) The language relating to exemptions to the regulation for occupational noise exposure requirements in subsection (12) of this section shall apply in lieu of 29 CFR 1910.95(o).

(12) 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.

(13) 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.

(14) 29 CFR 1910.95 Appendix E shall read: Acoustic Calibration of Audiometers.

This Appendix is Mandatory.

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

(a) Sound pressure output check.

1. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

2. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

3. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) for each earphone.

4. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2, as appropriate, for 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.

ADMINISTRATIVE REGISTER - 3929

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 1910.96, "Ionizing Radiation", 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? 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 ionizing radiation.

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 work with ionizing radiation.

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.

LABOR CABINET

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

803 KAR 2:308. Personal protective equipment.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

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) "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

ADMINISTRATIVE REGISTER - 3931

3. 29 CFR 1910.134(d)(2) through 29 CFR 1910.134(f)(5)(iii);
4. 29 CFR 1910.135 through Appendix B to Subpart I.

(b) The revisions to 29 CFR 1910.133, "Occupational Noise Exposure", as published in the Federal Register, Volume 61, Number 86, May 2, 1996 [46, March 7, 1996], are incorporated by reference.

(c) The revisions to 29 CFR 1910.135, "Head Protection [Nonionizing Radiation]", as published in the Federal Register, Volume 61, Number 86, May 2 [46, March 7], 1996, are incorporated by reference.

(d) The revisions to 29 CFR 1910.136, "Foot Protection [Occupational Noise Exposure]", as published in the Federal Register, Volume 61, Number 86, May 2 [46, March 7], 1996, are incorporated by reference.

~~[(e) The removal of 29 CFR 1910.139, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.~~

~~[(f) The removal of 29 CFR 1910.140, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.]~~

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

(3) The language relating to selection of respirators audiometric testing in Section 2(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.134(c).

(4) The language relating to specifications for breathing air in Section 2(6) of this administrative regulation shall apply in lieu of 29 CFR 1910.134(d)(1).

(5) The language relating to identification of gas mask canisters in Section 2(8) of this administrative regulation shall apply in lieu of 29 CFR 1910.134(g).

(6) 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: March 28, 1997

FILED WITH LRC: April 14, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 29, 1997 at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 1997, five work 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: William Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-3070.

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 using personal protective equipment in the general 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: 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 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 as these revisions provide that employers assure that the employee wear the personal protective equipment required. It clarifies for employees, employers, enforcement officers, and the courts that it is the responsibility of the employer to assure that the protection is worn. It also revises the definition section to meet KRS Chapter 13A considerations.

(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.

Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas or the external environment.

(n) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(o) "Regulated area" means an area where entry and exit is restricted and controlled.

(3) Definitions for Section 5 of this administrative regulation.

(a) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet.

(b) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet.

(c) "U.S. Department of Labor" means Kentucky Labor Cabinet.

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and application.

(a) This section applies to any area in which, 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (5)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than 1.0 (one) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas where 4,4'-Methylene bis (2-chloroaniline) is stored in sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only;

2. Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations as defined in paragraph (b)13 of this subsection are prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charge, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

1. Access shall be restricted to authorized employees only;

2. Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated

area

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 1910.134. A respirator affording higher level of protection may be substituted.

5. 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.

6. Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains are prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall:

1. Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with 1910.134;

2. Be decontaminated before removing the protective garments and hood;

3. Be required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this subparagraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

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

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4. Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. 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,

of this section which are accessible only to, and handled only by authorized employees, or by other employees trained in accordance with paragraph (e) of this subsection, may have contents identification limited to a generic or proprietary name, or other proprietary identification, or the carcinogen and percent.

2. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5, (f)7b, and (f)7b, and (g)3 of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with subparagraph of this paragraph shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in subsection (1)(a) of this section.

3. Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

4. Containers which have 4,4'-Methylene bis (2-chloroaniline) contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive of affected portions of the body.

(c) Lettering. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches. Labels on containers required under this section shall not be less than one-half (1/2) the size of the largest lettering on the package, and not less than eight (8) point type in any instance; provided that no such required lettering need be more than one (1) inch in height.

(d) Prohibited statements. No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(e) Training and indoctrination.

1. Each employee prior to being authorized to enter regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;

b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) which could result in exposure;

c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

d. The purpose for and application for decontamination practices and purposes;

e. The purpose for and significance of emergency practices and procedures;

f. The employees specific role in emergency procedures;

g. Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 4,4'-Methylene bis (2-chloroaniline);

h. The purpose for and application of specific first-aid procedures and practices.

(i) A review of this section at the employees first raining and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1, 1974, the information required in subparagraphs 1, 2, 3, and 4 of this paragraph shall be reported in writing to the nearest OSHA Area director. Any changes in such information shall be similarly reported in writing within fifteen (15) calendar days of such change.

1. A brief description and implant location of the area(s) regulated and the address of each regulated area:

2. The name(s) and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated

area.

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area; e.g., whether it is manufactured, processed, used, repackaged, release, stored, or otherwise handled.

(b) Incidents. Incidents which result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph.

1. A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within twenty-four (24) hours to the nearest OSHA Area Director.

2. A written report shall be filed with the nearest OSHA Area Director within fifteen (15) calendar days thereafter and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure:

b. A description of the area involved, and the extent of known and possible employee and area contamination; and

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the circumstances to be taken, with specific completions dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated are, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided periodic physical examination, not less often than annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids of cytotoxic agents, pregnancy and cigarette smoking.

(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' employment. Upon termination of the employee' 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

ADMINISTRATIVE REGISTER - 3937

March 7, 1996, are incorporated by reference.

(g) ~~{(e)}~~ The revisions to 29 CFR 1910.1018, "Inorganic arsenic," as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(r) The renumbering of 29 CFR 1910.20, "Access to Employee and Medical Records", to 29 CFR 1910.1020, as published in the Federal Register, Volume 61, Number 46, June 20, 1996, is incorporated by reference, as follows:

1. 29 CFR 1910.1020 through 29 CFR 1910.1020(e)(1);
2. 29 CFR 1910.1020(e)(1)(ii); and
3. 29 CFR 1910.1020(e)(3)(iii)(a) through Appendix B to 1910.1020.

(s) ~~{(p)}~~ The revisions to 29 CFR 1910.1025, "Occupational Exposure to Lead", as published in the Federal Register, Volume 60, Number 196, October 11, 1995, are incorporated by reference.

(t) 29 CFR 1910.1051, "Occupational Exposure to 1,3-Butadiene", as published in the Federal Register, Volume 61, Number 214, November 4, 1996, is incorporated by reference.

(u) The renumbering of 29 CFR 1910.96, "Ionizing Radiation", to 29 CFR 1910.1096, as published in the Federal Register, Volume 61, Number 46, June 20, 1996, is incorporated by reference.

(v) ~~{(q)}~~ The revisions to 29 CFR 1910.1200, "Hazard Communication", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(w) ~~{(r)}~~ The removal of 29 CFR 1910.1499, "Source of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(x) ~~{(s)}~~ The removal of 29 CFR 1910.1500, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(2) The language relating to the access of exposure and medical records in Section 4(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.1020(e)(1)(i).

(3) The language relating to the access of exposure and medical records in Section 4(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.1020(e)(1)(iii).

(4) The language relating to gloves in Section 5 [4](2) of this administrative regulation [subsection] shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix).

(5) ~~{(3)}~~ This material may be inspected, copied or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 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: March 28, 1997

FILED WITH LRC: April 14, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 29, 1997 at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 1997, five work 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: William Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-3070.

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: OSHA estimates that the butadiene regulation, 29 CFR 1910.1051, will cost the industry \$2.9 million dollars nationwide.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: OSHA estimates that the butadiene regulation, 29 CFR 1910.1051, will cost the industry \$2.9 million dollars nationwide.

(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 will be a limited increase in costs resulting from the requirement for medical records retention. There will be no effect on competition. Reporting and paperwork requirements: This amendment mandates that medical records be kept as part of a butadiene medical surveillance program.

(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: This amendment mandates that medical records be kept as part of a butadiene medical surveillance program. There are no other 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

ADMINISTRATIVE REGISTER - 3939

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.

(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:

(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 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? 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. This amendment affects local government entities who perform construction work.

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 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.

LABOR CABINET

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

803 KAR 2:403. 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

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

ADMINISTRATIVE REGISTER - 3941

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.

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. 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".

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. This amendment affects local government entities who perform 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 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.

LABOR CABINET

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

803 KAR 2:404. Personal protective and life saving equipment.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

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

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. Table E-4 Respirator Protection Factors. (1) The Table E-4 Respirator Protection factors found in Section 2 shall apply in lieu of Table E-4 found in 29 CFR 1926.103.

(2) Table E-4 Respiratory Protection Factors.

Type of Respirator	Respirator Protection Factors ^a		Respirator Protection Factor	
	Permitted for Use in Oxygen-deficient Atmosphere	Permitted for Use in Immediately-dangerous-to-life-or-health Atmosphere ¹	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-	No	No	10, or maximum use limit of cartridge	As measured on each person with maximum

ADMINISTRATIVE REGISTER - 3943

(IDLH) values.

Airline, demand, full facepiece, with or without escape provisions ^a	Yes ¹	No	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
Airline, continuous flow or pressure demand type, any facepiece, without escape provisions ^c	Yes ¹	No	N/A No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.	N/A
Airline, continuous flow or pressure demand type, any facepiece, with escape provisions ^{c,a}	Yes ⁹	Yes	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factors is 10000 plus ^b .	N/A
Airline, continuous flow, helmet, hood, suit without escape provisions	Yes ¹	No	N/A No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.	N/A
Airline, continuous flow, helmet, hood, or suit, with escape provisions ^a	Yes ⁹	Yes	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus ^b .	N/A
Hose mask, with or without blower, full facepiece	Yes ¹	No	10	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.
Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, quarter-mask or half-mask facepiece ^c	Yes ¹	No	10	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.
Self-contained breathing apparatus, demand-type open-circuit or negative-pressure-type closed-circuit, full face-piece or mouth-piece/nose clamp ^c	Yes ¹ (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

ADMINISTRATIVE REGISTER - 3945

on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: William Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-3070.

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.

(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.

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 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 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.

- (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) and (c)), 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 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 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.

LABOR CABINET

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

803 KAR 2:410. Electrical.

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

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.

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.

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

803 KAR 2:411. Scaffolds. [Adoption of 29 CFR Part 1926.450-452.]

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926 [Chapter 338]

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

NECESSITY, FUNCTION, AND FUNCTION: 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 29 CFR Part 1926.450-453, 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 1926.450-453, revised as of July 1, 1996, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revisions to 29 CFR 1926, Subpart L, "Scaffolds", as published in the Federal Register, Volume 61, Number 170, August 30, 1996, are 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) Revision to 29 CFR 1926.450, as published in the Federal Register, Volume 55, Number 220, November 14, 1990, is incorporated by reference.

(2) 29 CFR 1926.451(a)(4) shall read as follows: Guardrails and toeboards shall be installed on all open sides and ends of platforms more than ten (10) feet above the ground or floor, except needle beam scaffolds and floats (see paragraphs (p) and (w) of this section). Toeboards shall not be required on the loading side of platforms which are loaded by means of a high lift tractor or fork truck provided that employees are prohibited from entering the area beneath the scaffolding where they could be exposed to objects which might fall from the scaffolding. Scaffolds four (4) to ten (10) feet in height, having a minimum horizontal dimension in either direction of less than forty five (45) inches, shall have standard guardrails installed on all open sides and ends of the platform.

(3) Revisions to 29 CFR 1926.451, "Scaffolding", as published in

the Federal Register, Volume 58, Number 124, June 30, 1993, are incorporated by reference.

(4) Revision to 29 CFR 1926.452, as published in the Federal Register, Volume 55, Number 220, November 14, 1990, is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), 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: March 28, 1997

FILED WITH LRC: April 14, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 29, 1997 at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 1997, five work 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: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-3070.

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

(e) The revision of 29 CFR 1926.1080, "Safe Practices Manual", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(f) The revision of 29 CFR 1926.1081, "Pre-Dive Procedures", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(g) The revision of 29 CFR 1926.1082, "Procedures During Dive", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(h) The revision of 29 CFR 1926.1083, "Post-Dive Procedures", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(i) The revision of 29 CFR 1926.1084, "SCUBA Diving", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(j) The revision of 29 CFR 1926.1085, "Surface-Supplied Air Diving", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(k) The revision of 29 CFR 1926.1086, "Mixed-Gas Diving", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(l) The revision of 29 CFR 1926.1087, "Liveboating", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(m) The revision of 29 CFR 1926.1090, "Equipment", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(n) The revision of 29 CFR 1926.1091, "Recordkeeping Requirements", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(o) The revision of 29 CFR 1926.1092, "Effective Dates", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(p) The revision of Appendix A of Subpart Y, as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(q) The revision of Appendix B of Subpart Y, 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.

[Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), 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: March 28, 1997

FILED WITH LRC: April 14, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 29, 1997 at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 1997, five work 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: William L. Ralston, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-3070.

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 who conduct diving operations.

(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 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 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

ADMINISTRATIVE REGISTER - 3953

zidine (and its salts)", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1107, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(h) 29 CFR 1926.1108, "bis-chloromethyl ether", is revised, as follows:

1. ~~(g)~~ The amendment to 29 CFR 1926.1108, "bis-chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1108, "bis-chloromethyl ether", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(i) 29 CFR 1926.1109, "beta-naphthylamine", is revised, as follows:

1. ~~(h)~~ The amendment to 29 CFR 1926.1109, "beta-naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1109, "beta-naphthylamine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(j) 29 CFR 1926.1110, "Benzidine", is revised, as follows:

1. ~~(i)~~ The amendment to 29 CFR 1926.110, "Benzidine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.110, "Benzidine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(k) 29 CFR 1926.1111, "4-Aminodiphenyl", is revised, as follows:

1. ~~(j)~~ The amendment to 29 CFR 1926.1111, "4-Aminodiphenyl", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1111, "4-Aminodiphenyl", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(l) 29 CFR 1926.1112, "Ethyleneimine", is revised, as follows:

1. ~~(k)~~ The amendment to 29 CFR 1926.1112, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1112, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(m) 29 CFR 1926.1113, "beta-Propiolactone", is revised, as follows:

1. ~~(l)~~ The amendment to 29 CFR 1926.1113, "beta-Propiolactone", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1113, "beta-Propiolactone", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(n) 29 CFR 1926.1114, "2-Acetylaminofluorene", is revised, as follows:

1. ~~(m)~~ The amendment to 29 CFR 1926.1114, "2-Acetylaminofluorene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1114, "2-Acetylaminofluorene", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(o) 29 CFR 1926.1115, "4-Dimethylaminoazobenzene", is revised, as follows:

1. ~~(n)~~ The amendment to 29 CFR 1926.1115, "4-Dimethylaminoazobenzene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1115, "4-Dimethylaminoazobenzene", 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. ~~(o)~~ 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.

(g) 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: March 28, 1997

FILED WITH LRC: April 14, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 29, 1997 at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 1997, five work days prior to the hearing, of their intent to attend. If no notification of

ees.

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

803 KAR 2:500. Maritime employment.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1915, 1917, 1918, 1919

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1915, 1917, 1918, 1919

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 Maritime employment.

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

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

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

(a) Chapter 29, Part 1915 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.

1. The revision to 29 CFR 1915.5, "Incorporation by Reference", as published in the Federal Register, Volume 61, Number 102, May 24, 1996, is incorporated by reference.
2. The revision to 29 CFR 1915.32, "Toxic Cleaning Solvents", as published in the Federal Register, Volume 61, Number 102, May 24, 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 corrections to 29 CFR 1915.152, "General Requirements", as published in the Federal Register, Volume 61, Number 115, June 13, 1996, is incorporated by reference.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 29 CFR 1915.1003, "13 Carcinogens", is revised, as follows:

a. [4-] 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.

22. 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.

23. 29 CFR 1915.1006, "Methyl chloromethyl ether" is amended, as follows:

a. [3-] 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.

24. 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

ADMINISTRATIVE REGISTER - 3957

(2) This material may be inspected, copied, or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 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: March 28, 1997

FILED WITH LRC: April 14, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 29, 1997 at 2 p.m. (ET), at the Kentucky Labor Cabinet, 1047 U.S. 127 South, Bay 3 Conference Room, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by May 21, 1997, five work 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: Timothy P. Chancellor, Kentucky Labor Cabinet, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, (502) 564-3070.

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T.P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all public sector employers having maritime operations.

(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, in Section 2 a publication in the Federal Register, dated June 20, 1996, which removes the text of the standards from 29 CFR Part 1915 and directs those affected to the applicable standards in 29 CFR Part 1910. The revision to Section 1(4) corrects and clarifies the definition. 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".

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from the first revision. However, OSHA estimates the cost of the revisions to the shipyard standards to average about \$2 per covered employee.

(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 entail any the production and retention of training records for covered employees.

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

gating 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 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

the commissioner. Otherwise, the date of second receipt shall be the filing date.

(3) All pleadings shall be served upon the commissioner and shall be served upon all other parties by mailing a copy to the other parties or, if represented, to that representative, at the parties' or representatives' last known address. A certificate of service indicating the method and date of service and signed by the party shall appear on the face of the pleading. Notices of deposition and physical examination shall be served upon the parties and shall not be filed with the commissioner.

(4) After the application for resolution has been assigned to an arbitrator or administrative law judge, subsequent pleadings shall include, within the style of the claim and immediately before the claim number, "Before arbitrator (name)" or "Before administrative law judge (name)." Upon consolidation of claims, the most recent claim number shall be listed first.

Section 4. Motions. (1) The party filing a motion shall tender a proposed order granting the relief requested.

(2) The party filing a motion may file a brief memorandum supporting the motion and opposing parties may file brief memoranda in reply. Further memoranda (for example, reply to response) shall not be filed.

(3) Every motion and response, the grounds of which depend upon the existence of facts not in evidence, shall be supported by affidavits demonstrating such facts.

(4) Every motion, the grounds of which depend upon the existence of facts which the moving party believes are shown in the evidence or are admitted by the pleadings, shall make reference to the place in the record where that evidence or admission is found.

(5) A motion, other than to reopen pursuant to KRS 342.125 or for interlocutory relief, may be considered ten (10) days after the date of filing. A response will be considered if filed on or before the tenth day after the filing of the motion.

(6)(a) A motion to reopen shall be accompanied by as many of the following items as may be applicable:

1. A current medical release Form 106 executed by the plaintiff;
2. An affidavit evidencing the grounds to support reopening;
3. A current medical report showing a change in disability established by objective medical findings;

4. A copy of the opinion and award, settlement, voluntary agreed order or agreed resolution sought to be reopened;

5. An affidavit certifying that no previous motion to reopen has been made by the moving party, or if one (1) has previously been made, the date on which the previous motion was filed.

(b) A motion to reopen shall not be considered until twenty-five (25) days after the date of filing. Responses may be served within twenty (20) days of filing the motion to reopen.

(7) Motion for allowance of a plaintiff's attorney fee shall be made within thirty (30) days following the finality of the award, settlement or agreed resolution upon which the fee request is based and be served upon the adverse parties and the attorney's client. The motion shall set forth the fee requested and mathematical computations establishing that the request is within the limits set forth in KRS 342.320. The motion shall be accompanied by an affidavit of counsel detailing the extent of the services rendered and the time expended, a signed and dated Form 109 as required by KRS 342.320(3), and a copy of the signed and dated contingency fee contract.

(8) A motion for allowance of defendant's attorney's fee shall be filed as required by KRS 342.320. The motion shall be accompanied by an affidavit of counsel detailing the extent of the services rendered and the time expended, the hourly rate and total amount to be charged, the date upon which agreement was reached for providing the legal services, and a certification of any amounts previously paid on the claim in question.

Section 5. Application for Resolution of an Injury Claim. (1) Form

101 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 date of injury;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;

(c) Medical release (Form 106);

(d) One (1) medical report describing the injury which is the basis of the claim and, if a psychological condition is alleged, an additional medical report establishing the presence of a mental impairment or disorder. Medical reports required under this paragraph may consist of legible, hand-written notes of a treating physician. Medical reports filed with an application shall be considered as evidence before the arbitrator.

(2) Defendant shall file a notice of claim denial or acceptance (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 any 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 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 6. Application for Resolution of an Occupational Disease Claim. (1) Form 102 shall be filed with the following completed attachments:

(a) Work history (Form 104), to include all past jobs performed on a full or part-time basis within twenty (20) years preceding the date of last exposure and all jobs in which plaintiff alleges exposure to the hazards of the occupational disease;

(b) Medical history (Form 105), to include all physicians, chiropractors, osteopaths, psychiatrists, psychologists, and medical facilities such as hospitals where the individual has been seen or admitted in the preceding fifteen (15) years and including beyond that date any physicians or hospitals regarding treatment for the same body part claimed to have been injured;

(c) Medical release (Form 106);

(d) One (1) medical report supporting the existence of occupational disease. For coal related pneumoconiosis claims, the medical report shall include both a chest x-ray examination and spirometric tests when pulmonary dysfunction is alleged. Medical reports filed with an application shall be considered as evidence before the arbitrator;

(e) Social Security earnings record release form (Form 115).

(2) Defendant shall file a notice of claim denial or acceptance (Form 111) within forty-five (45) days after the date of issuance of notice that an application for resolution has been filed. If none is filed,

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 commissioner may designate, except that an arbitrator or administrative law judge may permit the introduction of other reports.

(3) Medical reports shall be signed by the physician making the report, or be accompanied by an affidavit from the physician or submitting party or representative verifying the authenticity of the report.

(4) Medical reports shall include within the body of the report or as an attachment, a statement of qualifications of the person making the report. If the qualifications of the physician who prepared the written medical report have been filed with the commissioner and the physician assigned a medical qualifications index number, reference may be made to the physicians index number in lieu of attaching qualifications.

(5) Narratives in medical reports shall be typewritten. Other portions, 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 no objection is 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 arbitrator or administrative law judge shall rule on the objection within fifteen (15) days of the filing.

(7) In proceedings before an administrative law judge, if a medical report is admitted as direct testimony, any adverse party may depose the reporting physician in a timely manner as if on cross-examination at its own expense.

Section 11. Interlocutory Relief. (1) At any time during 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 request.

(3) Entitlement to interlocutory relief may be shown by means of affidavit, deposition, or other evidence of record demonstrating the requesting party is eligible under KRS Chapter 342 and will suffer irreparable injury, loss or damage pending a final decision on the application. Rehabilitation services may be ordered while the claim is pending upon showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.

(4) When interlocutory relief is awarded in the form of income benefits, the application shall be placed in abeyance unless a party shows irreparable harm thereby. The arbitrator or administrative law judge may require periodic reports as to the physical condition of the plaintiff. Upon motion and a showing of cause, or upon the arbitrator or administrative law judge's own motion, interlocutory relief may be terminated and the claim removed from abeyance.

(5) An attorney's fee in the amounts authorized by KRS 342.320 but in no event to exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.

Section 12. Appeals to Administrative Law Judges from Benefit Review Determinations. (1) Within thirty (30) days after the date of the

filing of a written benefit review determination or ruling on petition for reconsideration from that benefit review determination by an arbitrator, any parties aggrieved by the determination may appeal to an administrative law judge.

(2) The appeal shall be initiated by filing a "Request for Hearing before an Administrative Law Judge". The appealing party shall be designated as petitioner and all parties against whom the appeal is taken as respondents. The petitioner shall certify copies have been served upon all other parties.

(3) The commissioner shall assign the claim to an administrative law judge and shall notify the parties of the schedule for presentation of proof and the time and place of the hearing. The scheduling order shall provide forty-five (45) days for all parties to present proof, thirty (30) days for respondents only, and fifteen (15) days for rebuttal.

(4) Within fifteen (15) days following assignment to an administrative law judge, the parties shall file a statement of proposed stipulations, notice of contested issues, and designation of any evidence in the benefit review record upon which they intend to rely on appeal before the administrative law judge.

(5) The administrative law judge may order an informal conference for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposition of the case.

(6) At least fifteen (15) days prior to the scheduled hearing, all parties shall serve witness lists and copies of known exhibits on all other parties and upon the commissioner. Except for good cause shown, persons who are not listed as witnesses shall not present testimony. Witness lists shall state the name of each proposed witness and summarize the testimony of the witness, and shall identify matters in controversy. For medical witnesses, the summary shall include a diagnosis, the physical findings, the results of diagnostic studies supporting the diagnosis, and an assessment of functional impairment in accordance with the most recent edition of the AMA Guides to Evaluation of Permanent Impairment.

(7) Except for evidence timely designated by the parties, information submitted to the arbitrator shall not be considered evidence before the administrative law judge. Proof and discovery before the administrative law judge shall be by way of notice of introduction of medical reports and depositions of lay witnesses. However, a report of a medical evaluator pursuant to KRS 342.315 shall become evidence before the administrative law judge without the filing of a notice or motion.

(8) If, during the pendency of a claim before an administrative law judge, the parties voluntarily resolve a claim, an Agreement as to Compensation (Form 110) or agreed resolution of the claim shall be submitted for the approval of the administrative law judge.

Section 13. Appeals to Administrative Law Judges from Final Orders. (1) Within thirty (30) days after a final order of an arbitrator other than a benefit review determination or ruling on a petition for reconsideration from that benefit review determination, any party aggrieved by the order may file a "Request for De Novo Review by an Administrative Law Judge". As used in this section "final order" means one that grants or denies the ultimate relief sought as to all parties without the need for further steps to be taken.

(2) The appealing party shall be designated as petitioner and all other parties shall be designated as respondents. The petitioner shall certify copies have been served upon all other parties.

(3) The request for de novo review by an administrative law judge, shall not exceed five (5) pages, and shall contain a clear and concise statement of the material facts, the questions of law involved and the specific reasons for which the request was filed. The request shall cite any authority for petitioner's position.

(4) The respondents shall have fifteen (15) days thereafter in which to file responses which shall not exceed five (5) pages, setting forth the basis of their opposition to the request.

(5) The commissioner shall refer the matter to an administrative

weeks in the award.

2. Discount the number of weeks remaining in the award at the prescribed discount rate.

3. Multiply the weekly benefit rate by the discounted number of weeks remaining (subparagraph 2 of this paragraph) in award. This product equals the entire future lump sum liability for the award.

4. Add the amount of past due benefits to the future lump sum liability award (subparagraph 3 of this paragraph). The sum represents the entire lump sum value of the award.

(b) Determine the employer's lump sum liability as follows:

1. The employer's future liability 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 paragraph (e)2 and 3 of this subsection.

(c) Determine the Special Funds' portion of the lump sum liability by subtracting the value of the employer's liability in lump sum (paragraph (b) of this subsection) from the entire value of the lump sum settlement (paragraph (a) of this subsection). The remainder is the Special Fund's lump sum liability.

(2) Where the employer settles its liability for income benefits with the employee for a lump sum payment and thereafter a determination is made of the Special Fund's liability, the Special Fund's portion of income benefits shall be paid commencing with the date of approval of the employer's settlement and continuing for the balance of the compensable period.

Example #1. In a 1996 claim covered by KRS 342.1202 apportionment, an agreement between the employer and employee is reached settling the claim for a lump sum payment in the 150th week after permanent disability has commenced. It is subsequently determined that the worker has a forty (40) percent permanent partial occupational disability and the employee is a maximum wage earner. The Special Fund's payment period commences on the date of approval of the settlement agreement and extends for the balance of the 425 week period or 275 weeks. The Special Fund's total liability for half of the forty (40) percent permanent partial disability award is computed, then divided by 275 weeks. Thus, the Special Fund's liability of \$26,515.75 ($\$311.96 \times 40\% \times 212.5$ weeks) is divided by the 275 weeks remaining for a weekly payment of \$96.42.

Example #2. Assume the same factual situation in example #1 with fifty (50) percent apportionment to the Special Fund, but increase the award to sixty (60) percent permanent partial disability. The Special Fund's payment period still commences on the date of approval of the settlement agreement and extends for the balance of the 520 week period or 370 weeks. Thus, the Special Fund's entire liability of \$48,666.80 ($\$311.96 \times 60\% \times 260$ weeks) would be paid out weekly at \$131.53 for 370 weeks. Figures in these examples are rounded to the nearest cent and do not include any adjustment for tier down of benefits pursuant to KRS 342.730(4).

(3) In computing settlements involving periodic payments, the employer shall pay its liability over the initial portion of the award, based on the number of weeks its liability bears to the entire liability upon the claim. Thereafter, the Special Fund shall make all remaining payments for the balance of the compensable period.

(4) Pursuant to KRS 342.265, election by the Special Fund to settle on the "same terms" as the employer 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 Special Fund shall have the option to pay its proportionate liability in a discounted lump sum. "Same terms" does not include any additional

payments the employer included for buy out of medical expenses, temporary total disability, rehabilitation, or other payments for which the Special Fund is not liable.

Section 23. Appeals to Workers' Compensation Board. (1) Within thirty (30) days after the date of filing of a final award or order of an administrative law judge any party aggrieved by the order may appeal to the board. As used in this section "final order" shall be determined in accordance with Civil Rule 54.02(1) and (2).

(2) An appeal shall be initiated by the filing of a notice of appeal denoting the appealing party as the petitioner and all parties against whom the appeal is taken as respondents. The administrative law judge who rendered the order appealed from shall be named as a respondent. If appropriate, the Director of the Special Fund or the Director of the Coal Workers' Pneumoconiosis Fund shall be named as a "respondent" pursuant to KRS 342.120 or 342.316. The workers' compensation claim number shall be set forth in all pleadings before the board.

(3) Any party other than the petitioner may file a cross-appeal through notice of cross-appeal filed within ten (10) days after notice of appeal is served. The cross-appeal shall designate the parties as appropriate (i.e., petitioner-cross-respondent).

(4) Notice of appeal, cross-appeal and all other pleadings before the board shall be served as provided in Section 3 of this administrative regulation. The commissioner shall issue an acknowledgement to all parties of the filing of a direct appeal only.

(5) If a ground for the appeal is fraud or misconduct pursuant to KRS 342.285(2), the board shall immediately schedule a hearing on that issue. All subsequent appeal time in the case shall be calculated from the date the transcript of hearing is filed instead of the date of filing of notice of appeal.

(6) Petitioner's brief shall be filed within thirty (30) days of the filing of the notice of appeal. The organization and contents of petitioner's brief shall be as provided in Civil Rule 76.12(4)(c) except no index shall be required and the appendix shall only include copies of decision appealed, petitions for reconsideration, rulings on petitions, and cases cited from federal courts and foreign jurisdictions.

(7) Respondent's brief shall be filed within thirty (30) days of the date petitioner's brief was served. Organization and contents shall be provided in Civil Rule 76.12(4)(d) except no index shall be required and the appendix shall only include copies of cases cited from federal courts and foreign jurisdictions. If the respondent is also a cross-petitioner, a combined brief shall address issues raised by the cross-appeal.

(8) Failure of a party to timely file a brief is ground for imposition of one (1) or more of the following penalties:

(a) Affirmation or reversal of the final order;

(b) Striking of an untimely brief;

(c) A fine of not more than \$500; or

(d) Dismissal of appeal of petitioner's original brief.

(9) Petitioner's reply brief may be served within fifteen (15) days after the date on which the last respondent's brief was served or due, whichever is earlier. The organization and contents of the petitioner's reply brief shall be as provided in Civil Rule 76.12(4)(e), except that no appendix, index, or contents page shall be required. If the petitioner is also a cross-respondent, a combined brief shall address issues raised by the cross-petitioner's brief.

(10) If a cross-appeal has been filed, the cross-petitioner's reply brief may be served within fifteen (15) days after the date on which the last cross-respondent's brief was served or due, whichever is earlier. The organization and contents of the cross-petitioner's reply brief shall be as provided in Civil Rule 76.12(4)(e) except that no appendix, index, or contents page shall be required.

(11) Petitioner's brief and the respondent's brief shall be limited to fifteen (15) pages each, reply briefs to five (5) pages, and combined briefs to twenty (20) pages. Permission to increase the length of a brief shall be sought by motion.

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 30. 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 administrative 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 31. 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 incorporation 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), Department of Workers Claims;

(n) Form 110-O, "Agreement - Occupational Disease", (January

1, 1997 Edition), Department of Workers Claims;

(o) Form 111- Injury and Hearing Loss, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), Department of Workers Claims;

(p) Form 111-OD, "Notice of Claim Denial or Acceptance", (January 1, 1997 Edition), Department of Workers Claims;

(q) Form 115, "Social Security Release Form", (January 1, 1997 Edition); and Department of Workers Claims;

(r) Form AWW - 1, "Average Weekly Wage Form", (January 1, 1997 Edition), Department of Workers Claims;

(s) Lump Sum Settlement Tables, (April 15, 1997 Edition), Department of Workers Claims.

(3) This material may 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; and

(c) Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

[Definitions. (1) "Administrative law judge" means an individual appointed pursuant to KRS 342.230(3).

(2) "Board" means the Workers' Compensation Board created pursuant to KRS 342.215(1).

(3) "Civil rule" means the Kentucky Rules of Civil Procedure.

(4) "Commissioner" means the commissioner of the Department of Workers' Claims appointed pursuant to KRS 342.228.

(5) "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 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.

(6) "Employer" means and includes individuals, partnerships, voluntary associations and corporations.

(7) "An employer who has not secured payment of compensation" means any employer who employs covered employees as defined by KRS 342.640 but has not complied with KRS 342.340.

(8) "Special defenses" means defenses that shall be raised by "special answer" filed within twenty (20) days of the date of the scheduling order, 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 342.610(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 under KRS 342.185, 342.270, 342.316, or any other applicable statute.

Section 2. Parties. (1) The party making the original application for adjustment of claim pursuant to KRS 342.270 shall be designated as "plaintiff" and adverse parties "defendants".

(2) All persons shall be joined as plaintiffs in whom any right to any relief pursuant to KRS Chapter 342, arising out of the same transaction or occurrence, is alleged to exist. If any person should refuse to join as a plaintiff, that person shall be joined as a defendant, and the fact of refusal to join as a plaintiff shall be pleaded.

(3)(a) All persons shall be joined as defendants against whom the ultimate right to any relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An administrative law

103 shall be filed with the completed documents required by Section 5(1)(a) through (c) 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 342.320. 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 scheduling order, or within twenty (20) days of the filing of any

subsequent motion.

(3) A request for interlocutory relief becomes ripe for decision twenty (20) days after the issuance of the scheduling order where relief has been requested in the Form 101 application. Where request for interlocutory relief has been made by motion, the request becomes ripe twenty (20) days after service of the motion.

(4) Entitlement to interlocutory relief may be shown by means of affidavit, deposition, or other evidence of record demonstrating that movant is eligible under KRS Chapter 342 and will suffer irreparable injury, loss, or damage pending a final decision on the application. Rehabilitation services may be ordered while the claim is pending upon a showing that immediate provision of services will substantially increase the probability that the plaintiff will return to work.

(5) When interlocutory relief is awarded in the form of income benefits the application shall be placed in abeyance, unless a party shows irreparable harm thereby. The administrative law judge may require periodic report as to the physical condition of the plaintiff. Upon motion and a showing of cause, or upon the administrative law judge's own motion, interlocutory relief may be terminated and the claim removed from abeyance.

(6) Interlocutory relief may not be granted upon a claim for retraining incentive benefits.

(7) An attorney's fee in the amounts authorized by KRS 342.320 but in no event to exceed twenty (20) percent of the weekly income benefits awarded pursuant to a request for interlocutory relief may be granted. The approved fee shall be deducted in equal amounts from the weekly income benefits awarded and shall be paid directly to the attorney.

Section 11. 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 rendition of a written opinion. In any event, a decision shall be rendered no later than sixty (60) days following hearing. The time for filing a petition for reconsideration or notice of appeal shall not begin to run until the "date of filing" of the written opinion as set forth in Section 1(5) of this administrative regulation.

Section 12. Petitions for Reconsideration. (1) Within fourteen (14) days of the filing of the order, award, or decision as set forth in Section 1(4) of this administrative regulation, 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 administrative law judge shall act upon the petition within ten (10) days after the response is due.

Section 13. Appeals to the Workers' Compensation Board. (1) Within thirty (30) days after the date of filing of a final order of an administrative law judge as set forth in Section 1(5) of this administrative regulation any party aggrieved by the order may appeal to the board. As used in this section "final order" shall be determined in accordance with Civil Rule 54.02(1) and (2).

(2) An appeal shall be initiated by the filing of a notice of appeal denoting the appealing party as the "petitioner" and all parties against whom the appeal is taken as "respondents." The administrative law judge who rendered the order appealed from shall be named as a "respondent." If appropriate, the Director of the Special Fund shall be

is mandatory except for those employers exempted by KRS 342.650 and those employees rejecting the provisions of KRS Chapter 342 pursuant to KRS 342.305 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. Appearance. (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 sixty (60) days after the order resolving the claim has become final.

A party filing an exhibit may make arrangements to claim an exhibit prior to that time. If an unclaimed exhibit has no money value, it shall be destroyed; if an unclaimed exhibit has a value of more than \$100, it shall be sold as surplus property; if an unclaimed exhibit has a value of less than \$100, it shall be donated to an appropriate state agency; and, if an unclaimed exhibit has historic value, it shall be sent to the state archives.

Section 22. Routine Records Admission. Any party may file in the record of a case any properly authenticated hospital, armed forces or Social Security records. However, opinions of physicians which may be expressed in such records shall not be considered by the administrative law judge in violation of the rule relative to the number of physician's opinions set forth in KRS 342.032.

Section 23. Sanctions. Pursuant to KRS 342.310, an administrative law judge and the board may assess costs upon determination that proceedings have been brought, prosecuted or defended without reasonable grounds. Whenever justice will be served penalties shall be assessed against an offending attorney rather than against the client the attorney represents. Where a party is a governmental agency and attorney's fees are assessed, such fees shall include fees for the services of an attorney in public employment, measured by the reasonable cost of like services had a private attorney been retained. Failure of a party to timely file any pleading required by this administrative regulation may be treated by an administrative law judge or the board as prosecuting or defending without reasonable grounds.

Section 24. Payment of Compensation from Uninsured Employers' Fund. (1) Payment from the uninsured employers' fund of compensation shall be made only after the claimant, 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 claimant may by motion and affidavit demonstrating compliance with the requirement of subsection (1) of this section, request an administrative law judge to order payment from the uninsured employers' fund in accordance with KRS 342.760.

(3) This section shall not be construed to prohibit the voluntary payment of compensation by an employer, or any other person liable for payment thereof, who has failed to secure payment of compensation as provided for by KRS Chapter 342, the compromise and settlement of a claim, or the payment of benefits by the special fund.

(4) Compliance with subsection (1) of this section shall not be required and the compensation awarded shall be deemed uncollectible from an uninsured employer upon a showing that the employer has filed a petition under either Chapter 7 or Chapter 11 of the Federal Bankruptcy Code.

Section 25. 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 claimant stands in his stocking feet and shall be rounded to the nearest centimeter.

(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 0.0214 times A minus 4.650.

FEV1 in liters equals 0.0414 times H minus 0.0244 times A minus 2.10.

H is height in centimeters.

A is age in years.

Section 1. The commissioner shall collect in advance fees as follows:

- (1) Annual statement.
 - (a) Filing each year, \$150 ~~[\$100]~~.
 - (b) Filing additional or supplemental statement in the same year, \$100.
- (2) Filing charter documents.
 - (a) Original charter document, bylaws, and records of organization, or certified copies thereof required to be filed, \$100.
 - (b) Amended charter documents, bylaws, and records of organization, or certified copies thereof required to be filed, \$50.
- (3) Certificate of authority or certificate of filing.
 - (a) Nonrefundable application fee, \$500.
 - (b) Issuance of original certificate, \$100 ~~[\$600]~~.
 - (c) ~~[(b)]~~ Amending, to add a line, \$100 ~~[\$60]~~.
 - (d) ~~[(e)]~~ Renewal, each year, \$200 ~~[\$100]~~.
- (4) Organization of domestic mutual insurers: filing application for solicitation permit and issuance of such permit, \$200.
- (5) Self insurer.
 - (a) Application to become self insurer under subtitle 39, \$200.
 - (b) Notification of self-insurance program under subtitle 32, \$50.
- (6) Risk purchasing groups.
 - (a) Application and registration fee, \$250.
 - (b) Alterations and updates to currently registered purchasing groups, \$50.
- (7) Agent licenses, foreign and alien insurers.
 - (a) Agent license, per insurer represented, biennial, \$60 ~~[\$40]~~.
 - (b) Temporary license as agent, 50 ~~[\$20]~~.
 - (c) Nonresident agent, per insurer represented, biennial, \$70 ~~[\$50]~~.
 - (d) Resident corporate or partnership agent, per insurer represented, biennial, \$120 ~~[\$100]~~.
 - (e) Nonresident corporate or partnership agent, per insurer represented, biennial, \$140 ~~[\$120]~~.
- (8) ~~[(7)]~~ Surplus lines broker, reinsurance intermediary, or managing general agent, biennial, \$150 ~~[\$100]~~.
- (9) ~~[(8)]~~ Solicitor license, biennial, \$60 ~~[\$40]~~.
- (10) ~~[(9)]~~ Adjuster license, biennial, \$100 ~~[\$50]~~.
 - (a) Temporary license as apprentice adjuster, \$50 ~~[\$25]~~.
 - (b) Administrator's license, biennial, \$100 ~~[\$50]~~.
- (11) ~~[(10)]~~ Consultant license, biennial, \$150 ~~[\$100]~~.
- (12) ~~[(11)]~~ Agent licenses for risk retention agents, fraternal benefit societies, subtitle 32 corporations, health maintenance organizations, prepaid dental plan organizations, per fraternal benefit society, subtitle 32 corporation, health maintenance organization, or prepaid dental plan represented, biennial.
 - (a) Residents, \$60 ~~[\$40]~~.
 - (b) Nonresidents, \$70 ~~[\$50]~~.
- (13) ~~[(12)]~~ Filing agent and solicitor continuing education courses for:
 - (a) Approval, \$5 per hour of continuing education credit; minimum of \$10, maximum of \$300.
 - (b) Biennial renewal, \$5 per hour of continuing education credit; minimum of \$10, maximum of \$150.
- (14) ~~[(13)]~~ Late renewal of agent licenses pursuant to KRS 304.9-260, 304.32-190, 806 KAR 38:020, 806 KAR 43:010, and KRS 304.99-100, per insurer, subtitle 32 corporation, health maintenance organization, or prepaid dental plan organization represented.
 - (a) Residents, \$60 ~~[\$40]~~.
 - (b) Nonresidents, \$70 ~~[\$50]~~.
- (15) ~~[(14)]~~ Examination for or in connection with licensing of agents, solicitors, adjusters, and consultants, \$75 ~~[\$50]~~.
- (16) ~~[(15)]~~ Annual registration fee of unauthorized insurer under KRS 304.11-020(2), \$500.
- (17) ~~[(16)]~~ Advisory organizations.
 - (a) Application for license, \$500.
 - (b) Annual renewal, \$100.

- (18) ~~[(17)]~~ Rate and form filings.
 - (a) Rate level revision filing in a noncompetitive market or other rate level revision filings subject to prior approval by the commissioner, \$150 ~~[\$100]~~.
 - (b) Credit life or health insurance filing requiring review for compliance with KRS 304.19-080, \$200 ~~[\$100]~~.
 - (c) Health insurance rates requiring review under KRS 304.17A-095, \$500.
 - (d) Other rate and form filings, \$10 ~~[\$5]~~.
- (19) ~~[(18)]~~ Insurance premium finance companies.
 - (a) Nonrefundable application fee, \$500.
 - (b) Issuance of original license, \$100. ~~[Application for license, \$500.]~~
 - (c) ~~[(b)]~~ Annual renewal, \$200 ~~[\$100]~~.
 - (d) Filing of premium finance agreements, \$50.
- (20) ~~[(19)]~~ Cost of administering subtitle 32 per membership contract in force on December 31 of each year, except the health insurance contract or contracts for state employees as authorized by KRS 18A.225, ten (10) cents.
- (21) ~~[(20)]~~ Computer printouts of lists, computer printouts of mailing labels, and magnetic tapes:
 - (a) Agents:
 1. General lines or life and health, \$300.
 2. General lines or life and health magnetic tape, \$265.
 3. All other lines, \$100.
 4. Listing for each ZIP code, \$50.
 5. Appointments (activity) of a specific agent, \$5.
 - (b) Adjusters, consultants, managing general agents, solicitors, surplus lines brokers, and third party administrators, \$90.
 - (c) Insurer directories:
 1. All authorized insurers, \$90.
 2. Insurers by line of insurance, \$90.
 3. Appointments (activity) by a specific insurer, \$50.
 - (d) Corporate or partnership agents:
 1. Corporate or partnership agent directory, \$90.
 2. Corporate or partnership agents by line of insurance, \$90.
 3. Appointments (activity) of a specific corporation or partnership agent, \$10.
 - (e) Other special requests, printouts or magnetic tapes not specified in this section, if the request is approved by the commissioner, the commissioner shall establish the cost for the request.
- (22) ~~[(21)]~~ Miscellaneous services.
 - (a) Filing other documents, each, \$10 ~~[\$5]~~.
 - (b) Commissioner's certificate under seal, other than certificates, licenses, and other documents provided for in this section, each, \$10 ~~[\$5]~~.
 - (c) For copies of any document on file with the commissioner, per page, thirty (30) cents.
 - (d) For information available on diskette, \$10.
 - (e) ~~[(d)]~~ Copy of annual statements, per page, \$1.
- (23) Insurance holding company systems.
 - (a) Form A filing fee, \$2,500.
 - (b) Form B (including Form C) - annual registration statement, filing fee, \$100.
 - (c) Form D filing fee, \$100.

Section 2. The biennial renewal fees specified in Section 1(6), (7), (8), (9), (10), and (11) of this administrative regulation are payable as follows:

- (1) Licensees for life, health, or life and health insurance or fraternal benefit societies shall renew their licenses on or before March 31 in odd numbered years and biennially thereafter; and
- (2) Licensees for casualty, marine and transportation, property, surety, mortgage guaranty, multiple line insurers, risk retention agent, ~~[fraternal benefit societies]~~, or reinsurance intermediaries shall renew their licenses on or before March 31 in even numbered years and biennially thereafter.

material manufactured or produced according to a specification listed in the code shall be considered approved if it meets the latest edition of the specification.

(2) A part or material shall not be used in a drainage or plumbing system, other than those currently authorized by the code, unless the use of the part or material has been considered by the committee and approved by the department as being equal to or better than other similarly approved items for inclusion in the APML. The APML may also specify methods of installation or restrictions applicable to a particular part or material.

Section 3. Amending the APML. (1) A person may petition the committee, in writing, no later than fourteen (14) days prior to the committee's next scheduled meeting for the purpose of amending the APML. The request shall include:

- (a) A description of the part or material for which approval is sought;
- (b) Available technical data;
- (c) A listing of other authorities which have approved the use of the part or material; and
- (d) Any other pertinent information requested by the committee.

(2)(a) The committee shall consider all parts or materials for which approval is sought and shall forward its recommendations within thirty (30) days to the department.

(b) A hearing shall be held before the committee if requested, by a person having an interest in the subject matter within thirty (30) days following the determination of the committee.

(c) Upon approval of a recommendation by the department, the APML shall be amended by listing the new part or material in Section 5 of this administrative regulation.

Section 4. Custody of the APML. The Director, Division of Plumbing, shall maintain an up-to-date APML and make it available for inspection during regular office hours. Copies of the APML may be obtained by mailing a self-addressed stamped envelope to the Division of Plumbing, Department of Housing, Buildings and Construction, Frankfort, Kentucky 40601.

Section 5. Content of Approved Parts or Materials List. The following list of parts or materials have been approved by the Kentucky Plumbing Code Committee and the Division of Plumbing and shall be allowed for installation in Kentucky.

(1) Flexible three-fourths (3/4) inch hot and cold water connectors for hot water heaters, minimum wall thickness, .032.

(2)(a) Flushmate water closet tank.

(b) Microphor company. Two (2) quart flush toilets.

(c) Jomar 3 and 4 water conserver water closets to operate efficiently on three and one-half (3 1/2) gallons of water per flush.

(d) Superinse toilet that operates on one (1) gallon of water per flush as manufactured by Universal Rundle for the Thetford Wastewater Treatment Systems.

(e) IFO Sanitar AB Model-3160 and 3180 China Water Closet equipped with a Fluidmaster 4003A-F77 Ballcock.

(f) Cashsaver MX (quantum 150-1) Water Closet Combination and Flushmate II Flushometer/Tank as manufactured by Mansfield Plumbing Products.

(3) Tubular traps with gasket in trap seal.

(4)(a) Polyethylene sump pump basin. Polyethylene sump pump basin shall be constructed of polyethylene material and shall be provided with a sump cover.

(b) Liberty Pump Model 402, Laundry Tray Pump for pipe size one and one-half (1 1/2) inch for light commercial and household usage.

(c) Zoeller Drain pump and HiLo Industries Power Drain for pipe sizes one and one-half (1 1/2) inch and two (2) inch for light commercial and household usage.

(d) Sewage ejector pit - eighteen (18) inch by twenty-two (22)

inch with steel cover pit and eighteen (18) inch by thirty (30) inch with steel cover sump pit as manufactured by Lunsford and Associates, Inc.

(e) Little Giant Pump Company, Drainsaur Water Removal System, Model #WRS-6. This approval shall be limited to two (2) drainage fixture units since it has a one and one-half (1 1/2) inch drain.

(f) Add A Drain (Waste Discharge System) as manufactured by Lunsford and Associates.

(g) Sta-Rite Pump Corporation, laundry tray system approved for residential and light commercial use.

(h) Electric Drain System as manufactured by Myers for light commercial and household usage.

(5)(a) No-caulk roof flashing. No-caulk roof flashing shall be eighteen (18) inch by eighteen (18) inch galvanized iron base with a neoprene boot forming a water tight seal with the stack that it serves.

(b) Polyethylene roof flashing. Polyethylene roof flashing shall have a base which shall extend six (6) inches in all directions from the base of a stack and shall have a boot with a preformed thermoplastic rubber gasket.

(c) Deklite pipe flashing system to be used on metal building decks for plumbing vent stacks as manufactured by Buildex Corporation.

(d) Oatey eighteen (18) inch by eighteen (18) inch no caulk thermoplastic flashing, one (1) piece construction, positive double seal in three (3) inch only.

(e) Carlisle syntec systems. Vent flashings for sureseal and Brite-Ply roofing systems as required by Carlisle Corporation.

(f) Trocal roofing systems. Vent flashings for Trocal roofing systems as required by Dynamit Nobel of American, Inc.

(g) Masterflash Pipe Flashing system for plumbing vent stacks as manufactured by Aztec Washer Company.

(h) Hi-Tuff Roofing Systems pipe flashing system for plumbing vent stacks as required by J.P. Stevens and Company, Inc.

(6)(a) Kitchen sink faucet. Kitchen sink faucets may have corrugated supply piping if the piping has a wall thickness equal to Type M copper pipe.

(b) Sink and lavatory faucets and pop-up lavatory assembly parts manufactured by CPVC plastic as manufactured by Nibco Co.

(c) Series 1000 Automatic Faucets as Manufactured by Hydrotek USA, Inc.

(7) Lab-Line Enfield L-E acid waste systems, one and one-half (1 1/2) through four (4) inch inside measurement for above and below ground installation on acid waste. Underground shall be laid on six (6) inches of sand grillage and shall be backfilled by hand and tamped six (6) inches around piping or surrounded by six (6) inches of sand grillage.

(8) Floor drains, shower drains, urinal drains and clean-outs manufactured by Plastic Oddities, Inc.

(9) Tubular plastic components conforming to ASTM F409-75, bathtub waste and overflow, traps, continuous sink wastes and extension tubes as manufactured by J & B Products Corporation.

(10)(a) Water heaters. Heat pump water heaters as manufactured by Dec International, Inc., Therma-Stor Products Group.

(b) Water heaters, point of use or instantaneous.

1. In-Sink-Erator's Ultra System. For instant hot water to serve individual fixtures, Model #777W, W, WH, WA and WHA, W-152 and W-154.

2. Eemax Electric Tankless water heaters - nonpressure type without the requirement of a temperature and pressure relief valve; the pressure type with the requirement that the temperature and pressure relief valve be of a one-half (1/2) inch short shank valve and shall be installed with the product.

3. Vitaclimate Control Systems, Inc. - Heatrae Instantaneous Water Heaters Models 7000 and 9000, pressure type, point of use water heater and shall be equipped with an approved temperature and pressure relief valve installed so that the thermo couple of the

pipe has been tested for the tensile strength, durability, etc., of ASTM D-2665 except that it is made from recycled, unused plastics rather than virgin materials.

(35) Blucher-Josam stainless steel pipe, fittings and drains for disposal of corrosive wastes.

(36) Paul Panella Industries Hostalen GUR UHMW Polymer Cleanout approved for use on sewers of Schedule 40 PVC, ABS and SDR in four (4) inch and six (6) inch sizes.

(37) Advanced Drainage Systems, Inc., Series 35 polyethylene corrugated sewer pipe with a smooth interior in sizes four (4) inch through twenty-four (24) inches for underground storm water drainage within a building.

(38) "Flowguard Gold" one (1) step CPVC cement for joining copper tube size CPVC piping systems through two (2) inches without the requirement of a cleaner or primer.

(39) E-Z Trap Adapter as manufactured by S & S Enterprises to be used as connection between chrome plated P trap and PVC waste line.

(40) Canplas Industries LTD Specialty DWV Fittings: Part #3628 ABS or PVC forty-five (45) degree Discharge Closet Flange, Part #2321 Appliance (dishwasher) Wye, Part #3650A Closet Flange Kit for Concrete Installations.

FRANK PHIEFFER, Chairman

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: November 11, 1997

FILED WITH LRC: April 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, May 22, 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 May 15, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

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: Manufacturers of new products not yet made part of a national standard allowed by the Kentucky Plumbing Code.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: There will be no impact on the cost of living or employment with this amendment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: Provides ability of manufacturer to market his product in the state.

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

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: Formalizes, with proper regulatory oversight the procedure for acceptability of new products in the State Plumbing Code.

(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: Unchanged by this amendment.

(4) Assessment of anticipated effect on state and local revenues: No effect on revenues because the regulation merely identifies existing procedures in regulatory form.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

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

(a) Geographical area in which administrative regulation will be implemented: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: The previous method of filing new parts or materials did not statutorily meet KRS Chapter 13A requirements.

(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 with this amendment.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable with this amendment.

(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: This is the only known law or policy dealing with this product.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workability standards.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Plumbing (Amendment)

815 KAR 20:070. Plumbing fixtures.

RELATES TO: KRS [Chapter] 318.010, 318.015, 318.150, 318.200

STATUTORY AUTHORITY: KRS 318.130

NECESSITY, FUNCTION, AND CONFORMITY: KRS 318.130 requires the department, after review by the State Plumbing Code Committee, to promulgate an administrative regulation establishing the Kentucky State Plumbing Code regulating plumbing, including the kind, type and quality of plumbing fixtures to be used in the construction of plumbing systems. [The department is directed by KRS 318.130 through the State Plumbing Code Committee to adopt and put into effect a State Plumbing Code.] This administrative regulation [relates to the kind, type and quality of plumbing fixtures that shall be used in the construction of plumbing systems and] identifies the manufacturer's specification number of the material accepted in those installations. This amendment is necessary to ensure that water

one-half (2.5) gpm per shower head.

(b) Lavatories.

1. Lavatories in restrooms of public facilities shall be equipped with an outlet device which shall ~~[devices which]~~ limit the flow of domestic hot water to a maximum of 0.75 gpm.

2. Lavatory faucets (other than those in restrooms of public facilities) shall be equipped with a flow control device which shall ~~[devices which]~~ limit the flow of domestic hot water to a maximum of two (2.0) gpm.

3. Sink faucets shall be equipped with a flow control device which shall ~~[devices which]~~ limit the flow of domestic hot water to a maximum of two and one-half (2.5) gpm.

(2) Conservation of cold water.

(a) Showers. A shower ~~[Showers]~~ used for other than safety reasons shall be equipped with an approved control device to limit the ~~[devices to limit]~~ total flow to a maximum of two and one-half (2.5) gpm per shower head.

(b) Lavatory and sink faucets.

1. Lavatory faucets. Lavatory faucets shall be equipped with a flow control device which shall ~~[devices which]~~ limit the flow of the domestic cold water to a maximum of two (2.0) gpm.

2. Sink faucets. Sink faucets shall be equipped with a flow control device which shall ~~[devices which]~~ limit the flow of domestic cold water to a maximum of two and one-half (2.5) gpm.

(c) Water closets. A ~~[no]~~ water closet shall not be installed in a ~~[any]~~ facility or building unless it is of a type designed and manufactured to limit the gallons per flush as required by this subsection:

1. Residential (private use) installations. A water closet ~~[closets]~~ for private use in a single family dwelling, duplex, or townhouse, condominium or apartment unit ~~[dwellings, duplexes and townhouses, condominiums and apartment units]~~ shall not exceed one and six-tenths (1.6) gallons per flush.

2. Commercial (public use) installations. A water closet ~~[closets]~~ for public use, including a commercial building ~~[buildings]~~, shall not exceed three and one-half (3.5) gallons per flush.

(d) Urinals. A urinal ~~[urinals]~~ shall not exceed one (1.0) gallon per flush.

(3) The provisions of this section shall apply to new construction, renovation ~~[renovations]~~ and replacement in an existing structure ~~[structures]~~. Upon satisfactory compliance with the requirements of this section, the Division of Plumbing shall permit the installation of a tank type water closet ~~[closets]~~ equipped with devices found by the inspector to meet applicable specifications in water closets having a tank capacity in excess of three and one-half (3 1/2) gallons (thirteen and three-tenths (13.3) liters). The Division of Plumbing may also allow the use of a standard flush water closet and a urinal which does ~~[closets and urinals which do]~~ not meet the specific specifications if, in the opinion of the division, the configuration of the building drainage system requires a greater quantity of water to adequately flush the system, or if the owner requests the use of antique fixtures which may not be equipped for reduced flow.

FRANK PHIEFFER, Chairman

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: November 11, 1997

FILED WITH LRC: April 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, May 22, 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 May 15, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of

the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

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: Licensed master and journeyman plumbers; users of the State Plumbing Code.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: Implementation of this amendment will not affect the cost of living or employment in any area.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in the cost of doing business.

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

1. First year following implementation: No reporting or paperwork required by users of the State Plumbing Code.

2. Second and subsequent years:

(3) Effects on the promulgating administrative body.

(a) Direct and indirect costs or savings: No cost or savings on the administrative agency involved in this amendment.

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Preparing amendment to Code and distributing the information to users.

(4) Assessment of anticipated effect on state and local revenues: No effect on state or local revenue with the implementation of this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing fee schedule is adequate. Enforcement of the regulation will not increase agency costs.

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

(a) Geographical area in which administrative regulation will be implemented: Administrative regulation implemented statewide; however, its implementation should have no economic impact to the area or statewide.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: State Plumbing Code Committee and Board of Housing review proposed amendments and accept on basis within limits defined.

(8) Assessment of expected benefits.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Implementation will protect against hooking up gas appliances to improper vents.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect could occur if gas line not properly connected or vented.

(c) If detrimental effect would result, explain detrimental effect: If

ADMINISTRATIVE REGISTER - 3979

from the total fixture units connected to the stack in accordance with Section 7 of this administrative regulation except that more than three (3) water closets shall not discharge into a three (3) inch stack.

Section 9. Future Openings. An existing opening or an opening installed in a plumbing system for future use shall be complete with its soil, waste and vent piping and shall comply with this administrative regulation.

Section 10. House Drain. (1) The size of the house drain shall be determined by the total number of fixture units connecting to the house drain. The total area of vents through the roof shall be equal to that of the house drain with a minimum of one (1) three (3) inch stack.

(2) If a three (3) inch house drain enters a building, it shall be attached to a three (3) inch stack. One (1) floor drain may be added to the house drain with a three (3) inch trap if it conforms with the requirements of Section 24 of this administrative regulation, without counting toward the fixture units of the system.

Section 11. Soil and Waste Stacks, Fixture Connections. A soil and waste stack or branch shall have correctly faced inlets for fixture connections. Each fixture shall be independently connected to the soil or waste system. A fixture connection to a water closet, floor-outlet pedestal sink, pedestal urinal, or other similar plumbing fixture shall be either a cast iron, lead, brass, copper, or plastic closet bend. A three (3) inch closet bend shall have a four (4) inch by three (3) inch flange.

Section 12. Changing Soil and Vent Pipes in an Existing Building. In an existing building if the soil, waste and vent piping is not extended undiminished through the roof or if there is sheet metal soil or waste piping and the fixtures are to be changed or replaced, the piping shall be replaced with appropriate sizes and materials as prescribed for new work.

Section 13. Prohibited Connections. A fixture connection shall not be made to a lead bend or a branch of a water closet or a similar fixture. A vent pipe above the highest installed fixture on a branch or main shall not be used as a soil or waste pipe.

Section 14. Soil, Waste and Vent Pipe Protected. Soil, waste, or vent pipe shall not be installed or permitted outside a building unless adequate provision shall be made to protect it from frost. The piping shall be wrapped with one (1) layer of heavy hair felt and at least two (2) layers of two (2) ply tar paper, properly bound with copper wire, or the vent shall be increased to full size, the size of the increaser required as if it were passing through the roof.

Section 15. Roof Extensions. A roof extension of soil and waste stacks shall run full size at least one (1) foot above the roof. If the roof is used for purposes other than weather protection, the extension shall not be less than five (5) feet above the roof. A stack of less than three (3) inches in diameter shall be increased to a minimum of three (3) inches in diameter before passing through a roof. If a change in diameter is made, the fitting shall be placed at least one (1) foot below the roof.

Section 16. Terminals. If a roof terminus of a stack or vent is within ten (10) feet of the top, bottom, face or side edge of a door, window, scuttle, or air shaft, and not screened from the opening by a projecting roof or building wall, it shall extend at least two (2) feet above the top edge of the window or opening.

Section 17. Terminals Adjoining High Buildings. Soil, waste or vent pipe extension of a new or existing building shall not run or shall not be placed on an outside wall, but shall be installed inside the

building unless the piping is protected from freezing. If the new building is built higher than the existing building, the owner of the new building shall not locate a window within ten (10) feet of an existing vent stack on the lower building.

Section 18. Traps, Protected; Vents. A fixture trap shall be protected against siphonage and backpressure. Air circulation shall be assured by means of an individual vent. A crown vent shall not be permitted.

Section 19. Distance of Trap from Vent. (1) The distance between the vent and the fixture trap shall be measured along the center line of the waste or soil pipe from the vertical inlet of the trap to the vent opening. The fixture trap vent, except for a water closet or a similar fixture, shall not be below the dip of the trap, and each ninety (90) degree turn in the waste line of the main waste, soil, or vent pipe shall be washed. A fixture trap shall have a vent located with a developed length not greater than that set forth in the table below:

Size of Fixture Drain (In Inches)	Distance Trap to Vent
1 1/4	2 ft. 6 in.
1 1/2	3 ft. 6 in.
2	5 ft.
3	6 ft.
4	10 ft.

(2) A fixture branch on a water closet shall not be more than three (3) feet.

Section 20. Main Vents to Connect at Base. All main vents or vent stacks [vent or vent stack is used, it] shall connect full size at the base of the main soil or waste pipe at or below the lowest fixture branch and shall extend undiminished in size through the roof or shall be reconnected with the main soil or vent stack at least six (6) inches above the rim of the highest fixture. If it becomes necessary to increase the size of a vertical vent stack, the entire stack shall be increased from its base; except that, if the height of a stack which does not serve as the main vent is less than forty-five (45) feet, it shall not be required to be increased from its base. [This section shall not apply to one (1) and two (2) story installations. If it becomes necessary to increase a vertical vent stack, the stack shall become a main vent and shall comply with this administrative regulation.]

Section 21. Vents; Required Sizes. (1) The required size of a vent or vent stack shall be determined by the total number of fixture units it serves and the developed length of the vent, interpolating, if necessary, between permissible length of vent given in the following table:

MAXIMUM PERMISSIBLE LENGTHS OF VENTS

Pipe Size (In Inches)	Maximum Length (In Feet)	Fixture Units
1 1/4	30	2
1 1/2	150	10
2	200	24
2 1/2	250	36
3	300	72
4	400	240
5	800	720

(2) Except for a residential installation, if a fixture opening is installed more than twenty-five (25) feet of developed length from the point where it is connected to the main soil or waste system, or, if more than ten (10) feet of vertical piping is used, the vent shall be

produced and labeled as ASTM D-2996 (green or poly thread).

Section 37. Special Vents. A flat or wet vent serving a plumbing fixture shall be constructed with special permission from the department if a plumbing system is being remodeled or if an addition is added to an original system; except that a flat vent in new construction may also be allowed in a commercial building if the design of the building prohibits the type of venting required by this administrative regulation.

Section 38. Basement Floor Drains and Sanitary Sewage Systems. (1) Except for a basement floor drain exempted under subsection (2) of this section, a basement floor drain shall be connected to the house sewer and properly trapped and vented as set forth in this administrative regulation.

(2) A basement floor drain in a single family dwelling shall not be connected to the house sewer and shall be exempt from this section if, prior to the installation, the local health department or sanitary sewage system board, plant, district, or treatment plant owner notifies the Division of Plumbing, in writing, that connection is detrimental to the functioning of the sanitary sewer system or subsurface system. If the drain is not to be connected to the house sewer, the installation shall also be exempt from the waste, trap and venting provisions of the State Plumbing Code.

FRANK PHIEFFER, Chairman

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: November 11, 1997

FILED WITH LRC: April 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Thursday, May 22, 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 May 15, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made in which case the person requesting the transcript shall have the responsibility of paying for same. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation by the above date to the contact person.

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: All licensed master and journeyman plumbers; users of the State Plumbing Code.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: No effect on cost of living or employment with the implementation of this amendment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change in the cost of doing business with the implementation of this amendment.

(c) Compliance, reporting, and paperwork requirements, including

factors increasing or decreasing costs (note any effects upon competition) for the: Not applicable

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: None beyond requirements of updating the State Plumbing Code with approved amendments to regulations.

(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: Preparing amendment to Code and distributing the information to users.

(4) Assessment of anticipated effect on state and local revenues: State or local revenues will not be affected by implementing this amendment.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Division of Plumbing's revenue will not be affected by the enforcement of this amendment.

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

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation is implemented statewide; however, its implementation should have no economic impact to the area or statewide.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The State Plumbing Code Committee and the Board of Housing review all proposed amendments and accept on basis within limits defined. This amendment has been approved by the Plumbing Code Committee and the Board of Housing.

(8) Assessment of expected benefits: Not applicable with this amendment.

(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 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: No known conflict.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was used in that each product presented for approval is considered separately for compliance with generally recognized safety and workable standards.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Environmental Health and Community Safety (Amendment)

902 KAR 55:015. Schedule I substances.

RELATES TO: KRS 218A.010 to 218A.050, 21 CFR 1308.11
STATUTORY AUTHORITY: KRS 194.050, 218A.020, 218A.040, 218A.250, 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 218A.020 authorizes the Cabinet for Health Services [Human

ADMINISTRATIVE REGISTER - 3983

(5) N-ethylamphetamine;
(6) Fenethylamine; and
(7) Methcathinone (2-(methylamino)-propiofenone, alpha (methylamino)-propiofenone, [alpha (methylamino)-propiofenone,] 2-(methylamino) -1-phenylpropan-1-one, alpha-N-methylaminopropiofenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463 or [and] UR1432(4)) its salts, optical isomers and salts of optical isomers.

RICE C. LEACH, MD, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: April 3, 1997

FILED WITH LRC: April 4, 1997 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held May 22, 1997, at 9 a.m. in the Cabinet for Health Services Auditorium, 1st Floor, Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by May 15, 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 an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Edward Crews

(1) Type and number of entities affected: The amendment to this regulation may affect the manufacturer of flunitrazepam. However, since the drug is not marketed in the United States, no one else should be affected except persons who possess, sell or transfer the substance illegally.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received on this issue.

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

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

1. First year following implementation: There is no compliance, reporting or paperwork required by this regulation that is not already required for other substances in Schedule I.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency because the only change is to add one substance to the list of substances in Schedule I.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the 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:

(a) Geographical area in which administrative regulation will be implemented: No comments were received related to this issue.

(b) Kentucky: No comments were received related to this issue.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because of illegal trafficking and possession of this substance.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Scheduling this drug will allow law enforcement agencies to address the diversion or misuse appropriately.

(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: If the administrative regulation is not implemented, the abuse and diversion of this drugs may escalate.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the provisions of KRS Chapter 218A apply to all substances uniformly.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal laws and regulations are 84 Stat. 1242; 21 USC 801; and 21 CFR 1308.11.

2. State compliance standards. The criteria for substances in Schedule I are set forth in KRS 218A.040.

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances in schedule IV are set forth in 21 USC 812.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The state regulation applies requirements identical to those in the federal regulations, with the exception of flunitrazepam.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The drug flunitrazepam is suspected of being abused and diverted in Kentucky. The stricter standard will not impose any hardship or difficulty since there is no legitimate use in the United States but will allow the criminal justice system to impose more appropriate penalties.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Environmental Health and Community Safety
(Amendment)

902 KAR 55:030. Schedule IV substances.

RELATES TO: KRS 218A.010 to 218A.030, 218A.100 to 218A.110, 21 CFR 1308.14

STATUTORY AUTHORITY: KRS 194.050(1), 218A.020, 218A.100, 218A.250, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human

received on this issue.

(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 because this amendment deletes a substance from Schedule IV.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no anticipated costs or savings to the administrative agency because the only change is to delete a substance from Schedule IV.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There is no reporting or paperwork required by this administrative regulation.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administration of drug regulations is financed by the 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:

(a) Geographical area in which administrative regulation will be implemented: No comments were received related to this issue.

(b) Kentucky: No comments were received related to this issue.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because of illegal trafficking and possession of this substance.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Deleting the substance from Schedule IV (and adding it to Schedule I) will allow law enforcement agencies to address the diversion or misuse with appropriate penalties.

(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: If the administrative regulation is not implemented, the abuse and diversion of these drugs may continue to escalate.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No statute, regulation, or policy conflicts, overlaps or duplicates this administrative regulation.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied because the provisions of KRS Chapter 218A apply to all substances uniformly.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal laws and regulations are 84 Stat. 1242; 21 USC 801; and 21 CFR 1308.14.

2. State compliance standards. The criteria for substances in Schedule IV are set forth in KRS 218A.100.

3. Minimum or uniform standards contained in the federal mandate. The criteria for substances in Schedule IV are set forth in 21 USC 812.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The proposed amendment will delete from Schedule IV a substance (flunitrazepam) that is listed as

Schedule IV in the federal regulations. Therefore this regulation will be less stringent than the federal regulation (although the substance is being listed in another regulation that will be more stringent than the federal regulations).

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The drug flunitrazepam is suspected of being abused and diverted in Kentucky. The stricter standard will not impose any hardship or difficulty because it is not marketed legally in the United States.

CABINET FOR HEALTH SERVICES

Department for Public Health

Division of Environmental Health and Community Safety (Amendment)

902 KAR 55:040. Excluded over-the-counter products.

RELATES TO: KRS 218A.020 to 218A.130

STATUTORY AUTHORITY: KRS 194.050, 211.090, 218A.020, 218A.250, 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 218A.020(4) and 218A.090(4)(i) authorize [authorizes] the Cabinet for Health Services [Human Resources] to exclude products that may be lawfully sold over the counter (without prescription) from the provisions of KRS Chapter 218A relating to controlled substances [of KRS Chapter 218A]. The purpose of this administrative regulation is to exclude certain over-the-counter products from the provisions of KRS Chapter 218A.

Section 1. Excluded Over-the-counter Products. The Cabinet for Health Services excludes the following products from the provisions of KRS Chapter 218A:

(1) Asthma-Ese®, tablet, NDC code 00349-2018: phenobarbital 8.10 mg.;

(2) Azma-Aids®, tablet, NDC code 00367-3153: phenobarbital 8 mg.;

(3) Benzedrex®, inhaler, NDC code 49692-0928: propylhexedrine 250 mg.;

(4) Bronkoxir®, elixir, NDC code 00057-1004: phenobarbital 0.8 mg/ml.;

(5) Bronkotabs®, tablet, NDC code 00057-1005: phenobarbital 8 mg.;

(6) Choate's Leg Freeze®, liquid: chloral hydrate 246.67 mg/ml.;

(7) Guaphed® Elixir, elixir, NDC code 00182-1377: phenobarbital 4 mg/ml.;

(8) Primatene (P-tablets)®, tablet, NDC code 0573-2940: phenobarbital 8 mg.;

(9) Tedral S.A.®, tablet, NDC code 00071-0231: phenobarbital 8 mg.;

(10) Tedral Elixir®, elixir, NDC code 00071-0242: phenobarbital 40 mg./ml.;

(12) Tedral®, tablet, NDC code 00071-0230: phenobarbital 8 mg.;

(13) Tedrigen®, tablet, NDC code 00182-0134: phenobarbital 8 mg.;

(14) Theophed®, tablet, NDC code 00719-1945: phenobarbital 8 mg. and

(15) Vicks Inhaler®, inhaler, NDC code 23900-0010: l-Desoxyephedrine 113 mg. [Any compound, mixture, or preparation containing any nonnarcotic substance which shall be excluded from the provisions of the federal controlled substance law as set forth in the April 1, 1994 edition of the Code of Federal Regulations (CFR), Title

ADMINISTRATIVE REGISTER - 3987

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 218A.020(3) provides that if any controlled substance [substances] is designated, rescheduled, or deleted as a controlled substance under federal law and notice is given to the Cabinet for Health Services [Human Resources], the Cabinet for Health Services [Human Resources] may similarly control the substance under KRS Chapter 218A by administrative regulation. The purpose of this administrative regulation is to exempt certain anabolic steroid products from the provisions of KRS Chapter 218A that have been exempted pursuant to federal regulation.

Section 1. Exempt Anabolic Steroid Products. The Cabinet for Health Services exempts the following anabolic steroid containing compounds, mixtures, or preparations from the provisions of KRS 218A.150 - 218A.180 and 218A.200:

- (1) Androgyn L.A.,® vial, NDC number 0456-1005: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;
- (2) Andro-Estro 90-4®, vial, NDC number 0536-1605: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;
- (3) DepANDROGYN®, vial, NDC number 0456-1020: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (4) DEPO-T.E.®, vial, NDC number 52765-257: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (5) depTESTROGEN®, vial, NDC number 51698-257: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (6) Duomone®, vial, NDC number 52047-360: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;
- (7) DURATESTIN®, vial, NDC number 43797-016: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (8) DUO-SPAN II®, vial, NDC number 0684-0102: testosterone cypionate 50 mg/ml, esterified cypionate 2 mg/ml;
- (9) Estratest®, tablet, NDC number 0032-1026: esterified estrogens 1.25 mg, methyltestosterone 2.5 mg;
- (10) Estratest HS®, tablet, NDC number 0032-1023: esterified estrogens 0.625 mg, methyltestosterone 1.25 mg;
- (11) PAN ESTRA TEST®, vial, NDC number 0525-0175: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (12) Premarin with Methyltestosterone®, tablet, NDC number 0046-0879: conjugated estrogens 1.25 mg, methyltestosterone 10.0 mg;
- (13) Premarin with Methyltestosterone®, tablet, NDC number 0046-0878: conjugated estrogens 0.625 mg, methyltestosterone 5.0 mg;
- (14) Synovex H Pellets in process, drum: testosterone propionate 25 mg., estradiol benzoate 2.5 mg.;
- (15) Synovex H Pellets in process granulation, drum: testosterone propionate 10 parts, estradiol benzoate 1 part;
- (16) TEST-ESTRO Cypionates®, vial, NDC number 0536-9470: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (17) Testagen®, vial, NDC number 55553-257: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (18) Testosterone Cyp 50 Estradiol Cyp 2, vial, NDC number 0814-7737: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (19) Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 54274-530: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (20) Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0182-3069: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (21) Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0364-6611: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;
- (22) Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0402-0257: testosterone cypionate 50 mg/ml, estradiol

cypionate 2 mg/ml;

(23) Testosterone Cypionate-Estradiol Cypionate Injection, vial, NDC number 0009-0253: testosterone cypionate 50 mg/ml, estradiol cypionate 2 mg/ml;

(24) Testosterone Enanthate-Estradiol Valerate Injection, vial, NDC number 0182-3073: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;

(25) Testosterone Enanthate-Estradiol Valerate Injection, vial, NDC number 0364-6618: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml;

(26) Testosterone Enanthate-Estradiol Valerate Injection, vial, NDC number 0402-0360: testosterone enanthate 90 mg/ml, estradiol valerate 4 mg/ml; and

(27) Tilapia Sex Reversal Feed (Investigational), plastic bags: methyltestosterone fish feed, 60 mg/1 kg. [Any compound, mixture, or preparation containing an anabolic steroid exempted from the provisions of the federal controlled substance law as set forth in the April 1, 1994 edition of the Code of Federal Regulations (CFR), Title 21, Food and Drugs, Chapter II - Drug Enforcement Administration, Department of Justice, Section 1308.34, Exempt Anabolic Steroid Products, incorporated by reference, shall be exempt from the provisions of KRS Chapter 218A, the Controlled Substances Act for administrative purposes only. The Code of Federal Regulations is published by the Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408. A copy of 21 CFR 1308.34 shall be on file in the Office of Drug Control, Cabinet for Human Resources, 275 East Main Street, Frankfort, Kentucky, 40621, and shall be available for public inspection and copying Monday through Friday, 8 a.m. - 4:30 p.m. A copy of the CFR is also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.]

RICE C. LEACH, MD, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: April 3, 1997

FILED WITH LRC: April 4, 1997 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held May 22, 1997, at 9 a.m. in the Cabinet for Health Services Auditorium, 1st Floor, Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by May 15, 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 an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Edward Crews

(1) Type and number of entities affected: Approximately 30,000 health care professionals including pharmacists, physicians, dentists, veterinarians and nurses in the Commonwealth are affected by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received on this issue.

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

the purpose of obtaining information in addition to that furnished in the original application.

(c) If the applicant or licensee fails to respond to a request in writing forwarded by certified mail for additional information within thirty (30) days of the date of the receipt of the request, or within another specified time if health and safety are threatened, the cabinet may suspend, modify or revoke the license in accordance with 902 KAR 100:170 or deny the application.

(3) The application shall be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

(4) An application for a license may include a request for a license authorizing one (1) or more activities if the application specifies the additional activities and complies with the provisions of 902 KAR Chapter 100 relating to specific licenses.

(5) The applicant may incorporate in the application, by reference, information contained in previous applications, statements, or reports filed with the cabinet, if references are clear and specific.

Section 4. General Requirements for the Issuance of a Specific License. (1) A license application shall be approved if the cabinet determines:

(a) The applicant is qualified by reason of training and experience to use the radioactive material in question for the purpose requested in accordance with 902 KAR Chapter 100 and in a manner as to minimize danger to public health and safety or property;

(b) The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property;

(c) The issuance of the license will not be adverse to the health and safety of the public; and

(d) The applicant satisfies applicable special requirements in 902 KAR Chapter 100.

(2) For an application for a license to receive and possess radioactive material which the cabinet determines will significantly affect the quality of the environment, the following shall apply:

(a) The secretary of the cabinet or his designee shall, before commencement of construction of the plant or facility in which the activity is to be conducted, weigh the environmental, economic, technical, and other benefits against environmental costs and consider available alternatives;

(b) A license application may be approved if the cabinet determines after consideration of the factors described in paragraph (a) of this subsection, that the action called for is the issuance of the proposed license, with appropriate conditions to protect environmental values;

(c) Commencement of construction prior to the determination shall be grounds for denial of a license to receive and possess radioactive material in the plant or facility.

1. As used in this subsection, the term "commencement of construction" means clearing of land, excavation, or other substantial action that would adversely affect the environment of a site.

2. The term shall not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

(3)(a) The licensee shall notify the cabinet in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under a chapter of Title 11 (bankruptcy) of the United States Code by or against:

1. The licensee;

2. An entity (as that term is defined in 11 USC 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

3. An affiliate (as that term is defined in 11 USC 101(2)) of the licensee.

(b) This notification shall indicate:

1. The bankruptcy court in which the petition for bankruptcy was filed; and

2. The date of the filing of the petition.

(4) Information provided to the cabinet by an applicant for a license or by a licensee or information required by 902 KAR Chapter 100, orders or license conditions to be maintained by the applicant or licensee shall be complete and accurate in all material aspects.

Section 5. Issuance of Specific Licenses. (1) Upon a determination that an application meets the requirements of KRS 211.842 to 211.852 and 902 KAR Chapter 100, the cabinet may issue a specific license authorizing the proposed activity in a form containing conditions and limitations as it deems appropriate or necessary.

(2) The cabinet may incorporate in a license when issued, or thereafter by appropriate rule, 902 KAR Chapter 100, or order, or as otherwise specified in Section 13 of this administrative regulation, additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material subject to 902 KAR Chapter 100 as it deems appropriate or necessary in order to:

(a) Minimize danger to public health and safety or property;

(b) Require reports and the keeping of records, and provide for inspections of activities under the license as may be appropriate or necessary; and

(c) Prevent loss or theft of licensed material.

Section 6. Specific Terms and Conditions of Licenses. (1) A license issued pursuant to this administrative regulation shall be subject to the provisions of KRS 211.842 to 211.852, 902 KAR Chapter 100, and orders of the cabinet.

(2) Neither the license nor a right under the license shall be assigned or otherwise transferred in violation of the provisions of KRS 211.842 to 211.852.

(3) A person licensed by the cabinet under 902 KAR Chapter 100 shall confine his use and possession of the radioactive material(s) licensed to the locations and purposes authorized in the license.

Section 7. Expiration and Termination of Licenses. (1) Except as specified in subsection (9) of this section and in Section 8(2) of this administrative regulation, a specific license shall expire at midnight on the day, in the month and year stated in the license.

(2) A licensee shall notify the cabinet promptly, in writing, and request termination of the license if the licensee decides to terminate activities involving materials authorized under the license. This notification and request for termination of the license shall include:

(a) The reports and information specified in subsection (3)(d) and (e) of this section; and

(b) A plan for completion of decommissioning if required by subsection (4) of this section or by license condition.

(3) If a licensee does not submit an application for license renewal under Section 8(2) of this administrative regulation, the licensee, on or before the expiration date specified in the license, shall:

(a) Terminate use of radioactive material;

(b) Remove radioactive contamination to the extent practicable except for those procedures covered by subsection (4) of this section;

(c) Properly dispose of radioactive material;

(d) File the "Disposition of Radioactive Material", "Form RPS-10", with the Cabinet for Health Services. The form may be obtained from the cabinet at 275 East Main Street, Frankfort, Kentucky 40621, between 8 a.m. and 4:30 p.m., Monday through Friday; and

(e) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the result of this survey, unless the licensee demonstrates that the premises are suitable for release for unrestricted use in some other manner. The licensee shall, as appropriate:

1. Report levels of radiation in units of microrads per hour of beta

Section 12. Transfer of Material. (1) A licensee shall not transfer radioactive material except as authorized by this administrative regulation.

(2) Except as stated in the license and subject to the provisions of subsections (3) and (4) of this section, a licensee may transfer radioactive material subject to the acceptance of the transferee to a person:

(a) Exempt from the requirements for a license as specified in this administrative regulation to the extent permitted under the exemption;

(b) Authorized to receive radioactive material under terms of a general license as specified in 902 KAR 100:050, or its equivalent, or a specific license or equivalent licensing document, issued by the cabinet, the U.S. Nuclear Regulatory Commission, or an Agreement State;

(c) Otherwise authorized to receive radioactive material by the federal government or an agency thereof, the cabinet, or an Agreement State; or

(d) As otherwise authorized by the cabinet in writing.

(3) Before transferring radioactive material to a specific licensee of the cabinet, U.S. Nuclear Regulatory Commission, or an Agreement State or to a general licensee who is required to register with the cabinet, U.S. Nuclear Regulatory Commission, or an Agreement State prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by this administrative regulation are acceptable:

(a) The transferor may have in his possession, and read, a current copy of the transferee's specific license or registration certificate;

(b) The transferor may have in his possession a written certificate by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date;

(c) For emergency shipments, the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date; if the oral certification is confirmed in writing within ten (10) days;

(d) The transferor may obtain other sources of information compiled by a reporting service from official records of the cabinet, the U.S. Nuclear Regulatory Commission, or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registration; or

(e) When none of the methods of verification described in paragraphs (a) through (d) of this subsection are readily available or when a transferor desires to verify that information received by one (1) of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the cabinet, U.S. Nuclear Regulatory Commission, or the licensing agency of an Agreement State that the transferee is licensed to receive the radioactive material.

(5) Shipment and transport of radioactive material shall meet the requirements of 902 KAR Chapter 100.

Section 13. Modification, Revocation, and Suspension of Licenses. (1) The terms and conditions of a license shall be subject to amendment, revision, or modification or the license may be suspended or revoked by reason of amendments to or violation of KRS 211.842 to 211.852, 902 KAR Chapter 100, or orders issued by the cabinet.

(2) A license may be revoked, suspended, or modified, in whole or in part, for:

(a) A material false statement in the application or in a statement

of fact required under provisions of KRS 211.842 to 211.852;

(b) Conditions revealed by application or statement of fact;

(c) A report, record, or inspection, or other means which would warrant the cabinet to refuse to grant a license on an original application; or

(d) A violation of, or failure to observe the terms and conditions of KRS 211.842 to 211.852, or of the license, or of rules, 902 KAR Chapter 100, or orders of the cabinet.

(3) Except in cases of willful violation or those in which the public health, interest, or safety requires otherwise, a license shall not be modified, suspended, or revoked unless, prior to the institution of proceedings:

(a) Facts or conduct which may warrant this action shall have been called to the attention of the licensee in writing; and

(b) The licensee shall have been accorded an opportunity to demonstrate or achieve compliance with lawful requirements.

(4) A licensee whose license is suspended or revoked, shall have a right to a hearing in a manner set forth in 902 KAR 1:400.

Section 14. Retention of Records. (1) A person who receives radioactive material in accordance with a license issued under 902 KAR Chapter 100 shall keep records showing the receipt, transfer, and disposal of radioactive material.

(2)(a) Records of receipt of radioactive material which are required by subsection (1) of this section shall be maintained as long as the licensee retains possession of the radioactive material and for two (2) years following transfer or disposal of the radioactive material.

(b) Records of transfer of radioactive material shall be maintained by the licensee who transferred the material for five (5) years after the transfer.

(c) Records of disposal of radioactive material shall be maintained in accordance with 902 KAR 100:021.

(3) Other records required by 902 KAR Chapter 100 or by a license condition shall be maintained for the period specified in 902 KAR Chapter 100. If the retention period is not specified by 902 KAR Chapter 100 or license condition, the records shall be permanently maintained unless the cabinet authorizes their disposition upon proper application for their destruction.

(4) Records required to be maintained by 902 KAR Chapter 100 may be the original, a reproduced copy or a microform if duly authenticated by authorized personnel and capable of producing a clear and legible copy after storage for the period specified by 902 KAR Chapter 100.

Section 15. Financial Assurance and Recordkeeping for Decommissioning. (1)(a) An applicant for a specific license authorizing the possession and use of unsealed radioactive material, except source material, with a half-life greater than 120 days and in quantities exceeding 10E5 times the applicable quantities set forth in 902 KAR 100:030, Section 1 shall submit a decommissioning funding plan as described in subsection (5) of this section. The decommissioning funding plan shall also be submitted if a combination of isotopes is involved if R divided by 10E5 is greater than one (1) (i.e., unity rule), where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in 902 KAR 100:030, Section 1.

(b) An applicant for a specific license authorizing the possession and use of more than 100 millicuries of source material in a readily dispersible form shall submit a decommissioning funding plan as described in subsection (5) of this section.

(c) An applicant for a specific license authorizing possession and use of quantities of source material greater than ten (10) millicuries but less than or equal to 100 millicuries in a readily dispersible form shall either:

1. Submit a decommissioning funding plan as described in subsection (5) of this section; or

2. Submit a certification that financial assurance for decommissioning has been provided in the amount of \$150,000 using one

(a) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after cleanup procedures or if there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials like concrete. These records shall include known information on identification of involved nuclides, quantities, forms and concentrations.

(b) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, relevant documents need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(c) A list of the following, contained in a single document and updated every two (2) years, except for areas containing only sealed sources, provided the sources have not leaked or no contamination remains after a leak, or radioactive materials having half-lives of less than sixty-five (65) days:

1. Areas designated and formerly designated restricted areas as defined in 902 KAR 100:010, Section 1(196). For requirements prior to January 26, 1994, see 902 KAR 100:010, Section 1(110) contained in the 1990 edition of 902 KAR Chapter 100 of the Kentucky Administrative Regulations, June 27, 1990;

2. Areas outside of restricted areas that require documentation pursuant to paragraph (a) of this subsection;

3. Areas outside of restricted areas where current and previous wastes have been buried as documented under 902 KAR 100:021, Section 11;

4. Areas outside of restricted areas which contain radioactive material so that, if the license expired, the licensee shall be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 902 KAR 100:021, Section 2.

(d) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

Section 16. Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds shall be available for decommissioning costs and on a demonstration that the parent company passes a financial test. This section establishes criteria for passing the financial test and for obtaining the parent company guarantee.

(1) Financial test. To pass the financial test, the parent company shall meet the criteria of either paragraph (a) or (b) of this subsection:

(a) The parent company shall have:

1. Two (2) of the following three (3) ratios: A ratio of total liabilities to net worth less than two (2.0); a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than one-tenth (0.1); and a ratio of current assets to current liabilities greater than one and one-half (1.5); and

2. Net working capital and tangible net worth at least six (6) times the current decommissioning cost estimates (or prescribed amount if a certification is used); and

3. Tangible net worth of at least \$10 million; and

4. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the current decommissioning cost estimates (or prescribed amount if certification is used).

(b) The parent company shall have:

1. A current rating for its most recent bond issuance of AAA, AA,

A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

2. Tangible net worth at least six (6) times the current decommissioning cost estimate (or prescribed amount if a certification is used); and

3. Tangible net worth of at least \$10 million; and

4. Assets located in the United States amounting to at least ninety (90) percent of total assets or at least six (6) times the current decommissioning cost estimates (or prescribed amount if certification is used).

(c) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in the financial statement. In connection with that procedure the licensee shall inform the cabinet within ninety (90) days of matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(d)1. After the initial financial test, the parent company shall repeat the passage of the test within ninety (90) days after the close of each succeeding fiscal year.

2. If the parent company no longer meets the requirements of paragraphs (a) and (b) of this subsection, the licensee shall send notice to the cabinet of intent to establish alternate financial assurance as specified in this administrative regulation. The notice shall be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of that fiscal year.

(2) Parent company guarantee. The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(a) The parent company guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the cabinet. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both licensee and the cabinet as evidenced by the return receipts.

(b) If the licensee fails to provide alternate financial assurance as specified in this administrative regulation within ninety (90) days after receipt by the licensee and the cabinet of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor shall provide alternative financial assurance in the name of the licensee.

(c) The parent company guarantee and financial test provisions shall remain in effect until the cabinet has terminated the license.

(d) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the cabinet. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

Section 17. Criteria Relating to Use of Financial Test and Self-guarantees for Providing Reasonable Assurance of Funds for Decommissioning. (1) An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of subsection (4) of this section.

(2) The terms of self-guarantee are in subsection (7) of this section.

(3) This section establishes criteria for passing the financial test for the self-guarantee and establishes the terms for self-guarantee.

(4) To pass the financial test, a company shall meet the following criteria:

(a) Tangible net worth at least ten (10) times the total current decommissioning cost estimate, or the current amount required if

ADMINISTRATIVE REGISTER - 3995

Manager, Radiation Control Branch, 275 East Main Street, Frankfort, Kentucky, 40621. The report shall include the following:

1. A description of the event, including the probable cause and the manufacturer and model number, if applicable, of equipment that failed or malfunctioned;
2. The exact location of the event;
3. The isotopes, quantities, and chemical and physical form of the radioactive material involved;
4. Date and time of the event;
5. Corrective actions taken or planned and results of evaluations or assessments; and
6. The extent of exposures of individuals to radiation or to radioactive materials without identification of individuals by name.

RICE C. LEACH, MD, Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: April 2, 1997

FILED WITH LRC: April 4, 1997 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held May 22, 1997, at 9 a.m. in the Cabinet for Health Services Auditorium, 1st Floor, Department for Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by May 15, 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 an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the General Counsel, Cabinet for Human Resources, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John A. Volpe, Ph.D.

(1) Type and number of entities affected: Approximately 25 out of 400 radioactive material licensees will be impacted by the timeliness decommissioning and decontamination amendment.

(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 comments received: No public hearing was requested and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public hearing was requested and no comments were received.

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

1. First year following implementation: If a licensee ceases operation at any time during the first year after promulgation, they will be impacted by the amendment.

2. Second and subsequent years: If a licensee ceases operation at any after time the first year, they will be impacted by the amendment.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Amendment will decrease potential liability to the agency since facilities will be required to initiate remediation within a specified time period.

2. Continuing costs or savings: Same as 1.

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: Fees from the licensing of radioactive material users.

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

(a) Geographical area in which administrative regulation will be implemented: No comments were received.

(b) Kentucky: No comments were received.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Amendment necessary to maintain compatibility with the U.S. Nuclear Regulatory Commission's requirements.

(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 benefit is a timely remediation of radioactive material facilities which will allow release for unrestricted use.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Without enforcement, facilities could remain contaminated with radioactive material and impact public health and safety.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict with statutes or administrative regulations.

(a) Necessity of 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: Not applicable.

(11) TIERING: Is tiering applied? Yes, only licensees who utilize diffuse radioactive material will be impacted by the timeliness in decommissioning and decontamination amendment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The Atomic Energy Act of 1954, as amended, 10 CFR 30, 40, and 70 as promulgated by the U.S. Nuclear Regulatory Commission.

2. State compliance standards. Administrative regulation provides requirements for licensing of radioactive material, reasonable assurance of funding for decommissioning and decontamination, and timeliness for decommissioning and decontamination.

3. Minimum or uniform standards contained in the federal mandate. This amendment will bring about compatibility with U.S. Nuclear Regulatory Commission's requirements.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

CABINET FOR FAMILIES AND CHILDREN

Department for Social Services

Division of Aging Services

(Amendment)

905 KAR 8:160. Adult day and Alzheimer's respite program.

RELATES TO: KRS 205.201, 205.203, 205.455-465, 902 KAR 20:066, 902 KAR 20:200, 905 KAR 8:180, 42 USC 3001 et seq.

STATUTORY AUTHORITY: KRS 194.050, 205.204(2), EO 96-862 NECESSITY, FUNCTION, AND CONFORMITY: 42 USC 3001 et seq. [~~the Older Americans Act of 1965, as amended,~~] authorizes grants to states to provide assistance in the development of new or improved programs for older persons. Executive Order 96-862,

ADMINISTRATIVE REGISTER - 3997

service provider shall meet the following general requirements:

(a) Assure that program staff shall treat the participant and caregiver in a respectful and dignified manner, involving them in decisions regarding the delivery of services;

(b) Assure that services are provided in a safe manner;

(c) Provide a unit cost figure to the case manager or assessor to be used as a basis for determining the applicable percentage of the fee schedule;

(d) Collect the fee for service as determined by the case manager or assessor. Fees and donations shall be budgeted and used to increase services;

(e) Have and use appropriate procedures for referrals to other service agencies or programs;

(f) Conduct community education and outreach activities to reach prospective participants;

(g) Comply with applicable administrative policies and procedures and service contracts; and

(h) Provide access for staff of the area development district and the Cabinet for Families and Children [~~Human Resources~~] for monitoring and evaluation purposes.

(2) The service provider shall meet the following program requirements for in-center services:

(a) Establish a schedule of days and hours of operation to be posted in a conspicuous place. A written copy of the schedule shall be given to the participant and the caregiver;

(b) Operate the program a minimum of four (4) hours per day, three (3) days per week, excluding holiday and emergency closings;

(c) Supervise program activities. Supervision shall be provided by staff or volunteers meeting staff requirements as set forth in Section 7 of this administrative regulation;

(d) Provide a balance of planned individual and group activities to meet participant needs, abilities and interests as determined by the individual plan of care;

(e) Provide participants an opportunity to plan and evaluate activities on a monthly basis;

(f) Provide participants a choice of activities and an opportunity to refuse to participate in the activity;

(g) Post a monthly calendar of planned activities and available services in a conspicuous place. Records shall be maintained for monitoring purposes;

(h) Provide assistance, when necessary, with activities of daily living including:

1. Walking;
2. Eating;
3. Grooming;
4. Toileting; and
5. Personal hygiene;

(i) Comply with the Division of Aging Services, Department for Social Services policies and procedures for self-administration of medications;

(j) Provide a meal that complies with the Division of Aging Services' nutrition program policies if the program is in operation during a normal meal hour. Therapeutic diets shall be available in accordance with a physician's order at licensed adult day centers;

(k) Allow participants, as a supplementary activity to staff assignments, an opportunity to assist in planning menus;

(l) Offer nutrient dense snacks, water and other liquids at regularly scheduled times during the day;

(m) Post a monthly calendar of menus in a conspicuous place if meals are provided. Maintain menus for monitoring purposes;

(n) Provide first aid and make arrangements for medical care with the participant's physician or hospital for accidents or medical emergencies;

(o) Notify the family or other appropriate person of any significant changes in the participant's mental or physical condition;

(p) Refer participants to health professionals of their choice, as needed;

(q) Establish linkages with other community agencies and institutions to better coordinate services;

(r) Assist participants and their families in identifying and accessing community agencies for:

1. Financial;
2. Social;
3. Recreational;
4. Educational;
5. Medical; and
6. Other services;

(s) Assist the family in arranging transportation; and

(t) Notify the area agency on aging immediately of a negative incident or accident involving a participant or employee, providing a written report if requested.

(3) The service provider operating a licensed adult day health center shall:

(a) Comply with licensure requirements of 902 KAR 20:066;

(b) Assure that health care needs are met;

(c) Provide self-care training;

(d) Provide personal care services; and

(e) Maintain a medication sheet in accordance with 902 KAR 20:066 if medications are administered to a participant.

(4) In-home respite care service providers shall comply with the following:

(a) Establish a monthly schedule of days and hours of service for each client based on the assessment, plan of care, and agreement with the participant and caregiver;

(b) Provide a copy of the schedule to the caregiver; and

(c) Supervise the participant and program activities as determined by the assessment and plan of care.

Section 6. Facility Requirements. Adult day and Alzheimer's respite program providers operating facilities for services shall:

(1) Comply with requirements outlined in 902 KAR 20:066 for a licensed adult day health center;

(2) Locate the center in a geographic area that provides convenient access to a majority of older persons;

(3) Locate, design, and furnish the center to assure access and to accommodate the special needs of older persons, including individuals with handicaps;

(4) Provide sufficient space and arrangements of furnishings to allow for:

- (a) Adequate client movement;
- (b) Program activities;
- (c) Food service; and
- (d) Socialization;

(5) Provide sufficient private office space to permit individual counseling and confidential maintenance of records;

(6) Provide appropriate lighting, heating, cooling and ventilation for participant comfort and program activities;

(7) Equip each center with bathroom facilities meeting the following requirements:

(a) A minimum of one (1) toilet for each ten (10) participants with equal number of wash basins;

(b) Easy accessibility to the handicapped;

(c) In men's bathrooms urinals may be substituted for up to one-half (1/2) the number of toilets required;

(d) Cleaned and sanitized daily; and

(e) Hot and cold running water, mirror, soap and towels;

(8) Comply with applicable housing and health codes;

(9) Obtain initial and annual inspection by state or local fire safety officials and comply with requirements;

(10) Maintain at least one (1) fire extinguisher with initial and annually updated inspection tags;

(11) Maintain a fully equipped first aid kit, with unexpired contents, as defined by the American Red Cross;

(12) Provide identifiable space during hours of operation for

ADMINISTRATIVE REGISTER - 3999

2. Progress;
 3. Physical and mental conditions;
 4. Behaviors;
 5. Responses;
 6. Attitudes;
 7. Appetite; or
 8. Other changes or observations noted by program staff and case manager;
- (i) Emergency contact information including responsible party and personal physician;
 - (j) Attendance record;
 - (k) Record of services provided by in-home or other program services;
 - (l) Signed authorization for participant to receive emergency medical care if necessary;
 - (m) Ongoing reassessments and care plans;
 - (n) Correspondence; and
 - (o) Closing summary.
- (2) Licensed day care centers shall maintain records as governed by 902 KAR 20:066.
- (3) The service provider shall comply with reporting requirements of the area agency on aging and the Cabinet for Families and Children. ~~(Human Resources)~~

DONNA HARMON, MSW, Commissioner

VIOLA P. MILLER, Secretary

APPROVED BY AGENCY: March 26, 1997

FILED WITH LRC: March 27, 1997 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on May 22, 1997 at 9 a.m. in the Health Services Auditorium, Cabinet for Human Resources Building, 275 East Main Street, Frankfort, Kentucky. Those interested in attending this hearing shall notify this agency in writing by May 15, 1997. If no notification of intent to attend the hearing is received by that date the hearing may be cancelled. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments to: Judy Trigg, Regulation Coordinator, Office of the General Counsel, Cabinet for Families and Children, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, Fax# (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are the 1700 frail low-income elderly persons who were served through the Adult Day Care Alzheimer's Respite Program as contracted through the fifteen area development districts.

(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 was scheduled but no public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received. Implementation of this regulation will not affect the cost of doing business in the areas served. A public hearing was scheduled but no public 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: There will not be any additional first year compliance, reporting or paperwork requirements

for the affected entities and this administrative regulation only clarifies the staff qualifications for case managers in the Adult Day Care Alzheimer's Respite Program.

2. Second and subsequent years: There will not be any additional second or subsequent year compliance, reporting or paperwork requirements for the affected entities and this administrative regulation only clarifies the staff qualifications for case managers in the Adult Day Care Alzheimer's Respite Program.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There will not be any direct or indirect costs or savings during the first year for the Department for Social Services.

2. Continuing costs or savings: There will not be any continuing direct or indirect costs or savings for the Department for Social Services.

3. Additional factors increasing or decreasing costs: There are no additional factors that would increase or decrease costs or affect competition for the Department for Social Services.

(b) Reporting and paperwork requirements: There will not be any change in the Department for Social Services reporting and paperwork requirements.

(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: The source of revenue is the Older Americans Act.

(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 was scheduled but no public comments were received.

(b) Kentucky: A public hearing was scheduled but no public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered as this administrative regulation only clarifies the staff requirements for case managers.

(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 of the area as this administrative regulation only clarifies the staff requirements for case managers.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There will be no detrimental effect on environment and public health if not implemented.

(c) If detrimental effect would result, explain detrimental effect: There would be no 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: 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 administrative regulation was not tiered as it established statewide qualifications for case managers in the Adult Day Care Alzheimer's Respite Program for which all contractors are required to comply.

ADMINISTRATIVE REGISTER - 4001

bilities;

(4) A description of long- and short-range goals in the provision of approved homecare services;

(5) A description of the manner in which delivery of services to eligible individuals is to be undertaken;

(6) A procedure published for monitoring subcontracts for direct services;

(7) Assurance that assessment for eligibility shall be conducted initially and at least every six (6) months thereafter; and

(8) Assurance that assessment shall include the following:

(a) Physical health;

(b) Activities of daily living and instrumental activities of daily living (potential and actual performance);

(c) Physical environment and living arrangements;

(d) Mental status (cognitive and emotional);

(e) Financial resources;

(f) Social support and participation; and

(g) Current services utilization.

Section 4. Eligibility. (1) Each applicant for homecare services shall file an application for participation and demonstrate that he is a person sixty (60) years of age or older and meets at least one (1) of the following criteria:

(a) The applicant has functional limitations that require a sheltered environment with provision of social and health related services specific to his activities of daily living and who has been determined impaired in at least:

1. Two (2) physical activities of daily living; or

2. Three (3) instrumental activities of daily living;

(b) The applicant has a stable medical condition requiring skilled health services along with services related to activities of daily living requiring an institutional level of care; or

(c) The applicant is currently residing in a skilled nursing facility, an intermediate care facility or a personal care facility and can be maintained at home if appropriate living arrangements and support systems can be established.

(2) Eligibility shall be determined at the initial assessment and at each reassessment. Only individuals who have been trained and meet the qualifications of an assessor or case manager pursuant to Section 5(1) of this administrative regulation shall determine eligibility.

(3) Homecare clients shall be informed that they shall be eligible for services as long as they meet eligibility requirements.

(4) Eligibility determination shall be based upon physical (functional) impairments; however, the assessor and case manager may consider individuals whose deficiencies are caused by mental or emotional impairments including Alzheimer's or other related disorders if these impairments affect physical (functional) capacities.

(5) The assessor or case manager shall determine eligibility for individuals being referred as needing adult day care, adult day health care, Alzheimer's respite care, or in-home services. Use of this procedure may be waived by the Director, Division of Aging Services, Cabinet for Families and Children ~~[Human Resources]~~, for those area development districts who provide generic assessment and case management.

(6) The homecare program shall not supplant or replace services provided by the client's informal support system. If needs are being met by the informal support system, the client shall be deemed ineligible. An applicant who needs respite services shall not be deemed ineligible as a result of this subsection.

Section 5. Case Management. (1) Case managers shall meet one (1) of the following qualifications:

(a) A bachelor's degree or master's degree in social work, gerontology, psychology, sociology, or a field relevant to geriatrics, no experience required;

(b) A bachelor's degree or master's degree in nursing with a current Kentucky nursing license, no experience required;

(c) A bachelor's degree with two (2) years experience in working with the elderly; or

(d) A Kentucky registered nurse with a current Kentucky [nursing] license and [with] two (2) years experience or a licensed practical nurse with a current Kentucky license and three (3) years experience in working with the elderly; and

(e) Volunteer experience working with the elderly shall be counted on an hour-for-hour basis.

(2) Each client shall be assigned a specific case manager.

(3) Clients shall be assessed initially and reassessed every six (6) months thereafter by a person who meets case manager qualifications. After each assessment or reassessment, the Homecare Certification of Eligibility, herein incorporated by reference, shall be completed. If the client is ineligible, the case shall be closed with the reason documented in the case record.

(4) The case manager shall be responsible for arranging and documenting those services provided by other funding sources or volunteers. Reasonable effort shall be made to secure and utilize informal supports for each client.

(5) Case managers shall:

(a) Monitor each client monthly including one (1) home visit with face-to-face contact at least every other month; and

(b) Document in the case record each contact with a client or on behalf of a client.

(6) Case management providers shall assure a minimum of one (1) full-time equivalent case manager for each 100 homecare clients. If the case manager also provides assessment services, his caseload shall not exceed seventy-five (75) clients. Time used to provide agency administration or supervision of other staff shall not be counted toward meeting the full-time equivalency requirement. Two (2) adult day care, adult day health care or Alzheimer's respite care clients may be counted as one (1) for the purpose of determining compliance with this subsection.

(7) Each homecare client shall receive services in accordance with an individualized care plan developed cooperatively with his case manager and revised if appropriate. The plan shall:

(a) Relate to the assessed problem;

(b) Identify the goal to be achieved;

(c) Identify the scope, duration and units of service required;

(d) Identify the source of service;

(e) Include a plan for reassessment; and

(f) Be signed by the client and case manager.

Section 6. Quality Assurance. (1) Upon admission to the homecare program, each client shall:

(a) Read, or have read and explained to him if necessary;

(b) Sign and receive a copy of a completed DSS 1253, Quality Assurance Agreement, herein incorporated by reference. The agreement shall contain the name, address and telephone number of:

1. The current case manager; and

2. The area development district homecare coordinator.

(2) A client call or other contact with the case manager, area development district or Division of Aging Services shall be documented on the DSS 1254, Report of Complaint or Concern, herein incorporated by reference. The identity of the complainant shall be kept confidential if requested.

(3) Copies of written complaints and detailed reports of telephoned or verbal complaints, concerns or service suggestions shall be maintained in the case manager's permanent file. Documentation of investigation and efforts at resolution or service improvement shall be available for monitoring by the area development district and Division of Aging Services staff.

Section 7. Fees and Contributions. (1) The assessor or case manager shall be responsible for determining fee paying status, using the following criteria:

(a) A fee shall not be assessed for the provision of assessment

change in the Department for Social Services reporting and paperwork requirements.

(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: The source of revenue is the Older Americans Act.

(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 was scheduled but no public comments were received.

(b) Kentucky: A public hearing was scheduled but no public comments were received.

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

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(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 administrative regulation was not tiered as it established statewide qualifications for case managers in the homecare program for which all contractors are required to comply.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(Amendment)

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

RELATES TO: KRS 205.520, 205.640, 1996 Ky. Acts ch. 380, Part I, 6B, 51.b.5 [206.675, 1992 Ky. Acts ch. 462, Part I, G.52.b.2.]

STATUTORY AUTHORITY: KRS 194.050, 205.640, [206.460, 1992 Ky. Acts ch. 462, Part I, G.52.b.2.,] 20 CFR 405.402 through 405.488, 42 CFR 440.10, 440.140, 447.250 through 447.280, 42 USC 1396a, b, d, r-4, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program [of Medicaid 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 adminis-

trative 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 method for determining amounts payable by the Medicaid Program [cabinet] for hospital inpatient services.

Section 1. Definitions. (1) "Acute care hospital" means a hospital appropriately licensed and certified to provide acute care hospital services in accordance with 902 KAR 20:016.

(2) "Base year" means the cost reporting period upon which a rate is based.

(3) "Capital costs" means capital related expenses including insurance, taxes, interest, and depreciation related to plant and equipment.

(4) "Charity care" means a service provided to a recipient by a provider without expectation on the part of the provider to receive payment, but shall not include bad debt.

(5) "Cost basis" means the total allowable Medicaid inpatient cost incurred by the provider in the base year.

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

(7) "Disproportionate share hospital" (DSH) means a hospital that meets the criteria specified in 42 USC 1396r-4(d) and one (1) of the following criteria:

(a) As specified in 42 USC 1396r-4(b); or

(b) A hospital that has a Medicaid utilization of one (1) percent or higher.

(8) "DRI" means Data Resources, Incorporated.

(9) "Indexing factor" means the amount that the cost of providing a service is expected to increase during the universal rate year.

(10) "Indigent days" means days in excess of fourteen (14) covered days for a Medicaid recipient and days of service provided to an individual eligible for the Kentucky Hospital Care Program, including outpatient equivalent care days, with eligibility determined in accordance with criteria shown in 907 KAR 1:635, and which are uninsured or unreimbursed by any other source.

(11) "Inflation factor" means the amount that the cost of providing a service has increased, or is expected to increase, for a specific period of time.

(12) "Pediatric teaching hospital" means a hospital as defined in KRS 205.565.

(13) "Professional component cost" means a physician compensation cost paid by the provider for a service to a patient and includes the following categories of practice:

(a) Anesthesiology;

(b) Cardiology;

(c) Electroencephalography;

(d) Pathology;

(e) Radiology; and

(f) Psychiatry in psychiatric hospitals only.

(14) "Psychiatric hospital" means a hospital which meets the minimum licensure requirements as defined in 902 KAR 20:180.

(15) "Rehabilitation hospital" means a hospital meeting the minimum licensure requirements as defined in 902 KAR 20:240.

(16) "State university teaching hospital" means:

(a) A hospital which is owned or operated by a Kentucky state supported university with a medical school; or

(b) A hospital in which three (3) or more departments or major divisions of the University of Kentucky or University of Louisville medical school are physically located and which are used as the primary (greater than fifty (50) percent) medical teaching facility for the medical students at the University of Kentucky or the University of Louisville; however, this shall not include a hospital having a residency program or rotation agreement.

(17) "Trending factor" means the inflation factor as applied to that period of time between a facility's base fiscal year end and the beginning of the universal rate year.

care pursuant to KRS Chapter 216B.

(2) ~~(a)~~ The peer groupings ~~[for the payment system]~~ shall be: 0-50 beds, 51-100 beds, 101-200 beds, 201-400 beds, and 401 beds or more ~~[and up]~~.

(3) A Type III hospital ~~(b)~~ Designated state teaching hospitals affiliated with or a part of the university of Kentucky and the University of Louisville shall not be included in the array for a facility ~~[facilities]~~ with 401 beds or more, but shall be subject to the upper limit for a facility with 401 beds or more. ~~[and up unless the facility's primary characteristics are considered essentially the same as the peer group's, and the facility, although not a university teaching hospital as such, is treated in a manner which recognizes the presence of the major pediatric teaching component existing outside the state university hospitals.]~~

~~[(c) A facility in the 201-400 peer group shall not have its operational per diem reduced below that amount in effect in the 1982 rate year as a result of the establishment of a peer grouping of 401 beds and up.]~~

(4) A ~~(d)~~ psychiatric hospital ~~[hospitals]~~ shall not be peer grouped but shall be in ~~[have]~~ a separate array of psychiatric hospitals ~~[only]~~.

(5) A ~~(e)~~ rehabilitation hospital ~~[hospitals]~~ and an acute care hospital providing only rehabilitation services ~~[hospitals considered to be primarily rehabilitative in nature]~~ shall not be:

- (a) Peer grouped; ~~[or]~~
- (b) Arrayed; or
- (c) Subject to the operating cost upper limit.

Section 8. ~~[(6) Use of a]~~ Minimum Occupancy Factor. Allowable Medicaid capital cost shall be reduced if the following minimum occupancy factors are not met: ~~[A minimum occupancy factor shall be applied to capital costs attributable to the Medicaid Program.]~~

(1) A sixty (60) percent occupancy factor shall apply to hospitals with 100 or fewer beds; or

(2) A seventy-five (75) percent occupancy factor shall apply to a hospital ~~[facilities]~~ with 101 or more beds. ~~[Capital costs are interest and depreciation related to plant and equipment.]~~

Section 9. ~~[(7) Use of a]~~ Reduced depreciation allowance shall be applicable, as follows:

(1) The allowable amount for depreciation on building and fixtures, excluding ~~[(not including)]~~ major movable equipment~~[(s)]~~, shall be sixty-five (65) percent of the reported depreciation amount as shown in the hospital's cost reports.

(2) The use of a reduced depreciation allowance is not applicable with regard to a psychiatric hospital ~~[hospitals]~~.

Section 10. ~~[(8) Use of]~~ Upper limits and payment principles ~~[with regard to services provided on or after November 20, 1993.]~~

(a) The following upper limits and payment principles shall apply to a hospital, ~~[all hospitals]~~ with additional ~~[other]~~ limitations for a disproportionate share hospital as defined in Section 11 of this administrative regulation, as follows: ~~[hospitals shown in paragraph (b) of this subsection.]~~

(1) An ~~[(i) For]~~ acute care hospital with 101 beds or more shall have ~~[hospitals except hospitals with 100 beds or less]~~ an upper limit ~~[shall be]~~ established on all costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital ~~[hospitals]~~ in each peer group~~[(s)]~~, using the most recent Medicaid cost report available as of December 1 of each year.

(2) An ~~[(ii) For]~~ acute care hospital ~~[hospitals]~~ with 100 beds or less shall have the upper limit on all costs (except Medicaid capital costs and professional component costs) ~~[shall be]~~ established at 110 percent of the weighted median per diem for a hospital ~~[hospitals]~~ in its ~~[the]~~ peer group~~[(s)]~~, using the most recent Medicaid cost report available as of December 1 of each year.

(3) A state university teaching hospital shall have an upper limit

on all costs (except Medicaid capital costs and professional component costs) established at 106 percent of the weighted median per diem for hospitals in its peer group;

(4) A ~~(b) For~~ psychiatric hospital ~~[hospitals]~~:

(a) Shall have an upper limit ~~[shall be]~~ established on all costs (except Medicaid capital costs and professional component costs) at the weighted median per diem cost for a hospital ~~[hospitals]~~ in the array;

(b) ~~[A psychiatric hospital]~~ Designated by the department ~~[cabinet]~~ as a primary referral and services resource for a child ~~[children]~~ in the custody of the Cabinet for Families and Children shall be exempt from the upper limit for the array and shall be paid at actual projected cost with no year end settlement to actual cost; and

(c) May have the projected cost ~~[may be]~~ adjusted for usual cost of living increases using the DRI ~~[Data Resources, Incorporated]~~ Index.

(5) Except as provided for in subsection (10) of this section the following principles shall apply:

(a) The most recent Medicaid cost report available as of May 1 of each year preceding the universal rate year shall be used for rate setting.

(b) If a desk review or audit of the most current cost report is completed after May 1, but prior to the universal rate setting for the year, the desk review or audited data shall be utilized for rate setting.

(c) An audit and desk review shall be conducted in accordance with the Medicaid Reimbursement Manual for Hospital Inpatient Services.

(6) After ~~[e. Upon]~~ being set, the arrays and upper limits shall not be altered due to a revision or correction ~~[revisions or corrections]~~ of data ~~[(s)]~~; however the arrays or upper limits may be changed as a result of changes of agency policy.

(7) Professional component costs shall be trended and indexed separately in the same manner as operating costs, except an upper limit shall not be established.

~~[(d) Disproportionate share hospitals shall also receive, in addition to regular program payments, disproportionate share hospital payments as described in the Reimbursement Manual at Section 402G.]~~

(8) A ~~(e)~~ provider tax ~~[taxes]~~ shall be considered an allowable cost but only that portion attributable to Medicaid utilization shall be included in the per diem rate. ~~[For the rate period beginning November 20, 1993, the allowable cost of the tax shall be added to the hospital rate with no offsets and without regard for usual upper limits. For subsequent rate periods the cost (excluding, effective March 1, 1994, any per diem rate adjustments for the prior rate period relating to provider taxes) shall be shown in the appropriate cost report with adjustment as necessary to reflect an annual amount.]~~

(9) Except as indicated in subsection (10) of this section, the following controls shall be applied to the per diem rate increases for an acute care hospital, except for one providing only rehabilitation services:

(a) ~~(f)~~ Allowable rate ~~[cost]~~ growth from the prior rate ~~[base]~~ year to the new rate ~~[base]~~ year shall be limited to not more than one and one-half (1 1/2) times the DRI ~~[Data Resources, Inc.]~~ inflation amount for the same time period;

(b) Limits shall be applied to the ~~[by component]~~ ~~[(capital and operating cost per diem components only)]~~;

(c) Rate ~~[(cost)]~~ growth beyond the allowable amounts shall be considered an unallowable cost for rate setting purposes; and

(d) Unallowable costs resulting from the use of control of rate increase limits shall not be included in the base for future rate setting purposes.

(10) For the rate period beginning July 1, 1997, the rate shall be the rate in effect for January 1, 1996 with the following modifications:

(a) The operating and professional components of the rate shall be indexed forward for the 1998 rate period using the inflation factor prepared by DRI for the same period;

1. Acute care hospitals with Medicaid utilization of twenty (20) percent or higher and psychiatric hospitals with Medicaid utilization of thirty-five (35) percent or higher;

2. Hospitals which are designated state teaching hospitals;

3. Hospitals which are designated major pediatric teaching hospitals;

4. Hospitals having twenty-five (25) percent or more nursery days resulting from Medicaid-covered deliveries as compared to the total number of paid Medicaid days; and

5. Effective with regard to services provided on or after July 1, 1990, hospitals not meeting the additional criteria specified in subparagraphs 1 through 4 of this paragraph but with Medicaid utilization of one-half (1/2) of one (1) percent or higher.

(b) The upper limit for payments for hospitals in Kentucky shall be set at the lower of allowable Medicaid cost or the median of the facility array of allowable cost with payment adjustments allowed for hospitals deemed disproportionate share hospitals in accordance with subsections (8) and (9) of this section. For compliance with 42 USC 1396r-4(c), the minimum payment adjustment and actual payment adjustment shall be computed in the following manner:

1. For the period ending June 30, 1994, the following policy shall be in effect:

a. Each disproportionate share hospital shall be paid a minimum disproportionate share payment amount for the type of hospital plus any earned adjustment to which the hospital is entitled. The hospital types, minimum payment amounts, and earned adjustments shall be as follows and shall only remain in effect for the period ending June 30, 1994:

(i) Type I hospitals shall be those acute care and psychiatric in-state hospitals serving a federally designated medically underserved area, a federally designated health manpower shortage area, or a primary care physician shortage area designated under the rural Kentucky medical scholarship fund, when the hospital has fifty (50) beds or less. Minimum amount: ninety-five (95) dollars per Medicaid day.

(ii) Type II. These hospitals shall be described in the same manner as Type I, except these hospitals have fifty-one (51) beds to 100 beds. Minimum amount: seventy (70) dollars per Medicaid day.

(iii) Type III. These hospitals shall be described in the same manner as Type I except these hospitals have 101 beds to 200 beds and include rehabilitation hospitals. Minimum amount: fifty-five (55) dollars per Medicaid day.

(iv) Type IV. These hospitals shall be described in the same manner as Type I except these hospitals have 201 or over beds and include rehabilitation hospitals. Minimum amount: forty-five (45) dollars per Medicaid day.

(v) Type V. All acute care and psychiatric in-state hospitals with 100 beds and under except those described as Type I or II. Minimum amount: forty-five (45) dollars per Medicaid day.

(vi) Type VI. All acute care, rehabilitation and psychiatric in-state hospitals with 101 beds to 200 beds except those that are Type III. Minimum amount: thirty-five (35) dollars per Medicaid day.

(vii) Type VII. These hospitals shall be described in the same manner as Type I, except the type shall be limited to rehabilitation hospitals. Minimum amount: ninety-five (95) dollars per Medicaid day.

(viii) Type VIII. These hospitals shall be described in the same manner as Type II, except the type shall be limited to rehabilitation hospitals. Minimum amount: seventy (70) dollars per Medicaid day.

(ix) Type IX. All rehabilitation hospitals, with 100 beds and under except those described as Type VII or VIII. Minimum amount: forty-five (45) dollars per Medicaid day.

(x) Type X. All other in-state hospitals. Minimum amount: ten (10) dollars per Medicaid day.

(xi) Type XI. All out-of-state hospitals. Minimum amount: one (1) dollar per Medicaid day.

b. (i) Each Type I through Type X hospital shall have the opportunity for an earned payment adjustment based on the provision of

indigent care (i.e., care provided to Medicaid recipients beyond the Medicaid covered days or to individuals or families with income under the poverty level).

(ii) For the period of July 1, 1993 through June 30, 1994, the earned adjustment shall equal ten (10) dollars for each indigent day of care provided plus an amount equal to the cost of the indigent care (at Medicaid rates) provided by the hospital for which there has been no direct or indirect payment (i.e., where the cost of the care has not been paid or cost shifted to other payers) with an adjustment to account for outpatient services so the total indigent care per diem rate shall be up to but not in excess of 140 percent of the Medicaid per diem rate.

(iii) A hospital shall be presumed to have received payment for indigent care to the extent that other patient revenues exceed other patient costs, and to the extent that direct or other indirect payments are made to the hospital for the indigent care.

(iv) A one (1) time disproportionate share payment shall be paid as appropriate for the period of June 15, 1994 through June 30, 1994 to those hospitals qualifying under the following formula:

i. The amount of disproportionate share indigent care payments earned by the hospital using the formula in effect during the period of July 1, 1993 through June 30, 1994 shall be compared to an amount which is derived by computing the amount of earnings that would have been realized during the period of July 1, 1993 through June 30, 1994 using the revised formula taking effect on July 1, 1994 (shown in subparagraph 2 of this paragraph); the one (1) time payment amount shall be the amount (if any) by which the amount derived by using the formula effective July 1, 1994 exceeds the actual amount earned under the formula which was in effect; and

ii. If the one (1) time payments would cause the total of all disproportionate share payments to exceed \$81,000,000 for the period of July 1, 1993 through June 30, 1994, all one (1) time payments shall be reduced proportionately so the total amounts of disproportionate share payments for the period of July 1, 1993 through June 30, 1994 shall equal but not exceed \$81,000,000.

(v) Any acute care disproportionate share hospital with 100 beds or less whose July 1, 1993, or January 1, 1994, per diem payment rate is less than the April 1, 1993 rate paid as of June 30, 1993, and also less than full allowable per diem costs for the services provided by the hospital as of July 1, 1993, or January 1, 1994, respectively, shall receive an adjustment to the hospital's disproportionate share minimum payment for the period March 1, 1994 through June 30, 1994. The payment adjustment for an acute care hospital shall be determined by multiplying the number of the hospital's Medicaid days as follows:

i. For services provided for the July 1, 1993 through December 31, 1993 period by the difference between the hospital's July 1, 1993 payment rate and the April 1, 1993 rate as paid on June 30, 1993 not to exceed allowable cost; and

ii. For services provided for the January 1, 1994 through June 30, 1994 period by the difference between the hospital's January 1, 1994 payment rate and the April 1, 1993 rate as paid on June 30, 1993 not to exceed allowable cost.

(vi) Any acute care or psychiatric disproportionate share hospital of 100 beds or less shall receive an additional disproportionate share hospital payment of \$200,000 for the period March 1, 1994 through June 30, 1994. This payment shall be made in two (2) equal installments of \$100,000 each with the first payment amount to be paid on or before March 31, 1994 and the second payment amount to be paid on or before June 30, 1994.

e. Each Type XI hospital shall qualify for an earned adjustment which is equal to ten (10) cents for each one (1) percent of Medicaid occupancy above one (1) standard deviation.

2. The disproportionate share hospital payments for the period beginning July 1, 1994 and thereafter shall be made by paying for each indigent care day, including equivalent days based on outpatient services actually provided, at the hospital's Medicaid per diem rate

ADMINISTRATIVE REGISTER - 4009

from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The proportional adjustment of the Rate of Increase Control and the revised definition of state teaching hospitals and reimbursement clarification is budget neutral.

2. Continuing costs or savings: Agency anticipates a decrease in administrative costs relative to audits. There will be no net administrative savings since staff will be assigned to other tasks.

3. Additional factors increasing or decreasing costs: None identified at this time.

(b) Reporting and paperwork requirements: Normal adjustments expected.

(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 which have already been budgeted.

(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: Proportional relief of Rate of Increase Control (1 1/2 times the Data Resource, Inc.) and revised payment methodology will provide for continued access to hospital inpatient services for Medicaid recipients. The revision to the definitions of state teaching hospitals will benefit the health of individuals who are Medicaid eligible by providing greater access to life saving procedures and 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: No conflict identified.

(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.

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 a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This regulation will affect the local governments of Jefferson County and the City of Louisville.

3. State the aspect or service of local government to which this administrative regulation relates. The regulation relates to the contribution of the local governments described above to the Quality and Clarity Care Trust (QCCT). This regulation allows for their contributions to the QCCT to be refunded if the services covered by the QCCT are reimbursed by the Medicaid program.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No impact.

Expenditures (+/-): For fiscal year 1997 expenditures for each local government would decrease by \$3,602,264.

Other Explanation: None

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development (Amendment)

907 KAR 1:038. Hearing and vision program services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.140, 441.30, 42 USC 1396a, b, d, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [~~Human Resources~~] has responsibility to administer the 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 the hearing services and vision program [~~care~~] services for which payment shall be made by the Medicaid Program for [~~in behalf of~~] both categorically needy and medically needy.

Section 1. Hearing Services. (1) Audiological benefits. Coverage

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.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(Amendment)

907 KAR 1:560. Medicaid hearings and appeals for recipients.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS Chapters 13A, 13B, 194.025, 194.050, 205.231, 205.237, 42 CFR 431 Subpart E, 42 USC 1396, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places 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 provisions relating to the Medicaid grievance, hearing and appeal ~~[hearings and appeals]~~ process for recipients.

Section 1. Definitions. (1) "Applicant" means an individual applying for Medicaid.

(2) "Authorized representative" means an individual acting on behalf of an applicant or recipient.

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

(4) "Designated hearing agency" means the Department for Social Insurance.

(5) "Medicaid coverage" means items or services a Medicaid recipient may receive through the Medicaid Program.

(6) "Member" means as defined in 907 KAR 1:705.

(7) "Recipient" means an individual who receives Medicaid.

Section 2. Informing the Applicant or Recipient of His Rights. (1) Each applicant or recipient shall be informed of his right to a hearing: (a) Verbally ~~[orally]~~ and in writing when application is made; and (b) In writing when any action is taken affecting his eligibility in accordance with KRS 13B.050.

(2) Each applicant or recipient shall be informed of the method by which he may obtain a hearing and that he may be represented by:

(a) Legal counsel;

(b) A relative;

(c) A friend;

(d) Other spokesperson; or

(e) Himself.

Section 3. Request for a Hearing. (1) Any applicant or recipient or an authorized representative may request a hearing by filing a request with the designated hearing agency at either the local office or central office.

(2) The applicant or recipient shall clearly indicate a desire for a hearing by submitting a statement in:

(a) Written form; or

(b) Verbally ~~[orally]~~ and ~~[later]~~ followed up in writing.

Section 4. Time Limitation for Request. (1) To be considered timely, a written or verbal (with appropriate follow-up in writing) ~~[oral]~~ request from an applicant or recipient with regard to an action by the Department for Medicaid Services or its designee regarding Medicaid eligibility or coverage shall be received by the designated hearing agency within:

(a) Forty (40) days of the date of the advance notice of adverse action; or

(b) Thirty (30) days of the notice of:

1. Denial of an application;

2. Discontinuance of an active case;

3. Increase in patient liability;

4. Reduction of Medicaid coverage; or

5. If the hearing issue relates to a failure to take a timely ~~[is delayed in]~~ action, the applicant or recipient has a time period equal to the delay in order to request a hearing ~~[the action is pending]~~.

(2) An additional thirty (30) days for requesting a hearing may be granted if it is determined by the hearing officer that the delay was for good cause in accordance with the following criteria:

(a) The applicant or recipient was away from home during the entire filing period;

(b) The applicant or recipient is unable to read or to comprehend the right to request a hearing on the notice of adverse action or the notice of discontinuance, increase in patient liability or reduction of Medicaid coverage.

(c) The applicant or recipient moved resulting in delay in receiving or failure to receive the notice of adverse action or the notice of discontinuance, increase in patient liability or reduction of Medicaid coverage;

(d) Serious illness of the applicant or recipient; or

(e) The delay was no fault of the applicant or recipient.

Section 5. Continuation of Medicaid. (1) Medicaid coverage shall be continued through the month in which the hearing officer's decision is rendered if the request results from dissatisfaction regarding a proposed discontinuance, proposed increase in patient liability or proposed reduction of Medicaid coverage and is received within ten (10) days of the date of the advance notice of adverse action or notice of decrease or discontinuance.

(2) Medicaid shall be reinstated and continued through the month in which the hearing officer's decision is rendered if:

(a) The request is received within twenty (20) days of the date of the advance notice of adverse action or notice of discontinuance, increase in patient liability or reduction of Medicaid coverage; and

(b) The reason for delay meets the good cause criteria contained in Section 4 of this administrative regulation.

(3) Subsection (1) of this section shall not apply if the applicant or recipient requests the discontinuance, increase in patient liability or reduction of Medicaid coverage to be in effect pending the hearing decision.

(4) Subsections (1) and (2) of this section shall not apply if the program benefit has been reduced or discontinued as a result of a change in law or administrative regulation ~~[or policy of the department]~~.

(5) Continued or reinstated benefits shall be considered overpay-

Section 13. Appeal from Decision of Hearing Officer for an Applicant and Recipient [~~Applicants and Recipients~~]. (1) Any applicant or recipient or his authorized representative wishing to appeal the decision of a hearing officer may do so by filing an appeal to an appointed appeal board.

(2) ~~(4)~~ The appeal request shall be considered timely, when it is received in a local office or the central office of the designated hearing agency within twenty (20) days of the date on which the hearing officer's decision was mailed.

(3) ~~(2)~~ If the good cause criteria in Section 4 of this administrative regulation is met, an appeal request received within thirty (30) days of the hearing officer's decision shall be considered timely.

(4) The request shall be filed in writing or verbally [~~orally~~], but if filed verbally [~~orally~~] shall be followed up in writing. It shall be considered filed on the day the verbal [~~oral~~] or written request is received.

(5) ~~(3)~~ Medicaid eligibility shall continue to be denied, discontinued, patient liability increased, or Medicaid coverage reduced if the department's action is upheld by the hearing officer.

Section 14. Applicant's or Recipient's Rights Prior to Appeal Board Consideration. (1) An appeal [~~All appeals~~] shall be acknowledged in writing to the applicant or recipient and his authorized representative.

(2) The acknowledgment shall offer the opportunity to file a brief or submit new and additional proof and state the tentative date on which the board shall consider the appeal.

Section 15. Appeal Board Review. (1) An appeal to the appeal board shall be considered upon the records of the department and the evidence or exhibits introduced before the hearing officer unless the applicant or recipient specifically requests permission to file additional proof.

(2) When an appeal is being considered on the record, a party [~~the parties~~] may present a written argument [~~arguments~~] and at the appeal board's discretion, be allowed to present an oral argument [~~arguments~~].

(3) If needed, the appeal board may direct the taking of additional evidence to resolve the appeal.

(4) Evidence shall be taken by the appeal board after seven (7) days notice to the parties, giving them the opportunity to object to introduction of additional evidence or to rebut or refute any additional evidence.

Section 16. The Appeal Board Decision. The decision of the appeal board, duly signed by members of the appeal board, shall set forth in writing the facts on which the decision is based and unless set aside through the judicial review process pursuant to KRS 13B.140 and 13B.150, shall be irrevocable in respect to the issue [~~issues~~] in the individual case.

Section 17. Medicaid Case Actions Following a Decision. (1) Medicaid case actions following a decision of a hearing officer or the appeal board shall be made promptly and shall include the month of application or, providing it is established that the applicant or recipient was eligible during an entire period, the month in which incorrect action of the department adversely affected the applicant or recipient.

(2) For a reversal [~~reversals~~] involving reduction of Medicaid coverage or an increase in patient liability, action shall be taken to restore benefits within ten (10) days of the receipt of the hearing or appeal board decision.

Section 18. Special Procedures Relating to Nursing Facility, Hospital and Psychiatric Residential Treatment Facility Level of Care Determination [~~Determinations~~]. The department contracts with a peer review organization [~~organizations~~] to provide a level of care determination for an individual in a nursing facility. [~~determinations for these~~]

~~individuals in nursing facilities.~~ For an individual [~~these individuals~~] appealing a peer review organization's determination, the following special provisions shall be applicable:

(1) If the peer review organization's decision is adverse to the recipient, a written notice of the decision shall be given to the recipient, the physician of record, the facility (if any) and the department. The notice shall comply with the requirements of Section 2 of this administrative regulation.

(2) The recipient may appeal the determination of the peer review organization by filing a written request for reconsideration with the utilization review agency.

(a) The request for reconsideration shall be made within thirty (30) days of the date on the notice of the adverse decision.

(b) If the request for reconsideration is made within ten (10) days, benefits shall continue (as appropriate) until the reconsideration decision has been made.

(c) Reconsideration hearings shall be held within ten (10) working days of the request when the recipient is in the facility; if the request for reconsideration is received after the recipient has left the facility, the hearing shall be held within thirty (30) days.

(3) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(4) Impartiality.

(a) The hearing officer [~~He~~] shall be impartial and shall disqualify himself for any reason set forth in KRS 13B.040.

(b) The applicant or recipient may challenge the hearing officer by presentation of factual evidence that the impartiality criteria are not met.

(5) ~~(4)~~ After the hearing is concluded, the hearing officer shall issue a decision [~~set forth~~] in writing [~~his findings of facts and conclusion of law specifying the reasons for the decision and identifying the supporting evidence and administrative regulations~~]. The hearing officer's decision shall state the issue, contain a finding of fact, present the hearing officer's conclusion of law, state the decision with regard to the issue, and contain a statement explaining the appellant's further hearing rights. A copy of the decision shall be mailed to the recipient and his representative.

(6) ~~(5)~~ If the reconsideration decision is adverse to the recipient, he may then appeal to the department for a hearing in accordance with this administrative regulation.

(a) The appeal shall be filed within fifteen (15) days of the date the recipient is notified of the reconsideration decision, any request may be filed with the utilization review agency or directly with the department.

(b) If filed with the utilization review agency, they shall forward the request with appropriate medical records and any other necessary documentation to the department.

(7) ~~(6)~~ When a negative decision has been appealed to the department, the appeal shall be processed as set forth in Sections 3, 4, 5, and 6 of this administrative regulation.

Section 19. Special Procedures Relating to a Managed Care Participant. (1) A Medicaid recipient shall be informed by the partnership in writing of all policies and procedures for making a complaint, filing a grievance and requesting a hearing in accordance with 907 KAR 1:705.

(2) If the partnership's decision is adverse to the member, the member may request a hearing regarding any action or inaction on the part of the partnership and its subcontracted provider to the department in accordance with Sections 3 through 12 of this administrative regulation.

(3) Any member or his authorized representative wishing to appeal the decision of a hearing officer may do so by filing an appeal to an appointed appeal board.

(4) An appeal shall be processed as set forth in Sections 14, 15 and 16 of this administrative regulation.

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.

**CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(Amendment)**

907 KAR 1:631. Reimbursement of vision program [care] services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.40, 440.60, 447 Subpart B, 42 USC 1396a-d, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 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 method for establishing reimbursements [determining amounts payable by the cabinet] for vision care services.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Resource-based relative value scale (RBRVS) unit" means a value based on current procedural terminology (CPT) codes established by the American Medical Association assigned to the service.

(3) [For purposes of determination of payment the following definition shall be applicable:] "Usual and customary charge" means the uniform amount the individual optometrist or ophthalmic dispenser charges in the majority of cases for a specific covered procedure or service.

Section 2. Reimbursement for Covered Procedures and Materials for Optometrists. (1) Reimbursement for covered services, within the optometrist's scope of licensure, except materials and laboratory services, shall be based on the optometrists' usual and customary actual billed charges up to the fixed upper limit per procedure established by the department using a Kentucky Medicaid fee schedule developed from a resource-based relative value scale (RBRVS) on parity with medical doctors as described in subsection (2) of this section. If an RBRVS based fee is not established, the department shall set a reasonable fixed upper limit for the procedure consistent with general Medicaid rate setting methodology. [cabinet at seventy-eight (78) percent of the median billed charge using 1993 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median

for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service.] Fixed upper limits not determined in accordance with the principle shown in this section of the administrative regulation [(if any)] due to consideration of other factors [such as recipient access] shall be specified in the administrative regulation.

(2) RBRVS units shall be multiplied by a dollar conversion factor to arrive at the fixed upper limits. Medicaid shall use the Kentucky conversion factor for "all other services" as referenced in 907 KAR 3:010, Section 2(2)(b).

(3) Reimbursement for [materials - (eyeglasses or parts of eyeglasses)] shall be made at the optical laboratory cost of the materials not to exceed upper limits for materials as set by the department [cabinet]. An optical laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipient's medical records for postpayment review.

(4) Reimbursement for covered clinical laboratory services shall be based on the Medicare allowable payment rates. For laboratory services with no established allowable payment rate, the payment shall be sixty-five (65) percent of the usual and customary actual billed charges.

Section 3. Maximum Reimbursement for Covered Procedures and Materials for Ophthalmic Dispensers. (1) Reimbursement for covered services within the ophthalmic dispensers' scope of licensure, (a dispensing service fee or a repair service fee) rendered by licensed ophthalmic dispensers to eligible recipients shall be the ophthalmic dispensers' usual and customary actual billed charges up to the fixed upper limit per procedure established by the department using a Kentucky Medicaid fee schedule developed from a resource-based relative value scale (RBRVS) on parity with medical doctors as described in subsection (2) of this section. If an RBRVS based fee is not established the department shall set a reasonable fixed upper limit for the procedure consistent with general Medicaid rate setting methodology. [cabinet at seventy-eight (78) percent of the median billed charge using 1993 calendar year billed charges. If there is no median available for a procedure, or the cabinet determines that available data relating to the median for a procedure is unreliable, the cabinet shall set a reasonable fixed upper limit for the procedure consistent with the general array of upper limits for the type of service.] Fixed upper limits not determined in accordance with the principle shown in this subsection of the administrative regulation [(if any)] due to consideration of other factors [such as recipient access] shall be specified in the administrative regulation.

(2) RBRVS units shall be multiplied by a dollar conversion factor to arrive at the fixed upper limits. Medicaid shall use the Kentucky conversion factor for "all other services" as referenced in 907 KAR 3:010, Section 2(2)(b).

(3) Reimbursement for [materials - (eyeglasses or parts of eyeglasses)] shall be made at the optical laboratory cost of the materials not to exceed upper limits for materials as set by the department [cabinet]. A laboratory invoice, or proof of actual acquisition cost of materials, shall be maintained in the recipient's medical records for postpayment review.

Section 4. Reimbursement for Other Supplies and Materials. Other supplies and materials such as cleaning fluid, cleaning cloth, carrying cases, etc., which are not eyeglasses or replacement-repair parts for eyeglasses, shall [are considered to] be provided in conjunction with and paid for as a part of the vision services rendered, and additional charges shall not be made to the department [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

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, APRIL 15, 1997

**COUNCIL ON HIGHER EDUCATION
(New Administrative Regulation)**

13 KAR 2:080. State Autism Training Center.

RELATES TO: KRS 164.010

STATUTORY AUTHORITY: KRS 164.981-164.9819

NECESSITY, FUNCTION, AND CONFORMITY: The 1996 General Assembly authorized the creation of a State Autism Training Center and assigned overall responsibility for its operation to the Council on Higher Education. The authorizing language of the statute is KRS 164.981-164.9819. The Council on Higher Education is to award a contract to a public institution of higher education for the operation of the State Autism Training Center. An administrative regulation is required by the authorizing statute and also is necessary in order to define the parameters for the operation of the center and for access to services.

Section 1. Definitions. The following terms, when used in this administrative regulation, shall be given the meaning set forth in this section:

(1) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three (3), that adversely affects educational performance.

(2) "Autistic-related disabilities of communication and behavior" means disorders of verbal and nonverbal communication and repetitive, stereotyped, and restricted patterns of behavior.

(3) "Board" means the Citizens Advisory Board as set forth in KRS 164.981-164.9819 and created in Section 4 of this administrative regulation to advise the council and the center's director on the operation of the State Autism Training Center.

(4) "Center" means the Autism Training Center, operated under a memorandum of agreement between the council and a public institution, described in KRS 164.981-164.9819, which shall be known as the State Autism Training Center.

(5) "Client" means a person with the primary diagnosis of autism or autistic-like behavior.

(6) "Contract" means the memorandum of agreement developed and entered into by the Council on Higher Education and a public higher education institution for the purpose of operating the center.

(7) "Public institution" means a state university.

(8) "Council" means the Council on Higher Education.

(9) "Expenses" means those reasonable and customary expenditures related to training and treatment of eligible clients as set forth in this administrative regulation.

Section 2. Contract for the Operation of a State Autism Training Center, Supplemental Information and Plan of Operation. (1) The council shall contract with a public institution for the operation of a State Autism Training Center.

(2) The contract awarded by the council shall be for two (2) years with a provision for an additional two (2) years, if agreed upon by both parties.

(3) The contract shall include provision for:

(a) An annual report of activities, including an assessment of the center's performance, prepared by the public institution, reviewed by the board, and submitted to the council;

(b) Payment by the council to the public institution;

(c) An annual budget for the operation of the center, including a statement of projected revenues and expenditures; and

(d) A plan prepared by the public institution setting forth the activities and objectives to be performed annually.

(4) Supplemental information provided to the council by the public institution shall include a schedule of:

(a) Fees charged to sending agencies; and

(b) Charges for the reimbursement of trainee team or client expenses, if any.

(5) The plan of operation shall stipulate the level and degree of services to be provided in exchange for appropriated state funds and other funds federal, state, local, or private. The contract and plan of operation shall set the limits of the degree and level of services to be provided, and the public institution shall not be required to perform additional services unless compensation is provided and agreed upon by both parties.

Section 3. Operation of the State Autism Training Center. (1) The public institution shall provide the following services:

(a) Individual and direct family assistance in the home, community, and school;

(b) Technical assistance and consultation services, including specific intervention and assistance for a client of the center, the client's family, and the school district;

(c) Professional training programs that include developing, providing, and evaluating preservice and in-service training in state-of-the-art practices for personnel who work with the populations served by the centers and their families;

(d) Public education programs to increase awareness of autism, autistic-related disabilities of communication and behavior, dual sensory impairments, and sensory impairments with other handicapping conditions.

(2) Operation of the center shall be under the direction and control of the public institution which shall be responsible for compliance with all applicable federal and state laws.

(3) The primary method of providing services shall be through the use of trainee teams. Trainee teams shall consist, when possible, of an eligible client, a professional from a local service agency, and the client's guardian or one (1) or both parents. The public institution shall have responsibility for designating a trainee team for each client.

(4) The center's assistance is not intended to supplant other responsibilities of state and local agencies. The school district has primary responsibility for providing the appropriate educational program for a client of school age.

(5) The public institution shall exercise due diligence in maintaining the center's eligibility for federal funds.

Section 4. Citizens Advisory Board. (1) The public institution shall create a Citizens Advisory Board and appoint the members to advise the council and the center director on matters of policy. The board shall review the assessment of the center's performance.

(2) The Citizens Advisory Board shall be composed of the following:

(a) Parents or guardians of clients eligible for the center's program, fifty (50) percent;

(b) Persons from professional fields relating to autism, forty (40) percent;

(c) Knowledgeable lay persons, ten (10) percent;

(d) One (1) council representative and one (1) Kentucky Department of Education representative; and

(e) The director of the center, who shall be an ex officio, nonvoting member.

(3) The board shall meet not less than quarterly.

(4) The center's director shall give adequate notice of all meetings to the members of the board.

(5) The center's director shall publish the minutes of the meetings of the board including any advisory actions taken.

public hearing. If a request for a public hearing, and agreement to attend the public hearing is not received from at least one person, administrative body, or association at least five (5) working days prior to May 21, 1997, the public hearing will be canceled. Persons wishing to request a public hearing should mail their written request to the following address: Michael S. Schwendeman, Assistant Attorney General, Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Frankfort, Kentucky 40601-8204. (502) 573-2200, (502) 573-8317 FAX. Persons wishing to submit written comments should mail or fax such comments to the same address.

REGULATORY IMPACT ANALYSIS

Contact Person: Michael S. Schwendeman

(1) Type and number of entities affected: All cemeteries registered with the Office of the Attorney General pursuant to KRS 367.946(1). The number of cemeteries affected by this regulation would be 271 as of the date of this analysis.

(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 anticipated.

(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 anticipated.

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

1. First year following implementation: Minimal for those cemeteries whose fiscal year does not coincide with the calendar year to convert their reporting to the calendar year. Those cemeteries filing an additional report during the transition will pay filing fee with the additional report of ten (10) dollars. No change or additional cost or savings anticipated for all other cemeteries which already report on the calendar year. No public comments received. No effects on competition anticipated.

2. Second and subsequent years: Minimal for those cemeteries whose fiscal year does not coincide with the calendar year to report on the calendar year. No change or additional cost or savings anticipated for all other cemeteries which already report on the calendar year. No public comments received. No effects on competition anticipated.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Additional costs of employee time in processing the extra reports for those cemeteries which would be filing twice within a year to change over to the calendar year reporting cycle. Such costs will be small. There will be some savings in employee time in identifying cemeteries which are delinquent in filing their reports and in undertaking enforcement actions.

2. Continuing costs or savings: No additional direct or indirect costs foreseen. Continued savings in employee resources due to greater efficiency in processing at the same time and in identification and prosecution of cemeteries delinquent in filing their reports.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No change in reporting or paperwork requirements for cemeteries already reporting on the calendar year cycle. For those cemeteries which will transition to the calendar year cycle, there will be the requirement to file the additional partial year report to conform with the calendar year cycle. After this one time extra report, there will be no additional changes in reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: Each cemetery which has to make a report to transition to the calendar year cycle will be paying a fee of ten (10) dollars to the Attorney General with that report. This will result in a small one time

increase in revenues during the transition year for the enforcement fund. Beyond that, there is no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General funds appropriated to Office of the Attorney General, fees collected from regulated cemeteries, and penalties collected from cemeteries which are delinquent in filing.

(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 were received. The geographical area in which it will be implemented is the entire state.

(b) Kentucky: No public comments were received. Little or no economic impact anticipated from the administrative regulation.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Regulation does not create a new duty, but clearly defines when the report already required by statute should be filed. Alternative: No administrative regulation governing report due date, instead stay with existing policy of the Attorney General selecting a due date when the report forms are mailed out. This was rejected because: (1) the regulated cemeteries did not have fair legal notice of when the report was due. Instead, it was subject to change at the discretion of the Attorney General; (2) it continued the existing situation of having reports being filed throughout the year, making it difficult to monitor compliance and to enforce the 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 environmental 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: No

(11) TIERING: Is tiering applied?: No. There are no federal or state statutes or regulations that would require uniformity. However, tiering would be inappropriate in that there is only one class of entities in this industry. Tiering would have the effect of causing different treatment for entities in the same class. There are no differences in reporting requirements among the regulated entities. The impact of this regulation on the industry is very minimal, and uniform across the regulated entities. Tiering would create unnecessary additional work for the administrative agency, defeating one of the purposes of the regulation which was to streamline the reporting process and improve administrative efficiency. There is no logical basis whatsoever upon which to provide for tiering in this regulation.

DEPARTMENT OF LAW Division of Consumer Protection (New Administrative Regulation)

40 KAR 2:260. Filing of annual reports by preneed burial licensees.

RELATES TO: KRS 367.940(4)

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.972(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 367.972(2)

grants to the Attorney General the authority to establish such rules and administrative regulations as are necessary to carry out the provisions of KRS 367.932 to 367.974 and 367.991. KRS 367.940(4)

discretion of the Attorney General; (2) it continued the existing situation of having reports being filed throughout the year, making it difficult to monitor compliance and to enforce the 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 environmental 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: No

(11) TIERING: Is tiering applied?: No. There are no federal or state statutes or regulations that would require uniformity. However, tiering would be inappropriate in that there is only one class of entities in this industry. Tiering would have the effect of causing different treatment for entities in the same class. There are no differences in reporting requirements among the regulated entities. The impact of this regulation on the industry is very minimal, and uniform across the regulated entities. Tiering would create unnecessary additional work for the administrative agency, defeating one of the purposes of the regulation which was to streamline the reporting process and improve administrative efficiency. There is no logical basis whatsoever upon which to provide for tiering in this regulation.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(New Administrative Regulation)**

201 KAR 2:225. Special pharmacy permit-medical gasses.

RELATES TO: KRS 315.020, 315.035, 315.191(1)(a)

STATUTORY AUTHORITY: KRS 315.020, 315.035, 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes, consistent with the requirements of KRS 315.191(1)(a), minimum requirements for the permitting of those entities that distribute medical gasses.

Section 1. Definitions. (1) "Special pharmacy permits" are pharmacies providing miscellaneous specialized pharmacy service and functions.

(2) "Medical gasses" are oxygen USP and nitrous oxide.

Section 2. General Requirements. (1) Each applicant for a special pharmacy permit-medical gasses license shall comply with the requirements of 201 KAR 2:180 and 201 KAR 2:205, except that the pharmacist-in-charge designated on the permit is exempt from the requirements of 201 KAR 2:205, Section 2(2). The pharmacist-in-charge shall review the records of the special pharmacy permit-medical gasses licensee not less than once each quarter.

(2) Each applicant for a special pharmacy permit-medical gasses license shall prepare and adopt a policy and procedures manual which sets forth a detailed description of how the operation will comply with any laws or administrative regulations which may be applicable and how the licensee will maintain the premises so that the medical gasses remain secure and comply with the applicable compendial monographs.

(3) Each applicant for a special pharmacy permit-medical gasses license shall be subject to inspection prior to the issuance of the license.

Section 3. Qualifications for License. (1) The minimum qualifica-

tions shall include:

(a) The Kentucky Board of Pharmacy shall consider, at a minimum, the following factors in reviewing the qualifications of persons who apply to engage in the delivery of medical gasses to the ultimate consumer or user within the Commonwealth:

1. Any convictions of the applicant under any federal, state, or local laws relating to pharmacy, drug, or federal or state medical assistance programs;

2. Any felony convictions of the applicant under federal, state, or local laws;

3. The applicant's past experience in the sale or distribution of prescription drugs, including controlled substances;

4. The furnishing by the applicant of false or fraudulent material in any application made in connection with an application for a special pharmacy permit-medical gasses license or in any federal or state medical assistance program;

5. Suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant;

6. Compliance with licensing requirements under previously granted licenses, if any; and

7. Compliance with requirements to maintain or make available to the Kentucky Board of Pharmacy or to federal, state, or local law enforcement officials those records required.

(b) The Kentucky Board of Pharmacy shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest based on health and safety considerations.

(2) No license shall be issued pursuant to this administrative regulation unless the applicant has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is in compliance with all applicable federal and state laws and regulations relating to medical gasses; and

(b) That the applicant is equipped as to land, buildings, and security to properly carry on the business described in his application.

Section 4. License Fees; Renewals. (1) Applications for a special pharmacy permit-medical gasses license shall be submitted to the Board of Pharmacy on "Application for Permit to Operate a Pharmacy in Kentucky (11/92)" and is incorporated by reference.

(2) This form may be obtained, inspected, or copied at the Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, 8 a.m. to 4:30 p.m., Monday through Friday.

MICHAEL B. WYANT, President

APPROVED BY AGENCY: April 1, 1997

FILED WITH LRC: April 1, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 2:30 p.m. on May 27, 1997, at 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by May 19, 1997, five (5) working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Michael A. Moné, Executive Director, Kentucky Board of Pharmacy, 1027 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601-8204, Phone: (502) 573-1580.

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 regulation to: Marcy D. Ches, Staff Attorney, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601, (502) 564-5550, (502) 564-5934 (FAX).

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Department of Workers' Claims will incur nominal costs for reproducing the Notice and distributing it to individual self-insured employers and group self-insurance funds.

2. Continuing costs or savings: Minimal

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: 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: None known.

(b) Kentucky: None known.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This Notice was determined to be the most effective means of assuring that employees are informed of the identity of the employer's insurance carrier, and other relevant information regarding workers' compensation required by KRS 342.610(6).

(8) Assessment of expected benefits: Increased public awareness.

(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 employers in the Commonwealth of Kentucky subject to the provisions of KRS Chapter 342 must provide the notice to employees, therefore Tiering is not applied.

LABOR CABINET

Department of Workers' Claims
(New Administrative Regulation)

803 KAR 25:210. Affidavit of exemption from KRS Chapter 342.

RELATES TO: KRS 342.610(5)

STATUTORY AUTHORITY: KRS 342.260, 342.610(5)

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(5) requires that prior to issuing any building permit pursuant to KRS 198B.060(10) every local building official shall require proof of workers' compensation coverage from the builder. Also pursuant to KRS 342.610(5), the commissioner is required to prescribe a form whereby a person who is exempt under the exemption contained in KRS 342.650(2), and any contractor otherwise exempt from KRS Chapter 342, shall certify the exemption to the local building official in lieu of providing workers' compensation coverage. The function of this administrative regulation, is to adopt the exemption form.

Section 1. Exemption. (1) A person who is exempt from securing workers' compensation insurance under the exception contained in KRS 342.650(2), and any contractor otherwise exempt from KRS Chapter 342 shall certify the exemption to the local building official by submitting an "Affidavit of Exemption from KRS Chapter 342 (Individual)" or an "Affidavit of Exemption from KRS Chapter 342 (Corporation or Partnership)", whichever is applicable, in lieu of providing proof of workers' compensation coverage.

(2) The local building official which issues building permits shall immediately file the original affidavit with the Kentucky Department of Workers' Claims. A copy of the affidavit shall be maintained on file with the local office which issues the building permit.

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

(a) "Affidavit of Exemption from KRS Chapter 342 (Individual)" (January 1, 1997 Edition), Department of Workers' Claims; and

(b) "Affidavit of Exemption from the KRS Chapter 342 (Corporation or Partnership)" (January 1, 1997 Edition), Department of Workers' Claims.

(2) The material may 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 St., Paducah, Kentucky 42001.

(c) Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: April 15, 1997

FILED WITH LRC: April 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing will be held at the Kentucky Department of Workers' Claims, 1270 Louisville Road, Building C, Perimeter Park West, Frankfort, Kentucky 40601, on Thursday, May 22, 1997, at 10 a.m. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 1997, five work days prior to the hearing, of their intent to attend. If no notification of intent

of competent jurisdiction shall be deemed notice to the guaranty fund;

(f) Regular places and times for meetings of the board of directors;

(g) Procedures for records to be kept of all financial transactions of the guaranty fund, its agents, and the board of directors;

(h) Procedures for the expeditious and informal resolution of member grievances;

(i) Additional provisions as may be necessary or proper for the execution of the powers and duties of the guaranty fund.

Section 2. Powers and Duties of the Guaranty Funds. (1) Each guaranty fund shall:

(a) Be the insurer required to pay all workers' compensation benefits incurred during the period in which an insolvent self-insurer was a member of the guaranty fund, subject to the limitations provided in Section 24, Subsection (4) of House Bill 1; and, the guaranty fund shall have all the rights, duties and obligations of the insolvent self-insurer except as otherwise provided by law. For a group self-insurer, membership in the Kentucky group self-insurance fund shall continue until the coverage of every group member has been terminated by normal expiration or order of a court of competent jurisdiction. For individual self-insurers, membership in a guaranty fund continues until such employer becomes an insolvent self-insurer, as defined in Section 21(1) of House Bill 1 or secures coverage through an authorized carrier or self-insurance group;

(b) Determine the outstanding liabilities of the insolvent self-insurer and establish actuarially responsible reserves for all incurred claims. Such reserves shall then be applied pro rata to claims incurred before and after March 1, 1997. The guaranty fund is not responsible for any deficiency between the reserves so calculated and the total claims liability for claims incurred prior to March 1, 1997, but shall pay all claims liability incurred on or after that date.

(c) Establish a mechanism for return to the insolvent self-insured or the individual or entity posting the surety any remaining surety in the event of a surplus.

(d) Take possession of the books and records of the insolvent self-insurer necessary to fulfill the duties of the guaranty fund;

(e) Investigate claims brought against the guaranty fund and adjust, compromise, settle and pay workers' compensation benefits which might otherwise be delayed or terminated due to the failure of an insolvent self-insurer to meet its obligations under KRS Chapter 342;

(f) Notify claimants of the insolvent self-insurer of rights through the guaranty fund;

(g) Reimburse each servicing facility for obligations of the guaranty fund paid by the facility and for expenses incurred by the facility while handling claims on behalf of the guaranty fund; and

(h) Notify the commissioner of any information indicating that a member may be insolvent or in a financial condition jeopardizing payment of claims.

(2) A guaranty fund may:

(a) Appear in, defend, and appeal any action on a claim brought against the guaranty fund;

(b) Employ or retain such persons as are necessary to handle claims and perform other duties of the guaranty fund;

(c) Borrow funds necessary to effect the purposes of KRS Chapter 342 and this administrative regulation in accordance with its plan of operation;

(d) Sue or be sued;

(e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of KRS Chapter 342 and this administrative regulation; and

(f) Perform other acts as are necessary to effectuate the purpose of the guaranty fund.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: April 15, 1997

FILED WITH LRC: April 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing will be held at the Kentucky Department of Workers' Claims, 1270 Louisville Road, Building C, Perimeter Park West, Frankfort, Kentucky 40601, on Thursday, May 22, 1997, at 10 a.m. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 1997, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made five days prior to the hearing. 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 regulation to: Marcy D. Ches, Staff Attorney, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601, (502) 564-5550, (502) 564-5934 (FAX).

REGULATORY IMPACT ANALYSIS

Contact Person: Marcy D. Ches

(1) Type and number of entities affected: All employers self-insured for workers' compensation in the Commonwealth of Kentucky.

(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 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: Each newly created guaranty fund is required by House Bill 1 to raise a specified amount of capitol from its members.

2. Second and subsequent years. Additional assessments of all the members may occur in the event of insolvency of a member.

(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: Nominal costs may occur to the Department of Workers' Claims for processing and reviewing the guaranty funds' annual reports which must be submitted to the Department of Workers' Claims.

(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: The Kentucky Workers' 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: None known.

(b) Kentucky: None known.

(7) Assessment of alternative method; reasons why alternatives were rejected; House Bill 1, enacted December 12, 1996, requires the establishment of self-insurance guaranty funds. This regulation is deemed to be the most appropriate and efficient in accomplishing the intent of House Bill 1.

(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

ADMINISTRATIVE REGISTER - 4027

- (b) Paducah - 220 B North 8th Street, Paducah, Kentucky 42001; and
(c) Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

WALTER W. TURNER, Commissioner

APPROVED BY AGENCY: April 15, 1997

FILED WITH LRC: April 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing will be held at the Kentucky Department of Workers' Claims, 1270 Louisville Road, Building C, Perimeter Park West, Frankfort, Kentucky 40601, on Thursday, May 22, 1997, at 10 a.m. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 1997, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request and prior arrangements for a transcript are made five days prior to the hearing. 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 regulation to: Marcy D. Ches, Staff Attorney, Department of Workers' Claims, 1270 Louisville Road, Perimeter Park West, Building C, Frankfort, Kentucky 40601, (502) 564-5550, (502) 564-5934 (FAX).

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 employee leasing companies.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Department of Workers' Claims will incur minimal costs for processing the employee leasing company registrations.

2. Continuing costs or savings: Same as above.

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: 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: None known.

(b) Kentucky: None known.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The manner prescribed by this regulation for the registering of employee leasing companies is deemed to be the most effective, but least burdensome method, for the Department of

Workers' Claims to establish a system for monitoring the actions of employee leasing companies.

(8) Assessment of expected benefits: Increased protection for injured employees of employee leasing companies.

(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 business entities which engage in employee leasing are treated equally by this administrative regulation.

PUBLIC PROTECTION AND REGULATION CABINET Department of Alcoholic Beverage Control (New Administrative Regulation)

804 KAR 4:340. Brew-on-premises license.

RELATES TO: KRS 243.040(11)

STATUTORY AUTHORITY: KRS 241.060, 243.040(11)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 241.060 authorizes the Alcoholic Beverage Control Board to create special licenses the board may find necessary for the proper regulation and control of trafficking in malt beverages. This administrative regulation establishes a new malt beverage license entitled "Brew-on-premises" license.

Section 1. Definitions. (1) "Brew-on-premises establishment" means an establishment that has been granted a license pursuant to the provisions of this administrative regulation to provide ingredients, equipment, and assistance permitted by this administrative regulation to a customer to brew malt beverages on the premises of the establishment.

(2) "Customer" means a person at least twenty-one (21) years old.

Section 2. A "Brew-on-premises" license shall be granted if an applicant meets the provisions of this administrative regulation. The "Brew-on-premises" licensee shall not be considered a brewer, wholesaler, or retailer of malt beverages, if the licensee complies with the provisions of this administrative regulation.

Section 3. A "Brew-on-premises" licensee shall be authorized to provide:

(1) Instruction, advice, expertise, space, equipment, ingredients, and bottling supplies for a customer in brewing malt beverages at the licensed premises.

(2) Assistance to customers, including:

(a) Moving containers of beer between storage areas;

(b) Cleaning, maintaining, and repairing brewing and bottling equipment;

(c) Maintaining climate and temperature control;

(d) Disposing of spent grains and waste; and

(e) Quality control, including laboratory analysis of malt beverages.

(3) Filtering and carbonation of malt beverages.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate:
None
2. State compliance standards: KRS Chapters 241, 242, 243 and 244 and Kentucky Administrative Regulations Chapters 1 through 11.
3. Minimum or uniform standards contained in the federal mandate.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose similar responsibilities and requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. See No. 4 above.

FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government: No
2. State what unit, part or division of local government this administrative regulation will affect.
3. State the aspect or service of local government to which this administrative regulation relates.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation (+/-):

PUBLIC PROTECTION AND REGULATION CABINET
Department of Insurance
(New Administrative Regulation)

806 KAR 3:190. Risk-based capital for insurers.

RELATES TO: KRS 304.3-120, 304.3-140, 304.6, 304.7, 304.24-350, 304.33

STATUTORY AUTHORITY: KRS 304.2-110, 304.3-125

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 provides that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.3-125 provides that the commissioner is granted the authority to adopt administrative regulations that are promulgated and adopted by the National Association of Insurance Commissioners and a requirement of certification for the department. The NAIC requires that the department have this administrative regulation for accreditation. This administrative regulation established risk-based capital requirements for all insurers authorized to transact insurance business in Kentucky. The risk-based capital requirements will assist the department in determining financial strength.

Section 1. Definitions. (1) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with Section 2(7) of this administrative regulation.

(2) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

(3) The definition of "domestic insurer" shall be governed by KRS 304.1-070(1).

(4) The definition of "foreign insurer" shall be governed by KRS

304.1-070(2).

(5) "NAIC" means the National Association of Insurance Commissioners.

(6) "Life and health insurer" means any insurance company licensed to write insurance as defined in KRS 304.5-020, 304.5-030, and 304.5-040 or a licensed property and casualty insurer writing only accident and health insurance.

(7) "Property and casualty insurer" means any insurance company licensed to write insurance as defined in KRS 304.5-050, 304.5-060, 304.5-070, 304.5-080, and 304.5-110 but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(8) "Negative trend" means, with respect to a life or health insurer, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the RBC instructions.

(9) "RBC" means risk-based capital.

(10) "RBC instructions" means the RBC Report including risk-based capital instructions adopted by the NAIC.

(11) "RBC Level" means an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC where:

(a) "Company action level RBC" means, the product of two (2.0) and its authorized control level RBC;

(b) "Regulatory action level RBC" means the product of one and five-tenths (1.5) and its authorized control level RBC;

(c) "Authorized control level RBC" means the number determined under the risk-based capital formula in accordance with the RBC instructions;

(d) "Mandatory control level RBC" means the product of seven-tenths (.70) and the authorized control level RBC.

(12) "RBC plan" means a comprehensive financial plan containing the elements specified in Section 3(2) of this administrative regulation.

(13) "RBC report" means the report required in Section 2 of this administrative regulation.

(14) "Revised RBC plan" means a RBC plan that has been rejected by the commissioner and then revised by the insured.

(15) "Total adjusted capital" means the sum of:

- (a) An insurer's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under KRS 304.3-240; and
- (b) Any other items as specified in the RBC instructions.

Section 2. RBC Reports. (1) On or prior to March 1, every domestic insurer shall prepare and submit to the commissioner a RBC report for the calendar year just ended.

(2) The RBC report shall be filed in a form and contain information as is required by the RBC instructions.

(3) In addition, every domestic insurer shall file its RBC report with:

(a) The NAIC in accordance with the RBC instructions; and

(b) The insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:

1. Fifteen (15) days from the receipt of notice to file its RBC report with that state; or

2. The filing date.

(4) Requirements for life and health insurers:

(a) A life and health insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions.

(b) The formula shall take into account and may adjust for the covariance between the following which are determined in each case by applying the factors in the manner set forth in the RBC instructions:

1. The risk with respect to the insurer's assets;
2. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to file an RBC report by the filing date, unless the insurer has provided an explanation for that failure which is satisfactory to the commissioner and has cured the failure within ten (10) days after the filing date;

(e) The failure of the insurer to submit an RBC plan to the commissioner within the time period set forth in Section 3(3) of this administrative regulation;

(f) Notification by the commissioner to the insurer that:

1. The RBC plan or revised RBC plan submitted by the insurer is, in the judgment of the commissioner, unsatisfactory; and

2. The notification constitutes a regulatory action level event with respect to the insurer, provided that the insurer has not challenged the determination under Section 7 of this administrative regulation;

(g) If, pursuant to Section 7 of this administrative regulation, the insurer challenges a determination by the commissioner under paragraph (f) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected such challenge;

(h) Provided that the insurer has not challenged the determination under Section 7 of this administrative regulation, notification by the commissioner to the insurer that:

1. The insurer has failed to adhere to its RBC plan or revised RBC plan; and

2. The insurer's failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC plan.

(i) If, pursuant to Section 7 of this administrative regulation, the insurer challenges a determination by the commissioner under paragraph (h) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the challenge.

(2) In the event of a regulatory action level event the commissioner shall:

(a) Require the insurer to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform an examination or analysis as the commissioner deems necessary of the assets, liabilities, and operations of the insurer including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue a corrective order specifying corrective actions as the commissioner shall determine are required.

(3) In determining corrective actions, the commissioner may take into account relevant factors based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, which shall include but not be limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions.

(4) The RBC plan or revised RBC plan shall be submitted:

(a) Within forty-five (45) days after the occurrence of the regulatory action level event;

(b) If the insurer challenges the adjusted RBC report pursuant to Section 7 of this administrative regulation and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge; or

(c) If the insurer challenges a revised RBC plan pursuant to Section 7 of this administrative regulation and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to:

(a) Review the insurer's RBC plan or revised RBC plan;

(b) Examine or analyze the assets, liabilities, and operations of the insurer; and

(c) Formulate the corrective order with respect to the insurer.

(6) The fees, costs, and expenses relating to consultants shall be borne by the affected insurer or other party as directed by the commissioner.

Section 5. Authorized Control Level Event. (1) An authorized control level event is any of the following events:

(a) The filing of an RBC report by the insurer which indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an authorized control level event, provided the insurer does not challenge the adjusted RBC report under Section 7 of this administrative regulation;

(c) If, pursuant to Section 7 of this administrative regulation, the insurer challenges an adjusted RBC report that indicates an authorized control level event, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge;

(d) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order, provided that the insurer has not challenged the corrective order under Section 7 of this administrative regulation; or

(e) If the insurer has challenged a corrective order under Section 7 of this administrative regulation and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection of modification by the commissioner.

(2) In the event of an authorized control level event with respect to an insurer, the commissioner shall:

(a) Take actions as are required under Section 4 of this administrative regulation regarding an insurer to which an regulatory action level event has occurred; or

(b) Take actions as are necessary to cause the insurer to be placed under regulatory control pursuant to KRS Chapter 304, Subtitle 33 if the commissioner deems it to be in the best interest of the policyholders, creditors of the insurer, and public.

(3) The authorized control level event shall be deemed sufficient grounds for the commissioner to take action under KRS Chapter 304, Subtitle 33. In the event the commissioner takes actions under this section pursuant to an adjusted RBC report, the insurer shall be entitled to such protections as are afforded to insurers under the provisions of the section pertaining to summary proceedings.

Section 6. Mandatory Control Level Event. (1) A mandatory control level event is any of the following events:

(a) The filing of an RBC report which indicates that the insurer's total adjusted capital is less than its mandatory control level RBC;

(b) Notification by the commissioner to the insurer of an adjusted RBC report that indicates a mandatory control level event, provided the insurer does not challenge the adjusted RBC report under Section 7 of this administrative regulation; or

(c) If, pursuant to Section 7 of this administrative regulation, the insurer challenges an adjusted RBC report that indicates a mandatory control level event, notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) In the event of a mandatory control level event for a life insurer:

(a) The commissioner shall take actions as are necessary to place the insurer under regulatory control pursuant to KRS Chapter 304, Subtitle 33.

(b) If the commissioner takes actions pursuant to an adjusted RBC report, the insurer shall be entitled to the protections of KRS Chapter 304, Subtitle 33 pertaining to summary proceedings.

ADMINISTRATIVE REGISTER - 4033

by registered or certified mail; or

(2) In the case of any other transmission shall be effective upon the insurer's receipt of the notice.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 1996 NAIC Life Risk-Based Capital Report including Overview and Instructions for Companies (December 31, 1996); and

(b) 1996 NAIC Property and Casualty Risk-Based Capital Report including Overview and Instructions for Companies (December 31, 1996).

(2) This material may be inspected, copied, or obtained at Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner

SUETTA W. DICKINSON, General Counsel

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: April 15, 1997

FILED WITH LRC: April 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on May 21, 1997, at 10 a.m. (ET) in the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 14, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on May 21, 1997, in order to receive consideration. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, Telephone Number: (502) 564-6032, Ext. 239, Fax Number: (502) 564-1456.

REGULATORY IMPACT ANALYSIS

Contact Person: Sharron S. Burton

(1) Type and number of entities affected: There are 616 life and health insurers and 802 property and casualty insurers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments 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: All life and health insurers and property and casualty insurers must file a risk-based capital report with annual statements. Other reporting requirements may be necessary if certain risk-based capital levels are reported.

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 costs or savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will have additional responsibility to review risk-based capital 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: The normal budget used for the Department of Insurance.

(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 were received.

(b) Kentucky: No public comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This regulation is required for accreditation by the NAIC. Most companies are already complying with the requirements in other states. Therefore, the department does not want to propose alternatives but rather be consistent with NAIC guidelines and other state's laws.

(8) Assessment of expected benefits: The department will have an additional tool in determining the financial strength of an insured. Policyholders will have more protection.

(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:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: No conflict.

(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) TIERING: Is tiering applied? Tiering is not applied because this regulation will be applied equally to all life and health insurers and property and casualty insurers.

CABINET FOR HUMAN RESOURCES Department for Medicaid Services Division of Administration and Development (New Administrative Regulation)

907 KAR 1:645. Resource standards for Medicaid.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435, 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 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 provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth resource standards by which eligibility is determined.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or has a disability.

(2) "K-TAP" means as defined in 907 KAR 1:011.

ADMINISTRATIVE REGISTER - 4035

ation by the department:

- (1) SSI; and
- (2) K-TAP, using AFDC methodologies in effect prior to July 16, 1996.

JOHN H. MORSE, Commissioner, Secretary

APPROVED BY AGENCY: April 11, 1997

FILED WITH LRC: April 14, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on May 22, 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 May 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 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).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick, Trish Howard (564-5020)

(1) Type and number of entities affected: All Medicaid applicants and recipients.

(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 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:

(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: 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: To be implemented statewide.

(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: 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: 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:

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

(10) Any additional information or comments: The administrative regulation is being promulgated to create an individual subject matter that was previously included in 907 KAR 1:004. The regulation does not include any policy changes.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) 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.

CABINET FOR HEALTH SERVICES

Department for Medicaid Services

Division of Administration and Development

(New Administrative Regulation)

907 KAR 1:655. Spousal impoverishment and nursing facility requirements for Medicaid.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.505, 42 CFR 435, USC 1396a, d, r-5, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative

spouse and the community spouse shall be made upon request of either spouse at the beginning of a continuous period of institutionalization of the institutionalized spouse and upon receipt of relevant documentation of resources.

(2) The department shall complete the assessment within forty-five (45) days if the necessary documentation or verification is provided in a timely manner.

(3) If the resource assessment is complete, each spouse shall receive a copy of the assessment and notification that the right of appeal of the assessment shall exist at the time as the institutionalized spouse applies for Medicaid.

Section 3. Protection of Income and Resources of Couple for Maintenance of Community Spouse. 42 USC 1396r-5 provides for special treatment of income and resources for certain institutionalized spouses specified in 42 USC 1396r-5.

(1) Provisions for treatment of income. The following income provisions shall be applicable for individuals institutionalized on or after September 30, 1989:

(a) Separate treatment of income. Except as provided in paragraph (b) of this subsection, during any month in which an institutionalized spouse is in the institution, income of the community spouse shall not be deemed available to the institutionalized spouse.

(b) Attribution of income. In determining the income of an institutionalized spouse or community spouse, after the institutionalized spouse has been determined or redetermined to be eligible for Medicaid, regardless of any state laws relating to community property or the division of marital property, the provisions of 42 USC 1396r-5(b)(2)(A),(B),(C), and (D) shall be applicable.

(2) Provisions for treatment of resources. The following resource provisions shall be applicable for individuals beginning a continuous period of institutionalization on or after September 30, 1989.

(a) Attribution of resources at time of initial eligibility determinations. Except as provided in subsection 4(b) of this section, in determining the resources of an institutionalized spouse at the time of application for benefits under Medicaid, regardless of any state laws relating to community property or the division of marital property, all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse.

(b) Nonattributed resources. The following protected amounts shall be deducted from couples' combined countable resources at the time of determination of initial eligibility of the institutionalized spouse:

1. The state resource standard; and
2. If applicable, additional amounts transferred under a court support order; or
3. If applicable, an additional amount designated by a hearing officer.

(c) Exceptions to resource ineligibility by assignment of support rights. The institutionalized spouse shall not be ineligible by reason of resources determined under paragraphs (a) and (b) of this subsection to be available for the cost of care in the following circumstances:

1. If the institutionalized spouse has assigned to the department any rights to support from the community spouse;
2. If the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the state has the right to bring a support proceeding against a community spouse without the assignment; or
3. If the department determines that denial of eligibility would work an undue hardship.

(d) Separate treatment of resources after eligibility for benefits is established.

1. During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for Medicaid benefits, resources of the community spouse shall not be deemed available to

the institutionalized spouse.

2. Resources of the institutionalized spouse protected for the needs of the community spouse but not transferred to the community spouse within six (6) months of the initial eligibility determination shall be considered available to the institutionalized spouse.

(e) Excess value of an automobile. The equity value of an automobile in excess of prescribed limits as described in 907 KAR 1:645 shall not be included as a countable resource.

(3) Protecting income for the community spouse. The following provisions shall be applicable with regard to protecting income for the community spouse:

(a) The following allowances shall be offset from income of an institutionalized spouse. After an institutionalized spouse is determined or redetermined to be eligible for Medicaid, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

1. A personal needs allowable of forty (40) dollars plus any mandatory withholdings from income (for example, mandatory payroll deductions that are a condition of employment and federal, state and local taxes that the government requires the payer to deduct before payment is made to the payee);

2. A community spouse monthly income allowance, but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse;

3. A family allowance determined in accordance with the definition of other family members maintenance standard; and

4. Amounts for incurred expenses for medical or remedial care for the institutionalized spouse.

(b) Establishment of the community spouse maintenance standard. The community spouse maintenance standard shall be set at \$1,500 per month, to be increased for each calendar year after 1989 by the same percentage as the percentage increased in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved; the maintenance standard may be increased for an individual, as appropriate, by a hearing officer.

(c) Court ordered support. If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered.

(4) Permitting transfer of resources to community spouse. The following provisions shall be applicable with regard to transfers of resources from an institutionalized spouse:

(a) Permitted transfer. An institutionalized spouse may, without regard to the usual prohibition against disposal of assets for less than fair market value, transfer to the community spouse (or to another for the sole benefit of the community spouse) an amount equal to the community spouse resource allowance, but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse. The transfer shall be made as soon as practicable after the initial determination of eligibility, taking into account the time necessary to obtain a court order under paragraph (c) of this subsection.

(b) Establishment of the community spouse resource allowance.

1. The community spouse resource allowance shall be set at \$60,000, to be increased for each calendar year after 1989 by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved;

2. For an individual, the allowance may be a higher amount established by a hearing officer, or a higher amount transferred under a court order as specified in paragraph (c) of this subsection.

(c) Transfers under court orders. As specified in 42 USC 1396r-

ADMINISTRATIVE REGISTER - 4039

40621, (502) 564-7900, (502) 564-7573 (Fax).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick or Trish Howard (564-5020)

(1) Type and number of entities affected: Nursing facility, home and community based services and alternative intermediate services for the mentally retarded applicants and recipients.

(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 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 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:

(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: 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: 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: 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:

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

(10) Any additional information or comments: This administrative regulation is being promulgated to create an individual subject matter Medicaid regulation. The subject matter was previously included in 907 KAR 1:004. The regulation does not include any policy changes.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) 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.

CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development (New Administrative Regulation)

907 KAR 1:665. Special income requirements for alternative intermediate services for individuals with mental retardation (AIS-MR), hospice, and home and community based services (HCBS).

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435, 42 USC 1396a, n, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth special income requirements for alternative intermediate services for individuals with mental retardation (AIS-MR), hospice, and home and community based services (HCBS).

Section 1. Definitions. (1) "AIS-MR" means alternative intermediate services for individuals with mental retardation.

(2) "Basic maintenance" means the amount of income that may be retained by the applicant for living and personal expenses.

(3) "Categorically needy" means individuals with income below 300 percent of the supplemental security income (SSI) standard who have been receiving AIS-MR, hospice or HCBS for thirty (30) consecutive days.

(4) "HCBS" means home and community based services.

(5) "Income deeming" means the amount of income which is considered available to a Medicaid applicant from a spouse or parent.

(6) "Institutionalized" means residing in a nursing facility or receiving AIS-MR, hospice, or HCBS benefits.

(7) "SSI" means the Social Security Administration Program called supplemental security income.

(8) "SSI general exclusion" means the twenty (20) dollars disregard allowed by the Social Security Administration for SSI

ADMINISTRATIVE REGISTER - 4041

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 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).

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ked Fitzpatrick, Trish Howard (564-5020)

(1) Type and number of entities affected: Nursing facility, home and community base services, and alternative intermediate services for individuals with mental retardation applicants and recipients.

(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 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:

(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: 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: 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: 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: The administrative regulation is being promulgated to create an individual subject matter

Medicaid regulations. The subject matter was previously included in 907 KAR 1:004. The regulation does not include any policy changes.

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) 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. 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 - 4043

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to delete a statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to comply with the: (a) format requirements of KRS 13A.220(4).

Tourism Development Cabinet: Department of Fish and Wildlife: Wildlife

301 KAR 4:100. Peabody Wildlife Management Area use requirements and restrictions. Roy Grimes, Director of the Wildlife Division, Bob Bates, Administrative Services Director, and Reed Sanders, Regional Supervisor with the Division of Law Enforcement, represented the Department.

Mr. Grimes stated that this administrative regulation was amended to: (1) permit sale of the Peabody area use permit throughout the state through the agency's electronic vendor system, KDSS; (2) permit an attended campfire; and (3) remove restrictions on the length of a canoe in the area.

This administrative regulation was amended as follows: (1) Section 6(10) was amended to comply with the drafting requirements of KRS 13A.222(4)(b); and (2) Section 7 was amended to incorporate material in the proper format.

Licensing

301 KAR 5:040. Selling and purchasing migratory game bird and waterfowl permits. Mr. Bates stated that this administrative regulation: (1) brought the agency into compliance with 50 CFR Part 20, which now included Kentucky as part of the Federal migratory bird harvest survey data information program; (2) required a person who purchased a Kentucky waterfowl permit or migratory bird permit to complete a survey; and (3) required: (a) the licensing agent to return the completed survey to the Department; and (b) the Department to return the survey to the United States Fish and Wildlife database.

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 delete a statement that the administrative regulation did not exceed federal law, pursuant to KRS 13A.245(2)(b); and (3) Section 3 was amended to comply with the format for incorporating material by reference.

Water Patrol

301 KAR 6:030. Waterway safety requirements. Mr. Sanders stated that this administrative regulation was amended to: (1) clean up some of the language; and (2) make some minor substantive changes.

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) Section 6(1)(g) was amended to clarify that an operator was required to slow a boat to idle speed if he was not sure of an approaching vessel's course; and (4) Sections 1, 2, 4, 5, and 6 were amended to comply with the (a) drafting requirements of KRS 13A.222(4); and (b) formatting requirements of KRS 13A.220(4).

Department of Agriculture: Division of Animal Health: Livestock Sanitation

302 KAR 20:110 (&E). Treatment of imported mares. Mark Farrow, Chief of Staff, and Rusty Ford, Manager, Equine Programs, represented the Department. Mr. Farrow stated that these two administrative regulations governed the treatment of imported mares and stallions for contagious equine metritis.

In response to a question by Representative Bruce, Mr. Ford stated that metritis was an organism that was: (1) transmitted

venereally; (2) harmful to a specific species; and (3) not harmful to humans.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to include a citation to the appropriate federal regulation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 through 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

302 KAR 20:120 (&E). Treatment of imported stallions. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (2) Sections 1 through 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (3) Section 2(2) through 2(5) were amended to delete language that was deleted in the emergency administrative regulation.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality

401 KAR 5:001. Definitions of terms used in 401 KAR Chapter 5. In response to a question by Mr. Wilson, Subcommittee staff stated that the Regulations Compiler was authorized to correct a typographical error in a statutory citation.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. Jack Damron and Tamela Biggs, Staff Attorneys, represented the Department.

This administrative regulation was amended as follows: (1) CPP 9.6, IV. was amended to include the definitions of "Controlled Substance" and "Marijuana"; (2) CPP 9.6, V. A. was amended to comply with KRS 520.050 and 520.060; (3) CPP 9.6, VI. PROCEDURES was amended to include the terms, "contraband" and "dangerous contraband", established by KRS 520.010(1) and (3), respectively, pursuant to KRS 13A.222(4)(a); (4) CPP 9.6, VI. A. 4. was amended to delete the term "marijuana derivative", pursuant to KRS 218A.010; (5) CPP 9.6, VI. B. 1. was amended, pursuant to KRS 13A.222(4)(a), to clearly establish: (a) the meaning of the term, "Money"; and (b) that written authorization was required for an inmate to possess money; (6) CPP 9.6, VI. B. 8. and CPP 9.8, V. B. 1. a. were amended to use the term "controlled substance", instead of listing specific drugs, because "controlled substance" was defined by KRS 218.010(3); (7) CPP 9.8, V. A. 1. g. was amended to provide that a strip search shall be conducted by a member of the same sex, pursuant to KRS 13A.222(4)(a); (8) CPP 9.8, V. A. 1. h. was amended to require that a body cavity search shall be conducted by a member of the institutional medical staff, pursuant to KRS 13A.222(4)(a); (9) CPP 9.8, V. A. 3. d. was amended to provide that a search may be conducted on an unannounced basis, pursuant to KRS 13A.222(4)(a); (10) CPP 9.8, V. B. 10. was amended to provide that a parent or legal guardian shall consent to a search of a juvenile; (11) CPP 9.8, V. B. 15. was amended to clearly establish that the institution may: (a) contact local law enforcement officials to obtain a search warrant; or (b) by agreement with local law enforcement, directly seek a search warrant from a judge, pursuant to KRS 13A.222(4)(a); (12) CPP 9.8, V. E. 2. b. (3) was amended to clearly establish that the Warden, Deputy Warden, or Duty Officer shall be designated to make a disposition of property confiscated in a search, pursuant to KRS 13A.222(4)(a); (13) CPP 9.8, VI. was amended to provide that, while staff may deviate from the search policy if there was an emergency, the staff shall document and justify a deviation; and (14) CPP

Department of Housing, Buildings and Construction: Office of the State Fire Marshal

815 KAR 25:040. Fire safety requirements in manufactured and mobile homes. Judith Walden, General Counsel, represented the Department. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b); and (2) Sections 1 and 2 were amended to comply with the statutory requirements of KRS 227.555.

Cabinet for Health Services: Department for Medicaid Services

907 KAR 1:019 & E. Pharmacy services. Duane Dringenburg, Division Director, represented the Department. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs, and Sections 1 and 2, were amended to correct statutory citations; and (2) Sections 1 through 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

907 KAR 1:026. Dental services. This administrative regulation was amended as follows: Sections 1, 3, and 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

907 KAR 1:450. Nurse aide training criteria and registry. Karen Doyle, Commissioner's Office; Shirley Harold, Nursing Facilities Branch; and Ron Harold, Nurse Consultant Inspector, Nursing Facilities Branch, represented the Department. This administrative regulation was amended as follows: (1) Section 1 was amended to amend the definition of "nurse aide" to comply with 42 U.S.C. 1396r(b)(5)(F), as required by KRS 13A.120(2)(i); and (2) Sections 1 and 2, and 5 through 10 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

907 KAR 1:673 & E. Claims processing. This administrative regulation was amended as follows: (1) the RELATES TO paragraph and Section 1 were amended to correct statutory citations; (2) Section 1 was amended to include the definition of "home infusion therapy" in the definitions section, rather than in Section 2(2)(b); and (3) Sections 1, 2, and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4)(b).

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Finance and Administration Cabinet: Office of the Secretary: Property

200 KAR 6:050E. Control of concealed deadly weapons on property owned or leased by the executive and judicial branches of state government. Karen Powell, General Counsel, represented the Cabinet. Ms. Powell stated that: (1) this administrative regulation was promulgated at the request of several state employee groups; (2) the emergency administrative regulation had been filed because state employees expressed concerns for workplace safety as citizens began to receive concealed deadly weapon permits; (3) the Cabinet had requested an Opinion of the Attorney General as to whether it was authorized to promulgate this administrative regulation; and (4) on December 20, 1996, the Cabinet received OAG 95-45, which stated that the Cabinet did have the authority to promulgate this administrative regulation.

Subcommittee staff stated that: (1) the Cabinet did not have statutory authority to promulgate the administrative regulation; (2) with regard to attorney general opinions on the issue, several attorney general opinions addressed this issue, including an opinion that stated that the fiscal court as the legislative body of county government, rather than the county judge executive, had the authority to ban concealed weapons; (3) the second subsection of the statute provided

that the legislative body of the unit of state government had the authority to ban the carrying of concealed weapons; (4) the legislative body of state government was the General Assembly; and (5) it was recommended that the Subcommittee request the Legislative Research Commission to refer this issue to the appropriate legislative committee for a clarification of the issue during the 1998 Regular Session of the General Assembly.

The Subcommittee approved a motion to request the Legislative Research Commission to refer the issue to a standing committee for clarification during the 1998 Regular Session of the General Assembly.

Board of Veterinary Examiners

201 KAR 16:015. Fees. Dave Nicholas, Director, Division of Occupations and Professions, represented the Board. Subcommittee staff stated: (1) the initial staff review raised an issue regarding the Board's statutory authority to establish the fees; (2) although the fees established by this administrative regulation were not included in the itemized list of fees, other sections provided that for these subject matters, payment of the relevant fee was required; and (3) the Subcommittee could request the Legislative Research Commission to refer this issue to the appropriate legislative committee for a clarification of the issue during the 1998 Regular Session of the General Assembly.

The Subcommittee approved a motion to request the Legislative Research Commission to refer the issue to a standing committee for clarification during the 1998 Regular Session of the General Assembly.

201 KAR 16:040. Approved programs for veterinary technicians and veterinary technologists.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality

Jack Wilson, Director, and Paul Fitch, Facilities and Construction Branch, represented the Department.

Subcommittee staff stated that: (1) after meeting with Subcommittee staff on the regulations in 401 KAR Chapters 5 and 8, the agency had agreed to consider the suggestions made by Subcommittee staff to conform the administrative regulations to the requirements of KRS Chapter 13A; (2) the agency and the Subcommittee staff would report back to the Subcommittee in about four months on the 401 KAR Chapter 5 administrative regulations, and later on the 401 KAR Chapter 8 administrative regulations; and (3) the agency would then propose amendments to: (a) conform to the drafting and formatting requirements of KRS Chapter 13A; and (b) clarify any vagueness or ambiguity in the administrative regulations.

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

Subcommittee staff stated that: (1) the agency and Subcommittee staff had met to discuss these administrative regulations; and (2) in three or four months, the agency would propose amendments to comply with the drafting and formatting requirements of KRS Chapter 13A.

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

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.

persons who perform lead-hazard detection or lead-hazard abatement.

902 KAR 47:090 & E. Accreditation of training programs and providers of educational programs for individuals who perform lead-hazard detection and abatement.

902 KAR 47:100 & E. Permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement.

Cabinet for Families and Children: Department for Social Insurance: Division of Management and Development: Public Assistance

904 KAR 2:006E. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP).

904 KAR 2:015E. Supplemental programs for persons who are aged, blind, or have a disability.

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

Food Stamp Program

904 KAR 3:010E. Definitions.

904 KAR 3:025E. Technical requirements.

Department for Social Services: Day Care

905 KAR 2:140E. Child day care programs.

Cabinet for Health Services: Department for Medicaid Services

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

907 KAR 1:022E. Nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services.

907 KAR 1:038E. Hearing and vision program services.

907 KAR 1:381. Repeal of 907 KAR 1:380.

907 KAR 1:631E. Reimbursement of vision program services.

OTHER BUSINESS

Chairman Arnold stated that: (1) amendments would be filed with the Regulations Compiler by 9:00 a.m. on the day the of a meeting; and (2) if an amendment was not filed by 9:00 a.m., it would not be accepted.

Public Protection and Regulation Cabinet: Office of the Petroleum Storage Tank Environmental Assurance Fund

415 KAR 1:110. Contractor costs. Bob Nickel, and David Wicker, represented the Cabinet. A memorandum relating to the issues raised by this administrative regulation was submitted to the members of the Subcommittee. Subcommittee staff stated that: (1) Subcommittee staff, agency personnel, and representatives of Shewmaker Environmental, Inc had met; (2) agency personnel were informed and agreed that the public hearing required by Section 1(5) was: (a) separate from, in addition to, the public hearings required by KRS 13A.015, and 13A.270; and, (b) required to be conducted prior to the KRS 13A.015 and 13A.270 public hearings; (3) the agency had agreed to amend Section 1(4) to: (a) establish that the exemption to the manner for reimbursement for work, testing, and equipment established by Section 1 of this administrative regulation would be methods established by "Pay for Performance Cleanups", United States Environmental Protection Agency, EPA 510-B-96-002, June, 1996; and, (b) incorporate this document by reference; and, (4) the agency would propose the amendment to the Interim Joint Committee on Agriculture and Natural Resources, at its April, 1997 meeting.

The Subcommittee adjourned at 10:55 a.m. until May 13, 1997 at 10 a.m. in Room 149 of the State Capitol Annex.

ADMINISTRATIVE REGISTER - 4049

216.2920" AND INSERT IN LIEU THEREOF "KRS 216.2921"; AFTER THE PHRASE "STATUTORY AUTHORITY: KRS" DELETE THE REFERENCE TO "216.2901,"; AND ON LINE 10, AFTER THE PHRASE "KRS 216.2925" DELETE "AND 216.2901"; AND ALSO ON LINE 10, BY REPLACING "MANDATE" WITH "MANDATES".

INTERIM JOINT COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM DEVELOPMENT Meeting of March 20, 1997

Pursuant to KRS Chapter 13A, the Interim Joint Committee on Economic Development and Tourism Development met March 20, 1997, and reviewed and approved without change the following administrative regulation, as submitted by the Economic Development Cabinet, and as amended, March 11, by the Administrative Regulations Subcommittee: 307 KAR 5:010 and E.

INTERIM JOINT COMMITTEE ON STATE GOVERNMENT Meeting of March 26, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on State Government during its meeting of March 26, 1997, having been referred to the Committee on March 14, 1997, pursuant to KRS 13A.290(6):

101 KAR 1:325
200 KAR 5:021

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 March 26, 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 April 11, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Licensing and Occupations during its meeting of April 11, 1997, having been referred to the Committee on January 15, 1997, pursuant to KRS 13A.290(6): 201 KAR 12:200

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:

201 KAR 12:200: Page 2, Section 3, Line 10: Add subsection (4) to read as follows: A program shall be limited to a class size appropriate to the classroom or facility.; Page 3, Section 6(g), Line 8: After the period at the end of Section 6(g), insert the following: Manufacturers and distributor product classes shall be approved provided all provisions of 201 KAR 12:200 are met.; Page 3, Section 9, Line 21: Add a new section to read as follows: Section 9. A licensee not currently working in a salon may choose to let their license expire and may restore said license at any time within five (5) years by obtaining six (6) hours of continuing education and paying a restoration fee of \$50.00 in accordance with KRS 317A.050. Section 11.

The following administrative regulations were deferred pursuant to KRS 13A.300:

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the April 11, 1997 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

ADMINISTRATIVE REGISTER - K1

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates K2

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 K17

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 K33

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.

VOLUME 23

10-12-96	1508	10 KAR 1-00B	Emergency Administrative Regulations (Info)
5-12-97	3808	10 KAR 2-00B	Emergency Administrative Regulations (Info)
5-23-96	48	10 KAR 3-00B	Emergency Administrative Regulations (Info)
12-18-96		10 KAR 3-00B	Emergency Administrative Regulations (Info)
5-23-96	32	10 KAR 3-00B	Emergency Administrative Regulations (Info)
12-18-96		10 KAR 3-00B	Emergency Administrative Regulations (Info)
5-28-97	4232	10 KAR 3-00B	Emergency Administrative Regulations (Info)
3-27-97	4308	10 KAR 3-00B	Emergency Administrative Regulations (Info)
8-28-96	1336	10 KAR 3-00B	Emergency Administrative Regulations (Info)
3-8-97	3232	10 KAR 3-00B	Emergency Administrative Regulations (Info)
10-12-96	320	10 KAR 3-00B	Emergency Administrative Regulations (Info)
1-18-97		10 KAR 3-00B	Emergency Administrative Regulations (Info)
1-18-97	3217	10 KAR 3-00B	Emergency Administrative Regulations (Info)
10-11-96	419	10 KAR 3-00B	Emergency Administrative Regulations (Info)
4-1-96	1334	10 KAR 3-00B	Emergency Administrative Regulations (Info)

ADMINISTRATIVE REGISTER - K3

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
201 KAR 1:045E	58	5-22-96	502 KAR 45:150E	1353	8-14-96
Replaced		9-13-96	Expired		2-18-97
201 KAR 1:130E	59	5-22-96	502 KAR 60:010E	1354	8-14-96
Replaced		9-13-96	Withdrawn		9-11-96
201 KAR 10:050E			503 KAR 6:010E	1355	8-14-96
Replaced	170	9-11-96	Expired		2-18-97
201 KAR 11:190E	1877	10-14-96	503 KAR 6:020E	1357	8-14-96
201 KAR 12:082E	321	7-1-96	Replaced	2717	1-9-97
Expired		1-18-97	503 KAR 6:030E	1358	8-14-96
201 KAR 12:200E	324	7-1-96	Replaced	2718	1-9-97
Expired		1-18-97	503 KAR 6:040E	1359	8-14-96
201 KAR 20:390E	1541	8-16-96	Expired		2-18-97
Replaced	3006	2-19-97	503 KAR 6:050E	1360	8-14-96
301 KAR 2:221E	1880	10-2-96	Replaced	2718	1-9-97
Replaced	2842	3-12-97	503 KAR 6:060E	1361	8-14-96
301 KAR 2:222E	1883	10-2-96	Replaced	2719	1-9-97
Replaced	2844	3-12-97	503 KAR 6:070E	1362	8-14-96
301 KAR 2:224E	1887	10-2-96	Expired		2-18-97
Replaced	2848	3-12-97	503 KAR 6:080E	1363	8-14-96
301 KAR 2:225E	1544	8-16-96	Replaced	2719	1-9-97
Replaced	2972	2-12-97	503 KAR 6:090E	1365	8-14-96
301 KAR 3:022E	3535	2-21-97	Replaced	2720	1-9-97
Withdrawn		3-17-97	503 KAR 6:100E	1366	8-14-96
302 KAR 3:010E	325	7-15-96	Expired		2-18-97
Expired		1-18-97	503 KAR 6:110E	1367	8-14-96
302 KAR 20:110E	2439	11-6-96	Replaced	2720	1-9-97
302 KAR 20:120E	2440	11-6-96	505 KAR 1:020E	3208	2-14-97
302 KAR 78:020E	61	6-5-96	505 KAR 1:030E	3713	3-25-97
Replaced	1934	11-11-96	603 KAR 5:320E	1546	9-3-96
307 KAR 5:010E	327	7-15-96	Replaced	2641	2-10-97
Expired		1-18-97	603 KAR 5:330E	366	7-12-96
401 KAR 8:030E	1888	10-7-96	Replaced	2529	1-9-97
401 KAR 50:035E	62	6-14-96	701 KAR 5:020E	80	6-14-96
Expired		1-17-97	Replaced	2464	12-5-96
415 KAR 1:050E	328	7-3-96	701 KAR 5:051E	81	6-14-96
Expired		2-17-97	Expired		10-14-96
415 KAR 1:060E	330	7-3-96	701 KAR 5:055E	82	6-14-96
Expired		2-17-97	Replaced	2465	12-5-96
415 KAR 1:070E	333	7-3-96	701 KAR 5:086E	84	6-14-96
Expired		2-17-97	Expired		10-15-96
415 KAR 1:080E	336	7-3-96	701 KAR 5:090E	85	6-14-96
Expired		2-17-97	Replaced	2466	12-5-96
415 KAR 1:090E	340	7-3-96	702 KAR 1:080E	86	6-14-96
Expired		2-17-97	Replaced	2467	12-5-96
415 KAR 1:100E	343	7-3-96	702 KAR 7:055E	1368	8-12-96
Expired		2-17-97	Expired		2-18-97
415 KAR 1:110E	344	7-3-96	702 KAR 7:065E	87	6-14-96
Expired		2-17-97	Replaced	1433	12-5-96
415 KAR 1:114E	348	7-3-96	702 KAR 7:125E	1369	8-12-96
Expired		2-17-97	Replaced	2722	1-9-97
415 KAR 1:120E	352	7-3-96	703 KAR 3:060E	1372	8-12-96
Expired		2-17-97	Replaced	2724	1-9-97
415 KAR 1:125E	359	7-3-96	703 KAR 3:205E	89	6-14-96
Expired		2-17-97	Replaced	2472	12-5-96
501 KAR 8:010E	3536	3-14-97	703 KAR 4:010E	1376	8-12-96
502 KAR 45:005E	1350	8-14-96	Replaced	2728	2-6-97
Expired		2-18-97	703 KAR 4:090E	1379	8-12-96
502 KAR 45:035E	1351	8-14-96	Replaced	2731	1-9-97
Expired		2-18-97	704 KAR 20:305E	367	6-28-96
502 KAR 45:045E	1351	8-14-96	Expired		1-18-97
502 KAR 45:055E	1897	10-15-96	704 KAR 20:475E	370	6-28-96
Expired		2-18-97	Replaced	2356	1-9-97
502 KAR 45:075E	1352	8-14-96	707 KAR 1:180E	91	6-14-96
Expired		2-18-97	Replaced	2474	12-5-95

ADMINISTRATIVE REGISTER - K5

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
908 KAR 2:150E	1569	9-13-96	12 KAR 3:022		
908 KAR 2:160E	1572	9-13-96	Amended	1616	1-10-97
908 KAR 2:170E	1574	9-13-96	12 KAR 3:027		
908 KAR 2:180E	1576	9-13-96	Amended	1617	1-10-97
908 KAR 2:200E	3742	3-18-97	12 KAR 3:037		
909 KAR 1:005E	423	7-11-96	Amended	1618	1-10-97
Expires		1-18-97	12 KAR 3:042	1810	1-10-97
			13 KAR 2:045		
			Amended	3380	
			Amended	3797	
			13 KAR 2:060		
			Amended	164	
			As Amended	1389	9-5-96
			13 KAR 2:070	1049	
			Expired		9-13-96
			Resubmitted	2892	3-6-97
			13 KAR 2:080	4017	
			40 KAR 1:040	206	
			Withdrawn		10-22-96
			40 KAR 1:050	207	
			Withdrawn		10-22-96
			40 KAR 1:060	208	
			Withdrawn		10-22-96
			40 KAR 1:070	209	
			Withdrawn		10-22-96
			40 KAR 2:250	4018	
			40 KAR 2:260	4019	
			40 KAR 3:010		
			Amended	3604	
			40 KAR 3:020	2894	2-19-97
			101 KAR 1:325		
			Amended	3070	3-26-97
			101 KAR 1:365		
			Amended	2193	
			As Amended	2711	1-13-97
			103 KAR 16:200	3645	
			103 KAR 18:050		
			Amended	461	
			As Amended	1578	10-14-96
			104 KAR 1:020		
			Amended	166	
			As Amended	1391	9-11-96
			105 KAR 1:200		
			Amended	2834	
			As Amended	3311	
			As Amended	3554	2-26-97
			106 KAR 3:010	2896	3-6-97
			109 KAR 7:020	2638	
			Amended	3005	
			As Amended	3312	3-12-97
			200 KAR 5:021		
			Amended	1403	11-11-96
			Amended	3072	3-26-97
			200 KAR 5:025	1467	
			Amended	1955	
			As Amended	2458	12-13-96
			200 KAR 5:302	1468	
			As Amended	1924	11-11-96
			200 KAR 5:304		
			Amended	1401	11-11-96
			200 KAR 5:306		
			Amended	1405	
			As Amended	1925	11-11-96
			200 KAR 5:325	1470	11-11-96

ORDINARY ADMINISTRATIVE REGULATIONS:

1 KAR 6:020					
Amended	2833				
2 KAR 2:010					
Amended	1603				
As Amended	2458	12-13-96			
11 KAR 4:030					
Amended	3066	4-14-97			
11 KAR 5:130					
Amended	158				
As Amended	1387	9-5-96			
11 KAR 8:030					
Amended	159				
As Amended	1387	9-5-96			
11 KAR 12:050					
Amended	161				
As Amended	1389	9-5-96			
11 KAR 13:010	2636				
As Amended	3310	3-6-97			
12 KAR 2:006					
Amended	1604				
As Amended	2703	1-10-97			
12 KAR 2:011					
Amended	1604				
As Amended	2703	1-10-97			
12 KAR 2:016					
Amended	1606				
As Amended	2704	1-10-97			
12 KAR 2:017	1805				
As Amended	2705	1-10-97			
12 KAR 2:018	1806				
As Amended	2706	1-10-97			
12 KAR 2:021					
Amended	1607				
As Amended	2709	1-10-97			
12 KAR 2:026					
Amended	1608				
As Amended	2710	1-10-97			
12 KAR 2:036					
Amended	1609				
As Amended	2711	1-10-97			
12 KAR 2:041					
Amended	1610	1-10-97			
12 KAR 2:046					
Amended	1611	1-10-97			
12 KAR 2:051					
Amended	1612	1-10-97			
12 KAR 2:061					
Amended	1612	1-10-97			
12 KAR 2:066	1809	1-10-97			
12 KAR 3:012					
Amended	1613	1-10-97			
12 KAR 3:017					
Amended	1615	1-10-97			

ADMINISTRATIVE REGISTER - K7

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
301 KAR 2:222 Amended	2844	3-12-97	401 KAR 8:070 Amended	2548	
301 KAR 2:224 Amended	2848	3-12-97	401 KAR 8:100 Amended	2560	
301 KAR 2:225 Amended	2536		401 KAR 8:150 Amended	2563	
As Amended	2972	2-12-96	401 KAR 8:200 Amended	2568	
301 KAR 2:251 Amended	3879		401 KAR 8:250 Amended	2573	
301 KAR 3:022 Amended	1619		401 KAR 8:300 Amended	2579	
As Amended	2460	12-11-96	401 KAR 8:350 Amended	2593	
301 KAR 3:028 Amended	471		401 KAR 8:400 Amended	2595	
As Amended	1932	11-11-96	401 KAR 8:420 Amended	2600	
301 KAR 3:030 Amended	3881		401 KAR 8:440 Amended	2606	
301 KAR 4:100 Amended	3398		401 KAR 8:500 Amended	2609	
As Amended	3752		401 KAR 8:600 Amended	2612	
301 KAR 4:200 Amended	472	11-11-96	401 KAR 8:700 Amended	2614	
As Amended	1933		401 KAR 30:005	1052	3-12-97
301 KAR 5:040 As Amended	3457 3755		401 KAR 30:010 Amended	475	3-12-97
301 KAR 6:030 Amended	3401		401 KAR 30:031 Amended	487	3-12-97
As Amended	3755		401 KAR 30:040 Amended	490	3-12-97
302 KAR 3:010 Amended	2898 3367		401 KAR 30:080 Amended	492	3-12-97
As Amended	3561	4-9-97	401 KAR 31:005 Amended	1054 1956	3-12-97
302 KAR 20:110 Amended	3403		401 KAR 31:010 Amended	494	3-12-97
As Amended	3757		401 KAR 31:030 Amended	509	3-12-97
302 KAR 20:120 Amended	3405		401 KAR 31:040 Amended	511	3-12-97
As Amended	3758		401 KAR 31:050 Amended	1969	3-12-97
302 KAR 20:180 Amended	3882		401 KAR 31:060 Amended	528	3-12-97
302 KAR 40:010 Amended	3885		401 KAR 31:070 Amended	530	3-12-97
302 KAR 78:020 As Amended	1471 1934	11-11-96	401 KAR 31:110 Amended	533	3-12-97
307 KAR 2:020 As Amended	1812 2461	12-11-96	401 KAR 31:120 Amended	536	3-12-97
307 KAR 5:010 Amended	2900 3368		401 KAR 31:160 Amended	538	3-12-97
As Amended	3562	3-20-97	401 KAR 31:170 Amended	546	3-12-97
401 KAR 5:001 Amended	1621		401 KAR 32:005 Amended	550	3-12-97
Amended	2755		401 KAR 32:010 Amended	1067	3-12-97
401 KAR 5:005 Amended	1633			1989	
Amended	2766			559	3-12-97
401 KAR 5:006 Amended	1814 2780				
401 KAR 8:010 Amended	2538				
401 KAR 8:030 Amended	3079				
Amended	3808				
401 KAR 8:060 Amended	2543				

ADMINISTRATIVE REGISTER - K9

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
401 KAR 37:050			401 KAR 44:020	1245	3-12-97
Amended	925	3-12-97	401 KAR 44:030	1248	3-12-97
401 KAR 37:100			401 KAR 44:040	1249	
Repealed	816	3-12-97	Amended	2167	3-12-97
401 KAR 38:005	1179		401 KAR 44:050	1253	3-12-97
Amended	2113	3-12-97	401 KAR 44:060	1258	3-12-97
401 KAR 38:010			401 KAR 44:070	1261	3-12-97
Amended	928	3-12-97	401 KAR 44:080	1264	3-12-97
401 KAR 38:020			401 KAR 46:060		
Amended	931	3-12-97	Recodified from 401-49:220		11-8-96
401 KAR 38:030			401 KAR 46:070		
Amended	934	3-12-97	Recodified from 401-49:230		11-8-96
401 KAR 38:040			401 KAR 47:005	1265	3-12-97
Amended	938		401 KAR 48:005		
Amended	2127	3-12-97	Amended	990	3-12-97
401 KAR 38:050			401 KAR 49:005	1272	3-12-97
Amended	943	3-12-97	401 KAR 49:220		
401 KAR 38:060			Recodified as 401-46:060		11-8-96
Amended	949	3-12-97	401 KAR 49:230		
401 KAR 38:070			Recodified as 401-46:070		11-8-96
Amended	956	3-12-97	401 KAR 50:035		
401 KAR 38:080			Amended	1646	
Amended	959	3-12-97	Amended	2785	
401 KAR 38:090			As Amended	3313	2-12-97
Amended	961	3-12-97	401 KAR 51:017		
401 KAR 38:100			Amended	2203	
Amended	965	3-12-97	Amended	3009	3-12-97
401 KAR 38:150			415 KAR 1:050		
Amended	968	3-12-97	Amended	2218	4-9-97
401 KAR 38:160			415 KAR 1:060		
Amended	970	3-12-97	Amended	2220	4-9-97
401 KAR 38:170			415 KAR 1:070		
Amended	972	3-12-97	Amended	2223	4-9-97
401 KAR 38:190			415 KAR 1:080		
Amended	974	3-12-97	Amended	2226	
401 KAR 38:250			Amended	3023	4-9-97
Amended	976	3-12-97	415 KAR 1:090		
401 KAR 38:500			Amended	2230	4-9-97
Amended	978	3-12-97	415 KAR 1:100		
401 KAR 39:005	1192		Amended	2232	4-9-97
Amended	2132	3-12-97	415 KAR 1:110		
401 KAR 39:080			Amended	2234	
Amended	980	3-12-97	Amended	3027	
401 KAR 39:110			As Amended	3759	4-9-97
Amended	982	3-12-97	415 KAR 1:114		
401 KAR 39:120			Amended	2239	4-9-97
Amended	983	3-12-97	415 KAR 1:120		
401 KAR 40:001	1205	3-12-97	Amended	2242	4-9-97
401 KAR 42:005			415 KAR 1:125	2336	4-9-97
Amended	986	3-12-97	415 KAR 1:130	3649	
401 KAR 43:005	1207		500 KAR 11:001		
Amended	2145	3-12-97	Amended	1000	11-8-96
401 KAR 43:010	1219	3-12-97	500 KAR 11:010		
401 KAR 43:020	1222	3-12-97	Amended	1408	11-8-96
401 KAR 43:030	1226		500 KAR 11:015		
Amended	2159	3-12-97	Amended	1409	11-8-96
401 KAR 43:040	1231		500 KAR 11:025		
Amended	2163	3-12-97	Amended	1410	
401 KAR 43:050	1233	3-12-97	As Amended	1935	11-8-96
401 KAR 43:060	1235	3-12-97	500 KAR 11:030		
401 KAR 43:070	1237	3-12-97	Amended	1001	
401 KAR 44:005	1240		As Amended	1935	11-8-96
Amended	2165	3-12-97	500 KAR 11:060		
401 KAR 44:010	1242	3-12-97	Amended	1412	11-8-96

ADMINISTRATIVE REGISTER - K11

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
601 KAR 12:040			702 KAR 3:270		
Repealed	2901	3-4-97	Amended	1429	
601 KAR 12:041	2901	3-4-97	As Amended	2468	12-5-96
601 KAR 13:025			702 KAR 3:285	1474	1-9-97
Amended	2261		702 KAR 4:150	2351	
As Amended	2982	2-10-97	Amended	2820	
601 KAR 13:070			As Amended	2986	2-6-97
Amended	2264		702 KAR 5:130		
As Amended	3347	3-4-97	Amended	1431	
601 KAR 13:090	219		As Amended	2471	12-5-96
As Amended	1593	10-1-96	702 KAR 5:150		
601 KAR 13:100	221		Amended	2268	
Amended	1399		Amended	2821	2-6-97
As Amended	1594	10-1-96	702 KAR 7:010		
601 KAR 13:110	2639		Repealed	1368	8-12-96
Amended	3032		702 KAR 7:020		
As Amended	3349		Repealed	1368	8-12-96
As Amended	3567	3-4-97	702 KAR 7:050		
602 KAR 15:010			Repealed	1368	8-12-96
Amended	3615		702 KAR 7:065		
603 KAR 2:015			Amended	1433	12-5-96
Amended	1014		702 KAR 7:125	2352	
As Amended	1596	10-1-96	As Amended	2722	1-9-97
603 KAR 4:035			703 KAR 3:060		
Amended	3413		Amended	2269	
Amended	3821		As Amended	2724	1-9-97
603 KAR 4:040			703 KAR 3:205		
Amended	178	9-3-96	Amended	1434	
603 KAR 5:066			As Amended	2472	12-5-96
Amended	183	9-3-96	703 KAR 4:010		
603 KAR 5:115			Amended	2273	
Amended	2266		As Amended	2728	2-6-97
As Amended	2985	2-10-97	703 KAR 4:090		
603 KAR 5:230			Amended	2276	
Amended	1419		As Amended	2731	1-9-97
Amended	2171		703 KAR 4:110	2355	
As Amended	2462	11-14-96	As Amended	2731	1-9-97
603 KAR 5:320	2641	2-10-97	704 KAR 3:305		
603 KAR 5:330	1818		Amended	3419	
Amended	2529	1-9-97	Amended	3827	
701 KAR 5:020			704 KAR 3:345		
Amended	1422		Amended	2277	
As Amended	2464	12-5-96	As Amended	2732	1-9-97
701 KAR 5:051	1472		704 KAR 3:390		
Withdrawn		10-15-96	Amended	186	9-5-96
701 KAR 5:055			704 KAR 20:045		
Amended	1423		Amended	3920	
As Amended	2465	12-5-96	704 KAR 20:050		
701 KAR 5:060			Repealed	1292	10-3-96
Repealed	2350	1-9-97	704 KAR 20:052	1292	10-3-96
701 KAR 5:065	2350	1-9-97	704 KAR 20:060		
701 KAR 5:086	1473		Amended	3922	
Withdrawn		10-15-96	704 KAR 20:070		
701 KAR 5:090			Amended	3923	
Amended	1425		704 KAR 20:260		
As Amended	2466	12-5-96	Amended	2280	1-9-97
702 KAR 1:080			704 KAR 20:290		
Amended	1426		Amended	3924	
As Amended	2467	12-5-96	704 KAR 20:305		
702 KAR 3:100			Amended	2856	
Amended	1428		As Amended	3351	3-6-97
As Amended	2468	12-5-96	704 KAR 20:430	2902	
702 KAR 3:130			Withdrawn		1-30-97
Amended	185	9-5-96			

ADMINISTRATIVE REGISTER - K13

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
803 KAR 2:411			805 KAR 4:140		
Amended	3949		Amended	1752	
803 KAR 2:422			As Amended	2493	12-11-96
Amended	1743	12-13-96	805 KAR 5:010		
803 KAR 2:424			Amended	1019	
Amended	3950		As Amended	1599	10-14-96
803 KAR 2:425			805 KAR 5:020		
Amended	1744	12-13-96	Repealed	2493	12-11-96
Amended	3952		805 KAR 5:070		
803 KAR 2:500			Amended	2185	
Amended	1746	12-13-96	As Amended	2493	12-11-96
Amended	3955		805 KAR 7:080		
803 KAR 2:600			As Amended	2499	12-11-96
Amended	1748	1-9-97	806 KAR 3:190		
803 KAR 25:010			806 KAR 4:010		
Amended	3958		Amended	3970	
803 KAR 25:012			806 KAR 5:060		2-10-97
Amended	1450		806 KAR 9:240		3-12-97
Amended	2173		806 KAR 17:100		12-11-96
As Amended	2481	12-13-96	806 KAR 17:120		12-11-96
803 KAR 25:015			806 KAR 17:130		12-11-96
As Amended	1475		806 KAR 17:140		
803 KAR 25:035			As Amended	2907	
Amended	2987	2-10-97	806 KAR 18:060		3-12-97
Amended	1453		806 KAR 18:080		12-11-96
Withdrawn		9-30-96	806 KAR 18:080		
Repealed	2442	11-14-96	Amended	3126	
803 KAR 25:036			806 KAR 46:030	3595	
As Amended	2904		807 KAR 5:003	224	9-11-96
803 KAR 25:089			807 KAR 5:063	2369	1-9-97
Amended	3355	2-25-97	808 KAR 10:225	3659	
Amended	1750		808 KAR 10:260	3459	
As Amended	2485	12-12-96	Amended		
803 KAR 25:091			As Amended	2286	
Amended	2619		808 KAR 10:290	2738	1-9-97
As Amended	2988	2-10-97	Repealed		
803 KAR 25:096			808 KAR 10:291	2370	1-9-97
Amended	1455		808 KAR 10:300	2370	
Amended	2177		As Amended	2371	
As Amended	2485	12-13-96	810 KAR 1:026	2739	1-9-97
803 KAR 25:190			Amended		
Amended	1459		Amended	1021	3-14-97
Amended	2181		811 KAR 1:020		
As Amended	2489	12-13-96	Amended	2287	
803 KAR 25:200			As Amended	3569	3-14-97
803 KAR 25:210			811 KAR 1:035		
803 KAR 25:220			Amended	2288	
803 KAR 25:230			As Amended	3570	3-14-97
803 KAR 50:010			811 KAR 1:120		
Amended	191	9-11-96	Amended	2290	3-14-97
804 KAR 4:330			811 KAR 1:215		
As Amended	2367		Amended	3116	
804 KAR 4:340			As Amended	3774	
804 KAR 11:010			815 KAR 7:100		
Amended	4027		Repealed	2990	2-10-97
Withdrawn		1-2-97	815 KAR 7:101		
804 KAR 13:010			As Amended	2643	
As Amended	1477		815 KAR 7:105	2990	2-10-97
805 KAR 1:160			As Amended	2644	
805 KAR 1:170			As Amended	2990	2-10-97
805 KAR 1:180			815 KAR 8:010		
805 KAR 4:085			As Amended	436	9-11-96
Amended			815 KAR 8:020		
As Amended	1751		As Amended	438	
805 KAR 4:093			As Amended	1396	9-11-96
As Amended	2492	12-11-96	815 KAR 15:026		
	1820		Amended	3621	
	2492	12-11-96			

ADMINISTRATIVE REGISTER - K15

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
904 KAR 2:410			907 KAR 1:160		
Amended	3432		Amended	2631	
Amended	3831		Expired*		2-6-97
904 KAR 2:470	2387	12-18-96	907 KAR 1:170		
904 KAR 3:025			Amended	2633	
Amended	3627		Expired*		2-6-97
904 KAR 3:042	1304		907 KAR 1:381	3491	
As Amended	1600	9-18-96	907 KAR 1:405	3661	
905 KAR 1:320			907 KAR 1:416		
Amended	1786		Repealed	2454	11-15-96
As Amended	2525	11-20-96	907 KAR 1:417	3492	
905 KAR 1:360	1484		907 KAR 1:422		
As Amended	1952	10-16-96	Repealed	2650	2-19-97
905 KAR 2:100			907 KAR 1:423	2650	2-19-97
Amended	2884	2-19-97	907 KAR 1:450		
905 KAR 2:140			Amended	202	
Amended	3629		Expired		8-6-96
905 KAR 5:040			Amended	2889	
Amended	3637		Amended	3601	
905 KAR 5:080	3487		As Amended	3784	
905 KAR 8:160			907 KAR 1:560		
Amended	3995		Amended	4011	
905 KAR 8:180			907 KAR 1:605		
Amended	4000		Amended	3642	
906 KAR 1:040			907 KAR 1:631		
Amended	2320	12-18-96	Amended	4015	
907 KAR 1:008			907 KAR 1:645	4033	
Amended	3440		907 KAR 1:655	4035	
Amended	3839		907 KAR 1:665	4039	
907 KAR 1:011			907 KAR 1:673		
Amended	3442		Amended	3453	
Amended	3841		As Amended	3786	
907 KAR 1:013			907 KAR 1:705	2651	
Amended	1790		Amended	3370	
Withdrawn		12-18-96	As Amended	3578	
Amended	4003		As Amended	3787	3-19-97
907 KAR 1:019			907 KAR 1:715	1831	
Amended	3447		Amended	2530	
As Amended	3781		As Amended	2752	12-18-96
907 KAR 1:021			907 KAR 3:005	1308	9-18-96
Amended	3448		907 KAR 3:010	1309	9-18-96
907 KAR 1:022			907 KAR 3:020	2656	2-19-97
Amended	2322		908 KAR 1:300		
Withdrawn		1-17-97	Amended	1045	9-18-96
907 KAR 1:025			908 KAR 1:340		
Amended	2327		Amended	449	8-21-96
Withdrawn		1-17-97	908 KAR 1:350	1833	
907 KAR 1:026			Amended	2827	
Amended	3450		As Amended	3362	
As Amended	3782		908 KAR 1:360	1487	
907 KAR 1:028			Withdrawn		9-20-96
Amended	3640		908 KAR 2:060		
907 KAR 1:034			Amended	3454	
Amended	1796		908 KAR 2:100	3127	
As Amended	2747	12-18-96	Amended	3845	
907 KAR 1:035			908 KAR 2:110	3129	
Amended	1799	12-18-96	Amended	3847	
907 KAR 1:038			908 KAR 2:120	3133	
Amended	4009		Amended	3851	
907 KAR 1:140			908 KAR 2:130	3136	
Amended	1801		Amended	3854	
As Amended	2750	12-18-96	908 KAR 2:140	3139	
			Amended	3857	

ADMINISTRATIVE REGISTER - K17

KRS SECTION	REGULATION	KRS SECTION	REGULATION
KRS INDEX			
6.666	2 KAR 2:010	45A.080	200 KAR 5:306
6.807	2 KAR 2:010	45A.245	603 KAR 2:015
6.821	2 KAR 2:010	45A.343	109 KAR 7:020
6.824	2 KAR 2:010	45A.345-45A.353	109 KAR 7:020
6.827	2 KAR 2:010	45A.345A-45A.460	702 KAR 4:150
Chapter 7A	1 KAR 6:020	47.011	904 KAR 2:016E
11A.233	307 KAR 2:020	56.453	200 KAR 6:050E
12.290	735 KAR 1:010	56.610-56.760	600 KAR 3:010
13A.310	735 KAR 1:020	58.200	815 KAR 20:191
	907 KAR 1:381	58.600-58.615	109 KAR 7:020
	907 KAR 1:405		702 KAR 4:150
	907 KAR 1:417	61.394	101 KAR 2:100E
	907 KAR 1:423		101 KAR 3:010E
Chapter 13B	101 KAR 1:365	61.510-61.705	105 KAR 1:200
	201 KAR 11:190E	78.510-78.852	105 KAR 1:200
	601 KAR 13:025	103.200	200 KAR 15:010
	781 KAR 1:010	103.2101	200 KAR 15:010
	803 KAR 25:015	103.286	200 KAR 15:010
	804 KAR 13:010	Chapter 138	601 KAR 1:005
	902 KAR 1:400	141.200	103 KAR 16:200
13B.005-13B.170	905 KAR 5:080	141.330	103 KAR 18:050
13B.010	905 KAR 1:320	141.335	103 KAR 18:050
15.025	104 KAR 1:020	150.010	301 KAR 2:172
	40 KAR 1:040		301 KAR 2:174
	40 KAR 1:050		301 KAR 2:176
	40 KAR 1:060		301 KAR 2:178
	40 KAR 1:070		301 KAR 2:221
16.040	502 KAR 45:005		301 KAR 2:222
	502 KAR 45:035		301 KAR 2:224
	502 KAR 45:150		301 KAR 3:030
16.050	502 KAR 45:005	150.025	301 KAR 1:016
	502 KAR 45:035		301 KAR 2:221
	502 KAR 45:045		301 KAR 2:222
	502 KAR 45:055		301 KAR 2:224
	502 KAR 45:075		301 KAR 2:225
16.080	502 KAR 45:035		301 KAR 2:251
	502 KAR 45:045		301 KAR 3:030
16.505-16.652	105 KAR 1:200		301 KAR 4:100
17.165	905 KAR 2:100	150.090	301 KAR 1:016
18A.030	101 KAR 2:100E	150.105	301 KAR 2:176
18A.075	101 KAR 1:325	150.170	301 KAR 2:172
	101 KAR 1:365		301 KAR 2:174
18A.0751	101 KAR 1:325		301 KAR 2:176
	101 KAR 1:365		301 KAR 2:178
18A.095	101 KAR 1:365		301 KAR 2:140
18A.110	101 KAR 2:100E		301 KAR 3:028
18A.111	101 KAR 1:325	150.175	301 KAR 2:140
18A.155	101 KAR 3:010E		301 KAR 2:172
	101 KAR 3:045E		301 KAR 2:174
18A.195	101 KAR 2:100E		301 KAR 2:176
18A.430	200 KAR 22:130		301 KAR 2:178
39.800-39.990	106 KAR 1:091E		301 KAR 3:022
41.600-41.620	302 KAR 3:010		301 KAR 3:028
	307 KAR 5:010	150.180	301 KAR 2:172
41.600-41.625	302 KAR 3:010E		301 KAR 2:174
	307 KAR 5:010E		301 KAR 2:178
44.045	200 KAR 5:011E	150.195	301 KAR 3:022
	600 KAR 1:120		301 KAR 5:040
Chapter 45A	200 KAR 5:021	150.225	301 KAR 3:022
	200 KAR 5:025		301 KAR 4:100
	200 KAR 5:302	150.235	301 KAR 3:022
	200 KAR 5:304		301 KAR 5:040
	200 KAR 5:325	150.240	301 KAR 3:022

ADMINISTRATIVE REGISTER - K19

KRS SECTION	REGULATION	KRS SECTION	REGULATION
158.100	702 KAR 7:125	161.030	704 KAR 20:510
	704 KAR 3:390		704 KAR 20:555
	702 KAR 7:055E		704 KAR 20:585
	702 KAR 7:125		704 KAR 20:670
	707 KAR 1:180		704 KAR 20:700
158.115	600 KAR 5:010		704 KAR 20:710
158.135	702 KAR 3:270		704 KAR 20:045
158.240	702 KAR 7:055E		704 KAR 20:052
	702 KAR 7:125		704 KAR 20:060
158.645	703 KAR 3:060		704 KAR 20:070
	703 KAR 4:010		704 KAR 20:260
	703 KAR 4:090		704 KAR 20:290
	703 KAR 4:110		704 KAR 20:305
158.6451	703 KAR 3:060		704 KAR 20:460
	703 KAR 4:010		704 KAR 20:475
	703 KAR 4:090		704 KAR 20:510
	703 KAR 4:110		704 KAR 20:555
	704 KAR 3:305		704 KAR 20:670
158.6453	703 KAR 3:060		704 KAR 20:700
	703 KAR 4:010		704 KAR 20:710
	703 KAR 4:090	161.040	704 KAR 20:585
	703 KAR 4:110	161.120	704 KAR 20:585
158.6455	703 KAR 3:060	161.200	702 KAR 7:055E
	703 KAR 4:010		702 KAR 7:125
	703 KAR 4:090	161.770	701 KAR 5:090
	703 KAR 4:110	161.790	701 KAR 5:090
158.650-158.750	701 KAR 5:065	163.450-163.470	782 KAR 1:020
158.780	703 KAR 3:205		782 KAR 1:030
158.785	703 KAR 3:205		782 KAR 1:040
159.010	702 KAR 7:125	163.510	735 KAR 1:010
159.030	702 KAR 7:125		735 KAR 1:020
159.035	702 KAR 7:055E	164.010	13 KAR 2:080
	702 KAR 7:125	164.020	13 KAR 2:045
159.051	601 KAR 13:070		13 KAR 2:060
159.170	702 KAR 7:055E		13 KAR 2:070
	702 KAR 7:125	164.030	13 KAR 2:045
160.045	702 KAR 1:080	164.516-164.5169	11 KAR 13:010
160.160	703 KAR 3:060	164.744	11 KAR 8:030
160.345	701 KAR 5:086	164.748	11 KAR 4:030
160.470	702 KAR 3:270	164.753	11 KAR 8:030
160.476	702 KAR 3:270	164.7535	11 KAR 5:130
161.010	704 KAR 20:260	164.769	11 KAR 8:030
161.020	704 KAR 20:045	164.780	11 KAR 5:130
	704 KAR 20:052	164.785	11 KAR 5:130
	704 KAR 20:060	164A.310	11 KAR 12:070
	704 KAR 20:070	164A.325	11 KAR 12:050
	704 KAR 20:260	164A.330	11 KAR 12:050
	704 KAR 20:290		11 KAR 12:070
	704 KAR 20:460	164A.335	11 KAR 12:070
	704 KAR 20:470	164A.744-164A.753	11 KAR 5:130
	704 KAR 20:475	167.150	707 KAR 1:180
	704 KAR 20:510	174.400-174.425	601 KAR 1:025
	704 KAR 20:670	175.450	600 KAR 2:020
	704 KAR 20:710		600 KAR 2:030
161.027	704 KAR 20:460	175.470	600 KAR 2:020
	704 KAR 20:470		600 KAR 2:030
	704 KAR 20:710	175.520	600 KAR 2:020
161.028	704 KAR 20:045		600 KAR 2:030
	704 KAR 20:052	175.525	600 KAR 2:020
	704 KAR 20:060		600 KAR 2:030
	704 KAR 20:070	176.090-176.110	603 KAR 2:015
	704 KAR 20:260	176.130-176.220	603 KAR 2:015
	704 KAR 20:290	177.0734-177.0738	603 KAR 4:035
	704 KAR 20:305	177.977	603 KAR 5:115
	704 KAR 20:470	177.9771	603 KAR 5:115
	704 KAR 20:475		603 KAR 5:230

ADMINISTRATIVE REGISTER - K21

KRS SECTION	REGULATION	KRS SECTION	REGULATION
	907 KAR 1:715	216.2925-216.2929	902 KAR 17:040
	907 KAR 1:720E	216.2960	806 KAR 17:130
	907 KAR 3:005	216.920	902 KAR 1:400
	907 KAR 3:010	Chapter 216B	909 KAR 1:005E
	907 KAR 3:020	216B.010-216B.055	906 KAR 1:040
205.560	907 KAR 1:021	216B.010-216B.130	900 KAR 6:015E
	907 KAR 3:020E		900 KAR 6:030
205.575	907 KAR 1:013E		902 KAR 14:070
205.6334	907 KAR 1:705		902 KAR 14:080
205.640	907 KAR 1:013		902 KAR 14:082
205.710-205.800	904 KAR 2:001		902 KAR 14:090
	904 KAR 2:380		902 KAR 17:035E
	904 KAR 2:400		902 KAR 20:008
	904 KAR 2:410		902 KAR 20:016
205.992	904 KAR 2:380		902 KAR 20:018
Chapter 208	505 KAR 1:030E		902 KAR 20:018
	905 KAR 1:180E		902 KAR 20:041
Chapter 209	505 KAR 1:030E		902 KAR 20:078
	905 KAR 1:180E		902 KAR 20:160
209.030	905 KAR 5:040	216B.010-216B.131	902 KAR 20:320
209.160	905 KAR 5:040		900 KAR 6:020
209.200	905 KAR 5:080		902 KAR 20:180
210.370-210.460	908 KAR 2:060	216B.105	902 KAR 20:275
211.180	902 KAR 1:400	216B.400	900 KAR 6:040
	902 KAR 2:020	216B.450-216B.459	40 KAR 3:010
	902 KAR 2:060	216B.455	902 KAR 20:320
	902 KAR 2:090		900 KAR 6:015E
	902 KAR 115:020	216B.990	900 KAR 6:030
211.190	902 KAR 1:400		900 KAR 6:015E
	902 KAR 47:100		900 KAR 6:020
211.210	902 KAR 1:400		900 KAR 6:030
211.357	902 KAR 1:400		902 KAR 14:070
211.360	902 KAR 1:400		902 KAR 14:080
211.760	902 KAR 1:400		902 KAR 14:082
211.842-211.852	902 KAR 100:040		902 KAR 14:090
211.844	902 KAR 1:400		902 KAR 20:008
211.870	902 KAR 1:400		902 KAR 20:016
	902 KAR 105:070		902 KAR 20:018
211.900-211.905	902 KAR 47:080		902 KAR 20:041
	902 KAR 47:090		902 KAR 20:078
	902 KAR 47:100		902 KAR 20:160
211.925	902 KAR 1:400		902 KAR 20:180
211.950-211.956	902 KAR 14:010		902 KAR 20:275
	902 KAR 14:070	217.075	902 KAR 20:320
	902 KAR 14:080	217.126	902 KAR 1:400
	902 KAR 14:082	217.801	902 KAR 47:080
	902 KAR 14:090		902 KAR 47:090
211.964	902 KAR 1:400		902 KAR 47:100
211.990	902 KAR 47:080	217.809	902 KAR 1:400
	902 KAR 47:090	217.950	902 KAR 1:400
	902 KAR 100:040		902 KAR 55:100
211.994	902 KAR 47:080	217.952	902 KAR 55:100
	902 KAR 47:090	217C.040	902 KAR 1:400
	902 KAR 47:100	217C.050	902 KAR 1:400
212.170	902 KAR 1:400	218A.010-218A.030	902 KAR 55:030
212.210	902 KAR 1:400		902 KAR 55:090
212.230	902 KAR 1:400	218A.010-218A.050	902 KAR 55:015
212.620	902 KAR 1:400	218A.020-218A.130	902 KAR 55:040
212.627	902 KAR 1:400	218A.080-218A.090	902 KAR 55:090
214.010	902 KAR 2:020	218A.100-218A.110	902 KAR 55:030
214.032	902 KAR 2:060	219.031	902 KAR 1:400
214.034	902 KAR 2:060	219.370	902 KAR 1:400
	902 KAR 2:090	222.231	908 KAR 1:350
214.036	902 KAR 2:060		908 KAR 1:360
214.175	902 KAR 20:016	222.460-222.475	908 KAR 1:300
216.2925	902 KAR 20:008	Chapter 223	401 KAR 8:010

ADMINISTRATIVE REGISTER - K23

KRS SECTION

REGULATION

KRS SECTION

REGULATION

224.10-100
 224.10-110
 224.10-120
 224.10-130
 224.10-140
 224.10-150
 224.10-160
 224.10-170
 224.10-180
 224.10-190
 224.10-200
 224.10-210
 224.10-220
 224.10-230
 224.10-240
 224.10-250
 224.10-260
 224.10-270
 224.10-280
 224.10-290
 224.10-300
 224.10-310
 224.10-320
 224.10-330
 224.10-340
 224.10-350
 224.10-360
 224.10-370
 224.10-380
 224.10-390
 224.10-400
 224.10-410
 224.10-420
 224.10-430
 224.10-440
 224.10-450
 224.10-460
 224.10-470
 224.10-480
 224.10-490
 224.10-500
 224.10-510
 224.10-520
 224.10-530
 224.10-540
 224.10-550
 224.10-560
 224.10-570
 224.10-580
 224.10-590
 224.10-600
 224.10-610
 224.10-620
 224.10-630
 224.10-640
 224.10-650
 224.10-660
 224.10-670
 224.10-680
 224.10-690
 224.10-700
 224.10-710
 224.10-720
 224.10-730
 224.10-740
 224.10-750
 224.10-760
 224.10-770
 224.10-780
 224.10-790
 224.10-800
 224.10-810
 224.10-820
 224.10-830
 224.10-840
 224.10-850
 224.10-860
 224.10-870
 224.10-880
 224.10-890
 224.10-900
 224.10-910
 224.10-920
 224.10-930
 224.10-940
 224.10-950
 224.10-960
 224.10-970
 224.10-980
 224.10-990
 224.10-1000

401 KAR 35:190
 401 KAR 35:200
 401 KAR 35:210
 401 KAR 35:230
 401 KAR 35:245
 401 KAR 35:250
 401 KAR 35:275
 401 KAR 35:280
 401 KAR 35:281
 401 KAR 35:290
 401 KAR 36:005
 401 KAR 36:020
 401 KAR 36:025
 401 KAR 36:030
 401 KAR 36:070
 401 KAR 37:005
 401 KAR 37:010
 401 KAR 37:030
 401 KAR 37:040
 401 KAR 37:050
 401 KAR 38:005
 401 KAR 38:010
 401 KAR 38:020
 401 KAR 38:030
 401 KAR 38:040
 401 KAR 38:050
 401 KAR 38:060
 401 KAR 38:070
 401 KAR 38:080
 401 KAR 38:090
 401 KAR 38:100
 401 KAR 38:150
 401 KAR 38:160
 401 KAR 38:170
 401 KAR 38:190
 401 KAR 38:250
 401 KAR 38:500
 401 KAR 39:005
 401 KAR 39:080
 401 KAR 39:110
 401 KAR 39:120
 401 KAR 40:001
 401 KAR 42:005
 401 KAR 43:005
 401 KAR 43:010
 401 KAR 43:020
 401 KAR 43:030
 401 KAR 43:040
 401 KAR 43:050
 401 KAR 43:060
 401 KAR 43:070
 401 KAR 44:005
 401 KAR 44:010
 401 KAR 44:020
 401 KAR 44:030
 401 KAR 44:040
 401 KAR 44:050
 401 KAR 44:060
 401 KAR 44:070
 401 KAR 44:080
 401 KAR 47:005
 401 KAR 48:005
 401 KAR 49:005
 401 KAR 5:001
 401 KAR 5:005
 401 KAR 50:035

224.10-100

ADMINISTRATIVE REGISTER - K25

KRS SECTION

REGULATION

KRS SECTION

REGULATION

00052 KAR 32:030
01053 KAR 32:040
01054 KAR 32:050
02055 KAR 32:100
03056 KAR 33:005
04057 KAR 33:010
05058 KAR 34:005
06059 KAR 34:010
07060 KAR 34:020
08061 KAR 34:050
09062 KAR 34:060
10063 KAR 34:070
11064 KAR 34:080
12065 KAR 34:090
13066 KAR 34:100
14067 KAR 34:120
15068 KAR 34:180
16069 KAR 34:190
17070 KAR 34:200
18071 KAR 34:210
19072 KAR 34:230
20073 KAR 34:240
21074 KAR 34:245
22075 KAR 34:250
23076 KAR 34:275
24077 KAR 34:280
25078 KAR 34:281
26079 KAR 34:287
27080 KAR 34:290
28081 KAR 34:360
29082 KAR 35:005
30083 KAR 35:010
31084 KAR 35:020
32085 KAR 35:050
33086 KAR 35:060
34087 KAR 35:070
35088 KAR 35:080
36089 KAR 35:090
37090 KAR 35:100
38091 KAR 35:120
39092 KAR 35:180
40093 KAR 35:190
41094 KAR 35:200
42095 KAR 35:210
43096 KAR 35:230
44097 KAR 35:245
45098 KAR 35:250
46099 KAR 35:275
47100 KAR 35:280
48101 KAR 35:281
49102 KAR 35:290
50103 KAR 36:020
51104 KAR 36:025
52105 KAR 36:030
53106 KAR 36:070
54107 KAR 37:005
55108 KAR 37:010
56109 KAR 37:030
57110 KAR 37:040
58111 KAR 37:050
59112 KAR 38:005
60113 KAR 38:010
61114 KAR 38:020
62115 KAR 38:030
63116 KAR 38:040
64117 KAR 38:050

65118 KAR 38:060
66119 KAR 38:070
67120 KAR 38:080
68121 KAR 38:090
69122 KAR 38:100
70123 KAR 38:150
71124 KAR 38:160
72125 KAR 38:170
73126 KAR 38:190
74127 KAR 38:250
75128 KAR 38:500
76129 KAR 39:005
77130 KAR 39:080
78131 KAR 39:110
79132 KAR 39:120
80133 KAR 40:001
81134 KAR 43:005
82135 KAR 43:010
83136 KAR 43:020
84137 KAR 43:030
85138 KAR 43:040
86139 KAR 43:050
87140 KAR 43:060
88141 KAR 43:070
89142 KAR 44:005
90143 KAR 44:010
91144 KAR 44:020
92145 KAR 44:030
93146 KAR 44:040
94147 KAR 44:050
95148 KAR 44:060
96149 KAR 44:070
97150 KAR 44:080
98151 KAR 30:005
99152 KAR 30:010
100153 KAR 30:031
101154 KAR 31:050
102155 KAR 31:060
103156 KAR 34:060
104157 KAR 34:070
105158 KAR 34:275
106159 KAR 34:280
107160 KAR 35:020
108161 KAR 35:050
109162 KAR 35:070
110163 KAR 40:001
111164 KAR 44:005
112165 KAR 44:010
113166 KAR 44:020
114167 KAR 44:030
115168 KAR 44:040
116169 KAR 44:050
117170 KAR 44:060
118171 KAR 44:070
119172 KAR 44:080
120173 KAR 48:005
121174 KAR 30:005
122175 KAR 42:005
123176 KAR 30:060
124177 KAR 1:114
125178 KAR 1:050
126179 KAR 1:060
127180 KAR 1:070
128181 KAR 1:080
129182 KAR 1:090
130183 KAR 1:100

ADMINISTRATIVE REGISTER - K27

KRS SECTION	REGULATION	KRS SECTION	REGULATION
224A.040	401 KAR 48:005	244.165	804 KAR 4:330
224A.050	401 KAR 5:006	250.491-250.631	12 KAR 2:006
224A.055	401 KAR 5:006		12 KAR 2:011
224A.070	401 KAR 5:006		12 KAR 2:016
224A.080	401 KAR 5:006		12 KAR 2:017
227.550-227.660	815 KAR 25:010		12 KAR 2:018
	815 KAR 25:040		12 KAR 2:021
227.990	815 KAR 25:010		12 KAR 2:026
230.215	810 KAR 1:026		12 KAR 2:036
230.225	810 KAR 1:026		12 KAR 2:046
230.231	811 KAR 1:120		12 KAR 2:051
230.260	810 KAR 1:026		12 KAR 2:061
230.630	811 KAR 1:020		12 KAR 2:066
	811 KAR 1:035		12 KAR 3:012
	811 KAR 1:090E		12 KAR 3:017
230.640	811 KAR 1:020		12 KAR 3:022
	811 KAR 1:035		12 KAR 3:027
	811 KAR 1:090E		12 KAR 3:037
230.700	811 KAR 1:090E		12 KAR 3:042
230.770	811 KAR 1:215	257.020	302 KAR 20:180
235.240	301 KAR 6:030	257.030	302 KAR 20:120
235.250	301 KAR 6:030		302 KAR 20:180
235.280	301 KAR 6:030	257.070	302 KAR 20:110
235.290	301 KAR 6:030	260.010	302 KAR k40:010
Chapter 236	815 KAR 15:026	Chapter 278	807 KAR 5:003
Chapter 237	503 KAR 6:010E	278.650	807 KAR 5:063
	503 KAR 6:020E	Chapter 281	601 KAR 1:005
	503 KAR 6:030E	281.600	601 KAR 1:101
	503 KAR 6:040E	281.655	601 KAR 1:101
	503 KAR 6:050E	281.656	601 KAR 1:101
	503 KAR 6:060E	281.670	601 KAR 1:101
	503 KAR 6:070E	281.990	601 KAR 1:101
	503 KAR 6:080E	281A.100	601 KAR 11:020
	503 KAR 6:090E	Chapter 292	808 KAR 10:291
	503 KAR 6:100E	292.310	808 KAR 1:260
	503 KAR 6:110E	292.330	808 KAR 10:225
237.110	503 KAR 4:010		808 KAR 10:260
	503 KAR 4:020	292.330-292.390	808 KAR 10:300
	503 KAR 4:030	292.400	808 KAR 10:300
	503 KAR 4:040	292.410	808 KAR 10:300
	503 KAR 4:050	292.460	808 KAR 10:225
	503 KAR 4:060	292.470	808 KAR 10:225
	503 KAR 4:070	292.500	808 KAR 10:225
	503 KAR 6:020		808 KAR 10:260
	503 KAR 6:030	304.3-120	806 KAR 3:190
	503 KAR 6:050	304.3-140	806 KAR 3:190
	503 KAR 6:060	304.4-010	806 KAR 4:010
	503 KAR 6:080	304.5-070	806 KAR 5:060
	503 KAR 6:090	304.6	806 KAR 3:190
237.115	200 KAR 6:050E	304.7	806 KAR 3:190
238.500-238.995	500 KAR 11:001	304.9-080	806 KAR 9:240
238.505	500 KAR 11:080	304.9-130	806 KAR 9:240
	500 KAR 11:090	304.12-140	806 KAR 9:240
	500 KAR 11:110	304.12-150	806 KAR 9:240
238.515	500 KAR 11:015	304.12-160	806 KAR 9:240
	500 KAR 11:070	304.12-170	806 KAR 9:240
238.525	500 KAR 11:010	304.13-011	806 KAR 13:130E
	500 KAR 11:015	304.13-057	806 KAR 13:130E
238.535	500 KAR 11:070		806 KAR 13:140E
238.540	500 KAR 11:060	304.13-091	806 KAR 13:130E
238.545	500 KAR 11:030	304.13-161	806 KAR 13:140E
238.550	500 KAR 11:025	304.13-415	806 KAR 13:130E
	500 KAR 11:120		806 KAR 13:140E
238.570	500 KAR 11:025	304.17A-070	806 KAR 17:120
243.040	804 KAR 4:340	304.17A-095	806 KAR 17:140
		304.17A-100	806 KAR 17:100

ADMINISTRATIVE REGISTER - K29

KRS SECTION	REGULATION	KRS SECTION	REGULATION
334.060	201 KAR 7:040		803 KAR 2:408
334.070	201 KAR 7:040		803 KAR 2:410
334.080	201 KAR 7:040		803 KAR 2:411
334.090	201 KAR 7:040		803 KAR 2:422
334.150	201 KAR 7:040		803 KAR 2:424
335.340	201 KAR 32:060		803 KAR 2:425
Chapter 338	803 KAR 50:010		803 KAR 2:500
338.051	803 KAR 2:019		803 KAR 2:600
	803 KAR 2:200		803 KAR 2:900E
	803 KAR 2:300	341.270	787 KAR 1:210
	803 KAR 2:301	341.380	787 KAR 1:200
	803 KAR 2:302	341.395	787 KAR 1:320
	803 KAR 2:303	Chapter 342	803 KAR 25:012
	803 KAR 2:304		803 KAR 25:015
	803 KAR 2:305		803 KAR 25:034E
	803 KAR 2:306		803 KAR 25:089
	803 KAR 2:307		803 KAR 25:096
	803 KAR 2:308		803 KAR 25:190
	803 KAR 2:309		806 KAR 13:140E
	803 KAR 2:311		806 KAR 17:130
	803 KAR 2:312	342.020	803 KAR 25:091
	803 KAR 2:313	342.035	803 KAR 25:091
	803 KAR 2:314	342.270	803 KAR 25:010
	803 KAR 2:315	342.315	803 KAR 25:091
	803 KAR 2:316	342.610	803 KAR 25:200
	803 KAR 2:317		803 KAR 25:210
	803 KAR 2:319	344.010-344.500	104 KAR 1:020
	803 KAR 2:320	344.030	101 KAR 2:100E
	803 KAR 2:402	344.600-344.680	104 KAR 1:020
	803 KAR 2:403	344.990	104 KAR 1:020
	803 KAR 2:404	351.127	805 KAR 7:080
	803 KAR 2:405	351.175	805 KAR 5:010
	803 KAR 2:408	351.315	805 KAR 4:140
	803 KAR 2:410	351.350	805 KAR 4:085
	803 KAR 2:411		805 KAR 4:140
	803 KAR 2:422	351.365	805 KAR 4:085
	803 KAR 2:424	351.367	805 KAR 4:085
	803 KAR 2:425		805 KAR 4:093
	803 KAR 2:500	351.370	805 KAR 4:093
	803 KAR 2:600	352.201	805 KAR 5:070
	803 KAR 2:900E	353.520	805 KAR 1:170
338.061	803 KAR 2:019	353.550	805 KAR 1:180
	803 KAR 2:200	353.570	805 KAR 1:170
	803 KAR 2:300	353.590	805 KAR 1:170
	803 KAR 2:301	353.5901	805 KAR 1:170
	803 KAR 2:302	353.595	805 KAR 1:170
	803 KAR 2:303	353.597	805 KAR 1:170
	803 KAR 2:304	353.656	805 KAR 1:160
	803 KAR 2:305	367.046	40 KAR 2:250
	803 KAR 2:306	367.940	40 KAR 2:260
	803 KAR 2:307	403.210-403.240	904 KAR 2:001
	803 KAR 2:308		904 KAR 2:400
	803 KAR 2:309	403.215	904 KAR 2:410
	803 KAR 2:311	405.450	904 KAR 2:410
	803 KAR 2:312	405.465	904 KAR 2:410
	803 KAR 2:313	405.467	904 KAR 2:410
	803 KAR 2:314	405.490	904 KAR 2:410
	803 KAR 2:315	405.520	904 KAR 2:001
	803 KAR 2:316		904 KAR 2:400
	803 KAR 2:317		904 KAR 2:410
	803 KAR 2:319	406.011-406.180	904 KAR 2:390
	803 KAR 2:320	406.021	904 KAR 2:001
	803 KAR 2:402	406.025	904 KAR 2:001
	803 KAR 2:403	407.010-407.480	904 KAR 2:001
	803 KAR 2:404		904 KAR 2:380
	803 KAR 2:405	422.455	603 KAR 5:115

ADMINISTRATIVE REGISTER - K31

KRS SECTION

REGULATION

401 KAR 35:010
 401 KAR 35:020
 401 KAR 35:050
 401 KAR 35:060
 401 KAR 35:070
 401 KAR 35:080
 401 KAR 35:090
 401 KAR 35:100
 401 KAR 35:120
 401 KAR 35:190
 401 KAR 35:200
 401 KAR 35:210
 401 KAR 35:230
 401 KAR 35:245
 401 KAR 35:250
 401 KAR 35:275
 401 KAR 35:280
 401 KAR 35:281
 401 KAR 36:005
 401 KAR 36:020
 401 KAR 36:025
 401 KAR 36:030
 401 KAR 37:005
 401 KAR 37:010
 401 KAR 37:030
 401 KAR 37:040
 401 KAR 37:050
 401 KAR 38:005
 401 KAR 38:010
 401 KAR 38:020
 401 KAR 38:040
 401 KAR 38:050
 401 KAR 38:060
 401 KAR 38:090
 401 KAR 38:170
 401 KAR 38:250
 401 KAR 39:005
 401 KAR 42:005
 401 KAR 43:005
 401 KAR 43:010
 401 KAR 43:020
 401 KAR 43:030
 401 KAR 43:040
 401 KAR 43:050
 401 KAR 43:060
 401 KAR 43:070
 401 KAR 44:005
 401 KAR 44:010
 401 KAR 44:020
 401 KAR 44:030
 401 KAR 44:040
 401 KAR 44:050
 401 KAR 44:060
 401 KAR 44:070
 401 KAR 44:080
 401 KAR 47:005
 401 KAR 48:005
 401 KAR 50:035
 401 KAR 51:017
 415 KAR 1:050
 415 KAR 1:060
 415 KAR 1:070
 415 KAR 1:080
 415 KAR 1:090
 415 KAR 1:100
 415 KAR 1:110

KRS SECTION

REGULATION

42 CFR
 45 CFR
 49 CFR
 59 CFR
 7 USC
 8 USC
 12 USC
 15 USC
 16 USC
 20 USC
 25 USC
 29 USC
 31 USC
 33 USC
 42 USC

415 KAR 1:120
 415 KAR 1:125
 904 KAR 2:016E
 904 KAR 2:001
 904 KAR 2:006E
 904 KAR 2:016E
 904 KAR 2:380
 904 KAR 2:390
 904 KAR 2:400
 904 KAR 2:410
 905 KAR 1:320
 905 KAR 2:140
 600 KAR 3:010
 601 KAR 1:005
 601 KAR 1:025
 601 KAR 1:101
 301 KAR 2:221
 301 KAR 2:222
 301 KAR 2:224
 904 KAR 3:010E
 904 KAR 3:020E
 904 KAR 3:025
 904 KAR 3:042
 904 KAR 2:006E
 201 KAR 30:040
 401 KAR 38:070
 904 KAR 2:001
 904 KAR 2:410E
 401 KAR 30:031
 707 KAR 1:180
 908 KAR 2:100
 908 KAR 2:110
 908 KAR 2:120
 908 KAR 2:130
 908 KAR 2:140
 908 KAR 2:150
 908 KAR 2:160
 908 KAR 2:170
 908 KAR 2:180
 908 KAR 2:200E
 904 KAR 2:016E
 780 KAR 3:070
 780 KAR 6:060
 781 KAR 1:010
 781 KAR 1:030
 782 KAR 1:020
 782 KAR 1:030
 782 KAR 1:040
 905 KAR 1:320
 904 KAR 2:001
 401 KAR 5:001
 401 KAR 5:006
 401 KAR 30:031
 106 KAR 1:091E
 401 KAR 42:005
 401 KAR 50:035
 401 KAR 51:017
 815 KAR 25:010
 904 KAR 2:006E
 904 KAR 2:016E
 904 KAR 2:017E
 904 KAR 2:370E
 905 KAR 1:320
 905 KAR 2:100
 905 KAR 8:160
 905 KAR 8:180

ADMINISTRATIVE REGISTER - K33

SUBJECT INDEX

ABSENTEE BALLOTS

(See Elections)

ACCOUNTANCY, STATE BOARD

Conducting examination, procedure; 201 KAR 1:040
Examination application procedure; 201 KAR 1:130
Examination subjects, grading, reexamination; 201 KAR 1:045

ACCOUNTANTS

(See Accountancy, State Board)

ADULT AND TECHNICAL EDUCATION

Personnel System for Certified and Equivalent Employees
Attendance, compensatory time, leave; 780 KAR 3:070
Extent, duration of school term, use of school days, extended employment; 780 KAR 3:080
Unclassified Personnel Administrative Regulations
Attendance, compensatory time, leave; 780 KAR 6:060

ADULT EDUCATION AND LITERACY

Testing Program; 785 KAR 1:010

ADVERTISING DEVICES

(See Highways)

AERONAUTICS

Airport Development
Airport development loans; 602 KAR 15:010

AGING SERVICES

(See Social Services)

AGRICULTURAL EXPERIMENT STATION

Seed; 12 KAR Chapter 2
Pet food; 12 KAR Chapter 3

AGRICULTURAL PRODUCTS

(See Agriculture)

AGRICULTURE, DEPARTMENT OF

(See also Occupational Safety and Health)

Linked Deposits

Investment program for agribusiness; 302 KAR 3:010

Livestock Sanitation

Restricts equine viral arteritis

Treatment of imported mares; 302 KAR 20:110

Treatment of imported stallions; 302 KAR 20:120

Organic Agricultural Product Certification

Standard requirements; 302 KAR 40:010

Weights and Measures; Tobacco Sales

Use, sale, distribution of tobacco products; 302 KAR 78:020

AIR POLLUTION

(See Air Quality)

AIR QUALITY

General Administrative Procedures

Permits; 401 KAR 50:035

New Source Requirements, Nonattainment Areas

Prevention of significant deterioration; 401 KAR 51:017

ALCOHOL ABUSE

(See Mental Health, Mental Retardation Services)

ALCOHOL, DRUG COUNSELORS

Fees; 201 KAR 35:020

ALCOHOLIC BEVERAGE CONTROL

Licensing

Brew-on-premises license; 804 KAR 4:340

Direct sales from out-of-state companies; 804 KAR 4:330

Malt Beverage Equipment, Supplies, Service

Equipment, supplies; 804 KAR 11:010

Tobacco Enforcement

Enforcement and administration; 804 KAR 13:010

AMBULANCES

(See Public Health)

ARCHITECTS

(Also see Landscape Architects, State Board)

Examination application; 201 KAR 19:025

Examination qualifications; 201 KAR 19:035

Examinations required, general provisions; 201 KAR 19:040

Fees; 201 KAR 19:085

Reexamination, reconsideration; 201 KAR 19:050

Repealer; 201 KAR 19:031

ASSISTED LIVING

(See Social Services)

ATHLETICS, HIGH SCHOOL

(See Education, Department of)

ATTORNEY GENERAL

Parties who may request an opinion; 40 KAR 1:040

Procedures for requesting and issuing an opinion; 40 KAR 1:070

Subjects on which opinions may be issued; 40 KAR 1:050

Subjects on which opinions shall not be issued; 40 KAR 1:060

AUTISM

(See Higher Education, Council on)

BINGO

(See Charitable Gaming)

BLIND, DEPARTMENT OF

Appeal procedures; 782 KAR 1:040

Definitions; 782 KAR 1:020

Services, scope and nature; 782 KAR 1:030

BOILERS, PRESSURE VESSELS

Existing vessels; testing, repairs, inspection, safety factors; 815 KAR 15:026

BONDS

(See Local Government)

BUILDING CODE, KENTUCKY

Building code, 1997; 815 KAR 7:105

Repealer; 815 KAR 7:101

CAPITAL PLANNING ADVISORY BOARD

Policies and procedures; 1 KAR 6:020

CEMETERIES

(See Consumer Protection)

CERTIFICATE OF NEED

Expenditure minimums; 900 KAR 6:030

Licensure hearings; 900 KAR 6:040

Matters; 900 KAR 6:015E

Process; 900 KAR 6:010

ADMINISTRATIVE REGISTER - K35

DRIVER'S LICENSE
(See Vehicle Regulation)

DRIVER EDUCATION
(See Vehicle Regulation)

DRUG ABUSE
(See Mental Health, Mental Retardation Services)

DRUG, ALCOHOL COUNSELORS
(See Alcohol, Drug Counselors)

DRUGS
(See Public Health)

EARLY INTERVENTION PROGRAM
(See Mental Health, Mental Retardation Services)

ECONOMIC DEVELOPMENT
Linked Deposits
Investment program; 307 KAR 5:010
Sales Tax Credit Program; 307 KAR 2:020

EDUCATION, DEPARTMENT OF
Chief State School Officer
High School Athletic Association, appeal procedures; 701 KAR 5:020
Removal hearing procedures; 701 KAR 5:055
Repeal of 701 KAR 5:050; 701 KAR 5:051
Repeal of 701 KAR 5:060; 701 KAR 5:065
Repeal of 701 KAR 5:085; 701 KAR 5:086
Teacher disciplinary hearings; 701 KAR 5:090
Deaf and Hard of Hearing, Commission; 735 KAR Chapter 1
District Support Services
Facilities management; 702 KAR Chapter 4
General administration; 702 KAR Chapter 1
Pupil transportation; 702 KAR Chapter 5
School administration, finance; 702 KAR Chapter 3
Education Professional Standards Board; 704 KAR Chapter 20
Learning Programs Development
Office of instruction; 704 KAR Chapter 3
Learning Results Services
Assistance and intervention services; 703 KAR Chapter 3
Learning results services; 703 KAR Chapter 4
Special Instructional Services
Exceptional, handicapped program;s 707 KAR Chapter 1

EDUCATION PROFESSIONAL STANDARDS BOARD
Certificate revocation, suspension, etc.; 704 KAR 20:585
College faculty, professional certificate; 704 KAR 20:555
Early elementary grades, certification; 704 KAR 20:290
Exceptional children teacher, probationary certificate; 704 KAR 20:510
Instructional leadership - school principal, professional certificate; 704 KAR 20:710
Junior ROTC certification; 704 KAR 20:260
Principal certification, examination prerequisites; 704 KAR 20:460
Principal intern program; 704 KAR 20:470
Recency and certification fees; 704 KAR 20:045
Renewals; 704 KAR 20:060
Repealer; 704 KAR 20:052; 704 KAR 20:430
Secondary grades, teaching certification; 704 KAR 20:070
Student teaching; admission, placement, supervision; 704 KAR 20:705
Teacher certification, written examination prerequisites; 704 KAR 20:305
Teaching certificates; 704 KAR 20:670
Teacher education, standards for accreditation; 704 KAR 20:695
Teacher education, standards for admission; 704 KAR 20:700
Technology education, probationary certificate; 704 KAR 20:475

EDUCATIONAL SAVINGS PLAN TRUST
(See Higher Education Assistance Authority)

ELECTIONS
Forms and Procedures
Absentee ballots cast in county clerk's office; 31 KAR 4:040E
Voting
Absentee voting; 31 KAR 5:010E

EMERGENCY MEDICAL SERVICES
(See Public Health)

EMPLOYEES, STATE
(See Personnel)
Retirement; 105 KAR Chapter 1

EMPLOYMENT SERVICES (WORKFORCE DEVELOPMENT)
Unemployment Insurance
Employer contribution rates; 787 KAR 1:210
Maximum weekly benefit rate; 787 KAR 1:200
Priority of deductions from benefits; 787 KAR 1:320

ENERGY CONSERVATION
(See Local Government)

ENGINEERS AND SURVEYORS
Retired, inactive status; 201 KAR 18:210

ETHICS
Legislative Ethics Commission; 2 KAR Chapter 2

EXCEPTIONAL CHILDREN
(See Special Instructional Services)

EXECUTIONS
(See Corrections)

FAMILIES AND CHILDREN (CABINET)
Social Insurance
Food Stamp Program; 904 KAR Chapter 3
Public assistance; 904 KAR Chapter 2
Social Services
Adult services; 905 KAR Chapter 5
Aging services; 905 KAR Chapter 8
Child welfare; 905 KAR Chapter 1
Day care; 905 KAR Chapter 2

FAMILY THERAPISTS
(See Marriage and Family Therapist, State Board)

FINANCE AND ADMINISTRATION CABINET
Personnel pilot programs; 200 KAR Chapter 22
Private activity bond allocation; 200 KAR Chapter 15
Property; 200 KAR Chapter 6
Purchasing; 200 KAR Chapter 5

FINANCIAL INSTITUTIONS
Securities
Examination requirement, individuals advising public on securities; 808 KAR 10:260
Hearings before the department; 808 KAR 10:225
Registration exemptions, pension plans; 808 KAR 10:300
Repealer; 808 KAR 10:291

FISH AND WILDLIFE RESOURCES
Fish
Department-owned lakes, use of lands & waters; 301 KAR 1:016
Fishing limits; 301 KAR 1:201

ADMINISTRATIVE REGISTER - K37

Traffic

Annual overweight permit for nondivisible load; 603 KAR 5:330
Coal, coal by-products haul road system, bridge weight limits; 603 KAR 5:230
Coal haul highway system, reporting; 603 KAR 5:115
Highway work zones, safety; 603 KAR 5:320
Weight (mass) limits for trucks; 603 KAR 5:066

HORSE RACING

(See Racing)

HOUSING, BUILDINGS AND CONSTRUCTION

Boilers, pressure vessels; 815 KAR Chapter 15
Building code; 815 KAR Chapter 7
Hazardous materials; 815 KAR Chapter 30
Manufactured homes, recreational vehicles; 815 KAR Chapter 25
Plumbing; 815 KAR Chapter 20

HUMAN RESOURCES

(See Health Services; or, Families and Children)

HUMAN RIGHTS, COMMISSION ON

Administrative proceeding; 104 KAR 1:020

HUNTING, FISHING

(See Fish and Wildlife Resources)

INSURANCE

Agents, Consultants, Solicitors, Adjusters
Noncredit related insurance agents, licensed; 806 KAR 9:240
Authorization of Insurers, General Requirements
Risk-based capital for insurers; 806 KAR 3:190
Fees and Taxes
Fees of the department; 806 KAR 4:010
Groups and Blanket Health Insurance
Association uniform data collection; 806 KAR 18:080
Associations offering group health insurance; 806 KAR 18:060
Health Insurance Contracts
Accountable health plan certification; 806 KAR 17:120
Health insurance rate filing requirements; 806 KAR 17:140
Provider-sponsored network, certificate of filing; 806 KAR 17:100
24-hour pilot insurance program; 806 KAR 17:130
Health Maintenance Organizations
Open enrollment; 806 KAR 38:090E
Kinds, Limits of Risk, Reinsurance
Service contracts for consumer products, registration; 806 KAR 5:060
Liability Self-insurance Groups
Reasonable time for violation correction; 806 KAR 46:030
Rates and Rating Organizations
Experience modification factors for workers' comp insurers; 806 KAR 13:130E
Workers' comp insurance rates, notice of right to seek review of application; 806 KAR 13:140E

INTERMEDIATE CARE FACILITIES

(See Medicaid Services)

JAILS

(See Corrections)

JUSTICE CABINET

Charitable gaming; 500 KAR Chapter 11
Corrections
Execution hearings; 501 KAR Chapter 8
Institutional policies; 501 KAR Chapter 6
Jail standards, not housing Class D felons; 501 KAR Chapter 13
Criminal Justice Training
Concealed deadly weapon licensing; 503 KAR Chapter 6

Concealed deadly weapons; 503 KAR Chapter 4
Juvenile Justice
Child welfare; 505 KAR Chapter 1
State Police
Candidate selection; 502 KAR Chapter 45

JUVENILE JUSTICE

Child Welfare
Internal grievance procedure; 505 KAR 1:020E
Policy and procedures manual; 505 KAR 1:030E

KENTUCKY WORKS

(See Social Insurance)

LABOR CABINET

Occupational safety and health; 803 KAR Chapter 2
OSH Review Commission; 803 KAR Chapter 50
Workers' claims; 803 KAR Chapter 25

LAETRILE

(See Public Health)

LAND SURVEYORS

(See Engineers and Land Surveyors)

LANDSCAPE ARCHITECTS, STATE BOARD

Fees; 201 KAR 10:050

LAW, DEPARTMENT OF

Attorney General; 40 KAR Chapter 1
Consumer protection; 40 KAR Chapter 2
Sexual abuse victims, medical examination; 40 KAR Chapter 3

LEARNING PROGRAMS DEVELOPMENT

Office of Instruction
Evaluation guidelines; 704 KAR 3:345
Extended school services; 704 KAR 3:390
High school graduation, minimum requirements; 704 KAR 3:305

LEARNING RESULTS SERVICES

Assistance and Intervention Services
Determining rewards & sanctions, procedures for; 703 KAR 3:060
Management Improvement Program; 703 KAR 3:205
Rewards, sanctions, procedures determining; 703 KAR 3:060E
Learning Results Services
Assessment, accountability program; 703 KAR 4:090
Code of ethics for state required testing; 703 KAR 4:110
Formula determining successful schools; 703 KAR 4:010

LEGISLATIVE ETHICS

Legislative agent, employer forms; 2 KAR 2:010

LIABILITY SELF-INSURANCE GROUPS

(See Insurance)

LINKED DEPOSITS

(See Agriculture or Economic Development)

LITERACY

(See Adult Education and Literacy)

LIVESTOCK SANITATION

(See Agriculture, Department of)

LOCAL GOVERNMENT

Bonds
Energy conservation projects; 109 KAR 7:020

ADMINISTRATIVE REGISTER - K39

Water; 401 KAR Chapters 5 through 8

NURSE AIDE

(See Medicaid Services)

NURSING

Advanced registered nurse practitioners

Scope, standards of practice; 201 KAR 20:057

License renewal; 201 KAR 20:230

Licensure, registration; applications; 201 KAR 20:370

Licensure renewal, contact hours, recordkeeping, reporting; 201 KAR 20:215

Nursing Incentive Scholarship Fund; 201 KAR 20:390

Provider approval; 201 KAR 20:220

NURSING FACILITIES

(See Medicaid Services)

OCCUPATIONAL SAFETY AND HEALTH

(See also Occupational Safety and Health Review Commission)

Agriculture; occupational safety, health standards; 803 KAR 2:600

Air contaminants; 803 KAR 2:320

Commercial diving operations; 803 KAR 2:319

Compressed gas, compressed air equipment; 803 KAR 2:312

Confined space entry; 803 KAR 2:200

Diving; 803 KAR 2:424

Egress, means of; 803 KAR 2:304

Electrical; 803 KAR 2:410

Federal standards; adoption, extension; 803 KAR 2:301

Fire protection, prevention; 803 KAR 2:311; 803 KAR 2:405

General; 803 KAR 2:300

General environmental controls; 803 KAR 2:309

General safety, health provisions; 803 KAR 2:302; 803 KAR 2:402

Hand, portable-powered tools, equipment; 803 KAR 2:315

Hazardous materials; 803 KAR 2:307

Machinery, machine guarding; 803 KAR 2:314

Maritime employment; 803 KAR 2:500

Materials handling, storage; 803 KAR 2:313

Occupational health, environmental control; 803 KAR 2:306; 803 KAR 2:403

Personal protective equipment; 803 KAR 2:308; 803 KAR 2:404

Powered platforms, manlifts, vehicle-mounted work platforms; 803 KAR 2:305

Receiving, unloading bulk hazardous liquids; 803 KAR 2:019

Repealer; 803 KAR 2:900E

Rollover protective structures; overhead protection; 803 KAR 2:422

Scaffolds; 803 KAR 2:411

Special industries; 803 KAR 2:317

Tools-hand and power; 803 KAR 2:408

Toxic, hazardous substances; 803 KAR 2:425

29 CFR 1910.251-.257; 803 KAR 2:316

Walking-working surfaces; 803 KAR 2:303

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Hearings; procedure, disposition; 803 KAR 50:010

OCCUPATIONS AND PROFESSIONS

Accountancy; 201 KAR Chapter 1

Alcohol, drug counselors; 201 KAR Chapter 35

Architects; 201 KAR Chapter 19

Dentistry; 201 KAR Chapter 8

Drug counselors; 201 KAR Chapter 35

Engineers, land surveyors; 201 KAR Chapter 18

Geologists; 201 KAR Chapter 31

Hairdressers and cosmetologists; 201 KAR Chapter 12

Hearing instrument specialists; 201 KAR Chapter 7

Landscape architects; 201 KAR Chapter 10

Marriage, family therapists; 201 KAR Chapter 32

Medical licensure; 201 KAR Chapter 9

Nursing; 201 KAR Chapter 20

Pharmacy; 201 KAR Chapter 2

Physical therapists; 201 KAR Chapter 22

Real estate appraisers; 201 KAR Chapter 30

Real Estate Commission; 201 KAR Chapter 11

Veterinary examiners; 201 KAR Chapter 16

OIL (USED)

(See Waste Management)

OIL AND GAS

(See Mines and Minerals)

ORGANIC AGRICULTURAL PRODUCTS

(See Agriculture)

PERSONNEL

Adult and Technical Education; 780 KAR Chapters 3, 6

Board

Appeal, hearing procedures; 101 KAR 1:365

Probationary periods; 101 KAR 1:325

Cabinet

Classified

Leave; 101 KAR 2:100E

Unclassified

Compensation plan, incentive systems; 101 KAR 3:045E

Leave; 101 KAR 3:010E

PERSONNEL PILOT PROGRAMS

Cabinet for Health Services, Department for Public Health, Division of Disability Determinations; 200 KAR 22:130

PET FOOD

Additives; 12 KAR 3:037

Brand and product names; 12 KAR 3:017

Caloric content statement; 12 KAR 3:042

Guarantees; 12 KAR 3:022

Ingredients; 12 KAR 3:027

Uniform labeling format; 12 KAR 3:012

PETROLEUM STORAGE TANK ENVIRONMENTAL ASSURANCE FUND

Claims procedures; 415 KAR 1:080

Contractor certification; 415 KAR 1:114

Contractor costs; 415 KAR 1:110

Definitions; 415 KAR 1:050

Discovery procedure; 415 KAR 1:125

Financial responsibility account; 415 KAR 1:060

Hearings; 415 KAR 1:120

Petroleum storage tank account; 415 KAR 1:070

Ranking system; 415 KAR 1:090

Small operators tank removal account; 415 KAR 1:130

Third party claims; 415 KAR 1:100

PHARMACY BOARD

Collaborative care agreements; 201 KAR 2:220

Pharmacy, manufacturer, distributor closures; 201 KAR 2:106

Special pharmacy permit, medical gasses; 201 KAR 2:225

Technicians; 201 KAR 2:045

PHYSICAL THERAPISTS

(See Physical Therapy, State Board)

PHYSICAL THERAPY, STATE BOARD

Assistant's certification procedure; 201 KAR 22:106

Fees; 201 KAR 22:135

Therapist's licensing procedure; 201 KAR 22:031

ADMINISTRATIVE REGISTER - K41

REAL ESTATE COMMISSION

Agency disclosure requirements; 201 KAR 11:400
Rules of practice and procedure; 201 KAR 11:190E

RECREATIONAL VEHICLES

(See Manufactured Homes, Recreational Vehicles)

RELOCATION ASSISTANCE

(See Transportation)

RENAL DIALYSIS FACILITIES

(See Public Health)

RETIREMENT

Kentucky Employee's Retirement System
Procedures and forms; 105 KAR 1:200

REVENUE

(See Taxation)

RIGHT-OF-WAY

(See Highways)

SALES TAX CREDIT PROGRAM

(See Tourism, or Economic Development)

SCHOOLS, NONPUBLIC TRANSPORTATION

(See Transportation)

SCHOOLS, PUBLIC

(See Education, Department of; or, District Support Services; or, Learning Results Services)

SECURITIES

(See Financial Institutions)

SEED

Additives; 12 KAR 2:041
Brand and product names; 12 KAR 2:016
Definitions; 12 KAR 2:006
Guaranteed analysis; 12 KAR 2:018
Guarantees; 12 KAR 2:021
Ingredients; 12 KAR 2:026
Label format; 12 KAR 2:011
Manufacturing conditions; 12 KAR 2:051
Nonprotein nitrogen; 12 KAR 2:036
Poisonous or deleterious substances; 12 KAR 2:046
Product purpose statement; 12 KAR 2:017
Registration; 12 KAR 2:061
Suitability; 12 KAR 2:066

SEXUAL ABUSE VICTIMS, MEDICAL EXAMINATION

Local multidisciplinary teams on child sexual abuse, protocol for operation; 40 KAR 3:020
Payment schedule for examinations; 40 KAR 3:010

SOCIAL INSURANCE

Food Stamp Program
Definitions; 904 KAR 3:010E
Employment and training program; 904 KAR 3:042
Financial requirements; 904 KAR 3:020E
Technical requirements; 904 KAR 3:025
Public Assistance
Definitions; 904 KAR 2:001
Child support collection, distribution; 904 KAR 2:410
Child Support Enforcement Program
Application; 904 KAR 2:380
Paternity establishment; 904 KAR 2:390
Child, medical support orders; establishment, review, modifica-

tion; 904 KAR 2:400

Disability determinations; 904 KAR 2:470
Kentucky Works supportive services; 904 KAR 2:017E
Kentucky Works technical requirements; 904 KAR 2:370E
Standards for need, amount; K-TAP; 904 KAR 2:016E
Supplemental programs; aged, blind, disabled; 904 KAR 2:015E
Technical requirements, K-TAP; 904 KAR 2:006E

SOCIAL SERVICES

Adult Services

Assisted living residences certification; 905 KAR 5:080
State-funded spouse abuse shelters, standards; 905 KAR 5:040

Aging Services

Adult day, Alzheimer's respite program; 905 KAR 8:160
Homecare program for the elderly; 905 KAR 8:180

Child Welfare

Fair hearings; 905 KAR 1:320
Policies and procedures; manual; 905 KAR 1:180E
Private child care levels of care; 905 KAR 1:360

Day Care

Child day care programs; 905 KAR 2:140
Family child-care home certification; 905 KAR 2:100

SPECIAL INSTRUCTIONAL SERVICES (EDUCATION)

Exceptional, Handicapped Programs

Due process procedures; 707 KAR 1:180

STALLIONS, MARES

(See Agriculture, Department of)

STATE POLICE

Candidate Selection

Application, selection process; 502 KAR 45:035
Content Based Task Test; 502 KAR 45:150
Definitions; 502 KAR 45:005
Oral interview; 502 KAR 45:055
Register; 502 KAR 45:075
Written examination; 502 KAR 45:045

SUBSTANCE ABUSE

(See Mental Health, Mental Retardation Services)

TAXATION

Income; Corporations
Consolidated income tax return; 103 KAR 16:200
Income; Withholding
Withholding statements; Form K-2; 103 KAR 18:050

TEACHERS

(See Education, Department of)

TEACHER SCHOLARSHIPS

(See Higher Education Assistance Authority)

TELECOMMUNICATIONS

(See Public Service Commission)

THERAPISTS

(See particular type of therapist; i.e., physical therapist, marriage therapist, etc.)

THOROUGHBRED RACING

Racing associations; 810 KAR 1:026

TOBACCO PRODUCTS

(See Agriculture; also see Alcoholic Beverage Control)

TOLL FACILITIES

(See Transportation)

ADMINISTRATIVE REGISTER - K43

Hazardous Wastes; Storage, Treatment, Disposal Facilities; Interim Status Standards

- Closure financial requirements; 401 KAR 35:090
- Closure, postclosure; 401 KAR 35:070
- Containers, use and management; 401 KAR 35:180
- Containment buildings; 401 KAR 35:245
- Definitions; 401 KAR 35:005
- Equipment leaks, air emission standards; 401 KAR 35:280
- General facilities standards; 401 KAR 35:020
- General financial requirements; 401 KAR 35:080
- General provisions; 401 KAR 35:010
- Groundwater monitoring; 401 KAR 35:060
- Landfill; 401 KAR 35:230
- Liability requirements; 401 KAR 35:120
- Manifest system, recordkeeping, reporting; 401 KAR 35:050
- Postclosure financial requirements; 401 KAR 35:100
- Process vents, air emission standards; 401 KAR 35:275
- Recordkeeping instructions; 401 KAR 35:290
- Surface impoundments; 401 KAR 35:200
- Tanks; 401 KAR 35:190
- Tanks, surface impoundments, containers; air emission standards; 401 KAR 35:281
- Thermal treatment; 401 KAR 35:250
- Waste piles; 401 KAR 35:210

Hazardous Wastes; Storage, Treatment, Disposal Facilities; Owner and Operator Standards

- Closure financial requirements; 401 KAR 34:090
- Closure, postclosure; 401 KAR 34:070
- Containers, use and management; 401 KAR 34:180
- Containment buildings; 401 KAR 34:245
- Definitions; 401 KAR 34:005
- Equipment leaks, air emission standards; 401 KAR 34:280
- General facility standards; 401 KAR 34:020
- General financial requirements; 401 KAR 34:080
- General provisions; 401 KAR 34:010
- Groundwater protection; 401 KAR 34:060
- Incinerators; 401 KAR 34:240
- Landfills; 401 KAR 34:230
- Liability requirements; 401 KAR 34:120
- List of hazardous constituents for groundwater monitoring; 401 KAR 34:360
- Manifest system, recordkeeping, reporting; 401 KAR 34:050
- Miscellaneous units; 401 KAR 34:250
- Postclosure financial requirements; 401 KAR 34:100
- Process vents, air emission standards; 401 KAR 34:275
- Recordkeeping instructions; 401 KAR 34:290
- Surface impoundments; 401 KAR 34:200
- Tanks; 401 KAR 34:190
- Tanks, surface impoundments, containers; air emission standards; 401 KAR 34:281
- Waste management units, corrective action; 401 KAR 34:287
- Waste piles; 401 KAR 34:210

Hazardous Wastes, Transporter Standards

- Definitions; 401 KAR 33:005
- General provisions; 401 KAR 33:010

Land Disposal Restrictions

- Definitions; 401 KAR 37:005
- General provisions; 401 KAR 37:010
- Prohibitions; 401 KAR 37:030
- Storage prohibitions; 401 KAR 37:050
- Treatment standards; 401 KAR 37:040

Oil, Used; Management Standards

- Applicability; 401 KAR 44:010
- Burners who burn off-specification used oil for energy recovery; 401 KAR 44:060
- Collection centers, aggregation points; 401 KAR 44:030
- Disposal; 401 KAR 44:080
- Definitions; 401 KAR 44:005
- Fuel marketers; 401 KAR 44:070

- Generator standards; 401 KAR 44:020
- Processors, re-refiners; 401 KAR 44:050
- Transporters, transfer facilities; 401 KAR 44:040

Solid Waste Facilities

- Definitions; 401 KAR 47:005

Solid Waste Facilities Standards

- Definitions; 401 KAR 48:005

Solid Waste Planning

- Definitions; 401 KAR 49:005

Special Collection System Wastes, Standards

- Definitions; 401 KAR 43:005
- Destination facilities; 401 KAR 43:050
- Import requirements; 401 KAR 43:060
- Petitions to include other wastes; 401 KAR 43:070
- Universal waste, general standards; 401 KAR 43:010
- Universal waste, large quantity handlers; 401 KAR 43:030
- Universal waste, small quantity handlers; 401 KAR 43:020
- Universal waste transporters; 401 KAR 43:040

Specific Hazardous Wastes, Specific Types of Hazardous Wastes; Management Facilities Standards

- Boilers and industrial furnaces; 401 KAR 36:020
- Definitions; 401 KAR 36:005
- Recyclable materials, disposal; 401 KAR 36:030
- Spent lead-acid batteries being reclaimed; 401 KAR 36:070
- Tables and procedures; 401 KAR 36:025

Underground Storage Tanks

- Definitions; 401 KAR 42:005

WATER

Public Water Supply

- Bottled water; 401 KAR 8:700
- Corrosivity monitoring; 401 KAR 8:350
- Definitions; 401 KAR 8:010
- Disinfection and filtration; 401 KAR 8:150
- Disinfection by-products; 401 KAR 8:500
- Facility design, construction, approval; 401 KAR 8:100
- Inorganic chemical sampling, analytical techniques, maximum contaminant levels; 401 KAR 8:250
- Lead and copper; 401 KAR 8:300
- Microbiological monitoring; 401 KAR 8:200
- Public notification; 401 KAR 8:070
- Secondary standards; 401 KAR 8:600
- Synthetic organic chemicals; 401 KAR 8:400
- Unregulated inorganic, synthetic organic contaminants, special testing; 401 KAR 8:440
- Variances, exemptions; 401 KAR 8:060
- Volatile organic chemicals; 401 KAR 8:420
- Water treatment plants, distribution systems, operator certification; 401 KAR 8:030

Water Quality

- Definitions; 401 KAR 5:001
- Permits; 401 KAR 5:005
- Wastewater planning requirements; 401 KAR 5:006

WATER FLUORIDATION

(See Public Health)

WATERFOWL

(See Fish and Wildlife)

WATER PATROL

(See Fish and Wildlife Resources)

WEAPONS (CONCEALED DEADLY)

(See Concealed Weapons)

WEIGHTS AND MEASURES

(Also see Agriculture)

Tobacco sales; 302 KAR Chapter 78