

ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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MEETING NOTICE: The Administrative Regulation Review Subcommittee is scheduled to meet on November 11, 1997. See tentative agenda beginning on page 1009 of this Register.

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Title		Chapter	Regulation
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Cabinet, Department, Board or Agency		Office, Division, or Major Function	Specific Regulation

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ADMINISTRATIVE REGISTER - 1007



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ADMINISTRATIVE REGISTER - 1009

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
TENTATIVE AGENDA - November 11, 1997 at 10 a.m.**

Room 149, Capitol Annex

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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

Work Study Program

11 KAR 6:010. KHEAA Work Study Program.

COUNCIL ON POSTSECONDARY EDUCATION

Public Educational Institutions

13 KAR 2:060. Degree program approval; equal opportunity goals.

KENTUCKY REVENUE CABINET

Office of General Counsel

Division of Tax Policy

Sales and Use Tax; Administration and Accounting

103 KAR 31:030. Direct pay authorization.

FINANCE AND ADMINISTRATION CABINET

Travel Expense and Reimbursement

200 KAR 2:006. Employees' reimbursement for travel.

Purchasing

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

200 KAR 5:302. Delegation of authority.

200 KAR 5:306. Competitive sealed bidding.

State Investment Commission (Deferred from October)

200 KAR 14:011E. General rules.

200 KAR 14:081E. Repurchase agreement.

200 KAR 14:200E. Linked Deposit Investment Program.

GENERAL GOVERNMENT CABINET

Board of Dentistry

201 KAR 8:390. General anesthesia, deep sedation, and conscious sedation by dentists.

201 KAR 8:400. Complaint procedure.

201 KAR 8:411. Repeal of 201 KAR 8:410.

TOURISM CABINET

Department of Fish and Wildlife Resources

Game

301 KAR 2:225E. Dive, wood duck, teal and other migratory game bird hunting.

DEPARTMENT OF AGRICULTURE

Division of Pesticides

Pesticides

302 KAR 31:040. Storage and handling of bulk pesticides and bulk fertilizers for agrichemical facilities. (Deferred from October)

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Division for Air Quality

New Source Standards

401 KAR 59:174. Stage II controls at gasoline dispensing facilities. (Public Hearing in September)

General Standards of Performance

401 KAR 63:005. Open burning. (Public Hearing in September)

Mobile Source-related Emissions

401 KAR 65:010. Vehicle emission control programs. (Public Hearing in September)

Department for Surface Mining Reclamation and Enforcement

Permits (Received Written Comments in September)

405 KAR 8:001. Definitions for 405 KAR Chapter 8.

405 KAR 8:030. Surface coal mining permits.

405 KAR 8:040. Underground coal mining permits.

Performance Standards for Surface Mining Activities (Received Written Comments in September)

405 KAR 16:001. Definitions for 405 KAR Chapter 16.

405 KAR 16:060. General hydrologic requirements.

405 KAR 16:090. Sedimentation ponds.

405 KAR 16:100. Permanent and temporary impoundments.

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405 KAR 16:160. Coal mine waste dams and impoundments.

Performance Standards for Underground Mining Activities (Received Written Comments in September)

405 KAR 18:001. Definitions for 405 KAR Chapter 18.

405 KAR 18:060. General hydrologic requirements.

405 KAR 18:090. Sedimentation ponds.

405 KAR 18:100. Permanent and temporary impoundments.

405 KAR 18:160. Coal mine waste dams and impoundments.

405 KAR 18:210. Subsidence control.

JUSTICE CABINET

Department of Corrections

Division of Adult Institutions

Office of the Secretary

501 KAR 6:020. Corrections policies and procedures. (Deferred from October)

501 KAR 6:040. Kentucky State Penitentiary.

501 KAR 6:090. Frankfort Career Development Center. (Deferred from October)

Department of Juvenile Justice

Child Welfare

505 KAR 1:040E. Policy and procedures manual.

TRANSPORTATION CABINET

Department of Highways

Traffic

603 KAR 5:070E. Motor vehicle dimension limits. (Deferred from August)

EDUCATION, ARTS, AND HUMANITIES CABINET

Education Professional Standards Board

Board

704 KAR 20:084. Interdisciplinary early childhood education, birth to primary.

704 KAR 20:305E. Written examination prerequisites for teacher certification. (Deferred from October)

WORKFORCE DEVELOPMENT CABINET

State Board for Adult and Technical Education

Management of the Kentucky TECH System

780 KAR 2:130E. Minimum standards of admission for postsecondary students. (Deferred from September)

Personnel System for Certified and Equivalent Employees (Deferred from May)

780 KAR 3:070. Attendance, compensatory time, and leave. (Amended After Hearing)

780 KAR 3:080. Extent and duration of school term, use of school days and extended employment. (Amended After Hearing)

Unclassified Personnel Administrative Regulations

780 KAR 6:060. Attendance, compensatory time, and leave. (Deferred from March)

LABOR CABINET

Department of Workplace Standards

Division of Occupational Safety and Health Compliance

Division of Occupational Safety and Health Education and Training

Occupational Safety and Health (Deferred from October)

803 KAR 2:301E. Adoption and extension of established federal standards.

803 KAR 2:320E. Air contaminants.

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

803 KAR 2:411E. Scaffolds.

803 KAR 2:425E. Toxic and hazardous substances.

803 KAR 2:500E. Maritime employment.

Department of Workers' Claims

803 KAR 25:012. Resolution of medical fee disputes.

803 KAR 25:096. Selection of physicians, treatment plans and statements for medical services.

803 KAR 25:175. Filing of insurance coverage and notice of policy change or termination. (Amended After Hearing)

PUBLIC PROTECTION AND REGULATION CABINET

Department of Insurance

Motor Vehicle Reparations (No-fault)

806 KAR 39:070. Proof of motor vehicle insurance. (Not Amended After Hearing) (Deferred from October)

Department of Housing, Buildings and Construction

Division of Building Codes Enforcement

Kentucky Building Code

815 KAR 7:070. The Kentucky Certified Building Inspector Program.

815 KAR 7:105. Kentucky Building Code/1997.

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Heating, Ventilation, and Air Conditioning Licensing Requirements

815 KAR 8:010. Master heating, ventilation, and air conditioning (HVAC) contractor licensing requirements.

815 KAR 8:020. Journeyman heating, ventilation, and air conditioning (HVAC) mechanic licensing requirements.

Office of the State Fire Marshal

Boilers and Pressure Vessels

815 KAR 15:027. Certificates and fees for boiler and pressure vessel inspection.

815 KAR 15:080. Fees for licensing new boiler and pressure vessel contractors.

Division of Plumbing

Plumbing

815 KAR 20:020. Parts or materials list.

815 KAR 20:030. License application; qualifications for examination, examination requirements, expiration, renewal, revival or reinstatement of licenses.

815 KAR 20:130. House sewers and storm water piping; methods of installation.

CABINET FOR HEALTH SERVICES

Office of Certificate of Need

Certificate of Need

900 KAR 6:050E. Certificate of Need administrative regulations. (Deferred from October)

Department for Public Health

Division for Health Systems Development

Emergency Medical Technicians

902 KAR 13:120. Emergency medical technician-basic and EMT-first responder automated external defibrillation training and authorization.

State Health Plan

902 KAR 17:041E. State health plan for facilities and services. (Deferred from October)

Office of Inspector General

Health Services and Facilities

902 KAR 20:016. Hospitals; operations and services.

Controlled Substances

902 KAR 55:095E. Prescription for Schedule II controlled substance - facsimile transmission or partial filling. (Deferred from August)
(Deferred from October)

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). (Deferred from October)

904 KAR 2:016E. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP). (Deferred from October)

904 KAR 2:017E. Kentucky Works supportive services. (Deferred from September)

904 KAR 2:035 & E. Right to apply and reapply.

904 KAR 2:040 & E. Procedures for determining initial and continuing eligibility.

904 KAR 2:046 & E. Adverse action; conditions.

904 KAR 2:050E. Time and manner of payments. (Deferred from October)

904 KAR 2:055 & E. Hearings and appeals.

904 KAR 2:060 & E. Delegation of power for oaths and affirmations.

904 KAR 2:370E. Technical requirements for Kentucky Works. (Deferred from September)

CABINET FOR HEALTH SERVICES

Division of Licensing and Regulation

Office of Inspector General

906 KAR 1:120E. Informal dispute resolution. (Deferred from October)

Department for Medicaid Services

Division of Administration and Development

Medicaid Services

907 KAR 1:022E. Nursing facility and intermediate care facility for the mentally retarded services. (Deferred from October)

907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services. (Deferred from October)

907 KAR 1:145E. Supports for community living services for individuals with mental retardation or developmental disabilities.

907 KAR 1:151E. Repeal of 907 KAR 1:140 and 907 KAR 1:150.

907 KAR 1:155E. Payments for supports for community living services for individuals with mental retardation or developmental disabilities.

907 KAR 1:710. Managed behavioral health care initiative (1915b Waiver). (Amended After Hearing) (Deferred from September)

907 KAR 1:755E. Preadmission Screening and Annual Resident Review Program. (Deferred from October)

907 KAR 1:765E. Repeal of 907 KAR 1:460. (Deferred from October)

ADMINISTRATIVE REGISTER - 1012

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.

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

September 26, 1997

Kentucky Higher Education Assistance Authority

- (1) The subject matter of the administrative regulation is **11 KAR 5:130**, Student application.
- (2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 1 of the administrative regulation governing the subject matter listed above, particularly, the process by which a student may apply for a KHEAA grant.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Friday, November 28, 1997, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held, if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 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: Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (502) 696-7499.
- (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 Higher Education Assistance Authority at the address listed above.
- (7) Information relating to the proposed administrative regulation.
 - (a) The statutory authority for the promulgation of an administrative regulation relating to application for a KHEAA Grant is KRS 164.744(2), 164.746(6), 164.753(4), 164.7535, 164.780 and 164.785.
 - (b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 5:130, as follows: Section 1 of the above cited administrative regulation currently requires a student to complete and submit, in accordance with the instructions provided, the 1996-97 Free Application for Federal Student Aid (FAFSA) The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to require the submission of the 1998-99 Free Application for Federal Student Aid (FAFSA) to award grants for the upcoming 1998-99 academic year. Section 2 of the above cited administrative regulation currently specifies an August 1 and December 1 deadline for changing the applicants choice of educational institutions. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation by clarifying the impact on the applicant's grant award of changing the choice of educational institution after those deadline dates.
 - (c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendment is necessary to update the version of the Free Application for Federal Student Aid (FAFSA) that is used for the KHEAA Grant programs, consistent with its use for other programs of student financial assistance.
 - (d) The benefits expected from the administrative regulation are: The student can use a single application form for KHEAA grants and institutional and federal programs of student financial assistance at no processing cost to the student.
 - (e) The administrative regulation will be implemented as follows: The administrative regulation will require that a student complete and submit in accordance with the instructions provided the 1998-99 Free Application for Federal Student Aid (FAFSA) in order to be considered for a KHEAA grant.

KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY

October 15, 1997

Kentucky Board of Examiners of Psychology

- (1) **201 KAR 26:260**, Status of persons credentialed by the board.
- (2) The Kentucky Board of Examiners of Psychology intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1997, at the offices of the Division of Occupations and Professions located at 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 November 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: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.
- (b) On a request for public hearing, a person shall state:

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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 Board of Examiners of Psychology 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 status of persons credentialed by the board is KRS 319.032.

(b) The administrative regulation that the Kentucky Board of Examiners of Psychology intends to promulgate will: Clarify the status of all persons credentialed by the board.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: The purpose of this regulation is to clarify the status of persons regulated by the board.

(d) The benefits expected from administrative regulation are: Persons receiving psychological services in the Commonwealth will be clearly informed as to the status of the persons delivering those services.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented as soon as it becomes effective.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources

August 21, 1997

Tourism Development Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 1:192**, Closing Lake Chumbley.

(2) The Department of Fish and Wildlife Resources intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 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 is not received from the required number of people at least ten days prior to November 21, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation an administrative regulation governing public fishing lakes is KRS 150.620.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will close Lake Chumbley in Boyle and Lincoln Counties to public access from one-half (1/2) hour after sunset until one-half (1/2) hour before sunrise.

(c) The necessity and function of the proposed administrative regulation is to control vandalism at this lake.

(d) The benefits expected from the administrative regulation are the maintenance of order and the abatement of nuisance.

(e) The administrative regulation will be implemented as follows: Its provisions will be included in fishing guides and other public information disseminated by the department, with enforcement by the department's Division of Law Enforcement.

August 21, 1997

Tourism Development Cabinet

Department of Fish and Wildlife Resources

(1) Regulation Number and Title: **301 KAR 1:300**, Reciprocal waters on Dale Hollow Lake; **301 KAR 1:310**, Reciprocal waters on the Big South Fork.

(2) The Department of Fish and Wildlife Resources 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 regulation has been scheduled for November 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 is not received from the required number of people at least ten days prior to November 21, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to John Wilson, Assistant Director, Public

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Affairs/Policy, Kentucky Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation governing reciprocal license agreements is KRS 150.170(10).

(b) The administrative regulations that the department intends to promulgate will not amend an existing administrative regulation. They will establish certain sections of the Kentucky portions of Dale Hollow Lake and The Big South Fork of the Cumberland River where a Tennessee sport fishing license shall be valid.

(c) The necessity and function of the proposed administrative regulations is to establish reciprocal areas where either a Kentucky or Tennessee sport fishing license is valid.

(d) The benefits expected from the administrative regulations are allowing either a Kentucky or Tennessee fishing license in areas where state boundaries are not obvious.

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

KENTUCKY DEPARTMENT OF AGRICULTURE

October 10 1997

Kentucky Department of Agriculture

(1) Regulation number and title: **302 KAR 10:060**, Consumer grades.

(2) The Kentucky Department of Agriculture intends to promulgate an administrative regulation governing the above subject matter.

(3) A public hearing to receive oral and written comments has been scheduled for Friday, November 21, 1997 at 10 a.m. at the Department of Agriculture's Conference Room, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to consumer grades is KRS 260.260.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate will amend 302 KAR 10:060. It sets forth the changes in quality and quantity requirements for marketing shell eggs.

(c) The necessity and function of the proposed administrative regulation is as follows: Same as (b).

(d) The benefits expected from the proposed administrative regulation are: USDA compliance.

(e) The administrative regulation will be implemented as follows: The Division of Regulations and Inspections field inspectors will closely monitor the implementation of regulation and make timely reports to Regulations and Inspections Director.

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

September 18, 1997

Natural Resources and Environmental Protection Cabinet

Department for Environmental Protection, Division of Water

(1) The subject matter of the administrative regulation to be amended is **401 KAR 5:001**, Definitions of terms used in 401 KAR Chapter 5.

(2) The Natural Resources and Environmental Protection Cabinet, Division of Water, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 25, 1997, at 6:30 p.m. (central time), in the Auditorium Building of the Hopkinsville Community College, Talbert Drive and North Drive, Hopkinsville, Kentucky. Persons may also submit written comments on the proposed administrative regulation to the Division of Water at the

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address given below, by 4:30 p.m. (eastern time) on November 25, 1997.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 25, 1997, the public hearing will be canceled.

(c) The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The cabinet will provide, upon request, reasonable accommodations for the public hearing including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in the scheduled public hearing and all other cabinet programs and activities. If you need an alternative version of this Notice of Intent, contact the Division of Water by November 15, 1997, at the address below or by telephone, (502) 564-3410, or TDD 1-800-648-6056.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, telephone number (502) 564-3410, fax number (502) 564-4245.

(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 Water at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulation relating to definitions of terms is KRS 224.10-100, 224.10-110, 224.16-060, 224.70-100, 224.70-110, 224A.111, 224A.112, 224A.113, 33 USC 1288, 1313(e), 1314(b), 1342, 40 CFR Parts 116, 130, 136, 401 - 471.

(b) The administrative regulation that the Natural Resources and Environmental Protection Cabinet, Division of Water, intends to promulgate will amend 401 KAR 5:001, Definitions of terms used in 401 KAR Chapter 5. The cabinet intends to promulgate a new regulation dealing with the permitting of swine feeding operations. The definitions that relate to that regulation will be added to the definitions regulation so that all the definitions relating to 401 KAR Chapter 5 will be in one location. The cabinet has filed with the Regulations Compiler an emergency regulation that applies to swine feeding operations. The emergency regulation contains the definitions that apply to these operations. Included in the emergency regulation are new definitions for swine feeding operation; swine unit, to determine the applicability of the regulation; swine waste; land application; injection; minimum design volume; nutrient management plan; supernatant; swine waste management permit; and karst feature. Other terms currently in 401 KAR 5:001 will be amended to include their application to swine feeding operations. Some of the terms that will be amended include permit, agricultural waste handling system, direct discharge, draft permit, and facility. When the ordinary regulation is proposed and promulgated, the definitions that are currently in the emergency regulation will be moved to 401 KAR 5:001, to comply with KRS Chapter 13A.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation establishes definitions that apply to 401 KAR Chapter 5. The amended regulation will contain the new and amended definitions that apply to swine feeding operations.

(d) The benefits expected from the administrative regulation are: The definitions relating to swine feeding operations will be in the definitions regulation, thus providing one convenient location to look for definitions.

(e) The administrative regulation will be implemented as follows: On and after the effective date of the administrative regulation, the definitions that apply to swine feeding operations will be in this regulation. Some definitions that are currently in this regulation will be amended to accommodate the new definitions. Copies of the emergency regulation that now contain these definitions are available from the Division of Water at the above address.

September 18, 1997

Natural Resources and Environmental Protection Cabinet
Department for Environmental Protection, Division of Water

(1) The subject matter of the administrative regulation to be promulgated is **401 KAR 5:008**, Swine feeding operations.

(2) The Natural Resources and Environmental Protection Cabinet, Division of Water, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 25, 1997, at 6:30 p.m. (central time), in the Auditorium Building of the Hopkinsville Community College, Talbert Drive and North Drive, Hopkinsville, Kentucky. Persons may also submit written comments on the proposed administrative regulation to the Division of Water at the address given below, by 4:30 p.m. (eastern time) on November 25, 1997.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 25, 1997, the public hearing will be canceled.

(c) The Natural Resources and Environmental Protection Cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability. The cabinet will provide, upon request, reasonable accommodations for the public hearing including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in the scheduled public hearing and all other cabinet programs and activities. If you need an alternative version of this Notice of Intent, contact the Division of Water before November 15, 1997, at the address below or by telephone, (502) 564-3410, or TDD 1-800-648-6056.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jack A. Wilson, Director, Division of Water, 14 Reilly Road, Frankfort Office Park, Frankfort, Kentucky 40601, telephone number (502) 564-3410, fax number (502) 564-

ADMINISTRATIVE REGISTER - 1017

4245.

(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 Water at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of administrative regulation relating to swine feeding operations is KRS 224.10-100, 224.70-100, and 224.70-110.

(b) The administrative regulation that the Natural Resources and Environmental Protection, Division of Water, intends to promulgate will be a new regulation for the permitting of swine feeding operations. A swine feeding operation is defined to be an operation that confines 1,000 or more swine units and is not a concentrated animal feeding operation. An emergency regulation to regulate the permitting of those operations has been filed with the Regulations Compiler and is now effective. The promulgation of this ordinary regulation will continue the emergency regulation after the required expiration date. The proposed new administrative regulation will contain construction and operational requirements for new swine feeding operations that house more than 1,000 swine units. A swine unit takes into consideration the number of swine that are confined and the type of operation it is. Existing operations that are currently under the 1,000 swine unit threshold will not be affected unless they expand their operation above that threshold. Existing permitted operations that are above the size threshold will not be affected unless they expand their operation above ten percent of their current permitted level. Finally, some existing unpermitted operations over 1,000 swine units will be given the opportunity to be permitted under the current program in 401 KAR 5:005 if they notify the cabinet by January 1, 1998, of the number of swine units at their operations and then subsequently apply for and receive their permits under 401 KAR 5:005 by July 25, 1999. New construction requirements include the construction of anaerobic lagoons, with compacted soil liners of specified size and slopes. New operation requirements include the development and implementation of a nutrient management plan for each farm. Land setbacks are also specified for the construction of the barns, lagoons, and other related structures and for the land application of the swine waste from the lagoon during specified applications. Copies of the emergency regulation which contain the same requirements and that are currently in effect are available from the Division of Water at the above address.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation establishes administrative procedures and technical standards for the issuance of permits for swine feeding operations authorized under KRS Chapter 224. It also establishes conditions for their proper construction and operation.

(d) The benefits expected from the administrative regulation are: The citizens of the Commonwealth will be assured that the operation of swine feeding operations will protect the waters of the Commonwealth.

(e) The administrative regulation will be implemented as follows: On and after the effective date of this administrative regulation, the permitting of these operations will be governed by the provisions contained in this regulation. Copies of the emergency regulation that contain the cabinet's current requirements are available from the Division of Water at the above address.

JUSTICE CABINET Department of Corrections

October 15, 1997

Justice Cabinet

Department of Corrections

(1) **501 KAR 6:999**, Department of Corrections secured policies and procedures (new);

501 KAR 6:020, Department of Corrections policies and procedures (amended);

501 KAR 6:030, Kentucky State Reformatory (amended);

501 KAR 6:040, Kentucky State Penitentiary (amended);

501 KAR 6:090, Frankfort Career Development Center (amended);

501 KAR 6:110, Roederer Correctional Complex (amended);

501 KAR 6:120, Blackburn Correctional Complex (amended); and

501 KAR 6:170, Green River Correctional Complex (amended).

(2) The Justice Cabinet, Department of Corrections, intends to promulgate a new administrative regulation governing the subject matter listed above and intends to amend the remaining administrative regulations listed above.

(3) There shall be no public hearing on these regulations as they relate to secured policies under the provisions of KRS 197.025 which states that these policies shall not be accessible to the public or inmates.

(4) Information relating to these proposed administrative regulations:

(a) The statutory authority for the promulgation of these administrative regulations relating to the subject matter of these administrative regulations is KRS 196.035, 197.020, and 197.025.

(b) The administrative regulations that the Department of Corrections intends to promulgate shall delete secured policies from existing administrative regulations and establish 501 KAR 6:999, as follows:

1. Inclement weather/emergency condition operation (BCC 09-01-01)

2. Restricted areas (BCC 09-02-01)

3. Inmate pass system to restricted areas (BCC 09-02-02)

4. Regulation of inmate movement (BCC 09-02-03)

5. Radio escorted yard movement during daylight savings time (November 1 - April 30) (BCC 09-02-04)

6. Inmate identification (BCC 09-03-01)

7. Complex entry and exit (BCC 09-04-02)

8. Key control (BCC 09-05-01)

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9. Transportation to courts (BCC 09-06-02)
10. Drug abuse and intoxicants testing (BCC 09-07-01)
11. Population counts and count documentation (BCC 09-09-01)
12. Development of institutional post orders (BCC 09-10-03)
13. Prohibiting inmate authority over other inmates (BCC 09-14-01)
14. Search policy and disposition of contraband (BCC 09-15-01)
15. Security activity logs (BCC 09-16-01)
16. Institutional supervisor inspection (BCC 09-17-01)
17. Use of state vehicles and staff-owned vehicles (BCC 09-18-01)
18. Duties and responsibilities of the institutional captain (BCC 09-19-01)
19. Inmate death (BCC 09-20-01)
20. Tool control (BCC 09-21-01)
21. Emergency communication system (BCC 09-22-01)
22. Occupational exposure to bloodborne pathogens (CPP 8.1)
23. Fire safety (CPP 8.2)
24. Emergency planning (CPP 8.3)
25. Emergency preparedness (CPP 8.4)
26. Emergency squads (CPP 8.5)
27. Use of force (CPP 9.1)
28. Execution (CPP 9.5)
29. Storage, issue and use of weapons including chemical agents (CPP 9.7)
30. Transportation of inmates (CPP 9.9)
31. Security inspections (CPP 9.10)
32. Tool control (CPP 9.11)
33. Institutional entry and exit surveillance and perimeter security procedures (FCDC 09-01-02)
34. Control and accountability of flammable, toxic, caustic and other hazardous materials (FCDC 09-03-01)
35. Escape plan (GRCC 08-03-01)
36. Emergency squad: selection, training and evaluation (GRCC 08-05-01)
37. Response units (GRCC 08-06-01)
38. Procedure for operation in event of dense fog, inclement weather or loss of power (GRCC 09-03-01)
39. Inmate death (GRCC 09-04-01)
40. Entry and exit procedures (GRCC 09-06-01)
41. Searches and preservation of evidence (KSP 09-08-01)
42. Horizontal gates/box 1 entrance and exit procedure (KSR 09-00-04)
43. Gate 1 entrance and exit procedure (KSR 09-00-05)
44. Contraband, dangerous contraband and search policy (KSR 09-00-09)
45. Construction crew entry/Exit (KSR 09-00-27)
46. Fire prevention (RCC 08-01-01)
47. Control and use of flammable, toxic, and caustic materials (RCC 08-08-01)
48. Duties and responsibilities of the fire and safety officer (RCC 09-04-03)
49. Search policy/disposition of contraband (RCC 09-06-01)

(c) The necessity and function of the proposed administrative regulations are 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. These administrative regulations establish operating procedures at the Department of Corrections to comply with KRS Chapter 13A and to reflect current operating procedures.

3. KRS 197.025(5) provides: "The policies and procedures of administrative regulations of the department which address the security and control of inmates and penitentiaries shall not be accessible to the public or inmates. The Administrative Regulations Review Subcommittee's review process for these policies and procedures shall be conducted in closed sessions."

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

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

TRANSPORTATION CABINET

October 15, 1997

Transportation Cabinet

(1) **600 KAR 6:050, 600 KAR 6:060, and 600 KAR 6:080** relating to professional engineering and related services for the Transportation Cabinet.

(2) The Kentucky Transportation Cabinet intends to promulgate amendments to three existing administrative regulations relating to the procurement and management of contracts for professional engineering and related services.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1997 at 10:30 a.m. local prevailing time, at 501 High Street, 4th Floor Hearing/Conference Room, Frankfort, Kentucky 40622.

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

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1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
 2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 21, 1997, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622.
- (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 Transportation 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 procurement of professional engineering or related services is KRS 45A.807.
- (b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend the following: 600 KAR 6:050 to allow the bulletins announcing the projects for which the Transportation Cabinet is seeking professional engineering or related services to be posted electronically. 600 KAR 6:060 to allow the Professional Engineering Services Selection Committee to hold meetings by electronic media means. 600 KAR 6:080 to adopt the latest changes to the federal procurement regulations which govern the procurement and auditing of professional engineering contracts and services.
- (c) The necessity, function, and conformity of the proposed administrative regulations are as follows: 600 KAR 6:050: This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when issuing public notice of the need for professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835. 600 KAR 6:060: This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when selecting professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835. 600 KAR 6:080: This administrative regulation sets forth the procedure to be used by the Transportation Cabinet when auditing professional engineering or related services providers while implementing the provisions of KRS 45A.800 to 45A.835. It further sets the standards firms are to follow in the keeping of their financial records. All engineering and related projects which are funded with U.S. Department of Transportation funds are required to use the audit and accounting standards set forth in 48 Code of Federal Regulations 30 and 31. Because an engineering or related services firm may have both a federally funded and state only funded project, the federal requirements are imposed on all firms contracting with or prequalified by the Transportation Cabinet.
- (d) The benefits expected from the administrative regulations are continued compliance with the federal requirements regarding auditing and accounting standards for procurement of professional engineering or related services. In addition, the Transportation Cabinet, by joining the electronic age will be able to provide information and conduct meetings in a more timely manner.
- (e) The administrative regulations will be implemented as follows: The Consulting Engineers Council will be notified of the amendments to the federal regulations so that their membership can make the required changes in their accounting methods. In addition, the Selection Committee will be able to meet using teleconferencing technology. Since the members of the various committees are located around the state this will allow greater productivity. The bulletin listing the projects for which the Transportation Cabinet is seeking proposals will be placed on the internet. The prequalified professional engineering firms all have access to the internet. This will allow information to be made available in the most timely manner.
- (8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than November 11, 1997.

KENTUCKY BOARD OF EDUCATION

September 5, 1997

Kentucky Board of Education

- (1) **702 KAR 3:110**, Document filing dates.
- (2) The Kentucky Board of Education intends to amend an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1997, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (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 (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 21, 1997, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to: Mr. Kevin Noland, General Counsel, Office of Legal Services, Kentucky Department of Education, 500 Mero Street, 1st Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, fax (502) 564-9321.
- (b) On a request for a public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request from the Department of Education at the address listed above.

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(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to document filing dates is KRS 156.160.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 702 KAR 3:110.

(c) The necessity, function, and conformity of the proposed administrative regulation is to establish forms and dates of filing for Kentucky Board of Education financial archives. Also, this regulation incorporates these forms and guidelines by reference.

(d) The benefits expected for the administrative regulations are the establishment of uniform reporting dates and current financial information from local districts.

(e) The administrative regulation will be implemented as follows: Financial documents will be submitted to the Division of Finance electronically.

October 9, 1997

Kentucky Board of Education

(1) **703 KAR 3:060**, Procedures for determining rewards and sanctions.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1997, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (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 (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 21, 1997, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the amendment of an existing administrative regulation relating to procedures for determining rewards and sanctions is KRS 158.6455.

(b) The administrative regulation that the Kentucky Board of Education intends to amend is 703 KAR 3:060.

(c) The necessity, function, and conformity of the proposed administrative regulation is to permit distribution of reward monies to those schools which earned them in light of the recent data error corrections.

(d) The benefits expected from this proposed administrative regulation are to distribute reward monies to those schools which earned them in light of the recent data error corrections.

(e) The administrative regulation will be implemented as follows: the affected schools which are entitled to additional funds will be notified by letter and received the distribution of reward funds.

October 9, 1997

Kentucky Board of Education

(1) **703 KAR 4:110**, Code of Ethics for state required testing.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1997, at 10 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (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 (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to November 21, 1997, the public hearing will be cancelled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

ADMINISTRATIVE REGISTER - 1021

- (a) The statutory authority for the amendment of an existing administrative regulation relating to the implementation of a primarily performance-based assessment and school/district accountability system is KRS 158.6455 and 156.070.
- (b) The administrative regulation that the Kentucky Board of Education intends to amend is 703 KAR 4:110.
- (c) The necessity, function, and conformity of the proposed administrative regulation is to implement KRS 158.645 through 158.6455. This administrative regulation establishes a Code of Ethics for appropriate testing practices for state required tests.
- (d) The benefits expected from this proposed administrative regulation are to formalize a standard code of ethical practices as related to both the preparation for, and the administration of, the Kentucky Instructional Results Information System (KIRIS) assessment components. The proposed amendment is intended to increase the integrity and consistency of investigation of KIRIS cheating allegations.
- (e) The administrative regulation will be implemented as follows: The Code of Ethics will be made available to all local school districts.

EDUCATION PROFESSIONAL STANDARDS BOARD

September, 1997

Education Professional Standards Board

- (1) **704 KAR 20:700**, Standards for admission to teacher education.
- (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 November 26, 1997 at 10 a.m. at the Local District Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 5 days prior to November 26, 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: Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky 40601, fax (502) 573-1610.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
 2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Education Professional Standards Board at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the requirements for teacher education programs is found in KRS 161.028.
- (b) The administrative regulation that the Education Professional Standards Board intends to amend will establish passing scores for reading, writing, and mathematics for the Preprofessional Skills Test.
- (c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 161.028 requires that a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate shall be issued to a person who has completed a program approved by the Education Professional Standards Board. This administrative regulation establishes the standards for admission to a teacher education program and is not required by federal law.
- (d) The benefits expected from administrative regulation are: Institutions will have minimum passing scores for all Education Professional Standards Board tests approved for admission of students into teacher education programs.
- (e) The administrative regulation will be implemented as follows: Each institution of higher education having accredited teacher education programs will be copied with this regulation and required to forward an acknowledgement of receipt. Staff will be available on request, to respond to specific questions relating to the regulation.

WORKFORCE DEVELOPMENT CABINET State Board for Adult and Technical Education

September 18, 1997

Cabinet for Workforce Development

State Board for Adult and Technical Education

- (1) Regulation Number and Title: **780 KAR 2:131**, repeal of 780 KAR 2:130, Minimum standards of admissions for postsecondary students in vocational technical programs.
- (2) The Cabinet for Workforce Development, State Board for Adult and Technical Education intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1997 at 9 a.m., in the State Board Room, 2nd Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 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.

ADMINISTRATIVE REGISTER - 1022

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 21, 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: Delmus Murrell, Secretary, State Board for Adult and Technical Education, 20th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Phone # (502) 564-4286, FAX # (502) 564-4800.

(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 Delmus Murrell, Secretary, State Board for Adult and Technical 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 780 KAR 2:130 is KRS 151B.110 and 151B.150.

(b) The administrative regulation that the State Board for Adult and Technical Education intends to promulgate will repeal an existing administrative regulation because of KRS Chapter 13A.

(c) The necessity and function of the proposed administrative regulation is as follows: House Bill No. 1 enacted May 30, 1997 in the First 1997 Extraordinary Session of the Kentucky General Assembly placed the postsecondary schools within the definitions of KRS 164.001(10). The definition of "administrative regulation" in KRS 13A.010(2)(e) specifically excludes postsecondary institutions as defined in KRS 164.001. 780 KAR 2:130, establishing minimum standards of admission for postsecondary students, concerns subject matter excluded from the definition of administrative regulation and is prohibited.

(d) The benefits expected from administrative regulation are: The benefit will be easier to review and revise as board approved policy.

(e) The administrative regulation will be implemented as follows: The content will be included in the board approved policies and procedures manual.

KENTUCKY DEPARTMENT OF WORKERS' CLAIMS

October 6, 1997

Kentucky Department of Workers' Claims

(1) Regulation number and name: **803 KAR 25:120**, Training or education programs eligible for retraining incentive benefits.

(2) The Commissioner of the Department of Workers' Claims intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 21, 1997, at 10 a.m. at the Department of Workers' Claims, 1270 Louisville Road, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if 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 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 November 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: Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, ATTN: Carla H. Montgomery, (502) 564-5550, fax number 564-5934.

(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 the subject matter of administrative regulation is KRS 342.732(1)(a).

(b) The administrative regulation that the commissioner intends to promulgate will amend an existing administrative regulation. It will amend the administrative regulation to reflect the statutory changes made in the Special Session of the Kentucky Legislature in December of 1996.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 342.732 requires the commissioner to promulgate administrative regulation to approve bona fide training and education programs eligible to receive \$5,000 for standard instruction, tuition, and material costs directly from the employer for a student who has been awarded retraining incentive benefits.

(d) The benefits expected from administrative regulation are: The administrative regulation will be in compliance with all the new statutory requirements regarding retraining incentive benefits.

(e) The administrative regulation will be implemented as follows: The commissioner will continue to review training institutions or education programs for certification as he has been doing. However, now the administrative regulation will implement the statutory requirements.

ADMINISTRATIVE REGISTER - 1023

KENTUCKY RACING COMMISSION

October 14, 1997

Kentucky Racing Commission

- (1) Regulation Number and Title: **810 KAR 1:015**. Claiming races.
- (2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 25, 1997, 10 a.m. at the commission offices at 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 or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 25, 1997, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Bernie Hettel, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.
- (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 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 administrative regulation relating to the subject matter of administrative regulation is KRS 230.215(2) and 230.260(3).
 - (b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 810 KAR 1:015, Section 1. It will allow persons to claim multiple horses from a race. It also alters the restrictions on the horse after it is claimed.
 - (c) The necessity and function of the proposed administrative regulation is as follows: The administrative regulation prescribes conditions for claiming races.
 - (d) The benefits expected from administrative regulation are: Broadens the availability to claimants and benefits horse owners options on participation.
 - (e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

October 14, 1997

Kentucky Racing Commission

- (1) Regulation Number and Title: **810 KAR 1:018**. Medication; testing procedures.
- (2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 25, 1997, 10 a.m. at the commission offices at 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 or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 25, 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: Bernie Hettel, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.
- (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 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 administrative regulation relating to the subject matter of administrative regulation is KRS 230.215(2).
 - (b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 810 KAR 1:018, Section 7. It will eliminate unnecessary mandatory drug testing on horses placing in quinella races, exacta races, and stakes races and gives the stewards the authority to drug test any horse they deem necessary.
 - (c) The necessity and function of the proposed administrative regulation is as follows: To regulate conditions under which thoroughbred horses are drug tested.
 - (d) The benefits expected from administrative regulation are: Savings on unnecessary drug testing. This change would give the stewards the authority to have a horse drug tested whose performance in a race is questionable.
 - (e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

October 14, 1997

Kentucky Racing Commission

- (1) Regulation Number and Title: **810 KAR 1:026**. Racing associations.
- (2) The Kentucky Racing Commission intends to promulgate an administrative regulation governing the subject matter listed above.

ADMINISTRATIVE REGISTER - 1024

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 25, 1997, 10 a.m. at the commission offices at 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 or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 25, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Bernie Hettel, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 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 administrative regulation relating to the subject matter of administrative regulation is KRS 230.215.

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 810 KAR 1:026, Section 29. It will require all outriders to wear a safety vest.

(c) The necessity and function of the proposed administrative regulation is as follows: To establish the requirements for outriders.

(d) The benefits expected from administrative regulation are: The wearing of safety vests will help provide shock protection to the upper body of outriders at the tracks.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

October 14, 1997

Kentucky Racing Commission

(1) Regulation Number and Title: **811 KAR 1:085**. Conduct of racing.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 25, 1997, 10 a.m. at the commission offices at 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 or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 25, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Bernie Hettel, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

(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 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 administrative regulation relating to the subject matter of administrative regulation is KRS 230.260(3).

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:085. It will alter restrictions on wagering by racing participants.

(c) The necessity and function of the proposed administrative regulation is as follows: To regulate the conduct of racing.

(d) The benefits expected from administrative regulation are: Modernizes regulation to include a wager that did not exist previously.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

October 14, 1997

Kentucky Racing Commission

(1) Regulation Number and Title: **811 KAR 1:220**. Harness racing at county fairs.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 25, 1997, 10 a.m. at the commission offices at 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 or a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 25, 1997, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Bernie Hettel, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511.

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

ADMINISTRATIVE REGISTER - 1025

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

2. "I will not attend the public hearing.

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

(b) Persons who wish to file this request may obtain a request from the 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 administrative regulation relating to the subject matter of administrative regulation is KRS 230.260(3).

(b) The administrative regulation that the Kentucky Racing Commission intends to promulgate will amend 811 KAR 1:220 in its entirety. It will revamp the county fair regulations governing harness racing at the Kentucky county fairs.

(c) The necessity and function of the proposed administrative regulation is as follows: To bring the county fair regulations up to the standards of other states.

(d) The benefits expected from administrative regulation are: It is determined that updating the program will attract more horses and a higher caliber of horses into the program.

(e) The administrative regulation will be implemented as follows: Changes will be applied as soon as administratively permitted.

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

October 15, 1997

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation Number and Title: **815 KAR 30:060**, Certification of underground petroleum storage tank contractors.

(2) The department 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 Friday, November 21, 1997 at 10 a.m., local time, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to November 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: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

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

(b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 224.60-135.

(b) The department intends to amend various area of this administrative regulation to (1) include verification to the State Fire Marshal of an applicant's experience in upgrading a UPST systems; (2) add a new subsection to allow an applicant requesting certification in the limited function of installing cathodic protection to be certified in that function by demonstrating experience in installing six systems and testing on the general knowledge of cathodic protection.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation is necessary to set the minimum requirements for determining technical competency and proficiency of companies who are responsible for the installation of these systems by qualifying individuals. The amendments are necessary to meet the 1998 federal regulation deadline to upgrade tanks which is often less costly than replacing tanks.

(d) The benefits expected from this administrative regulation are: That the public will be better protected by certifying the competency of the contractors.

(e) This administrative regulation will be implemented by State Fire Marshal's Office; Division of Hazardous Materials.

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

Date: September 16, 1997

Department for Social Insurance

Division of Management and Development

(1) **904 KAR 3:025**, Technical requirements. Cabinet for Families and Children, Department for Social Insurance.

(2) Cabinet for Families and Children, Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

ADMINISTRATIVE REGISTER - 1026

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 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 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 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: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (fax).

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the program is KRS 194.050 and Executive Order 96-862, which reorganizes the Cabinet for Human Resources and places the Department for Social Insurance and its programs under the Cabinet for Families and Children.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate is a proposed amendment to administrative regulation, 904 KAR 3:025. The proposed administrative regulation implements the Food Stamp Program technical eligibility requirements that are mandated by PL 104-193 mandates that states implement PL 105-33, §5302, §5306, §5562, and §5563. Also, Section 8(b)1 is amended to lower the age of an individual who is subject to the work requirement of 7 USC 2015(o) from age fifty (50) to age forty-nine (49). This change is the result of a Food and Consumer Service clarification.

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

(d) The benefits expected from administrative regulation are: This administrative regulation will prevent a loss of federal funds by timely implementing the requirements mandated by PL 105-33, §5302, §5306, §5562, and §5563. Further, implementation of the federal mandates will afford new categories of alien immigrants the opportunity of obtaining a nutritious diet by participating in the Food Stamp Program, thereby eliminating a threat to public health.

(e) The administrative regulation will be implemented as follows: This administrative will be administered by the Department for Social Insurance, Division of Field Services. Policy materials will be disseminated to staff through the Field Services Operation Manual.

Department for Social Services Division of Family Services

October 15, 1997

Cabinet for Families and Children

Department for Social Services

Division of Family Services

(1) **905 KAR 1:360**, Private child care levels of care.

(2) The Department for Social Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 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 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 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: 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,

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in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Human Resources' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to rate of reimbursement for child-caring facilities which are consistent with the level of service provided is KRS 199.641(4).

(b) The administrative regulation the Department for Social Services intends to promulgate will amend an existing administrative regulation. This administrative regulation establishes a five level reimbursement system based on the needs of the child and will allow the department the flexibility to adjust rates, as announced at 7.5%, for fiscal accountability and as necessary for the development of a quality of care contracting system. This quality of care contracting system allows providers greater flexibility in designing services for the child and family, facilitates the movement of the child through the service system and provides the ability to deliver services to families and children in the least restrictive and most cost effective manner. The function of this administrative regulation is to establish procedures whereby each child shall be evaluated to assure classification in the appropriate level of care. Additionally the regulation establishes procedures for the "gatekeeper" who is responsible for assigning levels of treatment needed by children, conducting utilization review and monitoring for quality assurance of the placements.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 199.641 provides that the Secretary for the Cabinet for Families and Children shall promulgate administrative regulations to establish the rate of reimbursement for child-caring facilities which are consistent with the level of services provided and allows the development of a continuum of care services model in which the per diem rate paid to the provider remains the same throughout the receipt of services regardless of the levels of the continuum through which the child progresses. The function of this administrative regulation is to establish procedures whereby each child shall be initially and periodically evaluated to assure classification in the appropriate level of care which shall determine both the type of placement and the rate of payment for that child.

(d) The benefits expected from the proposed administrative regulation are: Expected benefits of these regulations are that the language will allow the department the flexibility to adjust rates, as announced at 7.5%, for fiscal accountability and as necessary for the development of a quality of care contracting system. This quality of care contracting system allows providers greater flexibility in designing services for the child and family, facilitates the movement of the child through the service system and provides the ability to deliver services to families and children in the least restrictive and most cost effective manner. Additionally this administrative regulation creates another level of care that will better serve the needs of children in the community and reduce the overall costs to the public as it is estimated that 20% of the referrals could be placed at this new level of care. Another benefit of this administrative regulation is a potential reduction in the length of stay for children in care and the development of outcome measures that result in greater permanency for children.

(e) The administrative regulation will be implemented as follows: The Department for Social Services will implement this administrative regulation.

October 15, 1997

Cabinet for Families and Children

Department for Social Services

(1) **905 KAR 2:150**, Child Day Care Assistance Program.

(2) The Department for Social Services intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for November 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 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to November 26, 1997, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, 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 2:150, Child Day Care Assistance Program is KRS 194.050, 199.892, 199.894, 42 USC 601 et seq., 7 USC 2015(b), 45 CFR 98 and EO 96-862.

(b) The administrative regulation that the Department for Social Services intends to promulgate will replace 905 KAR 2:140, Child day care programs. This administrative regulation shall establish the procedure for determining eligibility for subsidized child care payments, identifies parental rights and responsibilities, state and child care provider requirements, establishes maximum child care payment rates, a parental child care fee schedule and procedures for unregulated providers to become enrolled and meet the minimum health and safety standards requirements pursuant to 45 CFR 98.16.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: KRS 194.050 and 199.8994 authorize the Cabinet for Families and Children to adopt regulations as are necessary to implement programs mandated by federal law, or to qualify for

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receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs and to provide uniform administration of child day care funds. This administrative regulation shall establish the procedure for determining eligibility for subsidized child care payments, identifies parental rights and responsibilities, state and child care provider requirements, establishes maximum child care payment rates, a parental child care fee schedule and procedures for unregulated providers to become enrolled and meet the minimum health and safety standards requirements pursuant to 45 CFR 98.16.

(d) The benefits expected from this administrative regulation are: The cabinet or designee will operate one program for the provision of child care services rather than six separate programs providing eligible families with simplified access throughout the Commonwealth. The cabinet or designee shall comply with provisions of the Social Services Block Grant, Food Stamp Employment and Training Program and the Child Care Development Block Grant as required or amended by 42 USC 601 et seq. as follows:

Eligible Families: Child under the age of 13, or under the age of 18 if physically or mentally incapable of caring for himself or the child is under court supervision. Family needs child care for child protection, to work, or to participate in K-TAP. Family income at or below 133% of poverty unless the child is referred by DSS for child protection, the family is receiving benefits as governed by the Food Stamp Employment and Training Program, or the family's K-TAP case has been discontinued and needs child care assistance to accept or retain employment. Families whose K-TAP case has been discontinued and need child care assistance to accept or retain employment shall be eligible for 12 consecutive months from the date of discontinuance. All income of adult family members earned and unearned, with the exception of one time payments is counted.

Eligible Providers: Eligible providers include licensed, certified, and enrolled providers as well as relatives (grandparent, great grandparent, aunt, uncle and sibling, who resides in a separate residence). Persons living in the household are not eligible for child care payments, for a child living in the home.

Payment Rates: The proposed payment rates vary by type of provider, age of the child, needs of the child and geographic area.

Child Care Maximum Payment Rates

West/East Region (Districts #1-5, 8-13)

	License		Certified		Enrolled/Relative	
	FT	PT	FT	PT	FT	PT
Infant/Toddler	13	8	12	7	9	5
Preschool	13	8	13	8	9	5
School Age	13	8	12	7	9	5

Central Ky Region (Districts # 6, 7, 14, and 15)

	License		Certified		Enrolled/Relative	
	FT	PT	FT	PT	FT	PT
Infant/Toddler	16	10	15	9	12	7
Preschool	15	9	15	9	11	6
School Age	14	8	15	9	10	5

Licensed programs accredited by NAEYC (National Association for the Education of Young Children) and certified programs accredited by NAFDC (National Association for Family Day Care) may be paid an additional \$1 per day, if the general public is charged at least that amount. Licensed, certified or enrolled providers providing care for special needs children or providing nontraditional care may be paid an additional \$1 per day, if the general public is charged at least that amount. Weekly maximums have been dropped, full-time and part-time have been defined as more than 5 hours per day or less than 5 hours per day with part-day rates being capped at approximately 60% of the full-time rate.

Payment Policies: In order to serve more families, the following payment policies have been proposed: Payments shall be made on an enrollment basis, with the cabinet or designee enrolling children only for the amount of child care needed. Up to 5 excused absences per month shall be allowed. Supervisors may authorize payments beyond the 5 days for special circumstances. Payments shall only be made for part-time arrangements for those needing only part-time care unless part-time is not available. No payment for private kindergarten unless public kindergarten hours does not permit the parent to work or participate in K-TAP. Families are not eligible for subsidies when alternative programs are available and accessible. e.g. Head Start, state preschool, PACE.

Sliding Copayment Scale: No copays for families below 40% of poverty.

The fees for families at upper income levels approach the maximum payment rate for 1 child. Families will gradually increase their payments rather than experiencing a large increase when their eligibility for subsidy ends.

(e) The administrative regulation will be implemented as follows: The Department for Social Services and designee under contract will implement this administrative regulation.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY
401 KAR 5:008E

KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to adopt administrative regulations as are reasonably necessary to issue, continue in effect, remove, modify, suspend, or deny permits for the discharges of waters into the Commonwealth and permits for the installation, alteration, expansion, and operation of any sewage system. An ordinary administrative regulation is not sufficient and an emergency exists of an imminent threat to the public health and welfare because changes in the pork industry have brought a renewed interest in pork production in Kentucky that have created an urgent need to review and update Kentucky's current environmental permitting program. This emergency administrative regulation will implement new permitting standards for the construction and operation of swine feeding operations, thus protecting the citizens of the Commonwealth. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor
JAMES E. BICKFORD, Secretary

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

401 KAR 5:008E. Swine feeding operations.

RELATES TO: KRS 224.10, 224.70, 224.73

STATUTORY AUTHORITY: KRS 224.10-100, 224.70-100, 224.70-110

EFFECTIVE: September 18, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. This administrative regulation provides administrative procedures for the issuance of permits for swine feeding operations and for the operation of these facilities authorized under KRS Chapter 224 and establishes conditions for the construction and operation of swine feeding operations. There is no federal regulation relating to the subject matter of this administrative regulation, therefore this administrative regulation is not more stringent than federal requirements.

Section 1. Definitions. Terms used in this administrative regulation that are not defined in this section shall have the meaning given them in KRS 224.01-100 or 401 KAR 5:001, unless the content clearly indicates otherwise.

(1) "Agricultural wastes handling system" means a no-discharge structure or equipment that conveys, stores, or treats manure from an animal feeding operation prior to land application, but does not include a swine feeding operation.

(2) "Cation exchange capacity" or "CEC" means the measure of the ability of a soil to retain cations in a form available for uptake by plants. CEC is expressed in milliequivalents per 100 grams of soil.

(3) "CEC" means cation exchange capacity.

(4) "Concentrated animal feeding operation" shall have the

meaning given it in 401 KAR 5:001.

(5) "Direct discharge" means a discharge into the waters of the Commonwealth if the discharge is not included under the definition of indirect discharge, but does not include a discharge of animal waste onto land by land application if the discharge does not reach the waters of the Commonwealth.

(6) "Draft permit" shall have the meaning given it in 401 KAR 5:001.

(7) "Facility" shall have the meaning given it in 401 KAR 5:001.

(8) "Filter strip" means a strip or area of vegetation for removing sediment, organic material, and other pollutants from runoff and waste water.

(9) "Injection" means a type of land application in which the waste is placed directly beneath the land surface.

(10) "Karst feature" means a naturally occurring feature formed by the dissolution of carbonate rock including but not limited to a sinkhole, swallet, spring, sinking stream, or cave.

(11) "Land application" means the uniform placement of animal waste on or in the soil by spraying or spreading on the surface, incorporation into the soil, or injection beneath the surface.

(12) "Minimum design volume" means the minimum volume of swine waste necessary to maintain an anaerobic condition in the lagoon.

(13) "Natural Resource Conservation Service" or "NRCS" means the organization created pursuant to 7 USC 6962 in the United States Department of Agriculture. The NRCS was formerly called the Soil Conservation Service.

(14) "NRCS" means the Natural Resource Conservation Service.

(15) "Nutrient management plan" means the plan for an individual farm developed for the purpose of recycling nutrients from animal waste onto cropland to supply a crop's nutrient needs while preventing environmental damage from excess nutrient application.

(16) "Permit" means a swine waste management permit.

(17) "Public water" shall have the meaning given it in 401 KAR 8:010.

(18) "Residual solids" means the accumulated solid waste in the lower portion of a lagoon that contains greater than two and zero-tenths (2.0) percent total solids by dry weight analysis.

(19) "Supernatant" means the water that accumulates in the upper portion of a lagoon and contains no greater than two and zero-tenths (2.0) percent total solids by dry weight analysis.

(20) "Swine feeding operation" means an operation that:

- (a) Confines 1,000 or more swine units at a given time; and
- (b) Is not a concentrated animal feeding operation.

(21) "Swine units" means the units of measurement used to determine the applicability of this administrative regulation, calculated according to the following equation:

$$\text{Swine units} = (0.1 \times N_n) + (0.4 \times N_f) + (0.65 \times N_{gs}) + (1.0 \times N_{sl}) + (0.83 \times N_b) + (3.7 \times N_s)$$

Where:

N_n = Number of nursery swine;

N_f = Number of finishing swine;

N_{gs} = Number of gestating sows;

N_{sl} = Number of sows with litters;

N_b = Number of boars; and

N_s = Number of sows, farrow to finish.

(22) "Swine waste" means the waste from a swine feeding operation, including manure, bedding, soil, wasted water and feed, and flushing water from swine confinement.

(23) "Swine waste lagoon" means a structure constructed pursuant to this administrative regulation for the purpose of collecting, storing, and treating the waste from a swine feeding operation.

(24) "Swine waste management permit" or "SWMP" means the permit issued pursuant to this administrative regulation that authorizes the construction or operation of one (1) or more swine waste lagoons and all related appurtenances and the implementation of a nutrient management plan at the swine feeding operation.

(25) "SWMP" means a swine waste management permit.

(26) "Twenty-five (25) year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour rainfall event with a probable recurrence interval of once in twenty-five (25) years, as determined by "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971, Revised July 1, 1979", incorporated by reference in Section 20 of this administrative regulation.

(27) "100-year, twenty-four (24) hour rainfall event" means a twenty-four (24) hour rainfall event with a probable recurrence interval of once in 100 years, as determined by "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971, Revised July 1, 1979", incorporated by reference in Section 20 of this administrative regulation.

Section 2. Applicability. (1) This administrative regulation shall apply to the owner and operator of:

(a) A new swine feeding operation;

(b) An existing agricultural wastes handling system if, after the effective date of this administrative regulation, the agricultural wastes handling system increases the number of swine units at the system to 1,000 or more swine units; and

(c) An existing swine feeding operation, permitted or unpermitted, that increases the number of swine units at the operation by more than ten (10) percent after the effective date of this administrative regulation.

(2) This administrative regulation shall not apply to the owner and operator of an existing swine feeding operation that does not increase the number of swine units by more than ten (10) percent if:

(a) The swine feeding operation was permitted before July 25, 1997, for the construction or operation of an agricultural waste handling system pursuant to 401 KAR 5:005 for more than 1,000 swine units;

(b) The swine feeding operation submitted to the cabinet before July 25, 1997, for 1,000 or more swine units, either the Kentucky No Discharge Operational Permit Application for Agricultural Wastes Handling Systems, Short Form B, or the Site Survey Request, both required in 401 KAR 5:005, Section 2(1)(e); or

(c) The swine feeding operation demonstrates by substantial evidence that:

1. On July 25, 1997, it had an operating lagoon in place for the treatment of swine waste, otherwise conformed to the requirements of 401 KAR Chapter 5, and would have received a construction or operational permit for the swine feeding operation if it had applied for the permit;

2. On July 25, 1997, it had 1,000 or more swine units on the immediate property;

3. On July 25, 1997, it was engaged in the current daily operation of a swine feeding operation; and

4. The owner and operator:

a. Before January 1, 1998, notifies the cabinet in writing that he intends to comply with 401 KAR 5:005. The notification shall include the number of swine units that are confined at the swine feeding operation; and

b. Before July 25, 1999, applies for and receives a KNDOP pursuant to 401 KAR 5:005. This provision shall not exempt the owner or operator of an unpermitted facility from complying with 401 KAR 5:005 before that date.

Section 3. Swine Waste Management Permit. (1) No person shall

construct, modify, or operate a swine feeding operation without having received a permit to do so from the cabinet. The permitted area shall include:

(a) The area where the swine are confined;

(b) The swine waste lagoon; and

(c) The land application areas.

(2) The owner and operator of a swine feeding operation shall obtain a swine waste management permit (SWMP) from the cabinet before:

(a) Beginning construction of a swine waste lagoon or its related appurtenances;

(b) Beginning operation of a swine waste lagoon; or

(c) Beginning land application of the swine waste.

(3) The SWMP shall be effective immediately upon issuance by the cabinet unless otherwise conditioned.

(4) The owner and operator of a swine feeding operation shall apply for a permit pursuant to this administrative regulation at least 180 days before the operation commences construction, or for a permit renewal, 180 days before the permit expires. The owner and operator shall not begin construction on the operation until he receives the permit from the cabinet.

(5) The SWMP shall be valid for the time specified on the permit, not to exceed five (5) years.

(6) Failure to obtain a SWMP shall not relieve the owner or operator of a swine feeding operation subject to this administrative regulation from complying with the applicable requirements of this administrative regulation.

(7) The owner and operator of the swine feeding operation shall submit to the cabinet a complete application for a SWMP. A complete application shall consist of the permit fee required by Section 6 of this administrative regulation and two (2) copies of the following:

(a) A completed permit application form, "Kentucky Swine Waste Management Permit for Swine Feeding Operations Permit Application, DEP-7033-SFO (9/97)", incorporated by reference in Section 20 of this administrative regulation. The application shall include general facility information regarding its location, and owner and operator information;

(b) A set of detailed plans and specifications describing the design of the proposed swine waste lagoon, that has been prepared, stamped, signed, and dated by a professional engineer or the NRCS;

(c) Documentation of public notification as required in Section 5(1) of this administrative regulation;

(d) A USGS seven and one-half (7½) minute topographic quadrangle map with the project location clearly marked;

(e) A site map (1" = 400' scale) including a north arrow and legend, showing the swine waste lagoon location, roads, setback features in Section 7 of this administrative regulation and their setbacks, easements if applicable, locations of buildings on the site, field number and acres of land application areas, filter strips, and existing and proposed monitoring wells;

(f) A monitoring plan as required by Section 9 of this administrative regulation, designed to monitor the integrity of the swine waste lagoon;

(g) A site-specific nutrient management plan as required by Section 11 of this administrative regulation;

(h) A certified copy of a legal deed, easement, or contract if required by Sections 7 or 11 of this administrative regulation;

(i) A geotechnical demonstration that the lagoon design complies with the siting requirements of Section 7 of this administrative regulation; and

(j) The results of the baseline soil analyses required by Section 12 of this administrative regulation for each field that will receive the swine waste.

(k) The cabinet may request additional information concerning the swine feeding operation necessary to determine the ability of the swine feeding operation to comply with this administrative regulation, maintain water quality standards, and protect the waters of the

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Commonwealth.

(l) If the applicant becomes aware that he failed to submit a relevant fact in a permit application, or submitted to the cabinet incorrect information in a permit application or in a report, he shall promptly submit to the cabinet these facts or information.

(8) Permit modification.

(a) The permittee shall submit to the cabinet a complete application for modifying a SWMP and shall receive prior approval from the cabinet to make changes to the swine feeding operation if:

1. The swine waste lagoon design changes during construction or if an existing permitted swine waste lagoon is to be modified unless the repairs or changes are made pursuant to Section 10 of this administrative regulation;

2. The permittee intends to change the swine feeding operation, including a change in the maximum design capacity of the swine waste lagoon; or

3. There is a change in the land application area.

(b) A complete application for modifying a SWMP shall consist of the permit modification fee required by Section 6 of this administrative regulation and two (2) copies of:

1. An updated application form cited in subsection (7)(a) of this section;

2. A set of updated attachments that show the modifications to the original application;

3. The public notice required by Section 5(1) of this administrative regulation; and

4. For a new land application area:

a. The results of the baseline soil analyses required in Section 12 of this administrative regulation; and

b. The legal documents required by Section 7 or 11 of this administrative regulation.

(9) Permit renewal. For renewals of the SWMP, a complete application shall consist of the permit renewal fee required by Section 6 of this administrative regulation and two (2) copies of:

(a) A set of updated attachments that show the modifications to the original application, including the updated application form cited in subsection (7)(a) of this section;

(b) The most recent five (5) years of the sampling and analytical data and the land application rates, as required by Section 13 of this administrative regulation; and

(c) The public notice required by Section 5(1) of this administrative regulation.

(10) Permit transfer. The permit is not transferable to a person except after notice to the cabinet. The notice of transfer shall be submitted on the "Change in Ownership Certification for Swine Waste Management Permit", incorporated by reference in Section 20 of this administrative regulation. The cabinet may require modification or reissuance of the permit to change the name of the permittee and incorporate other requirements as required by KRS Chapter 224.

(11) Signatures. The permit application shall be signed and certified by the owner and operator of the swine feeding operation according to the certification in Section 17 of this administrative regulation.

Section 4. Related Agricultural Wastes Handling Systems. (1) If two (2) or more agricultural wastes handling systems are related, the number of swine units used to determine the applicability of this administrative regulation shall be the sum of the swine units at all related facilities.

(2) Facilities are related if:

(a) They share common swine waste lagoons;

(b) They share common land application areas; or

(c) They are physically related and under common ownership and control.

1. Physically related. Facilities are physically related if a portion of one (1) facility is located within one (1) mile of a portion of another.

2. Common ownership and control.

a. Facilities are under common ownership and control if:

(i) They are owned by the same person or are subsidiaries of the same corporation;

(ii) The same person has the right to direct how operations will be conducted on the site; or

(iii) More than fifty (50) percent of each facility is owned by the same person or corporation.

b. Facilities are presumed to be under common ownership and control if any of the following relationships exists. This presumption may be rebutted if the applicant demonstrates that there is no direct or indirect business relationship among the facilities.

(i) Facilities are under the same ownership or control of members of the same family;

(ii) Facilities have common partners, investors, officers, or directors;

(iii) Facilities have the same landowner, tenant, or operator; or

(iv) Facilities have common owners owning ten (10) to fifty (50) percent of each facility.

Section 5. Public Notification Requirements. (1) Applicant notification.

(a) At least fifteen (15) days before filing with the cabinet in Frankfort an application for a new SWMP, or a renewal or modification of a SWMP, the applicant shall provide the following notification:

1. The applicant shall cause to be published a legal notice of its intent to apply for a permit. The notice shall be published pursuant to KRS Chapter 424.

2. The applicant shall also notify landowners of property adjacent to or directly across the road from, the proposed swine feeding operation and the land application areas. The notice shall be sent by certified mail to the address on the record at the property valuation administrator's office in the county in which the land is located.

(b) The notification shall contain the following information:

1. Name and address of the owner and operator and physical location of the operation, if different than the mailing address;

2. Number of swine that will be confined at the swine feeding operation; and

3. Address where a person may submit comments on the application to the applicant.

(c) A copy of the notice, proof of its publication, and proof of the mailings shall be included with the permit application.

(2) Cabinet notification. Before the issuance of a final permit action, the cabinet shall, pursuant to KRS Chapter 424, publish a notice of its intent to issue or deny the permit. A copy of the draft permit shall be available for review in the appropriate regional office.

(3) A person shall have up to ten (10) days from the date of the publication of the cabinet's intended action to submit comments about the permit to the cabinet. A person who submits comments shall include the commentator's name and address. The cabinet shall notify each person who submitted comments to the cabinet on the draft permit of the cabinet's final action on the permit.

Section 6. Fees. (1) The applicant shall submit a permit fee as specified in subsection (4) of this section with the application.

(2) If the cabinet denies a permit under this administrative regulation, the fee shall be retained by the cabinet.

(3) The applicant shall make the check or money order payable to the Kentucky State Treasurer.

(4) The fee for a permit pursuant to this administrative regulation shall be as follows:

Permit Type and Action	Permit Fee
SWMP	\$1,500
Permit Renewal	\$1,000
Modification	\$500

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Section 7. Siting Requirements. (1) Siting restrictions.

(a) The barn, lagoon, or land application area shall not be located in:

1. A state or national park, state or national forest, or nature preserve; or
2. A wellhead protection area.
- (b) The barn or lagoon shall not be located in:
 1. A 100-year floodplain; or
 2. A jurisdictional wetland.
- (c) Swine waste shall not be land applied on:
 1. Land with a slope greater than twelve (12) percent; or
 2. Land that has less than eighteen (18) inches of soil to bedrock.
- (d) A swine waste lagoon shall be located so that there is at least:
 1. Three (3) feet of soil between the bottom of the lagoon liner and bedrock. This distance may be reduced with the use of an approved synthetic liner; and

2. Five (5) feet separation distance between the bottom of the lagoon liner and the zone of saturation. This distance may be reduced with the use of an approved synthetic liner.

(2) Setbacks.

(a) Each swine feeding operation shall be designed and constructed so that the barns and swine waste lagoons are located at least the minimum distance in paragraph (c) of this subsection from each existing setback feature; and

(b) Each swine feeding operation shall be operated so that the land application of the swine waste is at least the minimum distance in paragraph (c) of this subsection from each existing setback feature, for the applicable method of land application.

(c) Minimum distance. Distance shall be the shortest distance measured from the nearest edge of the barn, lagoon, or land application area to the nearest edge of the setback feature. An existing setback feature shall be existing as of the date that the applicant notifies the public pursuant to Section 5(1) of this administrative regulation.

Existing Setback Feature	Barn and Lagoon	Land Application Area	
		Land Application Method Injection	Other Method
Dwelling not owned by applicant, church, school and school yard, business, other structure to which the general public has access, park	1,500 feet	500 feet	750 feet
Incorporated city limit	3,000 feet	1,000 feet	1,500 feet
Lake, river, blue-line stream, karst feature	150 feet	75 feet	150 feet
Water well not owned by applicant	300 feet	150 feet	150 feet
Property line	150 feet	50 feet	100 feet
Downstream* water listed in 401 KAR 5:030 as other than use protected, outstanding resource water**	1 mile	750 feet	1,500 feet
Downstream* public water supply surface water intake	5 miles	1 mile	1 mile

*Measured along gradient

**Designated outstanding resource waters are listed in 401 KAR 5:026

(d) The cabinet may grant a variance from the setbacks in paragraph (c) of this subsection for a dwelling not owned by the applicant, church, or property line if the applicant obtains from the owner of the property in question an easement, properly filed of record, granting the applicant a permanent exemption from the distance requirements in this administrative regulation. A certified copy of this easement shall be submitted to the cabinet with the permit application.

Section 8. Requirements for a Swine Waste Lagoon. Each swine feeding operation shall have at least one (1) anaerobic lagoon, sized in accordance with this administrative regulation. No swine feeding operation shall have as its only means of treatment an aerobic lagoon, holding pond, or deep pit.

(1) Design and construction. Each swine waste lagoon shall be designed and constructed to meet the following:

(a) The lagoon shall have a maximum single-structure surface area of five (5) acres;

(b) The swine waste lagoon shall be able to hold a maximum design volume that is the sum of the volumes representing:

1. At least one (1) year's production of residual solids;
2. The minimum design volume;
3. At least 120 days of swine waste production;
4. Twelve (12) inches of excess precipitation; and
5. Precipitation from one (1) twenty-five (25) year, twenty-four (24) hour rainfall event;

(c) The swine waste lagoon shall have an emergency spillway above the maximum design volume, with one (1) foot of freeboard

above the spillway. The spillway shall have a slope with a vertical to horizontal ratio of no steeper than one to three (1:3) and shall be:

1. Designed to carry the flow from one (1) 100-year, twenty-four (24) hour storm event; and

2. At least ten (10) feet wide at the crest;

(d) The swine waste lagoon shall have a clearly marked staff gauge that shows the elevations of:

1. The minimum and maximum design volumes; and

2. The crest of the spillway.

(e) Each swine waste lagoon shall be designed by a professional engineer or the NRCS;

(f) Each swine waste lagoon shall have either:

1. A compacted soil liner of at least eighteen (18) inches, deposited and compacted in at least three (3) six (6) inch layers, with a maximum permeability of 1×10^{-7} cm/sec; or

2. A synthetic liner that provides at least equivalent protection;

(g) Swine waste shall not be placed directly in or be allowed to come in contact with groundwater;

(h) The inside and outside slopes shall have a vertical to horizontal ratio of no steeper than one to three (1:3), unless the cabinet approves a steeper slope based on a geotechnical investigation;

(i) The discharge from the inlet pipes to the swine waste lagoon shall not erode the berm or the sides of the swine waste lagoon;

(j) The swine waste lagoon shall have a continuous berm of at least two (2) feet above grade to prevent surface water from entering the lagoon; and

(k) The berm shall have a vegetative cover.

(2) The swine waste lagoon shall also be permitted pursuant to KRS 151.250 before construction begins if:

(a) The lagoon is more than twenty-five (25) feet in height, measured from the downstream toe of the dam to the crest of the dam;

(b) The lagoon impounds more than fifty (50) acre-feet at the crest of the dam; or

(c) The lagoon is classified as a high-hazard water-impounding structure pursuant to 401 KAR Chapter 4.

(3) Operation and maintenance. The permittee shall follow these procedures in operating and maintaining the swine waste lagoon.

(a) After construction of the lagoon and before beginning lagoon operation, the as-built construction of the lagoon shall be certified by a professional engineer or the NRCS as meeting the requirements of this administrative regulation and shall be submitted to the cabinet pursuant to Section 17 of this administrative regulation;

(b) 1. Before introducing swine waste, the lagoon shall be filled with water to at least one-half ($\frac{1}{2}$) of the minimum design volume; and

2. After the initial filling of the lagoon, the lagoon level shall be maintained above the minimum design volume by adding water;

(c) Only swine waste and water required by paragraph (b) of this subsection shall be discharged or disposed of in the swine waste lagoon;

(d) No other waste shall be disposed of in the swine waste lagoon, including dead animals;

(e) The contents of the lagoon shall not be agitated, except during the removal of residual solids; and

(f) The swine waste lagoon shall be inspected periodically, the vegetative cover shall be kept mowed, and the embankment and berm shall be kept free of shrubs, trees, holes, and animal burrows.

(4) Closure. A lagoon that was constructed or operated pursuant to this administrative regulation but that is no longer permitted for swine waste storage and treatment shall be closed according to this subsection.

(a) The owner and operator shall remove and land apply the entire contents of the lagoon in accordance with the operation's nutrient management plan;

(b) The empty lagoon shall be backfilled, graded, and revegetated unless the cabinet approves an alternative closure to keep the emptied lagoon as a permanent structure; and

(c) The owner and operator shall stabilize the site by using standard erosion control practices, unless the cabinet approves an alternative closure that complies with the environmental standards in Section 14 of this administrative regulation.

Section 9. Swine Waste Lagoon Performance Monitoring. The applicant shall develop a swine waste lagoon liner performance monitoring plan for detection of problems with the swine waste lagoon liner and to provide the opportunity to repair problems with the swine waste lagoon liner before a chronic failure of the lagoon develops or groundwater contamination occurs. The monitoring plan shall address the following items.

(1) The permittee shall conduct groundwater monitoring to measure the performance of the lagoon liner for each lagoon. A minimum of one (1) up-gradient and two (2) down-gradient groundwater monitoring wells shall be constructed for each lagoon. The cabinet may require additional groundwater monitoring wells, based on geological considerations, and the lagoon size, shape, and structure to reasonably ensure that a leak from the liner will be detected.

(2) Location of groundwater monitoring wells.

(a) Each up-gradient monitoring well shall be constructed as close as possible to the lagoon in an area that is not hydrologically affected by the lagoon, land application activities, and animal feeding and storage activities that may contribute monitored constituents to the up-gradient well.

(b) Each down-gradient monitoring well shall be constructed in an

area close to and hydrologically down-gradient of the lagoon in a location that maximizes the ability of the monitoring well to detect a lagoon liner failure.

(3) Groundwater monitoring well construction requirements.

(a) A groundwater monitoring well shall be constructed in accordance with 401 KAR 6:310 and shall:

1. Have a minimum diameter of two (2) inches;

2. Prevent surface contaminants from entering groundwater by way of the monitoring well;

3. Prevent unauthorized access to the monitoring well;

4. Be protected from damage occurring from normal activities at the swine feeding operation; and

5.a. Extend into the uppermost unconfined zone of saturation below the lowest point of the lagoon liner or be constructed to the soil-bedrock interface, if the monitoring well is able to capture groundwater at that depth.

b. If groundwater is at a depth or of a condition such that monitoring the unsaturated zone would not reflect a contribution from the swine waste lagoon, the applicant may submit an alternative monitoring plan to demonstrate the performance of the lagoon liner.

(4) Analysis parameters. The permittee shall analyze each groundwater sample for the following parameters: chlorides, nitrate nitrogen, total phosphorus, and fecal coliform.

(5) Monitoring well sampling.

(a) Each groundwater sample shall be collected and analyzed according to the procedures in Section 13 of this administrative regulation.

(b) Monitoring wells shall be purged three (3) to five (5) well volumes prior to sampling.

(c) Each monitoring well shall be sampled semi-annually after beginning lagoon operation. Samples from each monitoring well shall be analyzed for the parameters listed in subsection (4) of this section.

(6) Reporting and record keeping. Groundwater sampling results shall be recorded on the form "Groundwater Sample Analysis for Swine Feeding Operations", incorporated by reference in Section 20 of this administrative regulation and shall be submitted to the cabinet according to the procedures in Section 13 of this administrative regulation.

Section 10. Lagoon Liner Failure Response. (1) If a down-gradient monitoring well sample analysis result exceeds three (3) times the value of the up-gradient monitoring well sample analytical result and for nitrate nitrogen exceeds ten (10) mg/l or for chlorides exceeds 250 mg/l, then the permittee shall develop a plan to repair the swine waste lagoon or to determine the source of contamination.

(2) The permittee shall submit the plan to the cabinet for review and approval within forty-five (45) days of receiving the sampling results that exceed the value in subsection (1) of this section. The plan shall include a timetable for investigating the cause of the exceedances that may include additional monitoring to demonstrate that the lagoon liner is performing correctly or if the lagoon liner is shown to be failing, then for correcting the lagoon liner.

(3) The cabinet shall review the plan and the permittee shall make changes in the plan to conform with the cabinet's comments in accordance with this administrative regulation.

(4) If the cabinet approves a plan to repair the lagoon, the repairs to the liner or other corrections identified in the approved plan shall be completed no later than 120 days after the cabinet's approval of the plan or sooner if the failure is imminent.

(5) Groundwater contamination that occurs as a result of a discharge from the lagoon shall be addressed and corrected so that groundwater contaminant levels do not exceed ten (10) mg/l for nitrate nitrogen or 250 mg/l for chlorides, or ambient background groundwater quality conditions at the property line of the swine feeding operation.

(6) Before restarting lagoon operation, the permittee shall have the repairs certified by a professional engineer or the NRCS that the

repairs have been made in accordance with the approved plan and shall notify the cabinet that the repairs have been made and so certified.

(7) After restarting the lagoon operation following the procedures specified in Section 8 of this administrative regulation or following the procedures in the approved plan, the permittee shall return to the original sampling frequency required in Section 9 of this administrative regulation or the frequency specified in the approved plan.

Section 11. Land Application. (1) The permittee shall dispose of the swine waste in the swine waste lagoon by land application, unless an alternative practice is approved by the cabinet pursuant to Section 15 of this administrative regulation. The permittee shall apply waste only on areas that are included in the SWMP.

(2) Nutrient management plan.

(a) Each swine feeding operation shall develop a nutrient management plan that describes how the swine waste generated by the swine feeding operation will be used for the benefit of the surrounding land, and how and where the swine waste will be land applied.

(b) The nutrient management plan shall be developed with the assistance of an agronomic professional or the NRCS.

(c) The nutrient management plan shall contain the following information:

1. The proposed swine waste land application rate per acre, based on crop nitrogen requirements, method of application, expected quantity of nitrogen in the swine waste, residual nitrogen from previous waste application, and other sources of nitrogen applied as fertilizer;

2. Total number of acres needed for land application including the:

a. Number of acres needed to land apply the swine waste based on the land application rate per acre in subparagraph 1 of this paragraph, including the acreage necessary to comply with subsection (3)(d) of this section; and

b. Number of acres needed to comply with the siting restrictions for land application in Section 7 of this administrative regulation;

3. A demonstration that the applicant has adequate land available to comply with the land application requirements of subparagraph 2 of this paragraph. The demonstration shall consist of a certified copy, duly filed of record, of at least one (1) of the following that demonstrate legal right to apply waste to the proposed land application area or legal right to the variance on the setback allowed by Section 7 of this administrative regulation:

a. The deed to the property;

b. The lease for the property of at least ten (10) years' duration, evidencing the right to use another's property for land application; or

c. An easement evidencing the right to use another's property for land application or legal right to the variance in the setback allowed by Section 7 of this administrative regulation; and

4. A swine waste lagoon management plan that describes:

a. The frequency of the supernatant removal;

b. The frequency of residual solids removal;

c. The type of equipment that will be used for land application; and

d. The proposed odor control practices;

(d) The nutrient management plan shall be submitted with the permit application for the cabinet's approval. It shall be updated annually and be maintained on-site. The cabinet shall review the initial plan and the applicant shall make changes to conform with the cabinet's comments, in accordance with this administrative regulation.

(3) Land application management.

(a) Before every land application event, the permittee shall sample the swine waste to be applied. The sample shall be collected and analyzed for the parameters listed in Section 12(2) of this administrative regulation.

(b) Supernatant shall be land applied using irrigation, surface

spreading, or injection techniques. Residual solids shall be land applied using only injection.

(c) Swine waste shall not be land applied:

1. On frozen or saturated soil or during a precipitation event;

2. In excess of the amount needed to provide the nitrogen requirement of the crop being grown; or

3. At a rate that exceeds the soil's infiltration rate.

(d) Swine waste shall be land applied on the same field only three (3) out of every four (4) years.

(e) Soil pH shall be maintained at a range from six and zero-tenths (6.0) to eight and zero-tenths (8.0).

(f) Each field that receives swine waste shall have a filter strip designed, installed, and maintained on the lower side in accordance with "Natural Resources Conservation Service, Conservation Practice Standard, Filter Strip (ACRE), Code 393, NRCS-KY-April 1997", incorporated by reference in Section 20 of this administrative regulation. This strip may be included as a part of the setback area.

Section 12. Swine Waste Lagoon and Land Application Sampling Analysis and Recordkeeping. The applicant shall conduct background and annual land application performance soil analysis and annual swine waste lagoon analysis specified in this section and maintain records of those analysis results according to the procedures specified in this section and Section 13 of this administrative regulation.

(1) Soil sample analysis.

(a) Background sample analysis. Before the submittal of a permit application or permit modification and to establish the background conditions of the soil, the applicant shall conduct a baseline soil sample analysis for each field. The applicant shall analyze each soil sample for available phosphorus, available potassium, pH, and CEC.

(b) Annual sample analysis. The permittee shall perform an annual soil analysis on a composite sample of one (1) sample from each field that will receive swine waste that year. The permittee shall analyze each soil sample for available phosphorus, available potassium, soil pH, buffer pH, and CEC.

(2) Swine waste analyses. The contents of the swine waste lagoon shall be analyzed before every land application event for the following parameters:

(a) Nitrogen, including total kjeldahl nitrogen, nitrate nitrogen, and ammonia nitrogen;

(b) Total phosphorus;

(c) Total potassium;

(d) pH;

(e) Chloride; and

(f) Total solids.

(3) Each swine feeding operation shall maintain records of all swine waste that is land applied. The records shall be entered on the form "Swine Waste Application Log", incorporated by reference in Section 20 of this administrative regulation. Copies of the records shall be submitted with the permit renewal application. The records shall contain the following information:

(a) Soil and waste analytical results required in subsections (1) and (2) of this section; and

(b) For each land application event:

1. Field number and acreage;

2. Date applied;

3. Crop;

4. Quantity applied;

5. Method of application;

6. Weather conditions;

7. Type of swine waste applied; and

8. Percent of total solids of swine waste applied.

Section 13. General Monitoring, Analysis, and Reporting Requirements. (1) Reports. Groundwater monitoring, soil sampling, and swine waste analytical results shall be maintained by the swine feeding

operation on-site. The forms "Groundwater Sample Analysis for Swine Feeding Operations" and "Swine Waste Management Log", incorporated by reference in Section 20 of this administrative regulation, shall be used to record the data. A minimum of ten (10) years of data shall be maintained. These data shall be made available to the cabinet upon request. Copies of the analytical and monitoring data for the most recent five (5) years shall be submitted to the cabinet with an application to renew or modify the permit.

(2) Monitoring, analysis, and records.

(a) Sampling shall be conducted and the analysis shall be performed according to the procedures in 40 CFR Part 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants", adopted without change in Section 21 of this administrative regulation, unless other procedures have been specified in the permit.

(b) Samples and measurements shall be representative of the monitored activity.

(c) Monitoring records shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individuals who performed the sampling or measurements;
3. The dates analyses were performed;
4. The laboratories that performed the analyses;
5. The analytical techniques or methods used; and
6. The results of the analyses.

(d) A person who falsifies, tampers with, or knowingly renders inaccurate a monitoring device or method required to be maintained under the permit shall, upon conviction, be subject to penalties under KRS 224.99-010(4).

Section 14. General Environmental Conditions. (1) No permit shall be issued to a swine feeding operation that permits a direct discharge into the waters of the Commonwealth unless that discharge is caused by a rainfall event exceeding a twenty-five (25) year, twenty-four (24) hour rainfall event.

(2) The applicant shall demonstrate to the cabinet that the swine feeding operation will:

(a) Protect those minimum conditions found in 401 KAR 5:031 applicable to all waters of the Commonwealth;

(b) Not cause those waters classified by 401 KAR 5:026 or 5:030 to be of a lesser quality than the criteria applicable to those waters in 401 KAR 5:031 or the requirements of 401 KAR 5:030;

(c) Be in accordance with any of the general or particular swine feeding operation requirements mandated by this administrative regulation.

(d) Not create an environmental or a public health hazard;

(e) Not result in the contamination of public or private drinking water source or supply;

(f) Not result in the destruction of endangered or threatened species or contribute to the taking of a federally endangered or threatened species of plant, fish, or wildlife, or interfere with or cause harm to migratory birds; and

(g) Conform to other handling, treatment, and management and removal requirements deemed necessary by the cabinet to implement this administrative regulation and protect the waters of the Commonwealth.

(3) Dead animals shall be disposed of in accordance with KRS 257.160 and Chapter 263.

Section 15. Variance for Experimental or Alternative Practices. A swine feeding operation may obtain a variance from the requirements of this administrative regulation to use an experimental or alternative practice or technology that deviates from the requirements of this administrative regulation. The variance shall be submitted as a new permit, permit modification, or permit renewal.

(1) The applicant shall submit a request for the variance explaining the alternative or experimental practice or technology and documenting how the practice will be implemented.

(2) The cabinet may request additional technical information. The

cabinet will review the alternative or experimental practice or technology and may request additional review from the most appropriate technical agency to determine if the practice or technology is appropriate.

(3) The variance may be granted if the applicant demonstrates the practice or technology will comply with the requirements of Section 14 of this administrative regulation, will not pollute the waters of the Commonwealth, will not result in additional problems with odors from the operation, and will not cause additional health or environmental problems.

(4) If the alternative or experimental practice or technology fails to provide adequate environmental protections, the cabinet may revoke the variance and require the owner or operator to comply with the provisions of this administrative regulation.

Section 16. Compliance. If the swine feeding operation is not in compliance with the conditions of its permit, the cabinet may:

- (1) Revoke or modify the permit;
- (2) Initiate enforcement action;
- (3) Issue a notice of intent to deny a new permit;
- (4) Issue a new permit under Section 3 of this administrative regulation with appropriate conditions; or
- (5) Take other actions authorized by KRS Chapter 224 and the administrative regulations in 401 KAR Chapter 5.

Section 17. Standard Permit Conditions. The following conditions shall apply to all permits for swine feeding operations:

(1) Duty to comply. The permittee shall comply with all conditions of the permit. A permit noncompliance constitutes a violation of KRS Chapter 224, among which are the following remedies: enforcement action, permit revocation, permit modification, or denial of a permit renewal application. A person who violates a permit condition as set forth in this administrative regulation is subject to penalties under KRS 224.99-010(1) and (4).

(2) Duty to reapply. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee shall apply for and obtain a new permit as required Section 3 of this administrative regulation.

(3) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. The structural stability of a unit or part of the permitted swine feeding operation is the sole responsibility of the permittee. The failure of a structural unit or part of the swine feeding operation shall not relieve the permittee of the responsibility of complying with each term and condition of the permit.

(4) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent a discharge in violation of the permit.

(5) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances that are installed or used by the permittee to achieve compliance with the conditions of the permit.

(6) The filing of a request by the permittee for a permit modification, renewal, or reissuance or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property rights. The permit does not convey a property right of any kind, or an exclusive privilege.

(8) Duty to provide information. The permittee shall furnish to the cabinet, within a reasonable time, any information which the cabinet may request to determine whether cause exists for modifying, reissuing, or revoking the permit, or to determine compliance with the permit. The permittee shall also furnish to the cabinet, upon request, copies of records required to be kept by the permit.

(9) Inspection and entry. The permittee shall allow the cabinet, or an authorized representative, upon the presentation of credentials and

other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated swine feeding operation is located or conducted, or where records pertinent to the permit are or may be kept;

(b) Have access to and copy, at reasonable times, any records that shall be kept under the conditions of the permit;

(c) Inspect at reasonable times a swine feeding operation including monitoring and control equipment, practices, or operations regulated or required under the permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring compliance with this administrative regulation or as otherwise authorized by KRS Chapter 224, any substances or parameters at any location.

(10) After construction of the swine waste lagoon is completed and before beginning lagoon operation, the permittee shall submit the as-built certification required by Section 3 of this administrative regulation to the cabinet. The cabinet shall notify the permittee within ten (10) days of receipt of the certification of any problems associated with the certification or the construction of the lagoon.

(11) Signatures. Each application, report, or other information submitted to the cabinet shall be signed and certified by the owner or operator of the swine feeding operation. A person who knowingly makes a false statement, representation, or certification in a record or other document submitted or required to be maintained under this administrative regulation, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be subject to penalties under KRS 224.99-010(4).

Section 18. Compliance Reporting Requirements. (1) Planned changes. The permittee shall give notice to the cabinet as soon as possible of a planned physical alteration or addition to the permitted swine feeding operation.

(2) Anticipated noncompliance. The permittee shall give advance notice to the appropriate regional office and the Division of Water's Central Office in Frankfort of a planned change in the permitted swine feeding operation which may result in noncompliance with permit requirements.

(3) Lagoon discharge reporting. If there is a direct discharge from the lagoon, a direct discharge during land application to the waters of the Commonwealth, or a discharge through the spillway or over the berm, the permittee shall immediately notify the cabinet at 1-800-928-2380. The permittee shall provide the following information in the notification:

(a) A description and cause of the discharge, including a description of the flow path to the receiving water body;

(b) An estimate of the flow rate and volume discharged;

(c) The period of discharge, including exact dates and times, and if not already corrected, the anticipated time the discharge is expected to continue; and

(d) Steps taken to reduce, eliminate, and prevent recurrence of the discharge, other than from a twenty-five (25) year, twenty-four (24) hour rainfall event.

(4) Noncompliance endangering health and environment. The permittee shall orally report any noncompliance which may endanger health or the environment, within twenty-four (24) hours from the time the permittee becomes aware of the circumstances by calling 1-800-928-2380. This report shall be in addition to and not in lieu of another reporting requirement applicable to the noncompliance. A written submission shall also be provided within seven (7) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The cabinet may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(5) Other noncompliance. The permittee shall report all instances of noncompliance not reported under subsection (4) of this section, with the next permit application.

Section 19. Permit Timetables. This section shall apply to permits issued pursuant to this administrative regulation.

(1) Within thirty (30) calendar days of initial receipt of an application for a SWMP the cabinet shall notify the applicant as to whether the application is administratively complete, or if not complete, of the deficiencies that make the application administratively incomplete. A determination that the application is administratively complete shall not mean that the application is complete in every detail, nor shall it mean that an aspect of the application is technically sufficient or approvable.

(2) If the application is determined to be administratively incomplete, the applicant shall correct identified deficiencies within thirty (30) calendar days of the date of notification. If the applicant does not correct identified deficiencies within the time frame, the cabinet may return the application, and the fee shall be retained by the cabinet.

(3) After the notification that the application is administratively complete, if the cabinet determines that the application is technically deficient, the cabinet shall notify the applicant of deficiencies that make the application technically incomplete or unapprovable. The applicant shall correct the technical deficiencies within thirty (30) calendar days of the notification, or other time as agreed upon by the applicant and cabinet. If the technical deficiencies are not corrected within thirty (30) calendar days or the agreed upon time frame, the cabinet may deny the permit, and the fee shall be retained by the cabinet.

(4) The cabinet shall issue its final decision on a complete permit application within 180 calendar days after receipt of an administratively complete permit application. A complete permit application shall contain all the administrative and technical information required by this administrative regulation.

(5) Timetable exclusions. Time periods which shall not be included in the cabinet's consideration of its decision on a SWMP application shall include:

(a) Time waiting for the applicant to respond to a notice of deficiency;

(b) Time during which an opportunity for public comment period on a draft permit is given; and

(c) Other times as agreed to by the applicant and the cabinet.

Section 20. Documents Incorporated by Reference. The following documents and forms are incorporated by reference. Except as noted, the documents may be obtained from the Division of Water, 14 Reilly Road, Frankfort, Kentucky. The material is available for inspection and copying, subject to copyright laws, at the Division of Water. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays.

(1) Forms.

(a) "Kentucky Swine Waste Management Permit for Swine Feeding Operations Permit Application, DEP 7033-SFO (9/97)", Kentucky Division of Water;

(b) "Change in Ownership Certification for Swine Waste Management Permit, DEP 7033-CO (9/97)", Kentucky Division of Water;

(c) "Swine Waste Application Log, DEP 7033-LOG (9/97)", Kentucky Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water; and

(d) "Groundwater Sample Analysis for Swine Feeding Operations, DEP 7033-GW (9/97)", Kentucky Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division of Water.

(2) "Rainfall Frequency Values for Kentucky, Engineering Memorandum No. 2, April 30, 1971; Revised June 1, 1979"; Commonwealth of Kentucky, Department for Natural Resources and Environmental Protection, Bureau of Natural Resources, Division of

Water Resources.

(3) "Natural Resources Conservation Service, Conservation Practice Standard, Filter Strip (Acre), Code 393, NRCS-KY-April 1997". This document may be obtained from the NRCS, 771 Corporate Drive, Suite 110, Lexington, Kentucky 40503, (606) 224-7350.

Section 21. Adoption Without Change. The following federal regulation is adopted without change: 40 CFR Part 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants", as in effect July 1, 1996.

(1) The federal regulation may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328; and

(2) The federal regulation is available for inspection and copying, subject to the copyright laws, at the Division of Water, 14 Reilly Road, Frankfort, Kentucky. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays.

JAMES E. BICKFORD, Secretary

GLENN A. JO CURRY, General Counsel

APPROVED BY AGENCY: September 18, 1997

FILED WITH LRC: September 18, 1997 at 10 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Jack A. Wilson, Director

(1) Type and number of entities affected: This administrative regulation applies to a new swine feeding operation. A swine feeding operation is an operation that confines more than 1,000 swine units and is not a concentrated animal feeding operation. Existing operations will be allowed to continue under the Kentucky No-Discharge Operational Permit (KNDOP) Program pursuant to 401 KAR 5:005 as long as they do not increase beyond the 1,000 swine unit threshold. This administrative regulation applies to an existing swine feeding operation that confines more than 1,000 swine units and that obtained a permit under the KNDOP program or had applied for the permit before July 25, 1997, if the swine feeding operation expands greater than 10% beyond its current permitted capacity. This administrative regulation applies to an existing agricultural waste handling system that confines less than 1,000 swine units and that obtained a permit under the KNDOP Program before July 25, 1997, if the agricultural waste handling system increases beyond 1,000 swine units. This administrative regulation applies to an existing swine feeding operation that confines more than 1,000 swine units and that failed to obtain a permit under the KNDOP program and failed to apply for the permit before July 25, 1997, unless it notifies the cabinet in writing by January 1, 1998, that it wishes to be governed under the KNDOP Program. In this instance, the swine feeding operation must apply for and receive a permit under the KNDOP Program by July 25, 1999. Once permitted, expansions to this swine feeding operation would be regulated as if the facility had obtained a permit under the KNDOP Program or had applied for the permit before July 25, 1997. The number of new swine feeding operations seeking to locate in Kentucky is unknown. However, some large integrator swine feeding operations have expressed an interest in obtaining a permit to locate in Kentucky. If large integrator swine feeding operations locate in Kentucky and obtain permits, they will require contract growers. Large integrators confine a large number of sows for breeding purposes at a central swine feeding operation ("farrowing"). The sows give birth to an average of 2.3 litters per year with approximately 10 piglets born with each litter. The piglets are housed at swine nursery facilities until they reach a certain weight (approximately 55 pounds) at which time they are transferred to a "finishing" swine feeding operation where they are raised to market weight. Swine finishing operations are commonly "contract growers" for the large integrators. With integrators locating in Kentucky, the need for contract growers will likely be

addressed to some extent by the expansion of some existing operations permitted under the KNDOP Program; however, some new swine feeding operations will likely be established. The cabinet can only estimate the number of existing agricultural waste handling systems currently permitted under the KNDOP Program seeking to expand beyond the 1,000 swine unit threshold. There are presently 123 permitted agricultural waste handling systems with 1,000 or more swine. Of these 123, roughly a third confine greater than 1,000 swine units. Under the existing KNDOP Program, the cabinet permits an agricultural waste handling system based on the total number of animals at the operation, not the number of swine units. Because there is no data collected by the cabinet on the types of swine at each permitted operation, it is not possible to determine the actual number of swine units at these operations. Thus, it is unknown how many currently permitted agricultural waste handling systems could increase above the 1,000 swine unit threshold and be subjected to this administrative regulation. All of the 123 permitted agricultural waste handling systems with 1,000 or more swine are located in the western part of the state (west of Interstate 75). The top four largest swine operations are in Nelson (16,400 swine), Graves (12,000 swine), Allen (11,200 swine), and Butler (11,020 swine) counties, respectively. Most permitted agricultural waste handling systems with 1,000 or more swine are west of Interstate 65. Researchers at the University of Kentucky's Department of Agricultural Economics indicate swine numbers have generally declined in Kentucky since 1982; however, eleven counties in the central portion of the state have seen a 25% increase in the number of hogs produced during this period. Over the same period, there has been a 45% decrease in the number of farms producing hogs in these counties. This suggests that swine production facilities have become larger in terms of the number of swine produced at any given site. If this trend continues, the number of affected entities will continue to rise over time, though the total number of swine-producing operations may actually decrease. The cabinet can only estimate the number of existing agricultural waste handling systems with 1,000 or more swine expected to choose to become regulated under the less stringent requirements of 401 KAR 5:005. According to the Kentucky Pork Producers Association, there are approximately 1,500 swine operations in Kentucky. The KNDOP Program currently lists 350 permittees. Using these estimates, there are roughly 1,150 unpermitted swine operations within the Commonwealth.

(2) Direct and indirect costs or savings on the affected entities: This administrative regulation will require affected entities to comply with siting, permitting, design, operation, and public notification requirements. The cabinet can only estimate the extent to which this regulation will impact the cost of living and employment for new swine feeding operations. First, it is unclear whether this administrative regulation will serve to deter the installation of large swine feeding operations. Operations of this size (an estimated \$2 million - \$5 million investment) are believed to factor in the costs of environmental compliance into their operations. Furthermore, the limited studies that have been conducted regarding this issue provide mixed reviews as to whether the installation of large swine feeding operations would produce an overall positive or negative effect on the cost of living and employment. Because this regulation does not apply to existing swine feeding operations operating under their current permit, there are no foreseen impacts on the cost of living or employment levels for existing swine feeding operations. All affected entities will incur costs to come into compliance with this regulation. This cost could have an effect on the employment levels of these operations. Employment levels, however, are dependent on many factors including market demand for swine, and the management practices of the affected entities. The cabinet can only estimate the extent to which this regulation will impact the cost of doing business. This regulation does not apply to agricultural waste handling systems operating under their currently permitted capacity; therefore there are no foreseen impacts on the cost of doing business for existing agricultural waste handling

systems, unless they increase beyond the 1,000 swine unit threshold. All affected entities will be required to obtain land of suitable acreage to allow for the required setbacks and the proper disposition of swine waste. These costs could be significant depending on the size and location of the operation. This administrative regulation includes siting restrictions that prohibit swine feeding operations in wellhead protection areas, jurisdictional wetlands, and 100-year floodplains. Land application of swine waste is prohibited in areas with slopes steeper than 12%, and in areas with less than 18 inches of soil to bedrock. Land application of swine waste is not to exceed the agronomic capacity of the receiving fields. In some instances of existing operations seeking to expand, the land may be unsuitable, or unavailable, for the increased waste to be applied, thus necessitating a greater amount of acreage for land application. Furthermore, setback requirements constrain the acreage of available land for swine waste application. These factors will limit availability of suitable land for swine waste application. With this regulation in effect, certain areas may experience upward pressure on property values (and taxes) if demand for suitable sites increases. Land acquisition costs would increase accordingly. Land acquisition costs will vary depending on the amount of land already under control of the affected entity, the setbacks applicable to the site, and the agronomic characteristics of the land application areas. The Cabinet estimates lagoon waste application areas for a swine feeding operation with 1,000 swine units would require an estimated 200 to 800 acres depending on the cropping system and the underlying soils at each site. These estimates do not include the land required to meet all setback and siting requirements. Farm property values average \$1,077 per acre (1992 Census of Agriculture), thus the land acquisition requirements could cost between \$200,000 and \$800,000 for a swine feeding operation, not including the land required to meet all setback and siting requirements. These costs could be reduced, however, through a negotiated lease arrangement between the owner or operator of the swine feeding operation and the owner of the acreage targeted for land application of the swine waste. Considering the extent of environmentally sensitive areas and other restricted sites, the installation of swine feeding operations in many areas of Kentucky will be prohibited, possibly creating a premium for those lands that are suitable. If large integrator swine feeding operations do not locate in Kentucky, there could be less demand for associated agricultural operations such as grain suppliers and contract growers. However, it is unclear whether the installation of large integrator swine feeding operations in Kentucky will cause a positive or negative economic impact on small-scale swine operators. Anecdotal evidence from Oklahoma indicates large integrators tend to drive up demand for land application acreage to the point that small-scale swine operators cannot purchase land needed for expansion of their operations. Researchers from the University of Kentucky's Department of Agricultural Economics indicate the community and regional economic impacts associated with large integrator swine feeding operations could be significant if these integrators acquire building materials, feed, labor, and other production inputs from the local economy. However, there is anecdotal evidence from the Corn-Belt region indicating large integrators tend to contract building materials, feed, and veterinary services out to larger companies not necessarily located in the community where the feeding operations reside. If so, then the economic benefit to the host community from large integrators would be diminished. Data are insufficient to conclude the economic impacts large swine feeding operations will have on communities. However, even if all construction, feeding and veterinary services are obtained from outside the host community, there will be expenditures. Hence, if large integrator swine feeding operations do not locate in Kentucky, this will have the negative effect of these foregone expenditures in host communities although the scale of this impact is difficult to predict. The cabinet has compiled some preliminary information related to the cost of compliance, reporting, and paperwork requirements. Reporting and paperwork will be greater for

the affected entities under the new SWMP Program, compared to the existing KNDOP Program. Increased reporting and paperwork result from the requirements for geotechnical demonstrations, groundwater monitoring plans, soil testing, lagoon liner performance testing, and nutrient management plans. Compliance standards will require a swine feeding operation to conduct groundwater monitoring to adequately determine the integrity of waste lagoons. The costs to develop and implement groundwater monitoring will vary, depending on the size of the operation. Lagoon liner performance testing for the first year will require two samples at three points (1 up-gradient and 2 down-gradient of the lagoon(s)) for the first year. Installation of 3 wells for lagoon liner performance testing will cost an estimated \$3,000 to \$6,000. Tests conducted for the prescribed parameters will cost an estimated \$55 per well per sampling event. With these estimates, lagoon liner performance testing costs under this scenario are estimated at between \$3,330 and \$6,330 for the first year. Expanding swine feeding operations may be required to modify their existing lagoon if the lagoon fails to conform to the requirements of this administrative regulation. The liner requirements and depth to bedrock requirements for lagoons, along with the setbacks required, may preclude expansion of existing operations in certain circumstances, depending on land availability. Liners must have 18 inches of compacted soil or a synthetic liner to meet permeability standards. Liner costs will vary depending on the availability of suitable soils near the lagoon. Estimates for a clay liner for a 5-acre lagoon range from \$20,000-\$30,000 and twice this figure for a synthetic liner. Permeability tests for the liner cost an estimated \$75. For the second and subsequent years, swine feeding operations affected by this regulation will be required to incur a minimal cost (approximately \$330 total per year) to test for lagoon liner leaks at three (3) detection points twice per year. If leaks are detected, the permittee must develop a plan for repair or further monitoring. Additional monitoring is allowed to provide the swine feeding operation the ability to verify that the liner is performing as designed and potentially avoid liner replacement costs for properly performing lagoons. Testing costs will be dependent on the extent of lagoon leakage. A swine feeding operation is also required to develop and implement a nutrient management plan to ensure proper disposition of lagoon waste. Currently a nutrient management plan is a standard part of any large-scale agricultural operation. This requirement is not expected to create significant new costs for the affected entities. Baseline and annual soil testing, as part of the overall nutrient management plan, will be required at each field targeted to receive swine waste. Cost for the affected entities are estimated at \$50 per year per swine feeding operation. Total costs will vary depending on the number of fields to be sampled. In summary, certain costs of compliance will be relatively fixed for all affected entities. Other costs will vary dramatically depending on several factors. Land acquisition costs are by the far the most varying. Land acquisition costs are also the driving factors influencing a swine feeding operation's overall cost of compliance. The cabinet has prepared the following general breakdown of costs to the affected entities.

Relatively Fixed Costs for All New Operations:

- Geotechnical review of lagoon site - \$5,000
- Permit application preparation and development of nutrient management plan - \$4,000
- Permit fee - \$1,500
- Lagoon liner permeability test - \$75
- Groundwater monitoring well installation - \$4,500
- Annual groundwater monitoring - \$330
- Lagoon waste testing - \$20
- Soils testing - \$50
- Subtotal - \$15,475

Highly Variable Costs:

- Lagoon liner - \$25,000 for clay; \$50,000 for synthetic
- Land acquisition costs (if purchased, not least) - \$200,000 - \$800,000

Subtotal - \$225,000 - \$850,000

Grand Total - \$240,475 - \$865,475

(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: Because this is an emergency regulation, a public hearing was not conducted and public comments were not received.

(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: Because this is an emergency regulation, a public hearing was not conducted and public comments were not received.

(c) Effect on the compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition), to the extent available from the public comments received, for the:

1. First year following implementation: Because this is an emergency regulation, a public hearing was not conducted and public comments were not received.

2. Second and subsequent years: Because this is an emergency regulation, a public hearing was not conducted and public comments were not received.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cabinet will be required to review applications and process permits for all swine feeding operations that are required to comply with this administrative regulation. If an existing unpermitted operation decides to comply with 401 KAR 5:005, the cabinet will be required to review and process permits to those facilities by July 25, 1999. There are an estimated 1,150 unpermitted swine operations in Kentucky. The cabinet currently devotes 0.2 person-years to the review and issuance of animal feeding operations covered under the KNDOP Program governed by 401 KAR 5:005. Given the added complexity of the reviews required, the cabinet lacks the resources to fully implement the new SWMP Program. Additional staff time will be required to conduct a thorough review of the reports submitted by permit applicants. The cabinet estimates the need for 2 new engineers to adequately process the expected permit load. The cabinet also conducts site visits as part of the permitting process. Site inspections are necessary to determine the overall suitability of the site and verify that construction is commencing in accordance with the issued permit. There is an expected increase in the number of complaints to be investigated, compliance inspections, records reviews, and confirmation sampling. To meet expected demand, the cabinet will require four new field inspectors. Total personnel costs for 2 additional engineers and 4 additional inspectors are estimated at \$215,000.

2. Continuing costs or savings: One additional biologist and one additional groundwater hydrologist will be needed to collect surface and groundwater ambient monitoring data to establish conditions and trends in areas associated with swine feeding operations. This information will provide the basis to assess nutrient levels and the presence of pathogenic contamination as it pertains to ecological and human health, and to determine the overall effectiveness of this administrative regulation. Total additional personnel costs for these 2 positions are estimated at \$72,000. Additional staff time will be required on a continuing basis to review soil test data, lagoon liner performance data, and nutrient management plans. Staff time will need to be increased by cabinet agronomists, geologists, and engineers. Inspectors' time will need to be increased to verify the operation and compliance of the swine feeding operations, particularly those in the jurisdictions of the cabinet's western regional offices.

3. Additional factors increasing or decreasing costs: If soil data or lagoon liner performance data indicate environmental degradation is occurring, additional testing and lagoon repairs may be required. These events would require further devotion of staff time to conduct a thorough review of the swine feeding operation. However, these

testing requirements may prevent a future lagoon breach or environmental degradation, thus preventing significant damages (financial and otherwise) to the affected entities, the promulgating agency, and the environment. North Carolina environmental officials have indicted a 22-million-gallon lagoon breach in North Carolina resulted in a \$62,000 fine for the operator.

(b) Reporting and paperwork requirements: There will be an increase in the number of permit applications and reports submitted by swine operations. Applications and reports will require a thorough review by cabinet staff. There will also be an increase in the number of inspection reports that must be completed by cabinet inspectors.

(4) Assessment of anticipated effect on state and local revenues: Permit fees will be collected from the affected entities as follows: \$1,500 for first issuance; \$1,000 for renewals; \$500 for modifications. The existing KNDOP Program requires no fees. Since it is unknown how many permits and renewed permits will be issued, the expected state revenues are unknown. A swine feeding operation may also impact local revenues. New swine feeding operations could impact local tax revenues as provided by local tax ordinances.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General Fund revenue will be used for implementation and enforcement of this administrative regulation. The permit fees required by this administrative regulation will be submitted to the General Fund for appropriation by the General Assembly. Existing resources are insufficient to fully implement the new SWMP Program.

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

(a) Geographical area in which administration regulation will be implemented: Because this is an emergency regulation, a public hearing was not conducted and public comments were not received. However, the requirements of this administrative regulation apply throughout Kentucky. Additional information related to the economic impact to Kentucky is listed in (b) below.

(b) Kentucky: Most swine operations are located in western Kentucky, therefore the economic impacts are expected to be most prevalent in that region. Also, the siting restrictions, setbacks, and land application restrictions will further constrain the number of swine feeding operations locating in eastern Kentucky. Economic impacts are dependent on many factors. One component is property values. A Minnesota study by Taff, Tiffany and, Weisburg (1996) found that if newly locating swine feeding operations increase demand for housing through new hires or transferred labor, property values could increase. However, if swine feeding operations create negative effects on quality of life (odors, increased traffic, etc.) for the surrounding areas, property values could decrease. A Michigan study by Abeles-Allison and Connor found house values decreased \$.43 for each additional hog within a 5 mile radius of the study area (or \$430 for each additional 1,000 swine). Palmquist, Roka, and Vukina (1996) studied the impacts on nearby housing prices of new hog operations in southeastern North Carolina. This study shows that the proximity of hog operations has a statistically significant and negative impact on property values. The results also show that monetary damages decrease with the increasing distance from the swine production facility to the house. The results also show that expansion of swine production in areas where swine concentration is already high will have a smaller negative effect on surrounding property values than when expansion occurs in low swine density areas. This regulation creates safeguards for proper operation and management of swine feeding operations. If implemented correctly by the affected entities, these negative effects can be minimized.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet considered extending the applicability of this regulation to all swine feeding operations that had more than 750 head of swine. However, the cabinet rejected that approach because the cabinet considers the smaller operations to be adequately

addressed under the current KNDOP permitting program. Also, the threat to the environment and the waters of the Commonwealth is not as large for those operations due to the amount of waste generated. The cabinet also considered continuing the current permitting program for all operations regardless of their size, however that approach was rejected since the volume of waste generated by the larger operations poses a threat to Kentucky's environment, and the potential for environmental damage due to failure of a lagoon is greater for the larger operations. The cabinet may approve an alternative or experimental technology, if the applicant demonstrates that the alternative or experimental technology will comply with the general environmental conditions required in this regulation, not pollute the waters of the Commonwealth, will not result in additional problems with odors, and will not cause additional health or environmental problems.

(8) Assessment of expected benefits of the administrative regulation: Benefits take the form of potential damages avoided. Properly operated and maintained operations will result from promulgation of this regulation. For a description of property value losses that could be avoided through this regulation, see (6)(b) above. In western Kentucky, the tourism industry is a major contributor to the regional economy. This regulation creates safeguards to assure the proper operation and maintenance of swine feeding operations. By minimizing the impacts of swine odor, the potential for lagoon failure, and the increased traffic from heavy trucks in populated areas, this regulation is expected to protect those factors so critical to a vibrant tourist industry and overall quality of life. This administrative regulation requires adherence to strict construction standards for swine waste lagoons, along with semiannual groundwater monitoring around the lagoons. These, and other, requirements are expected to prevent contamination of groundwater from leaking lagoons. A Pennsylvania study by Abdalla (1990) indicated people undertake substantial averting actions in response to groundwater contamination and that such actions can have significant economic consequences. These averting actions can take the form of expenditures for point-of-use treatment systems, bottled water, and/or modifications to daily routines to avoid exposure to the contaminant. Abdalla found the total costs for the averting actions of households in the study area to be between \$252 and \$383 per household (in 1987 dollars). These figures underestimate the lower bound measure of total welfare loss for this case. Costs are not incurred for behavior modifications alone. Health effects (morbidity/mortality) can be significant, though difficult to quantify. Contamination of groundwater can also increase the level of anxiety and fear in a community (diminished quality of life). Finally, groundwater contamination can also impact surface water quality, particularly in Kentucky where a large portion of the state has underlying karst geology. This administrative regulation is expected to prevent these damages through strict siting requirements, lagoon construction standards, and semiannual groundwater monitoring. Surface water contamination is expected to be prevented through strict requirements on lagoon construction. This administrative regulation also establishes setback distances to allow for early warning of downstream areas in the event of a lagoon failure.

(9)(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Public health and welfare in Kentucky will be safeguarded through this regulation. Potential damages avoided are described in (6)(b) and (8) above.

(b) State whether a detrimental effect on environment and public health would result if not implemented: This regulation is designed to provide safeguards to protect environmental and public health.

(c) If detrimental effect would result, explain detrimental effect: See discussion of potential damages in (6)(b) and (8) above.

(10) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or government policy that may be in conflict, overlapping, or duplication. Any potential conflict or

overlapping will be removed with the redefining of an agricultural waste handling system in 401 KAR 5:001. That term will be defined to exclude swine feeding operations, thus removing the potential conflict or overlapping.

(a) Necessity of proposed regulation if in conflict: Not applicable since there is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administration regulation with conflicting provisions: Not in conflict.

(11) Any additional information or comments: On July 25, 1997, Governor Paul E. Patton issued Executive Order 97-926 that ordered an immediate suspension on the acceptance of new applications of permits for agricultural waste handling systems and for Kentucky Pollution Discharge Elimination System permits for all facilities handling swine related waste. Governor Patton also directed the cabinet to develop a balanced regulatory program to maximize the benefits to the Commonwealth and all of her citizens. This emergency regulation represents that balanced regulatory program, maximizing the Commonwealth's and her citizens' benefits. To develop this emergency regulation, the cabinet consulted with several agencies, organizations, and individuals in Kentucky and some state officials in Oklahoma and North Carolina. Some of the Kentucky contacts included the Natural Resources Conservation Service, the University of Kentucky, the Kentucky Geological Survey, the Sierra Club, the Kentucky Resources Council, and the Kentucky Pork Producers' Association.

(12) TIERING: Is tiering applied? Yes, tiering was applied in several instances in this regulation. The regulation applies only to those new swine feeding operations that confine 1,000 or more swine units (about 2,500 finishing swine) or more, instead of all swine operations. Existing permitted swine feeding operations that expand more than ten percent above their current permitted level would be subject to this administrative regulation. Existing animal feeding operations that are currently under the 1,000 swine unit threshold would not be affected by this regulation, unless they expand above that threshold. Another example of tiering is in the amount of land needed for land application of the swine waste. Less land is needed in some instances if the owner or operator uses soil injection instead of surface application or other method. Also, the barns and lagoons and land application areas must be at least a specified distance from given setback features.

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. Not applicable.

3. State the aspect or service of local government to which this administrative regulation relates. Not applicable.

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. There is no effect on the expenditures.

Revenues (+/-): None

Expenditures (+/-): None

Other explanation: None

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate.

4. Will this administrative regulation impose stricter requirements,

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or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

STATEMENT OF EMERGENCY 904 KAR 3:025E

The emergency administrative regulation is necessary to implement changes to the alien eligibility criterion that were mandated by PL 105-33, §5302, §5306, §5562, and §5563. These provisions amend the Food Stamp Act of 1977, PL 104-193, and 104-208 and became effective thirty (30) days after the bill was signed into law on August 5, 1997. Pursuant to KRS 13A.190, to avoid a loss of federal funds for failure to meet the federal implementation deadline, and to prevent an imminent threat to public health by denying food stamp benefits to individuals who are made eligible by PL 105-33, it is necessary to promulgate this emergency administrative regulation. Section 5302(a): Cuban and Haitian entrants are now eligible for food stamps for five (5) years. Section 5306: Amerasian immigrants pursuant to 8 USC 1101 (note) are eligible for food stamps for five (5) years. Section 5562: Aliens whose deportation is withheld under section 243(h) (8 USC 1253(h)) as in effect prior to April 1, 1997, and under 241(b)(3) (8 USC 1231(b)(3)) are eligible for food stamps for five (5) years. Section 5563(a): A condition was added requiring aliens who are veterans to have met the minimum active-duty service requirements of 38 USC 5303A(d) in order to be eligible for food stamps. Section 5563(b): The surviving spouse of a deceased veteran or individual on active duty, provided that the spouse has not remarried and the marriage fulfills the requirements of 38 USC 1304, is permitted to participate in the Food Stamp Program. Section 5563(c): The definition of a veteran who is eligible for food stamps is expanded for determining the eligibility of a surviving spouse, to include military personnel who die during active duty service, pursuant to 38 USC 1101 and 1301 and Filipinos pursuant to 38 USC 107. Section 8(b)1 is amended to lower the age from fifty (50) to age forty-nine (49) of an individual who is exempt from the work requirement at 7 USC 2015(o). This change is the result of clarification from the Food and Consumer Service. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice Of Intent for the ordinary administrative regulation is being filed concurrently with the emergency administrative regulation.

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

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

904 KAR 3:025E. Technical requirements.

RELATES TO: 7 CFR 273.4, 273.5, 273.7, 7 USC 2015(e), (o), 8 USC 1612(a), (b), [PL 104-193 sec. 402,] PL 104-208 sec. 510, PL 105-33 secs. 5302, 5306, 5562, 5563

STATUTORY AUTHORITY: KRS 194.050(1), 7 CFR 271.4, EO 96-862

EFFECTIVE: October 1, 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 has responsibility to administer a Food Stamp Program. KRS 194.050(1) provides that the secretary shall, by administrative regulation, develop policies and operate programs concerned with the welfare of the citizens of the Commonwealth. This

administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

Section 1. Definitions. (1) "Certification period" means a definite period of time within which a household shall be eligible to receive food stamp benefits.

(2) "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive food stamp benefits, is:

(a) An alien who is lawfully admitted for permanent residence pursuant to 8 USC 1101 et seq.;

(b) An alien who is granted asylum pursuant to 8 USC 1158;

(c) A refugee who is admitted to the United States pursuant to 8 USC 1157;

(d) An alien who is paroled into the United States pursuant to 8 USC 1182(d)(5) for a period of at least one (1) year;

(e) An alien whose deportation is being withheld pursuant to:

1. 8 USC 1253(h), as in effect prior to April 1, 1997; or

2. 8 USC 1231(b)(3);

(f) An alien who is granted conditional entry pursuant to 8 USC 1153(a)(7) as in effect prior to April 1, 1980;

(g) An alien who is granted status as a Cuban and Haitian entrant pursuant to 8 USC 1522; or

(h) An alien who is admitted to the United States as an Amerasian immigrant pursuant to 8 USC 1101.

(3) "Quality control review" means a review of a statistically valid sample of active and denied or discontinued cases to determine the extent to which households are receiving the food stamp allotments to which they are entitled, and to ensure that inactive cases are not incorrectly denied or terminated.

(4) "Student status" means any person who is between the ages of eighteen (18) and fifty (50) inclusive, physically and mentally fit, and enrolled at least half-time in an institution of higher education.

Section 2. Technical Eligibility. In accordance with federal regulations promulgated by the Food and Consumer Service (FCS), of the United States Department of Agriculture, the cabinet shall utilize national uniform requirements of technical eligibility for the Food Stamp Program.

Section 3. Technical Eligibility Criteria. Technical eligibility requirements shall apply equally to all households and consist of:

(1) Residency. A household shall live in the county in which they make application;

(2) Identity.

(a) The applicant's identity shall be verified; and

(b) If an authorized representative applies for the household, the applicant's and the authorized representative's identities shall be verified;

(3) Citizenship and alien status.

(a) Except as provided in paragraph (c) of this subsection, Food Stamp Program benefits shall be provided to a citizen of the United States.

(b) A qualified alien, as defined in Section 1(2) of this administrative regulation, shall not be eligible to participate in the Food Stamp Program.

(c) The following exceptions shall apply to paragraph (b) of this subsection:

1. A qualified alien described in this subparagraph shall be eligible to participate in the Food Stamp Program until five (5) years after the date:

a. He has entered [A qualified alien enters] the United States as a refugee pursuant to 8 USC 1157;

b. He [A qualified alien] is granted asylum pursuant to 8 USC 1158;

c. His [A qualified alien's] deportation is withheld pursuant to;

(i) 8 USC 1253(h), as in effect prior to April 1, 1997; or

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(ii) 8 USC 1231(b)(3);

d. He is granted status as a Cuban and Haitian entrant pursuant to 8 USC 1522; or

e. He is admitted to the United States as an Amerasian immigrant pursuant to 8 USC 1101.

2. A qualified alien who is lawfully admitted to the United States for permanent residence pursuant to 8 USC 1101 et seq.; and

a. Has worked forty (40) qualifying quarters of coverage pursuant to 42 USC 413; or

b. Can be credited with forty (40) qualifying quarters pursuant to PL 104-193, §435; and

c. For the purpose of qualifying for food stamp benefits pursuant to clauses a and b of this subparagraph, a qualifying quarter shall not be creditable for a period beginning after December 31, 1996, during which the qualified alien or his spouse receives a federal means-tested public benefit; and

3. An [A-qualified] alien who is lawfully residing in Kentucky and is:

a. A veteran, as defined pursuant to 38 USC 101, 107, 1101, or 1301 with;

(i) An honorable discharge and not on account of alienage; and

(ii) Who fulfills the minimum active-duty service requirements of 38 USC 5303A(d);

b. On active duty, other than active duty for training, in the Armed Forces of the United States; or

c. The;

(i) Spouse or unmarried dependent child of an individual described in clauses a and b of this subparagraph; or

(ii) Unmarried surviving spouse of an individual described in clauses a and b of this subparagraph who is deceased if the marriage fulfills the requirements of 38 USC 1304.

(d) Pursuant to PL 104-208, §510, an alien who was participating in the Food Stamp Program on August 22, 1996, shall not be determined ineligible based solely on the alien eligibility criteria of PL 104-193, §402(a)(1), as described in paragraphs (b) and (c) of this subsection, until April 1, 1997.

(e) An individual whose status is questionable shall be ineligible to participate until verified [verification];

(f) A single household member shall attest in writing to the citizenship or alien status of each household member by signing the Food Stamp Application Form, which is incorporated by reference at 904 KAR 3:030.

(4) Household size. Size of household shall be verified through readily available documentary evidence or through a collateral contact;

(5) Students. A person who meets the definition of student status pursuant to Section 1(4) of this administrative regulation shall be ineligible to participate unless they meet at least one (1) of the following criteria:

(a) Shall be engaged in paid employment for a minimum of twenty (20) hours per week or, if self-employed, shall be employed for a minimum of twenty (20) hours per week and receive weekly earnings at least equal to the federal minimum wage multiplied by twenty (20) hours; or

(b) Shall participate in a state or federally financed work study program during the regular school year; or

(c) Shall be responsible for the care of a dependent household member under the age of six (6); or

(d) Shall be responsible for the care of a dependent household member who has reached the age of six (6) but is under age twelve (12) where the cabinet has determined that adequate child care is not available to enable the individual to attend class and to satisfy the work requirements of paragraphs (a) and (b) of this subsection; or

(e) Shall receive benefits from the Kentucky Transitional Assistance Program (K-TAP);

(f) Shall be assigned to or placed in an institution of higher learning through a program pursuant to:

1. 29 USC 1501;

2. 7 USC 2015; or

3. 19 USC 2296;

(g) Shall be enrolled in an institution of higher learning as a result of participation in a work incentive program pursuant to 42 USC 681; or

(h) Is a single parent with responsibility for the care of a dependent household member under age twelve (12).

(6) Social Security number (SSN).

(a) Households applying for or participating in the Food Stamp Program shall comply with SSN requirements by providing the SSN of each household member or applying for one prior to certification.

(b) Failure to comply without good cause shall be determined for each household member and shall result in an individual's disqualification from participation in the Food Stamp Program until this requirement is met.

(7) Work registration. All household members shall be required to comply with the work registration requirements, unless exempt, pursuant to 904 KAR 3:042, Food Stamp Employment and Training Program.

(8) Work requirement.

(a) An individual shall not be eligible to participate in the Food Stamp Program as a member of any household if, during the preceding thirty-six (36) month period, excluding any period prior to December 1, 1996, the individual received food stamp benefits in any state or territory of the United States, for not less than three (3) months, consecutive or otherwise, during which the individual did not:

1. Work twenty (20) hours or more per week, averaged monthly;

2. Participate in and comply with the requirements of the Employment and Training Program component pursuant to 7 USC 2015(d) for twenty (20) hours or more per week, other than:

a. A job search component; or

b. A job search training component;

3. For twenty (20) hours or more per week, participate in and comply with the requirements of a program pursuant to:

a. 29 USC 1501 et seq.; or

b. 19 USC 2296; or

4. Pursuant to 904 KAR 3:042, participate in and comply with the requirements of the following workfare programs:

a. The Work Experience Program component of the Food Stamp Employment and Training Program; or

b. The Community Service Program.

5. Receive food stamp benefits pursuant to paragraph (b), (c) or (d) of this subsection.

(b) Paragraph (a) of this subsection shall not apply to an individual if the individual is:

1. Under eighteen (18) or over forty-nine (49) [fifty-(50)] years of age;

2. Medically certified as physically or mentally unfit for employment;

3. A parent or other member of a household with responsibility for a dependent child under the age of eighteen (18);

4. Exempt from work registration pursuant to 904 KAR 3:042, Section 2; or

5. Pregnant.

(c) Paragraph (a) of this subsection shall not apply if, pursuant to an approved waiver by the Food and Consumer Service, the county or area in which the individual resides:

1. Has an unemployment rate of over ten (10) percent; or

2. Does not have a sufficient number of jobs to provide employment.

(d) Subsequent eligibility.

1. An individual denied eligibility under paragraph (a) of this subsection shall regain eligibility to participate in the Food Stamp Program if, during a thirty (30) day period, the individual meets the conditions of paragraph (a)1, 2, 3, or 4 of this subsection.

2. An individual who regains eligibility pursuant to subparagraph

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(d)1 of this paragraph shall remain eligible as long as the individual meets the requirements of subparagraph 1 of this paragraph.

(e) Loss of employment or training.

1. An individual who regains eligibility under paragraph (d)1 of this subsection and who no longer meets the requirements of paragraph (a)1, 2, 3, or 4 of this subsection, through no fault of his [their] own, shall remain eligible for a consecutive three (3) month period, beginning on the date the individual first notifies the cabinet that the individual no longer meets the requirements of paragraph (a)1, 2, 3, or 4 of this subsection.

2. An individual shall not receive any benefits under subparagraph 1 of this paragraph for more than a single three (3) month period in any thirty-six (36) month period.

(f) Nothing in this section shall make an individual eligible for food stamp benefits if the individual does not meet all other technical and financial eligibility criteria pursuant to 7 USC 2011 et seq.

(9) Quality control. Refusal to cooperate in completing a quality control review shall result in termination of the participating household's benefits.

JOHN L. CLAYTON, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: September 25, 1997

FILED WITH LRC: October 1, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are individuals who are alien immigrants. The emergency administrative regulation is necessary to implement the changes to the alien eligibility criterion that are mandated by PL 105-33, §5302, §5306, §5562, and §5563. The specified provisions of PL 105-33 amend the Food Stamp Act of 1977, PL 104-193, and PL 104-208. Section 5302(a) makes Cuban and Haitian entrants eligible for food stamps for five (5) years. Section 5306 makes Amerasian immigrants pursuant to 8 USC 1101 (note) eligible for food stamps for 5 years. Section 5562 makes aliens whose deportation is withheld under section 243(h) (8 USC 1253(h)), as in effect prior to April 1, 1997, and under section 241(b)(3) (8 USC 1231(b)(3)) eligible for food stamps for 5 years. Section 5563(a) adds a condition requiring aliens who are veterans to have met the minimum active-duty service requirements of 38 USC 5303A(d) in order to be eligible for food stamps. Section 5563(b) permits the surviving spouse of a deceased veteran or individual on active duty, provided that the spouse has not remarried and the marriage fulfills the requirements of 38 USC 1304 to participate in the Food Stamp Program. For the purpose of determining the eligibility of a surviving spouse, Section 5563(c) expands the definition of a veteran who is eligible for food stamps to include military personnel who die during active duty service, pursuant to 38 USC 1101 and 1301 and Filipinos pursuant to 38 USC 107. Kentucky's alien population is very small. The cabinet anticipates that the above-referenced changes to the alien eligibility requirements will affect less than 50 individuals. Also, Section 8(b)1 is amended to lower the age of an individual who is subject to the work requirement at 7 USC 2015(o), from age fifty (50) to age forty-nine (49). This change is the result of an Food and Consumer Service clarification.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the Notice of Intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the Notice of Intent.

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

1. First year following implementation: This administrative regulation will not create any additional compliance, reporting or paperwork requirements.

2. Second and subsequent years: See item #1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state funds at a 50/50 match rate for the cost of administration. The increase in food stamp benefits is 100 percent federally funded.

(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: The same as item (6)(a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the cabinet is responsible to meet the federal requirements pursuant to PL 105-33.

(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 individuals made eligible by the provisions of PL 105-33 will benefit by obtaining a nutritious diet through the Food Stamp Program.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this amendment is not implemented. The individuals made eligible by the provisions of PL 105-33 may be deprived of a nutritious diet if they are not permitted to participate in the Food Stamp Program due to the cabinet's failure to implement the law.

(c) If detrimental effect would result, explain detrimental effect: It is necessary to promulgate this emergency administrative regulation to prevent the possible loss of federal funding (100 percent of food stamp benefits, 50 percent of federal match for administrative funds, and 100 percent of federal enhanced funding), due to the failure to implement the federal mandates of PL 105-33, §5302, §5306, §5562, and §5563. Further, the failure of the cabinet to implement the above-referenced provisions of the law would deprive eligible aliens of a nutritional diet.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 105-33, §5302, §5306, §5562, and §5563.

2. State compliance standards. This regulation pertains to technical eligibility requirements which are germane to the Food

Stamp Program. There are no separate state compliance standards.

3. Minimum or uniform standards contained in the federal mandate. The provisions of this administrative regulation are promulgated in accordance with 7 USC 2011 et seq., as amended, and applied in a like manner on a statewide basis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

STATEMENT OF EMERGENCY
905 KAR 1:360E

This emergency administrative regulation and Notice of Intent are being promulgated pursuant to KRS 199.641 which authorizes the cabinet to adopt administrative regulations to establish the rate of reimbursement for child-caring facilities which are consistent with the level of service provided. This administrative regulation provides for the establishment of a new level of care that is more consistent with the level of service required and provided to the child. This administrative regulation will also allow the department the flexibility to adjust rates for fiscal accountability and as necessary for the development of a quality of care contracting system. This quality of care contracting system allows providers greater flexibility in designing services for the child and family, facilitates the movement of the child through the service system and provides the ability to deliver services to families and children in the least restrictive and most cost effective manner. Another benefit of this administrative regulation is a potential reduction in the length of stay for children in care and the development of outcome measures that result in greater permanency for children. It is necessary to promulgate an emergency regulation to implement a revised system of reimbursement for child-caring facilities to allow appropriate attention to fiscal controls while maintaining a priority on preventing an imminent threat to the public health, safety and protective service needs or welfare of children in out-of-home placement. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary regulation is being filed concurrently with this emergency regulation.

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

CABINET FOR FAMILIES AND CHILDREN
Department for Social Services

905 KAR 1:360E. Private child care levels of care.

RELATES TO: KRS 199.640-199.670, 605.090, 610.110

STATUTORY AUTHORITY: KRS 194.050(1), 199.641, EO 96-862

EFFECTIVE: October 1, 1997

NECESSITY, FUNCTION, AND CONFORMITY: KRS 199.641 authorizes the cabinet to establish the rate of reimbursement for child-caring facilities which is consistent with the level of service provided. Executive Order 96-862, effective July 2, 1996, reorganized [~~reorganizes~~] the Cabinet for Human Resources and placed [~~places~~] the Department for Social Services and the Child Welfare Program under the Cabinet for Families and Children. This administrative regulation establishes a five (5) [~~four (4)~~] level reimbursement system based on the needs of the child with a reimbursement rate for each level. The function of this administrative regulation shall be to establish procedures whereby each child shall be evaluated to assure classification in the appropriate level of care.

Section 1. Definitions. (1) "Commissioner" means the Commis-

sioner or designee of the Department for Social Services.

(2) "Continuum of care services model" means a service-based system of care which allows:

(a) The provider greater flexibility in designing services for the child and family;

(b) The ability to facilitate more rapid movement of the child through the service system; and

(c) The ability to customize the delivery of services to each child and family in the least restrictive, and cost effective manner.

(3) "Department" means the Department for Social Services as defined in KRS 199.641.

(4) [(3)] "Gatekeeper" means the department or agent responsible for making a clinical determination of the level of care necessary to meet a child's treatment and service needs.

(5) [(4)] "Referral packet" means the required forms to be submitted to the gatekeeper and private child care providers to determine level of care and placement and contains the following forms:

(a) DSS-886, Private Child Care Client Inter-Agency Referral;

(b) DSS-886A, Application for Referral to Private Child Care;

(c) Achenbach Child Behavior Checklist; and, if a child has been assessed for youth services.

(6) [(5)] "Utilization review" means during a child's placement each child's case records and existing documentation shall be examined to identify the child's current level of functioning and assign the appropriate level of care.

Section 2. Levels of Care. (1) The department shall establish a five (5) [~~four (4)~~] level reimbursement system based on the needs of a child in care.

(a) [(1)] Level I children require a routine home environment which provides maintenance, guidance and supervision to meet the needs of the child and ensures the emotional and physical well-being of the child. The rate for Level I shall be no more than forty-five (45) dollars per day.

(b) [(2)] Level II children may engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships and require supervision in a structured supportive setting with counseling available from professional or paraprofessional staff, educational support, and services designed to improve developmental or normalized social skills. The rate for Level II shall be no more than sixty-five (65) dollars per day.

(c) Level III children may engage in occasional violent acts and may have superficial or fragile interpersonal relationships and require supervision in a structured, supportive environment where level of supervision and support may vary from low to moderate proportional to the child's ability to handle reduced structure. These children may occasionally require intense levels of intervention to maintain the least restrictive environment and require a program which is flexible enough to allow both extended trials of independence when the child is capable and periods of corrective and protective structure during relapse. The rate for Level III shall be no more than \$100 per day.

(d) [(3)] Level IV [(III)] children have both physical and emotional needs and may be at moderate risk for causing harm to themselves and others and require a structured supportive setting with therapeutic counseling available by professional staff and physical, environmental, and treatment programs designed to improve social, emotional, and educational adaptation behavior. The rate for Level IV [(III)] shall be no more than \$135 per day.

(e) [(4)] Level V [(IV)] children require a highly structured program with twenty-four (24) hour supervision and a specialized setting which can safely and effectively care for severe and chronic medical conditions complicated by behavioral disorders or emotional disturbance. The rate for Level V [(IV)] shall be no more than \$180 per day.

(2) The department may establish a continuum of care services model in which the per diem rate paid to the provider remains the same throughout the receipt of services regardless of the levels of the

continuum through which the child progresses. The continuum rate shall be established based on the initial assigned level of care. Upon admission of a child into the continuum the provider shall:

- (a) Assign a targeted length of stay based on the clinical assessment of the child and family;
- (b) Design and implement individualized treatment plan based on the unique needs of each child and family which enhances the department's permanency plan for the child;
- (c) Have the responsibility to decide the range of services provided to each child and family; and
- (d) Notify the department and gatekeeper prior to a child being moved within the continuum.

Section 3. Role of the Gatekeeper. The gatekeeper shall be responsible for:

- (1) Assessing each child-caring facility to determine what levels of care are provided;
- (2) Evaluating each child referred by the department or currently in a child-caring facility to determine classification in the appropriate level of care;
- (3) Reevaluating each child within six (6) months after placement in a facility, and every three (3) months thereafter, at which time the child may be reassigned to another level of care or recommended for placement outside the level of care system:
 - (a) If a child is reassigned to a lower level by the gatekeeper and the child is remaining in the same child-caring facility, the rate for the lower level shall be effective thirty (30) days from the date of the reassigned level unless the child is under the continuum of care service model. If the child is placed in another child-caring facility, the rate for the lower level shall be effective on the day the child is placed.
 - (b) If a child is reassigned to a higher level by the gatekeeper and the child is remaining in the same child-caring facility, the rate for the higher level shall be effective the day after the reassigned level is made unless the child is under the continuum of care service model. If the child is placed in another child-caring facility, the rate shall be effective on the day the child is placed.
 - (c) If, after the first six (6) months and before the next scheduled utilization review, the child-caring facility determines a child may be transitioned to a lower level of care, the rate for the current assigned level shall remain in effect until the next scheduled utilization review unless the child is under the continuum of care service model. If the lower level of care is therapeutic foster care, independent living, or other alternative placement, the facility shall notify the department.
 - (d) If the child-caring facility determines a child is beyond the facility's capacity to provide care, or there is new information previously not considered by the gatekeeper, a request for a redetermination may be made to the gatekeeper prior to the next utilization review;
 - 1. After a redetermination is completed by the gatekeeper, the facility and department shall be notified of the results.
 - 2. If the child-caring facility disagrees with a redetermination made by the gatekeeper, a request for dispute resolution shall be submitted in writing to the department as governed by Section 6 of this administrative regulation.
 - (4) Monitoring each placement for quality assurance as part of the reevaluation for each child within six (6) months of the placement and every three (3) months thereafter. The gatekeeper shall:
 - (a) Review the extent to which services provided are in compliance with the child's treatment plan;
 - (b) Determine if changes in the child's needs are reflected in the child's treatment plan; and
 - (c) Advise the Division of Licensing and Regulation of discrepancies; and
 - (5) Maintain [Maintaining] an information system for children served which shall include, but not be limited to:
 - (a) Placement history;

- (b) Facility placement;
- (c) Cost of services;
- (d) Length of treatment; and
- (e) Discharge outcomes.

Section 4. Provider Requirements. (1) Providers in the levels of care reimbursement plan shall be licensed under 905 KAR 1:300. Providers shall comply with 905 KAR 1:300, Section 8, Youth treatment center, if providing intensive treatment oriented services.

(2) The provider shall demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for that child and shall include:

- (a) Room and board including any activity contributing to housing, food, clothing, school supplies, or personal incidentals;
- (b) Clinical services include the evaluation and treatment of emotional disorders, mental illness and substance abuse and are directed to the identification and alleviation of disability or distress, related thereto, experienced by a child which follows specific treatment plans targeted to identified problems; and
- (c) Support services which include:
 - 1. The identification of resources needed by a child and the coordination of services provided by a range of agencies or professionals;
 - 2. Services which allow a child to cope with the disability or distress;
 - 3. Services which provide access to improving the educational or vocational status of the child; and
 - 4. Services which provide essential elements of daily living.

Section 5. Referral Process. (1) When the family service worker determines a need to place a child with a child-caring facility, a referral packet shall be completed and a copy submitted to the gatekeeper.

(2) The gatekeeper shall determine the appropriate level of care needed, using a needs assessment consistent with one (1) of the five (5) [four-(4)] levels, and return the completed DSS-886 Private Child Care Client Inter-Agency Referral Form, to the family service worker within three (3) working days of receipt of the referral packet.

(3) Upon notification of the assigned level of care, the family service worker shall forward the referral packet to potential child-caring facilities.

(4) Once a child-caring facility accepts a child for placement, the family service worker shall complete the DSS-114, Schedule of Payment, herein incorporated by reference, and on the pre-arranged date of placement, transport the child to the facility.

(5) On a monthly basis, the child-caring facility shall submit to the gatekeeper and family service worker a copy of the child's record or a narrative summary including:

- (a) Information regarding the child's adjustment;
- (b) Services provided to both the child and family;
- (c) Progress made toward returning the child home; and
- (d) Future plans for the child.

Section 6. Dispute Resolution. A child-caring facility may request a dispute resolution to a determination made by the gatekeeper in the application of the provisions of this administrative regulation.

(1) A written notice of dispute shall be submitted to the commissioner no later than thirty (30) days after a child-caring facility is notified of a level of care determination. The notice of dispute shall:

- (a) Specify the action being disputed;
 - (b) Specify the reasons the child-caring facility believes the level of care determination is unwarranted;
 - (c) Include documentation the child-caring facility considers relevant to support the dispute; and
 - (d) Specify alternative determinations or actions that may be taken.
- (2) The commissioner shall cause the dispute to be reviewed and

evaluated and shall:

(a) Notify the facility of the date, time and place for the informal conference within thirty (30) days of the receipt of the notice of dispute. The informal conference with the child-caring facility shall be conducted according to the following procedures:

1. The commissioner shall preside over the informal conference with the child-caring facility.
2. The proceedings shall be recorded.
3. The child-caring facility or an authorized representative may present oral arguments or documentation which are considered relevant to support the facility's contention regarding the assigned level of care.
4. The department staff and the gatekeeper shall explain the department's decision regarding the assigned level of care.
5. The commissioner may question the participants and may permit questions or discussions among participants if that may contribute to reaching a decision regarding the assigned level of care under dispute.

(b) Issue a written decision on the dispute, including findings of fact and conclusions of law, no later than thirty (30) days after the informal conference.

Section 7. Administrative Hearing Process. If the child-caring facility disagrees with the commissioner's decision on the dispute, the facility has the right to an administrative hearing held in accordance with KRS Chapter 13B. The notice of hearing shall comply with KRS 13B.050.

Section 8. Material Incorporated by Reference. (1) The following forms are herein incorporated by reference.

- (a) DSS-114, "Schedule of Payment", Edition [revised] July, 1996;
- (b) DSS-886, "Private Child Care Client Inter-Agency Referral Form", Edition [revised] March 1996;
- (c) DSS-886A, "Application for Referral to Private Child Care", Edition [revised] September 1996; and
- (d) "Achenbach Child Behavior Checklist (CBCL)", Edition [revised] January, 1995.

(2) Material incorporated by reference may be inspected and copied at the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621. Office hours are 8 a.m. to 4:30 p.m.

DONNA HARMON, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: September 25, 1997

FILED WITH LRC: October 1, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: Private child caring programs in the state of Kentucky providing residential care and treatment for children and youth committed to the Department for Social Services are affected by this regulation. There are 26 organizations operating at least 41 different programs throughout the state. These organizations include private nonprofit, private for-profit, and local government entities.

(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 affect the cost of living or employment in the areas served as the language will allow the department the flexibility to adjust rates, as announced at 7.5%, for fiscal accountability and as necessary for the development of a quality of care contracting system. This quality of care contracting system allows providers greater

flexibility in designing services for the child and family, facilitates the movement of the child through the service system and provides the ability to deliver services to families and children in the least restrictive and most cost effective manner. 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 these regulations will affect the cost of doing business in the areas served as the language creates a new level of care that will better serve the needs of children in the community and reduce the overall costs to the public as it is estimated that 20% of the referrals could be placed at this new level of care. Additionally the administrative regulation will allow the department the flexibility to adjust rates, as announced at 7.5%, for fiscal accountability and as necessary for the development of a quality of care contracting system. This quality of care contracting system allows providers greater flexibility in designing services for the child and family, facilitates the movement of the child through the service system and provides the ability to deliver services to families and children in the least restrictive and most cost effective manner. 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 should be minimal additional cost associated with the implementation of the new level of care, but affected entities opting to implement quality of care contracts will experience additional costs associated with the developing skills and expertise in program areas in which the contractor does not have current experience. Other costs may be incurred in the development of a plan describing continuum of services to be provided, how case management would be provided, show evidence of network services and in the initial start-up costs of the contracts.

2. Second and subsequent years: Second and subsequent year compliance, reporting and paperwork requirements include collecting and reporting of data relating to the period of permanency, instances of reabuse, changes in level of care, and number of planned and unplanned moves of the child. Other additional second and subsequent year costs may include the development and reporting of standard measures of success, other measurable outcomes for children in care.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Expenditures for private child care services have increased from 24.8 million in FY'94 to 51.5 million in FY'97 with an estimated expenditure of 56M in FY'98 which has exceeded the budgeted amount for the department each year. In an effort to initiate efforts at containing these costs the department implemented the level of care reimbursement system during May, 1996. Although the effort has not been as successful as projected, the rate of percent of growth in expenditures has been decreased from 50% from FY'94 to FY'96, 37% from FY'96 to FY'97 and a projected less than 20% from FY'97 to FY'98. With this regulation the department will save 3 million in the first year with the announced 7.5% rate reduction including 1 million as a result of saving in the establishment of the new level of care. During the first year with the establishment of the quality of care contracts some additional costs will be incurred by the department in developing the rate setting methodology, standards for success or failure, identification of the number of slots that could be contracted statewide, review of proposals, and developing training and procedures for contract and DSS staff.

2. Continuing costs or savings: Continuing costs or savings to the department include savings from the rate reduction and the new level. Additional savings come from the quality of care contracts in the ensuing years when placements are actually serving more children, resulting in cost containment which is achieved by contractors

accepting a preset number of children per month. Also children receiving continuum services will be stepped down to lower levels of care more quickly, thus achieving permanency more quickly with success measured in terms of the child remaining at home six months after discharge.

3. Additional factors increasing or decreasing costs: Additional factors increasing or decreasing costs include the number of providers actually implementing the quality of care contracts, the methodology for setting the rates for these contracts, development of additional resources in the community by private child care agencies or other entities (managed health and behavioral health care initiatives and Impact Plus). Another factor is that the department can not control the number of children entering the system from the court, but will be attempting to monitor the admissions and discharges with increased accountability for securing the most appropriate level of service needed and attempting, if appropriate, to provide additional in-home services to reduce the need for out-of-home care.

(b) Reporting and paperwork requirements: With the development of the additional level of care, quality of care contracts, increased monitoring of admissions and discharge, and increased accountability for securing the most appropriate level of service needed and attempting, if appropriate, to provide additional in-home services to reduce the need for out-of-home care the department will have a significant increase in both internal and external reporting of information. There will also be additional paperwork associated with the development of the contracts and some additional staff training.

(4) Assessment of anticipated effect on state and local revenues: Although there is a 7.5% announced rate reduction for the private child care agencies, there is an increase in the budgeted amount available for these expenditures on the state level. This regulation has as its anticipated effect cost containment and fiscal accountability.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue for this administrative regulation is general fund, Title IV-E and Medicaid.

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

(a) Geographical area in which administrative regulation will be implemented: A public hearing has been scheduled during which public comments may be received.

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

(7) Assessment of alternative methods; reasons why alternatives were rejected: Numerous alternative methods of resolving the departments' budget deficit were considered including numerous levels of reductions that would have contained costs to the actual department's budgeted amount. None of these solutions were in the best interest of the children in care, private providers or the department. Therefore the cabinet decided to bring together a representative group of private child care providers, consultants, and department staff to solve the current budget crisis, redesign the current system of care in an effort to provide a more appropriate service delivery system for the at-risk children and families and to contain the growth in department expenditures for out-of-home care.

(8) Assessment of expected benefits: Expected benefits of these regulations are that the language will allow the department the flexibility to adjust rates, as announced at 7.5%, for fiscal accountability and as necessary for the development of a quality of care contracting system. This quality of care contracting system allows providers greater flexibility in designing services for the child and family, facilitates the movement of the child through the service system and provides the ability to deliver services to families and children in the least restrictive and most cost effective manner. Another benefit of this administrative regulation is a potential reduction in the length of stay for children in care and the development of outcome measures that result in greater permanency for children. A public hearing has been scheduled during which public

comments may be received.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The effect on the public welfare are the expected benefits for Kentucky's children with a potential reduction in the length of stay for children in care, an increase in the states capacity for out-of-home care resources and the development of permanency outcome measures and increased accountability for securing the most appropriate level of service needed and attempting, if appropriate, to provide additional in-home services to reduce the need for out-of-home care.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Failure to implement this administrative regulation would restrict the department's ability for fiscal accountability and for a need to share the risk with private child care providers for the development of permanency outcome measures and increased accountability for securing the most appropriate level of service needed and attempting, if appropriate, to provide additional in-home services to reduce the need for continued out-of-home care.

(c) If detrimental effect would result, explain detrimental effect: The detrimental effect of not implementing these regulations would be the lost opportunity to initiate systemic long term changes that will benefit children in out-of-home care through the development of permanency outcome measures and increased accountability for securing the most appropriate level of service needed.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(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 regulation was not tiered as it implements a new level of care, allows fiscal accountability and the development of a quality of care contract statewide effective October 1, 1997 and is applicable to all private child care agencies contracting with the Department for Social Services.

STATEMENT OF EMERGENCY 905 KAR 2:150E

This emergency administrative regulation is being promulgated pursuant to KRS 194.050 and 199.8994 which authorize the cabinet to adopt administrative regulations necessary to operate programs and provide uniform administration of child day care funds. This administrative regulation is necessary to enable the Cabinet for Families and Children to qualify to receive federal funds under both the Social Services Block Grant and Child Care Development Fund. This emergency administrative regulation must be placed into effect immediately to implement the state plan for the Child Care and Development Fund Services effective October 1, 1997 which will enable the Cabinet for Families and Children to implement provisions of PL 104-193, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, that eliminated Title IV-A funding for the Transitional Child Care Assistance Program, the At-Risk Child Care Program and the Jobs Child Care Program and requires seventy (70) percent of the Child Care and Development Services Fund to be expended for K-TAP participants, those families attempting to transition from assistance and those at-risk of becoming dependent on assistance programs. This administrative regulation provides that families whose K-TAP case has been discontinued and needs child

Care assistance to accept or retain employment shall be eligible for twelve (12) consecutive months from the date of discontinuance. This administrative regulation establishes the policy and procedures for the implementation of these child care assistance programs that were previously covered by the transitional CCDBG plan that will expire on September 30, 1997 and is necessary to meet the October 1, 1997 deadline imposed by federal law for the implementation of the child care assistance program and to prevent an imminent threat to the public health, safety or welfare of low income families who need assistance with child care services. An ordinary administrative regulation would not allow for the timely implementation of these services. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent for the ordinary regulation is being filed concurrently with this emergency regulation.

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

**CABINET FOR FAMILIES AND CHILDREN
 Department for Social Services
 Division of Family Services**

905 KAR 2:150E. Child Day Care Assistance Program.

RELATES TO: KRS 199.892 - 896, 45 CFR 98, 256, 257

STATUTORY AUTHORITY: KRS 194.050(1), 199.892, 199.8994, 45 CFR 98.41, 7 USC 2015(d), 42 USC 601 et seq., EO 96-862

EFFECTIVE: October 1, 1997

NECESSITY, FUNCTION AND CONFORMITY: KRS 194.050 and 199.8994 provide that the Secretary for the Cabinet for Families and Children shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Families and Children and provide uniform administration of child day care funds. 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. This administrative regulation is necessary to enable the Cabinet for Families and Children to qualify to receive federal funds under the Social Services Block Grant, Child Care and Development Fund and for child care services pursuant to 904 KAR 2:017E and 904 KAR 3:042. The function of this administrative regulation is to establish procedures for the implementation of child day care assistance programs.

Section 1. Definitions. (1) "Attending a job training or educational program" means regular and scheduled participation in a program offering appropriate skills training or education required by K-TAP and if post secondary, consistent with employment goals.

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

(3) "Center-based child care" means a Type I child day care facility.

(4) "Certificate" means a payment mechanism provided by the cabinet or designee and used by a family to secure child day care from the provider of choice.

(5) "Certified family child care home" means a home as governed by KRS 199.8982(1)(c) and 905 KAR 2:100.

(6) "Child care and development fund, (CCDF)" means child care assistance provided to families throughout the state to improve the affordability, quality and availability of child care services for a low income family to work, participate in K-TAP or for protection and teen parent programs.

(7) "Child protective case" means a case registered for services in which the case file contains case documentation that substantiates or reflects some indication of child abuse, neglect, dependency or exploitation. This category may also include services to prevent abuse, neglect, dependency or exploitation, including multiproblem

families or teen parents.

(8) "Corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.

(9) "Day care" means the provision of essential child care for a portion of a day on a regular basis and is designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development and supervision.

(10) "Dependent care disregard" means a method of allowing a deduction from the gross income for child care expenses for K-TAP and medical assistance recipients with earned income and for food stamp recipients with earned income or who are in training or educational programs which are preparatory to employment. This deduction allows the K-TAP recipient to retain more income to pay child care expenses.

(11) "Eligibility requirements" means that for a family to qualify for child day care funds, except in those instances where day care is provided for child protective cases, a family shall meet both need and income status criteria.

(12) "Employment" means public or private, full or part-time, permanent or temporary work for which wages are paid, including self-employment.

(13) "Enrolled or enrollment" means the process by which unregulated providers become eligible for CCDF by completing the application for provider enrollment and obtaining approval by the Department for Social Services.

(14) "Family" means one (1) or more adults and children related by blood or law, including stepparents, residing in the same residence.

(15) "Family child care" means:

(a) Certified family child care homes as governed by 905 KAR 2:100; or

(b) Unregulated care provided for no more than three (3) unrelated children.

(16) "Family child care workers, (FCW)" means the Department for Social Services staff or designee staff who work strictly with the day care assistance program. The family child care worker provides services to families through the following federally funded programs: Social Services Block Grant, (SSBG), Child Care and Development Fund, (CCDF) and Food Stamp Employment and Training Program (FSETP).

(17) "Food Stamp Employment and Training Program (FSETP)" means a program administered by the cabinet and operated by the Workforce Development Cabinet, Department for Employment Services, pursuant to 904 KAR 3:042.

(18) "Group home child care" means a Type II day care facility.

(19) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's "Temporary Assistance for Needy Families (TANF) Program" means a money payment program for children who are deprived of parental support or care due to:

(a) Death, continued or involuntary absence, physical or mental incapacity of a parent; or

(b) Unemployment of at least one (1) parent when both parents are in the home.

(20) "Licensed child day care facility" means a facility as governed by KRS 199.894.

(21) "Physical or mental incapacity" means a child under the age of eighteen (18) who has multiple or severe problems diagnosed by a physician or qualified professional, that prevent the child from caring for himself for a part of the day.

(22) "Priorities" mean that the client groups identified for receipt of child day care are ranked in chronological order by priority.

(23) "Provider" means owner, operator or employee, including a volunteer, who works in a Type I or Type II licensed child day care facility, certified Family Child Care Home, relative or enrolled home.

(24) "Relative provider" means a person:

(a) At least eighteen (18) years of age;

(b) Who provides child care services only to a:

1. Grandchild;
2. Great-grandchild;
3. Niece or nephew; or
4. Sibling, who resides in a separate residence; and

(c) Who is related to the children served by:

1. Marriage;
2. Blood relationship; or
3. Court decree.

(25) "Social services block grant, (SSBG)" means child care assistance provided by licensed or certified providers for families receiving protective and preventive services, which may include multiproblem families or teen parents, and low income working parents.

(26) "Special needs child" means a child who has multiple or severe problems, and the severity of the disability requires ongoing specialized care as defined under PL 99-457 Part H or 94-142.2.

(27) "Type I child day care facility" means a facility:

(a) Other than a dwelling unit which regularly receives four (4) or more children for day care, including children of a staff member; or

(b) A facility, including a dwelling unit, which regularly provides day care for thirteen (13) or more children, including children of a staff member.

(c) If preschool children of any day care staff receive care in the facility, they shall be included in the number for which the facility is licensed.

(28) "Type II child day care facility" means a home or dwelling unit which regularly provides care apart from parents for seven (7) to twelve (12) children, including the provider's own preschool children.

(29) "Unregulated provider" means a child care provider who is not subject to be licensed or certified by the state or federal government.

(30) "Waiting list" means a list that may be maintained by the cabinet or designee staff once funds are obligated in a contract area. The list is based on the availability of allocated day care funds in each area.

(31) "Without regard to income" means that SSBG or CCDF child day care services for child protective cases may be provided or purchased without regard to family income.

Section 2. Technical Eligibility for CCDF. A child shall be eligible for services if he:

(1) Is under the age of thirteen (13) or is under the age of eighteen (18) and:

(a) Is physically or mentally incapable of caring for himself as verified by the written determination of:

1. A physician;
2. A licensed or certified psychologist;
3. A qualified mental health professional; or
4. As accepted by a collateral agency (schools, comprehensive care center); or

(b) Is under court supervision;

(2) Resides with a family whose income does not exceed 133 percent of poverty unless the case is a child protective services case. To the extent necessary, the eligibility requirement relating to the percent of poverty may be revised based on the availability of state and federal funds.

(3) Resides with parents or K-TAP specified relative whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment.

(a) The family remains eligible for child care assistance for a period of twelve (12) consecutive months from the date of discontinuance; and

(b) The family shall be responsible for the maximum co-payment amount specified in the Child Care Daily Parent Copayment Schedule if income exceeds 133 percent of poverty.

(4) Resides with parents or K-TAP specified relative who are

working, participating in K-TAP, are teen parents, or in need of protection. A K-TAP family shall comply with eligibility and limitations pursuant to 904 KAR 2:017E, Kentucky Works supportive services.

(5) Copayment requirement.

(a) A family receiving child day care assistance shall be required to contribute toward the payment based on the family's income as described in Section 6(3) of this administrative regulation.

(b) An individual who fails to cooperate in paying the required copayments may, subject to notices and hearing requirements, lose eligibility for the period of time back co-payments are owed, unless satisfactory arrangements are made to make full payment.

(c) In situations where the court is involved, parents may be ordered to pay for part or all of the cost of day care for their child. Voluntary payments by parents may be accepted.

(6) Other eligibility conditions or priority requirements including childhood development and before and after school care services, may be established in addition to Sections 3 through 6 of this administrative regulation as long as they shall not:

(a) Discriminate against children on the basis of:

1. Race;
2. National origin;
3. Ethnic background;
4. Sex;
5. Religious affiliation; or
6. Disability.

(b) Limit parental rights as governed by Section 5 or 6(4) of this administrative regulation.

(7) Families shall not be eligible for child care assistance if care is provided by:

(a) Parents or stepparents;

(b) Legal guardians;

(c) Members of the K-TAP or Food Stamp assistance unit or persons living in a home which includes the child in need of care;

(d) Providers not meeting applicable standards of state and local law or not enrolled pursuant to Section 6 of this administrative regulation; and

(e) Alternative programs such as Head Start, state preschool and kindergarten which are available and accessible for the hours child care is needed.

Section 3. Technical Eligibility for SSBG. (1) The child shall have met the requirements specified in Section 2(1) of this administrative regulation.

(2) The Department for Social Services case record shall:

(a) Substantiate or reflect some indication of child abuse, neglect, dependency or exploitation; or

(b) Provide documentation that a family has a need for child care services and with the use of child care the need for protective services may be prevented.

(c) Provide case by case documentation if the copayment is waived.

(3) Working parents may be eligible if:

(a) Child care needs exist in order to allow the parent to work;

(b) The family is income eligible as specified in Section 2(2) of this administrative regulation; and

(c) CCDF funds are obligated.

Section 4. Technical Eligibility for Dependent Care Pursuant to the Food Stamp Employment and Training Program (FSETP). (1) A dependent individual of a FSETP participant shall be eligible for services if he:

(a) Is under the age of thirteen (13); or

(b) Regardless of his age, is physically or mentally incapable of caring for himself as verified by the written determination of:

1. A physician;
2. A licensed or certified psychologist;
3. A qualified mental health professional;

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4. A Department for Social Services worker indicating that the dependent qualifies as a special needs child;

5. A collateral agency (schools, comprehensive care center); or

(c) Is disabled pursuant to 904 KAR 3:010, Section 1(9); or

(d) Is under court supervision; and

(e) Resides with an adult household member who:

1. Is responsible for his care; and

2. Is subject to and complying with FSETP, pursuant to 904 KAR 3:042.

(2) Families shall not be eligible for FSETP child care assistance if child care is provided by:

(a) A member of the food stamp household;

(b) A food stamp household member who has been exempted from participation in FSETP because he is responsible for the care of a household member who is under six (6) years of age; or

(c) The food stamp household resides in a Kentucky Domestic Violence Center (KDVC) shelter and child care is provided on site; or

(d) The FSETP participant is a K-TAP recipient.

Section 5. Parental Rights and Responsibilities. (1) A parent of an eligible child who receives or is offered child care services subject to the availability of state and federal funds shall be offered a choice:

(a) Unless alternative programs such as Head Start, state preschool and kindergarten are available and accessible for the hours care is needed;

(b) To enroll the child with an eligible child care provider that has a grant or contract, selected by the parent to the maximum extent practicable; or

(c) To receive a child care certificate, the DSS-76, Child Day Care Services Agreement and Child Care Certificate, which shall:

1. Be issued to the parent;

2. Be of value commensurate with the value of child care services provided in paragraph (b) of this subsection;

3. If chosen by the parent, be used for child care services provided by a sectarian or nonsectarian organization or agency;

4. Not be considered a contract or grant to the provider but assistance to the parent;

5. Allow parents to choose from a variety of child care categories in compliance with federal regulations governing child day care programs including:

a. Licensed child care providers;

b. Certified family child care providers (CFCCP); and

c. Unregulated child care providers enrolled with the Department for Social Services; or

d. Relative providers as defined in Section 1 of this administrative regulation; and

6. Inform parents and providers that the agreement may be terminated upon notice that the Department for Social Services has determined that conditions or circumstances at the child day care premises place children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(2) Providers of child care services shall afford parents unlimited access to their children and to the provider during normal hours of operation and whenever the child is in the care of the provider.

(3) The cabinet or designee shall:

(a) Maintain a record of substantiated parental complaints; and

(b) Make information regarding parental complaints available to the public upon request.

(4) The cabinet or designee shall make available to the parents and general public, consumer education about parental options relating to child care services including:

(a) Licensing and regulatory requirements; and

(b) Complaint procedures.

Section 6. State and Provider Requirements. (1) The cabinet shall assure that providers of child care services funded under CCDF, SSBG, and FSETP:

(a) Shall comply with licensing and regulatory requirements as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100;

(b) If not required to be licensed or certified as governed by 905 KAR 2:001, 905 KAR 2:090, 905 KAR 2:110, 905 KAR 2:120 and 905 KAR 2:100 or are not relative providers shall be enrolled with the cabinet to meet minimum health and safety standards. Providers requesting enrollment shall complete the DSS-1297, Application for Child Care Provider Enrollment: In Child's Home or the DSS-1295, Application for Child Care Provider Enrollment: In Provider's Home and DSS-1296, Child Care Provider Enrollment Self Assessment, and meet the following requirements:

1. The provider shall be at least eighteen (18) years of age;

2. The provider shall be free of tuberculosis, as stated by a qualified physician or health care specialist;

3. The provider shall not have been convicted of crimes against children, as shown by a criminal records check conducted within the past year by the Kentucky State Police;

4. The provider shall sign an agreement not to use any form of corporal physical discipline on the children entrusted into their care; and

5. The provider shall complete the enrollment process every three (3) years.

(c) The department may deny or terminate an agreement with an unregulated provider if conditions or circumstances at the child care premises places children at risk of abuse, neglect, or exploitation pursuant to KRS Chapter 620.

(d) If the department denies or terminates an agreement with an unregulated provider, the department shall notify the provider in writing stating the reasons for the adverse action and the provider's right of appeal.

(e) If the provider feels an action of the Department for Social Services is unfair, without reason, or unwarranted, the provider may appeal the action, in writing, to the Commissioner of the Department for Social Services, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) days after receiving the notice of the action from the department.

(f) Upon receipt of the request for hearing, the commissioner, or designee, shall appoint a hearing officer to review the record, conduct the hearing, and make recommendations upon the matter appealed. Within fifteen (15) days of the assignment, the hearing officer shall notify the provider in writing of the date, time and place of the hearing. The notice shall comply with KRS 13B.050(2),(3).

(g) The hearing shall be conducted as governed by KRS 13B.080 and 13B.090.

(h) The hearing officer shall advise the parties that a recommended order shall be distributed within ten (10) days after the close of the hearing, the parties shall have fifteen (15) days from the date of the recommended order to file exceptions, and a final decision shall be rendered within thirty (30) days from the close of the hearing.

(i) The recommended order shall be filed with the commissioner, or designee, and shall comply with KRS 13B.110.

(j) Within twenty (20) days after receipt of the recommended order, the commissioner or designee, shall render a final order, either affirming or overturning the initial decision of negative action. The final order shall comply with KRS 13B.120.

(k) If denial or termination of enrollment is upheld, the commissioner's or designee's notification shall specify the date by which the child care payments shall cease.

(2) The cabinet has established maximum child day care payments as follows:

(a) These charts represent the local maximum payment rate on a per day basis. Chart abbreviations are as follows: FD - full day, more than five (5) hours; PD - part day, less than five (5) hours.

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KENTUCKY CHILD CARE MAXIMUM PAYMENT RATES West/East Region

Counties: Allen, Ballard, Barren, Bath, Bell, Boyd, Bracken, Breckinridge, Breathitt, Butler, Caldwell, Calloway, Carlisle, Carter, Christian, Clay, Crittenden, Daviess, Edmonson, Elliott, Fleming, Floyd, Fulton, Grayson, Graves, Greenup, Hancock, Hardin, Harlan, Hart, Henderson, Hickman, Hopkins, Jackson, Johnson, Knott, Knox, Lawrence, Larue, Laurel, Lee, Leslie, Letcher, Lewis, Livingston, Logan, Lyon, Magoffin, Marion, Marshall, Martin, Mason, McCracken, McLean, Meade, Menifee, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Ohio, Owsley, Perry, Pike, Robertson, Rockcastle, Rowan, Simpson, Todd, Trigg, Union Warren, Washington, Webster, Whitley, and Wolfe.

	Licensed		Certified		Enrolled/Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	\$13	8	12	7	9	5
Preschool	\$13	8	13	8	9	5
School Age	\$13	8	12	7	9	5

Central Region

Counties: Adair, Anderson, Boone, Bourbon, Boyle, Bullitt, Campbell, Carroll, Casey, Clark, Clinton, Cumberland, Estill, Fayette, Franklin, Gallatin, Garrard, Grant, Green, Harrison, Henry, Jefferson, Jessamine, Kenton, Lincoln, Madison, McCreary, Mercer, Nicholas, Oldham, Owen, Pendleton, Powell, Pulaski, Russell, Scott, Spencer, Shelby, Taylor, Trimble, Wayne, and Woodford

	Licensed		Certified		Enrolled/Relative	
	FD	PD	FD	PD	FD	PD
Infant/Toddler	\$16	10	15	9	12	7
Preschool	\$15	9	15	9	11	6
School Age	\$14	8	15	9	10	5

(b) Providers, if the same amount is charged to the general public, may receive one (1) dollar per day beyond the maximum rate if the provider:

1. Is accredited by the National Association for the Education for Young Children or National Association for Family Child Care;
2. Provides special needs child care; or
3. Provides nontraditional hour care during the period 6 p.m. to 6:30 a.m.

(3) The cabinet or designee shall determine a copayment which the family shall pay to the provider for the cost of child day care based on the following sliding scale:

CHILD CARE DAILY PARENT COPAYMENT SCHEDULE

40% TO 133% of POVERTY

Monthly Income Range	Family Size 2 Family Copay with One Child		Family Size 3 Family Copay with One Child2 or more		Family Size 4 Family Copay with One Child2 or more		Family Size 5 or More Family Copay with One Child2 or more	
0 399								
400 499	\$1.10		\$1.10	\$1.25				
500 599	\$1.25		\$1.25	\$1.50	\$1.25	\$1.50		
600 699	\$1.50		\$1.50	\$1.75	\$1.50	\$1.75	\$1.50	\$1.75
700 799	\$2.00		\$1.75	\$2.25	\$1.75	\$2.25	\$1.75	\$2.25
800 899	\$3.00		\$2.00	\$2.50	\$2.00	\$2.50	\$2.00	\$2.50
900 999	\$4.00		\$2.50	\$3.00	\$2.50	\$2.75	\$2.25	\$2.75
1,000 1,099	\$5.25		\$3.25	\$3.75	\$2.75	\$3.25	\$2.50	\$3.00
1,100 1,199	\$6.50		\$4.25	\$4.75	\$3.25	\$3.75	\$2.75	\$3.25
1,200 1,299	\$0		\$5.50	\$6.00	\$4.00	\$4.50	\$3.00	\$3.50
1,300 1,399			\$6.75	\$7.50	\$5.00	\$5.50	\$3.50	\$4.25
1,400 1,499			\$8.00	\$8.75	\$6.25	\$7.00	\$4.25	\$4.75
1,500 1,599			\$0		\$7.25	\$8.00	\$5.50	\$6.25
1,600 1,699					\$8.25	\$9.00	\$6.25	\$7.00
1,700 1,799					\$9.25	\$10.00	\$7.50	\$8.25
1,800 1,899							\$8.75	\$9.75
1,900 1,999							\$10.25	\$11.25
2,000 2,099							\$10.75	\$11.75
2,100 2,199								
2,200 2,299								
*No copay below \$400 or 40% of Poverty	\$354		\$444		\$535		\$626	
Not eligible above 133% of Poverty	\$1,176		\$1,477		\$1,779		\$2,080	

(a) Copayments shall not be assessed in:

1. A K-TAP, medical assistance case where clients are receiving dependent care disregard;
2. A Food Stamp or FSETP case; or
3. A K-TAP case until January 1, 1998.

(b) Copayment may not be assessed in a child protective case under SSBG or CCDF.

(c) The cabinet or designee shall determine the maximum daily reimbursement rate and parent copayment, not to exceed rates as specified in subsection (2) of this section and monitor the payment to the child care provider using the DSS-77, Day Care Billing Statement. If the parent fails to pay the copayment, the cabinet or designee shall develop a plan with the parent to pay the copayment.

(d) The cabinet or designee shall advise the client to report family

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and financial changes that may affect authorization of payments. Reauthorizations shall be determined:

1. Every twelve (12) months; and
2. Upon receipt of reported changes.

(4) The Cabinet for Families and Children may, except for protective service cases and FSETP cases, establish priorities for child care services as follows:

- (a) Children with special needs;
- (b) Teen parents;

(c) K-TAP participants to meet the needs of families who are attempting to transition off assistance; and

(d) Other low income working parents.

(5) The Department for Social Services or designee shall exchange client specific information with the Department for Social Insurance within ten (10) days of discovery.

(6) Recoupment. The following provisions apply to overpayment in SSBG, CCDF and FSETP:

(a) Necessary action shall be taken promptly to correct and recoup an overpayment in a case:

1. Of fraud;
2. Involving a current recipient; and
3. In which the overpayment would equal or exceed the cost of recovery.

(b) An overpayment shall be recovered from the child care provider if due to provider error or fraud.

(c) An overpayment shall be recovered through a reduction in the amount payable to the provider.

(d) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.

(7) If a client's child care services are reduced or terminated due to need, income criteria, priority status, or change in law, regulation or policy of the cabinet, the cabinet or designee shall:

(a) Reassess the family so a client may be given a minimum ten (10) days notice of their eligibility if they do not meet the new criteria after their authorization period expires; and

(b) Send written notice explaining new eligibility criteria with a notice of intended action.

(8) The child care worker shall notify the client of their rights to notice of adverse actions, hearings and appeals as governed by 905 KAR 1:320, Fair hearing. If notice of intended action is appealed by the client, the child care worker shall notify the client that child care services shall not be continued through the month the hearing officer's decision is rendered.

Section 7. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Child Care Services Agreement and Child Care Certificate", DSS-76, "October, 1997", Cabinet for Families and Children;

(b) "Child Care Billing Statement", DSS-77, "October, 1997", Cabinet for Families and Children;

(c) "Application for Services", DSS-1A, "July, 1996", Cabinet for Families and Children;

(d) "Application for Child Care Provider Enrollment: In Child's Home", DSS-1297, "October, 1996", Cabinet for Families and Children;

(e) "Application for Child Care Provider Enrollment: In Provider's Home", DSS-1295, "October, 1996", Cabinet for Families and Children;

(f) "Child Care Provider Enrollment Self Assessment", DSS-1296, "October, 1996", Cabinet for Families and Children; and

(g) "Application for Subsidized Child Day Care Assistance", "October, 1997", Cabinet for Families and Children.

(2) This material may be inspected, copied, or obtained at the Department for Social Services, CHR Building, 6th Floor, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

DONNA HARMON, Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: September 25, 1997

FILED WITH LRC: October 1, 1997 at 4 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Michael Cheek

(1) Type and number of entities affected: The type and number of entities affected are approximately 40,000 children who may receive subsidized child care assistance governed by this administrative regulation and provided by 634 certified, 1878 licensed and 2600 enrolled or relative child care providers. The cabinet or designee will be responsible for the delivery of direct child care services as specified in the approved Child Care and Development Fund Services State Plan which with SSBG has available \$64.3M for SFY'97 and \$75M for SFY'98. This plan allows for the delivery of subsidized child care assistance by a contractor which may improve the delivery of services for both clients and child care providers, expand community resources and increase the number of eligible children served. A Notice of Intent has been filed and a public hearing has been scheduled during which comments may be received.

(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. With the passage of the welfare reform bill, the cabinet has the flexibility to design a service delivery system for the provision of child day care assistance to eligible families. This revised system combines six existing child day care assistance programs into one, implements a simplified child care maximum rate structure and a revised sliding copayment scale based on client eligibility at below 133% of poverty, and eliminates some duplicative billing processes for providers in the community. The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue. This improved service delivery system may encourage the development of needed child day care providers and assist local K-TAP recipients and other low income families in obtaining child day care assistance in order to work. This administrative regulation also provides that families whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment shall be eligible for twelve consecutive months from the date of discontinuance. A Notice of Intent has been filed and a public hearing has been scheduled during which 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. The impact of doing business in the geographical areas will be enhanced with the development of this revised service delivery system which combines six existing child day care assistance programs into one, implements a simplified child care maximum rate structure and a revised sliding copayment scale based on client eligibility at below 133% of poverty, and eliminates some duplicative billing processes for providers in the community. The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue. A Notice of Intent has been filed and a public hearing has been scheduled during which comments may be received.

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

1. First year following implementation: The compliance, reporting and paperwork requirement for the first year include the installation of

the new child day care assistance automated system to meet expanded federal and state information needs and efficiently serve nearly double the number of children, required training of contractor staff, local providers of subsidized child day care, and the compiling of the required federal reporting data necessary to comply with the CCDF State Plan. These first year requirements will be the responsibility of the local contractor upon designation and the contractors ability to assume authority for the full implementation of the local child day care assistance program. It is anticipated that each of the contracted areas may become operational at different times during this first year.

2. Second and subsequent years: Compliance, reporting and paperwork requirements for the second and subsequent years include operation of the revised child day care assistance program with appropriate monitoring of funds, potential use of other community resources and the reporting of required data for the completion of federal reports mandated pursuant to the CCDF State Plan.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The first year direct and indirect costs to the agency include the cost of the revised child day care automated system, (\$3.8M) cost of contracting with a local agent to implement the program, (\$3.5M) development and issuance or revised policy and procedures for cabinet staff, necessary training for contractors and providers as each contract area is phased in until the program is statewide. Staff currently providing child care services for the cabinet will be phased into other direct service positions as each contract area becomes operational. Additionally in order to serve more families, the following payment policies have been developed:

Payments shall be made on an enrollment basis, with the cabinet or designee enrolling children only for the amount of child care needed. Up to five excused absences per month shall be allowed. Supervisors may authorize payments beyond the five days for special circumstances.

Payments shall only be made for part-time arrangements for those needing only part-time care unless part-time is not available.

No payment for private kindergarten unless public kindergarten hours do not permit the parent to work or participate in K-TAP.

Families are not eligible for subsidies when alternative programs are available and accessible. e.g. Head Start, state preschool, PACE

Families whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment shall be eligible for twelve consecutive months from the date of discontinuance.

2. Continuing costs or savings: Continuing costs to the agency will include ongoing contract costs, (\$4.2M) monitoring of the contract and statewide child day care expenses for compliance with federal regulations, licensure, certification and enrollment of child day care providers and maintenance of the CCDF State Plan and necessary updates (\$4.0M). The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue. The payment policies identified in the first year will continue to allow the cabinet to serve more families with the limited funds available.

3. Additional factors increasing or decreasing costs: Additional factors increasing or decreasing costs include how effective the local contractor is in integrating the fiscal and human resources of the local communities with state revenue, increases or decreases in the need for child day care assistance for child protection cases, to meet K-TAP participation rates or increases or decreases in the need of low income working parents for subsidized child day care assistance. The cabinet has the flexibility with this regulation to expand the eligibility threshold to remain within the allocated funds for child day care assistance. Another factor that may increase or decrease the costs is the impact of recent minimum wage increases on the cost of the provision of child day care.

(b) Reporting and paperwork requirements: Reporting and paperwork requirements include the development of contracts, monitoring of child day care expenditures, provision of technical assistance to the local contractors, and establish the policies, regulations and state plan for the child day care assistance programs.

(4) Assessment of anticipated effect on state and local revenues: The anticipated effect on state and local revenues is that local contractors may be more effective in integrating the fiscal and human resources of the local communities with the state resources thereby expanding the number of families receiving assistance with meeting their child care needs.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue to be used for implementation is the Child Care and Development Fund, amended with the new welfare reform legislation, Social Services Block Grant and Food Stamp Employment and Training Programs.

(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 Notice of Intent has been filed and a public hearing has been scheduled during which comments may be received.

(b) Kentucky: A Notice of Intent has been filed and a public hearing has been scheduled during which comments may be received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The cabinet in its effort to meet the increasing demand for child day care services considered numerous alternative methods for the provision of child day care services including retaining the current operating structure all of which were restricting to the cabinet's goal of universal accessible child day care. The goal of universal access is to ensure a simplified system whereby all families in Kentucky are able to secure child care that is easily accessible, affordable and of such quality that all parents are able to work and participate in K-TAP without distraction. This system consists of a broad array of resources, including public and private programs and funding streams and assist all parents. Subsidies from the cabinet are available to low income families and to protection cases while the contractor develops strategies to expand community participation and increase private investments in child day care.

(8) Assessment of expected benefits: Anticipated benefits of this administrative regulation are the development of a revised service delivery system which combines six existing child day care assistance programs into one, implements a simplified child care maximum rate structure and a revised sliding copayment scale based on client eligibility at below 133% of poverty, and eliminates some duplicative billing processes for providers in the community. This administrative regulation also provides that families whose K-TAP case has been discontinued and needs child care assistance to accept or retain employment shall be eligible for twelve consecutive months from the date of discontinuance. The establishment of a child care contractor, who operates in the community, accepting referrals, taking applications, and locating child care services will be more effective in integrating the fiscal and human resources of the local communities with state revenue. Expected benefits for the enrollment process are that unregulated providers will become enrolled and be eligible for subsidies under the CCDF. Additionally the unregulated providers through the enrollment process will comply with 45 CFR 98.41 which requires at a minimum that providers protect the health and safety of children through the prevention and control of infectious diseases including immunizations, building and physical premises safety and minimum health and safety training. Additionally the requirement to have minimum health and safety standards for individuals caring for children provides parents with some assurance about the quality of care their children will receive.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: One

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effect on the public health is that the unregulated providers through the enrollment process will comply with 45 CFR 98.41 which requires at a minimum that providers protect the health and safety of children through the prevention and control of infectious diseases including immunizations, building and physical premises safety and minimum health and safety training.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There is no detrimental effect as unregulated providers would be ineligible for subsidies under the CCDF as amended by the new welfare reform legislation.

(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: There is no statute, administrative regulation, or governmental policy which may be in conflict with, overlap, or duplicate the proposed regulation.

(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? Yes. Tiering is necessary in order to allow each contract area flexibility to locally implement both the child care automated system and develop the local contractor to assume responsibility for the operation of the child day care assistance program. Until each area is operationalized the cabinet will continue to operate the child day care assistance program within both the Department for Social Insurance and Department for Social Services. All new provisions of the Child Care and Development State Plan will be implemented except that copayments will not be assessed in K-Tap eligible cases until 1-1-98 with all current responsibilities of the cabinet remaining in either DSI or DSS until the local contractor assumes responsibility for the local program.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq. and 45 CFR 98.41.

2. State compliance standards. In order to comply with the requirements of the above referenced mandate the state has combined six existing child day care programs into one, implemented a simplified child care maximum rate structure, a revised sliding copayment scale on client eligibility at below 133% of poverty, and established an enrollment process in order for unregulated providers to become eligible to receive payments under the Child Care Development Fund Block Grant as amended by PL 104-193.

3. Minimum or uniform standards contained in the federal mandate. Pursuant to 45 CFR 98.41 providers are required to protect the health and safety of children through the prevention and control of infectious diseases including immunization, building and physical premises safety and minimum health and safety training. Additionally the statute required that 70% of the CCDF be expended for K-TAP participants, those families attempting to transition from assistance and those at-risk of becoming dependent on assistance programs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No, prior to the amendment to the Child Care and Development Block Grant with PL 104-193, all unregulated providers requesting payment were required to become certified. With the expansion of the Child Care and Development Block Grant to include Title IV-A child care providers the cabinet developed the enrollment process that will provide minimum health and safety requirements for providers of child care that are not

required by statute to be licensed or certified.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No stricter standard than the federal mandate.

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

ARRS = Administrative Regulation Review Subcommittee
IJC = Interim Joint Committee

FINANCE AND ADMINISTRATION CABINET
Kentucky Asset/Liability Commission
(As Amended at ARRS, October 14, 1997)

200 KAR 23:010. Guidelines for use of financial agreements.

RELATES TO: KRS 56.863(9)

STATUTORY AUTHORITY: KRS 56.863(2), (9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 56.863(9) requires that the Kentucky Asset/Liability Commission promulgate administrative regulations that limit the net exposure of the Commonwealth as a result of the commission entering into financial agreements. This administrative regulation establishes the limits under which the commission may enter into financial agreements.

Section 1. Definitions. For the purpose of this administrative regulation:

(1) "Hedge" means a position in a financial agreement taken to minimize or eliminate the risk associated with an existing instrument or portfolio of instruments;

(2) "Net exposure" means the difference between the sum of the notional amount of financial agreements based on interest-sensitive assets or interest-sensitive liabilities under which variable payments are owed, less the sum of the notional amount of financial agreements based on interest-sensitive assets or interest-sensitive liabilities under which fixed payments are owed, respectively;

(3) "Notional amount" means the nominal amount on which a financial agreement is based;

(4) "Obligations" means notes, leases, bonds, or other financial liabilities;

(5) "Par amount" means the face or nominal value of a security.

Section 2. ~~[Goals of the Commission in the Use of Financial Agreements. The goals of the commission in the use of financial agreements shall include, but not be limited to, the following:~~

~~(1) To effectively manage the Commonwealth's net interest margin by more efficiently matching interest-sensitive assets with interest-sensitive liabilities;~~

~~(2) To hedge any of the Commonwealth's obligations from adverse changes in interest rates;~~

~~(3) To utilize financial agreements to lower interest expenses or the risk of fluctuating interest rates to the Commonwealth; and~~

~~(4) To better manage debt service reserve funds and advance refunding escrow accounts.~~

~~Section 3.] Guidelines of the Commission in the Use of Financial Agreements. The commission shall enter into financial agreements pursuant to the following guidelines:~~

~~(1) The commission shall utilize financial agreements in a prudent and non-speculative manner;~~

~~(2) The commission shall only enter into financial agreements with parties which are rated in one (1) of the three (3) highest rating categories by one (1) of the following rating agencies:~~

~~(a) Fitch Investors Service, L.P.;~~

~~(b) Moody's Investors Service; or~~

~~(c) Standard & Poor's Ratings Group; [a nationally-recognized rating agency;]~~

~~(3) Financial agreements resulting in variable rate obligations for the Commonwealth shall be entered into only if the aggregate of all variable rate obligations under financial agreements does not exceed~~

a net exposure of more than ten (10) percent of state obligations outstanding which are supported by appropriations by the General Assembly at the time the agreement is executed. Financial agreements utilized related to the issuance of tax and revenue anticipation notes shall be excluded from this limitation;

(4) Financial agreements utilized for the purpose of refunding or aiding in the refunding of obligations of the Commonwealth shall be limited to a notional amount not to exceed the par amount and stated final maturity of the refunding obligations;

(5) Financial agreements utilized as part of a debt service reserve fund investment strategy shall be limited to a notional amount not to exceed the maximum required debt service reserve fund amount required under the resolution, trust indenture, or agreement establishing the debt service reserve fund;

(6) Financial agreements utilized for the purpose of maximizing investment income and alleviating mismatches between an advance refunding escrow and debt service payments due on an obligation shall be limited to a notional amount not to exceed the par amount of the securities held in the escrow plus interest; and

(7) No more than ten (10) percent of the Commonwealth's investment portfolio shall be subject to financial agreements utilized for the purpose of managing the net interest margin. Financial agreements based on the Commonwealth's interest-sensitive assets shall be coordinated with the State Investment Commission.

JOHN P. MCCARTY, Chairman

APPROVED BY AGENCY: August 14, 1997

FILED WITH LRC: August 15, 1997 at 11 a.m.

GENERAL GOVERNMENT CABINET
Kentucky Board of Veterinary Examiners
(As Amended at ARRS, October 14, 1997)

201 KAR 16:060. Complaint processing procedures.

RELATES TO: KRS 321.235(2), 321.351, 321.360

STATUTORY AUTHORITY: KRS 321.235(2), (3), 321.240(5), 321.351, 321.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(2) authorizes the board to investigate an allegation of a practice which violates [persons engaging in practices which violate] the provisions of KRS Chapter 321 [or the administrative regulations promulgated hereunder]. This administrative regulation establishes the [detailed] procedures for processing a complaint [the investigation of] [complaints] received by the board.

Section 1. [Definitions. (1) "Chairman" means the chairman of the board;

(2) "Investigative assistant" means an appropriately licensed individual designated by the board to assist the board's attorney in the investigation of a complaint or an investigator employed by the Attorney General or the board;

(3) "Complaint" means any written allegation alleging misconduct which might constitute a violation of KRS Chapter 321 or the administrative regulations promulgated thereunder by a licensee or other person;

(4) "Charge" means a specific allegation contained in a formal complaint issued by the board alleging a violation of KRS Chapter 321 or the administrative regulations promulgated thereunder.

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(5) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensee or other person and commences a formal disciplinary proceeding.

(6) "Hearing officer" means the person designated and given authority by the board to preside over all proceedings pursuant to the issuance of any formal complaint.

(7) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching an informal disposition of any matter without further recourse to formal disciplinary procedures.

Section 2. Receipt of Complaints. (1) A complaint [Complaints] alleging misconduct which might constitute a violation of KRS Chapter 321 may be submitted by an individual, organization, or entity. A complaint [Complaints] shall be in writing and shall be signed by the person offering the complaint. The board may also file a complaint based on information in its possession.

(2) Upon receipt of a complaint, the board shall send a [copy of the complaint shall be sent to the board's attorney for an initial review and preliminary recommendation of subsequent action to the board. A] copy of the complaint [shall also be sent] to the licensed individual named in the complaint along with a request for that individual's response to the complaint. The response of the individual shall be required within [for the next regularly scheduled meeting of the board except that the individual shall be allowed a period of] twenty (20) days from the date of receipt [to make a response]. Failure to respond in a timely fashion may constitute a violation of the code of ethical conduct pursuant to 201 KAR 16:010, Section 18 [19].

Section 2. [3. Preliminary Recommendations and] Initial Board Review. (1) After the receipt of a complaint and the time period for the individual's response has expired, the board shall consider the complaint [preliminary recommendation of the board's attorney], the licensed individual's response, and [any] other relevant material available to the board [in the initial review of the complaint]. The determination that the board makes at this point shall be whether [or not] there is enough evidence to warrant an [a formal] investigation.

(2) If [When], in the opinion of the board, a complaint does not warrant an [the formal] investigation [of a complaint against an individual], the board shall notify both the complaining party and the licensed individual of the outcome of the complaint.

(3) If [When], in the opinion of the board, a complaint warrants an [the formal] investigation [of a complaint against either a licensed individual or a person who may be practicing veterinary medicine without appropriate certification], the board shall open an investigation [into] [authorize its attorney and a designated investigative assistant to investigate] the matter [and report their findings and recommendations to the board at their earliest opportunity].

Section 3. [4. Results of [Formal] Investigation[; Board Decision on Hearing]. (1) Upon completion of the [formal] investigation, the board shall review the investigative report and shall determine [board's attorney or the investigative assistant shall report to the board their findings and recommendations as to the proper disposition of the complaint. The determination that the board makes at this point shall be] whether [or not] there is enough evidence to believe that a violation of KRS Chapter 321 [the law or regulations] may have occurred [and that a hearing should be held].

(2) If the board dismisses the complaint, it [When in the opinion of the board a complaint does not warrant the issuance of a formal complaint and the holding of a hearing the complaint shall be dismissed or other appropriate action taken. The board] shall notify both the complaining party and the licensed individual of the outcome of the complaint.

(3) If the board does not dismiss the complaint, it shall proceed in accordance with the provisions of KRS 321.360.

[(3) When in the opinion of the board a complaint warrants the

issuance of a formal complaint, the board shall cause a complaint to be prepared stating clearly the charge or charges to be considered at the hearing. The formal complaint shall be signed by the chairman and served upon the individual as required by Section 6 of this administrative regulation.

(4) When in the opinion of the board a complaint warrants the issuance of a formal complaint against a person who may be practicing veterinary medicine without proper licensure, the board shall cause a complaint to be prepared and signed by the chairman of the board, stating the board's belief the charges are based upon reliable information. Such complaint shall be forwarded to the county attorney of the county where the alleged violation may have occurred alleging the practice of veterinary medicine without appropriate certification with a request that appropriate action be taken under KRS 321.990. The board may also initiate action in Franklin Circuit Court for injunctive relief to stop the unauthorized practice of veterinary medicine.

Section 5. Settlement by Informal Proceedings; Letter of Reprimand. (1) The board, through counsel may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately disposing of the matter. Any agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman of the board.

(2) When, in the judgment of the board, an alleged violation is not of a serious nature, and the evidence presented to the board after the investigation and appropriate opportunity for the licensee to respond, provides a clear indication that the alleged violation did in fact occur, the board may issue a letter of reprimand to the individual who is named in the complaint as a means of resolving the complaint. Such action may be taken if it is determined by the board that this is an appropriate method of dispensing with the complaint. Such letter of admonishment shall be sent to the individual with a copy placed in the individual's permanent file. Within thirty (30) days of the date of the letter, the individual shall have the right to file a written response to the letter and have it attached to the letter of reprimand and placed in the permanent file. The individual shall also, within thirty (30) days of the date of the letter, have the right to appeal the letter of reprimand and shall be granted a full hearing on the complaint. If this appeal is requested, the board shall file a formal complaint in regard to the matter and set a date for a hearing.

Section 6. Notice and Service of Process. (1) Any notice required by KRS Chapter 321 or this administrative regulation shall be in writing, dated and signed by the chairman of the board.

(2) Service of notice and other process shall be made by hand delivery or delivery by certified mail, return receipt requested, to the individual's last known address of which the board has record or if known, by such service on the named individual's attorney of record, if appropriate. Refusal of service or avoidance of service shall not prevent the board from pursuing proceedings as may be appropriate.

(3) When notice of the initial date for the administrative hearing is given by either the board or the hearing officer, such notice shall be sent to the appropriate person at least twenty (20) days prior to the hearing.]

JOHN R. McCLURE, Chairman

APPROVED BY AGENCY: July 31, 1997

FILED WITH LRC: August 1, 1997 at noon

ADMINISTRATIVE REGISTER - 1057

GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (As Amended at ARRS, October 14, 1997)

201 KAR 20:240. Fees for applications and for services.

RELATES TO: KRS 61.874(3), 314.041(5), 314.042(3), (6), 314.051(2), 314.071(1), (2), 314.073(7), 314.161[, 200 KAR 1:020]
STATUTORY AUTHORITY: KRS 61.874(3), 314.131, 314.142, 314.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.142(1)(b) requires the board to establish an application fee for a registered nurse who applies to the board to be credentialed as a "sexual assault nurse examiner". KRS 314.161 authorizes the board to establish fees necessary to implement KRS Chapter 314. This administrative regulation establishes those fees. [To establish fees to carry out the provisions of KRS Chapter 314:]

Section 1. Fees for Licensure and Registration Applications. (1) The board shall collect a fee [fees] for:

- (a) An application [Applications] for licensure;
- (b) An application [Applications] for registration;
- (c) Licensure renewal or reinstatement.
- (2) The fee for an application [fees for applications] shall be:
 - (a) Licensure as a registered nurse - eighty (80) [seventy (70)] dollars.
 - (b) Licensure as a licensed practical nurse - eighty (80) [seventy (70)] dollars.
 - (c) Biennial renewal of active license - fifty-five (55) [forty-five (45)] dollars.
 - (d) Biennial renewal of inactive license - thirty-five (35) dollars.
 - (e) Reinstatement of license - eighty (80) [seventy (70)] dollars.
 - (f) Active to inactive license status - forty (40) [thirty-five (35)] dollars.
 - (g) Inactive to active license status - fifty (50) [forty-five (45)] dollars.
 - (h) [Endorsement] Verification of original [Kentucky] licensure or registration - twenty-five (25) [twenty (20)] dollars.
 - (i) Duplicate license or registration card or letter - twenty (20) dollars.
 - (j) Registration as an advanced registered nurse practitioner - eighty (80) [seventy (70)] dollars.
 - (k) Biennial renewal of registration as an advanced registered nurse practitioner - fifty-five (55) [forty-five (45)] dollars.
 - (l) Reinstatement of registration as an advanced registered nurse practitioner - eighty (80) [seventy (70)] dollars.
- (3) An application shall not be evaluated unless the current fee is submitted.

Section 2. Fees for Applications for Continuing Education Approvals. The fee for an application [Fees for applications] for approval of a provider [providers] of continuing education and for a renewal or reinstatement of the approval [thereof] shall be:

- (1) Initial provider approval - \$200 [~~\$100~~].
- (2) Reinstatement of provider approval - \$100.
- (3) Biennial renewal of approval - \$100 [fifty (50) dollars].
- (4) Individual review of continuing education offerings - ten (10) dollars.

Section 3. Fees for Services. (1) The fee for a service [Fees for services] shall be:

- (a) An applicant [Applicants] for licensure who is [are] retaking the examination - forty (40) [thirty (30)] dollars.
- (b) Verification of licensure or registration letter:
 1. One (1) to five (5) verifications - ten (10) dollars;
 2. Six (6) [Eight (8)] to ten (10) verifications - twelve (12) dollars;

3. Eleven (11) to fifteen (15) verifications - fourteen (14) dollars;
4. Sixteen (16) to twenty (20) verifications - fifteen (15) dollars;
5. Twenty-one (21) to fifty (50) verifications - twenty-five (25) dollars;

6. Fifty-one (51) to 100 verifications - forty (40) dollars; and
7. 100 or more verifications - fifty (50) dollars. [five (5) dollars;]
- (c) Copy of an examination result or transcript [results or transcripts] - five (5) dollars.

- (d) Nursing certificate (optional) - thirty (30) dollars.
- (2) An applicant for licensure who takes or retakes the licensure examination shall pay:

- (a) The current examination fee required by the national council of state boards of nursing; and

- (b) Application for licensure and retake fees pursuant to Section 1 of this administrative regulation and subsections (1) and (4) [(5)] of this section.

- (3) A nurse shall pay the current examination fee required by the national council of state boards of nursing, and the fees established by the board for application for licensure and retake, if the nurse:

- (a) Is licensed in another state, United States territory, or country;
- (b) Submits an application for licensure in Kentucky as a registered nurse, or a licensed practical nurse; and
- (c) Is required to take or retake the licensure examination.

- (4) An applicant [Applicants] retaking the licensure examination shall submit:

- (a) The fee for retake prior to each time the examination is taken; and

- (b) A new application and current fees if more than one (1) year has passed since the date the applicant was declared eligible to take the examination initially.

- (5) A graduate of a foreign school of nursing shall be responsible for:

- (a) Costs incurred to submit credentials translated into English;
- (b) Commission on graduates of foreign nursing schools certificates;
- (c) Immigration documents; and
- (d) Other documents needed to verify that the graduate has met Kentucky licensure requirements.

Section 4. Except as provided by Section 3(4) [(5)] (b) of this administrative regulation, an application which is not completed within one (1) year from the date the application form is filed with the board office shall lapse and the fee shall be forfeited.

Section 5. An applicant who meets all requirements for approval, licensure, or registration shall be issued the appropriate approval, license, or registration without additional fee.

Section 6. Refunds. An overpayment of five (5) dollars or more of a current fee shall be refunded.

Section 7. A partial application fee may be held on record for one (1) year and shall be applied toward the fee to meet the requirements for licensure or registration.

Section 8. A fee [Fees] properly collected by the board shall not be refunded, except as provided in Section 6 of this administrative regulation.

Section 9. Fees for Sexual Assault Nurse Examiners. (1) The application fee shall be fifty (50) dollars.

(2) The credential renewal fee shall be forty (40) dollars.

(3) The credential reinstatement fee shall be fifty (50) dollars.

LINDA J. THOMAS, President

APPROVED BY AGENCY: July 1, 1997

FILED WITH LRC: July 8, 1997 at 1 p.m.

ADMINISTRATIVE REGISTER - 1058

GENERAL GOVERNMENT CABINET Kentucky Board of Certification of Marriage and Family Therapists (As Amended at ARRS, October 14, 1997)

201 KAR 32:030. Fees.

RELATES TO: KRS 335.330, 335.340(1)(a)

STATUTORY AUTHORITY: KRS 335.330, ~~[334.330;]~~ 335.320(7),
335.340(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.330 requires the board to promulgate an administrative regulation establishing the initial fee for certification required to be paid by an applicant for certification and requires an applicant to pass a written examination prescribed by the board. KRS 335.340(1)(a) requires the board to promulgate an administrative regulation establishing the fee for a certification renewal. KRS 335.320(7) authorizes the board to promulgate administrative regulations necessary to implement KRS Chapter 335. This administrative regulation establishes those fees. [This administrative regulation establishes all fees [the initial fee] for certification that KRS 335.330 authorizes the board to establish by administrative regulation.]

Section 1. Initial Certification Fee. (1) The initial certification fee for certification as a marriage and family therapist shall be \$200.

(2) If an application for certification is denied, the board shall refund \$150 of the initial certification fee.

Section 2. Examination Fee. The fee for taking the certification examination shall be \$195.

Section 3. Renewal Fee. The fee for renewal of certification shall be \$250 for a three (3) year period.

JOHN P. SOHAN, Chairman

APPROVED BY AGENCY: August 11, 1997

FILED WITH LRC: August 11, 1997 at 11 a.m.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, October 14, 1997)

301 KAR 2:140. Requirements [Seasons] for wild turkey hunting.

RELATES TO: KRS 150.010, 150.025, 150.092, 150.170(3), 150.175(4), 150.305, 150.360, 150.365, 150.390(1), 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 4 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:

~~(1) [(a)] Except on the dates and during the times specified in:~~

~~(a) 301 KAR 2:142;~~

~~(b) 301 KAR 2:144; or~~

~~(c) [1. In this section;~~

~~2. In Section 9 of this administrative regulation; or~~

~~3. In 301 KAR 2:111.~~

~~(2) [(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 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(3), a person hunting wild turkeys **shall possess a:**

(1) Spring turkey hunting permit during the spring season.

(2) Fall turkey archery hunting permit during the fall archery season.

(3) Fall turkey gun hunting permit during the fall gun season.

~~[:~~

~~(1) During the spring season shall possess a spring turkey hunting permit.~~

~~(2) During the fall archery season shall possess a fall turkey archery hunting permit.~~

~~(3) During the fall gun season shall possess a fall turkey gun hunting permit.]~~

Section 4. ~~[Bag and Possession Limits. Except as specified in Section 9 of this administrative regulation and by 301 KAR 2:111, a person shall not take more than:~~

~~(1) One (1) turkey per day;~~

~~(2) Two (2) turkeys with visible beards during the spring season;~~

~~(3) Two (2) turkeys of either sex during the fall archery season.~~

Section 5. ~~[Juvenile Hunters, Tagging and Checking.]~~ (1) An adult shall accompany and maintain control of a person ~~[turkey hunters]~~ under sixteen (16) years of age turkey hunting with a firearm.

(2) After taking a wild turkey ~~[wild turkeys]~~, and before moving the carcass, a person shall:

(a) Cut, punch, or mark with ink or indelible pencil the number and month on the carcass tag portion of the turkey permit corresponding to the current date.

(b) Attach the tag to the carcass:

1. While transporting the turkey by vehicle; or

2. Whenever the hunter is not in physical possession of the carcass.

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(c) Have the turkey checked at a check station or by an authorized employee of the department:

1. On the same day it was taken during the spring or fall gun season;

2. By 9 a.m. on the day after it was taken during the fall archery season. [Have the turkey checked:

1. At a check station; or
2. By an authorized employee of the department;
3. During the spring or fall gun season, on the same day it was taken;

4. During the fall archery season, by 9 a.m. on the day following the day it was taken.]

(d) Fill out a game check card and return it to the person checking the turkey.

(e) Keep the hunter's portion of the game check card in possession until the turkey is processed.

(f) Attach to a turkey [turkeys] taken to a taxidermist:

1. The taxidermy portion of the game check card;
2. A Ft. Campbell game check card; or
3. A Land Between the Lakes game check card.

(g) Check the turkey [turkeys] before transporting them out of Kentucky.

(3) A person taking a turkey on a wildlife management area [turkeys on wildlife management areas] shall follow the tagging and checking requirements in 301 KAR 2:142 or [Section 8 of this administrative regulation or in] 301 KAR 2:111.

(4) A person exempt from turkey permit requirements by KRS 150.170(3) shall:

(a) Write his name, address, the date when, and the county where, the turkey was taken on a card; and [:

1. Immediately after taking a turkey; and
2. Before moving the carcass.]

(b) Attach the card to the carcass when he removes the turkey from the property where it was taken. [:

1. While transporting the carcass by vehicle; or
2. Whenever he is not in physical possession of the carcass.]

Section 5. [6:] Firearms and Archery Equipment. A person hunting wild turkey shall not use or carry:

(1) A rifle or handgun [Rifles or handguns].

(2) A shotgun [Shotguns] larger than ten (10) gauge or smaller than twenty (20) gauge.

(3) Shot larger than Number Four (4).

(4) Shotgun slugs.

(5) A firearm [Firearms] during archery-only seasons.

(6) A crossbow [Crossbows], except on the Pioneer Weapons Area.

(7) Barbed broadheads.

(8) Broadheads smaller than seven-eighths (7/8) inch wide.

(9) Arrows with chemical treatments or attachments containing chemicals.

Section 6. [7:] Baiting. (1) A person shall not hunt wild turkeys on a baited area or by the aid of baiting:

(a) While bait is present; or

(b) For thirty (30) days after the bait has been removed.

(2) A person may hunt wild turkey on an area where grain, feed or other substance exists as the result of:

(a) Bona fide agricultural practice; or

(b) Manipulating a crop for a wildlife management purpose.

(3) A field shall be considered baited if grain, feed or other substance grown on the field is removed and later returned to the field. [A person may hunt wild turkeys on areas where grains, feed or other substances exist as the result of:

(a) Bona fide agricultural practices; or

(b) Manipulating a crop for wildlife management purposes; provided that grain, feed or other substances once removed from a

field are not returned to or scattered on the field.]

Section 7. [8:] Turkey Hunting Restrictions. (1) A person hunting wild turkeys:

(a) May use a hand or mouth-operated call;

(b) Shall not:

1. Use a dog;

2. Hunt from a boat;

3. Use an electronic call;

4. Use a live decoy; or

5. Take a roosting turkey. [A person hunting wild turkeys:

(a) Shall not use dogs;

(b) Shall not hunt from boats;

(c) Shall not use electronic calls;

(d) May use hand or mouth-operated calls;

(e) Shall not use live decoys;

(f) Shall not take roosting turkeys.]

(2) A person shall not mimic the sound of a turkey:

(a) From March 1 until the opening of the spring season;

(b) In an area [areas] open to hunting if [where] turkeys are reasonably expected to occur.

[Section 9. Seasons and Exceptions on Wildlife Management Areas. (1) Statewide seasons apply to wildlife management areas unless otherwise specified in this section.

(2) A person shall not hunt wild turkeys on the areas listed in this section except on the dates specified in this administrative regulation or in 301 KAR 2:111.

(3) Turkeys listed as bonus birds shall not:

(a) Count against statewide limits;

(b) Require a carcass tag portion of the turkey permit be attached to the carcass.

(4) Ballard Wildlife Management Area:

(a) Season: Quota youth hunt, the Saturday and Sunday before the Monday closest to April 15.

(b) Applicants 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.

(c) Shooting hours are one-half (1/2) hour before sunrise until noon.

(d) A person hunting wild turkey shall:

1. Check in and out daily;

2. Not take more than one (1) turkey;

(5) Fort Campbell Wildlife Management Area:

(a) Season: the last Saturday in March through the second Sunday in May;

(b) Turkeys taken on Fort Campbell shall be bonus birds.

(c) A person shall:

1. Obtain a postcombination hunting-fishing permit before hunting;

2. Not hunt except during daylight hours;

3. Not take more than two (2) turkeys per spring season;

4. Attach a Fort Campbell game check card to turkeys before leaving the post.

(6) Fort Knox Wildlife Management Area:

(a) Seasons: The last Saturday in March through the second Sunday in May;

(b) A person shall:

1. Hunt in assigned areas;

2. Check turkeys by 2 p.m. on the day harvested;

3. Not take more than one (1) turkey during the spring season;

(7) Grayson Lake Wildlife Management Area in Carter County and the portion in Elliott County east of Bruin Creek:

(a) Seasons: quota youth hunts:

1. The Saturday and Sunday before the Monday closest to April 15.

2. The Saturday and Sunday two (2) weeks after the first quota youth hunt.

(b) An applicant for the quota youth hunts shall participate in a

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drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(c) Shooting hours are one-half (1/2) hour before sunrise until noon.

(d) A person hunting wild turkeys:

1. Shall check in and out daily.

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: June 13, 1997

FILED WITH LRC: August 15, 1997 at 9 a.m.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, October 14, 1997)

301 KAR 2:142. Spring wild turkey hunting.

RELATES TO: KRS 150.175(1)(r), 150.305, 150.360, 150.390, 150.990(11)

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. This administrative regulation establishes season dates, shooting hours and other requirements for spring turkey hunting.

Section 1. Definitions. (1) "Quota hunt" means a hunt whose participants register in advance and are selected by a random drawing.

(2) "Youth hunt" means a hunt open to a person at least ten (10) years old but who has not reached his 16th birthday by the day of the hunt.

Section 2. A person may take wild turkeys:

(1) For twenty-one (21) consecutive days beginning on the Monday closest to April 15;

(2) Using firearms or archery equipment as specified in Section 5 of 301 KAR 2:140;

(3) From one-half (1/2) hour before sunrise until one-half (1/2) hour after sunset [1 p.m].

Section 3. A person shall not take more than:

(1) One (1) male turkey or turkey with a visible beard per day; or

(2) Two (2) male turkeys or turkeys with visible beards during the spring season.

Section 4. (1) Unless otherwise specified in this section, spring season dates and the requirements of 301 KAR 2:140 shall apply to wildlife management areas.

(2) A person shall not hunt wild turkeys during the spring on the areas listed in this section except on the dates specified in this administrative regulation.

(3) Turkeys listed as bonus birds shall not:

(a) Count against statewide limits.

(b) Require a carcass tag portion of the turkey permit be attached to the carcass.

(4) Ballard Wildlife Management Area.

(a) Season. Quota youth hunt, the Saturday and Sunday before the Monday closest to April 15.

(b) Applicants 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.

(c) Shooting hours are one-half (1/2) hour before sunrise until noon.

(d) A person hunting wild turkey shall:

1. Check in and out daily.

2. Not take more than one (1) turkey.

(5) Fort Campbell Wildlife Management Area.

(a) Season. The last Saturday in March through the second Sunday in May.

(b) Turkeys taken on Fort Campbell shall be bonus birds.

(c) A person shall:

1. Obtain a post combination hunting-fishing permit before hunting.

2. [Not hunt except during daylight hours.

3.] Attach a Fort Campbell game check card to turkeys before leaving the post.

(6) Fort Knox Wildlife Management Area.

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(a) Seasons. The last Saturday in March through the second Sunday in May.

(b) A person shall:

1. Hunt in assigned areas.

2. Check turkeys by 2 p.m. on the day harvested.

3.] Not take more than one (1) turkey during the spring season.

(c) Turkeys taken on Fort Knox shall be bonus birds.

(7) Grayson Lake Wildlife Management Area in Carter County and the portion in Elliott County east of Bruin Creek.

(a) Seasons. Quota youth hunts.

1. The Saturday and Sunday before the Monday closest to April 15.

2. The Saturday and Sunday two (2) weeks after the first quota youth hunt.

(b) An applicant for the quota youth hunts shall participate in a drawing held at 1 p.m. on the Saturday closest to April 1 on the area.

(c) Shooting hours are one-half (½) hour before sunrise until noon.

(d) A person hunting wild turkeys:

1. Shall check in and out daily.

2. Shall not take more than one (1) turkey.

(8) Green River Wildlife Management Area.

(a) This area shall be open during the spring season.

(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 (½) 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. During the spring season a person:

(a) Shall not use or possess firearms while turkey hunting.

(b) 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 state turkey permit to the carcass.

5. Not take more than one (1) turkey in the spring.

(c) Shooting hours shall be from one-half (½) hour before sunrise until one-half (½) hour after sunset.

(11) Pioneer Weapons Wildlife Management Area. During the spring season a person:

(a) Shall not use a breech-loading shotgun [breech-loading shotguns].

(b) May use a crossbow with a working safety device. [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) The main block of Robinson Forest shall be closed to turkey hunting.

(14) Swan Lake Wildlife Management Area shall be closed to turkey hunting.

(15) West Kentucky Wildlife Management Area shall be closed to turkey hunting.

C. THOMAS BENNETT, Commissioner

ANN R. LATTI, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 13, 1997

FILED WITH LRC: August 15, 1997 at 9 a.m.

TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, October 14, 1997)

301 KAR 2:144. Fall wild turkey hunting.

RELATES TO: KRS 150.175(1)(r), 150.305, 150.360, 150.390, 150.990(11)

STATUTORY AUTHORITY: KRS 150.025(1), 150.390(1), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)

and 150.390(1) authorize the department to promulgate administrative regulations governing wild turkey hunting. This administrative regulation establishes season dates, shooting hours and other requirements for fall gun and archery turkey seasons.

Section 1. A person may take wild turkeys:

(1) From the third Saturday in September through December 31, except during the modern gun deer season:

(a) Using archery equipment as specified in Section 5 of 301 KAR 2:140; **and**

(b) From one-half (½) hour before sunrise until one-half (½) hour after sunset.

(2) Beginning in 1998, for five (5) consecutive days beginning on the Wednesday closest to December 1:

(a) Using firearms as specified in Section 5 of 301 KAR 2:140; **and**

(b) From one-half (½) hour before sunrise until one-half (½) hour after sunset.

Section 2. Except as specified by 301 KAR 2:111, a person shall not take more than:

(1) One (1) wild turkey per day;

(2) Two (2) wild turkeys of either sex during the fall archery season; **and**

(3) One (1) wild turkey of either sex during the fall gun season.

Section 3. A person shall not hunt wild turkeys during the fall gun season except in Adair, Anderson, Allen, Barren, Boone, Bracken, Bullitt, Butler, Caldwell, Carroll, Christian, Crittenden, Cumberland, Edmonson, Franklin, Gallatin, Grant, Grayson, Green, Hardin, Harrison, Hart, Henry, Hopkins, Larue, Logan, Marion, Mason, Metcalfe, Muhlenburg, Nelson, Ohio, Owen, Pendleton, Robertson, Shelby, Spencer, Taylor, Todd, Trimble, Warren or Washington counties.

Section 4. On a wildlife management area owned, operated or under license to the department, a person:

(1) Shall not hunt wild turkey:

(a) During the fall gun season unless the wildlife management area lies partially or complete within a county listed in Section 3 of this administrative regulation.

(b) On a day when a firearm is allowed for deer hunting.

(c) During the fall gun or archery season on:

1. Ballard Wildlife Management Area;

2. Grayson Lake Wildlife Management Area;

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3. The main block of Robinson Forest;

4. Swan Lake Wildlife Management Area; or

5. West Kentucky Wildlife Management Area.

(2) May archery turkey hunt during the modern gun deer season if deer hunting with:

(a) A firearm is prohibited; and

(b) Archery equipment is permitted on the area during the modern gun deer season.

(3) Shall check in and out daily at the Higginson-Henry Wildlife Management Area. [On a wildlife management area owned or operated by the department, a person:

(1) May hunt wild turkeys during the fall gun season:

(a) If the wildlife management area lies completely or partially in a county listed in Section 3 of this administrative regulation; except

(b) During days when firearms are allowed for deer hunting on the wildlife management area;

(2) Shall not hunt during the fall turkey archery season on days when firearms are allowed for deer hunting on the wildlife management area;

(3) May archery turkey hunt during the modern gun deer season if deer hunting with:

(a) Firearms is prohibited; and

(b) Archery equipment is permitted on the area during the modern gun deer season;

(4) Shall check in and out daily at Higginson-Henry Wildlife Management Area;

(5) May use a crossbow during the fall archery turkey season on the Pioneer Weapons Area;

(6) Shall not fall turkey hunt on the following wildlife management areas:

(a) Ballard Wildlife Management Area;

(b) Grayson Lake Wildlife Management Area;

(c) Reelfoot National Wildlife Refuge;

(d) The main block of Robinson Forest;

(e) Swan Lake Wildlife Management Area; or

(f) West Kentucky Wildlife Management Area.]

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

APPROVED BY AGENCY: June 13, 1997

FILED WITH LRC: August 15, 1997 at 9 a.m.

DEPARTMENT OF AGRICULTURE

Division of Markets

(As Amended at ARRS, October 14, 1997)

302 KAR 40:010. Standard organic agricultural product requirements.

RELATES TO: KRS 260.036(1) [260.010]

STATUTORY AUTHORITY: KRS 260.036(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.036(1) 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. (1) "Allelochemic" means a naturally occurring substance significant to an organism of a species different from its source.

(2) "Allelopathic" means the ability of a plant to produce a substance that is toxic to certain plants.

(3) "Annual crop" means a crop that:

(a) Reaches maturity during a specific seasonal growing period; and

(b) Is harvested at maturity.

(4) "Biological control" means the use of a parasite, predator, or pathogen to suppress and maintain a pest population at a lower average density than would normally occur.

(5) "Botanical pesticide" means a natural pesticide derived from a plant.

(6) "Certification" means an annual process by which a person receives verification of authentic organic practice in the production, handling, or processing of food.

(7) "Certified organic farm" means a site that:

(a) Produces agricultural products or livestock;

(b) Utilizes a system of organic farming, pursuant to this administrative regulation; and

(c) Is certified by:

1. The department; or

2. An organic certification agent.

(8) "Commingled" means the mixing of agricultural products in a manner that makes them indistinguishable from each other.

(9) "Contaminated" means unfit for use because of the presence of an illegal quantity of a substance that is:

(a) Toxic;

(b) Synthetic; or

(c) Prohibited.

(10) "Cover crop" means a crop planted to:

(a) Prevent soil erosion;

(b) Recover nutrients from the subsoil;

(c) Increase water infiltration; and

(d) Increase the level of nitrogen and organic matter in the soil.

(11) "Farm" means agricultural land that is held by a certified producer.

(12) "Farm plan" means:

(a) A written plan to:

1. Rotate crops;

2. Build humus; and

3. Stabilize soil nutrients; and

(b) Similar documentation relevant to the management of an organic farm that addresses the:

1. Previous three (3) years;

2. Current management; and

3. Future management.

(13) "Fertilizer" means a substance that contains nitrogen, phosphorus, potassium, or a recognized plant nutrient used for:

(a) Its plant nutrient content; or

(b) Compounding mixed fertilizers.

(14) "Field" means a clearly demarcated, contiguous tract of agricultural land held by a:

(a) Certified producer; or

(b) Applicant for certification.

(15) "Genetic engineering" means an organism that has had its DNA altered or manipulated through biotechnology.

(16) "Green mature crop" means a crop planted primarily to be plowed under to increase soil tilth and fertility.

(17) "Handler" means a person engaged in the business of handling agricultural products, but shall not include a final retailer that does not process the agricultural product.

(18) "Handling operation" means an operation that:

(a) Receives agricultural products; and

(b) Processes, packages, or stores that product.

(19) "Illegal quantity" means an amount that is unlawful under:

(a) Federal law; and

(b) State law.

(20) "Low ecological profile" means a soil crop or pest management device that has little or no adverse effect on:

(a) Human health; or
(b) The environment.
(21) "Micronutrient" means a trace or minor element in soil that is essential for normal plant growth.

(22) "Organic certifying agent" means a private organic certification organization.

(23) "Organic farming" means a system of ecological soil management that:

- (a) Relies on building the humus level through:
 1. Crop rotation;
 2. Recycling organic waste; and
 3. The application of balanced mineral amendments;

(b) Uses, if necessary, a:

- 1. Mechanical control;
- 2. Botanical control; or
- 3. Biological control; and

(c) Has a minimum adverse effect on:

- 1. Health; and
- 2. The environment.

(24) "Organic food" means food:

(a) For:

- 1. Human consumption;
- 2. Livestock consumption; or
- 3. Aquaculture production;

(b) That is:

- 1. Produced under a system of organic farming; and
- 2. Processed, packaged, transported, and stored to retain

maximum nutritional value without the use of:

- a. An artificial preservative;
- b. Coloring;
- c. Ionizing radiation;
- d. A synthetic pesticide; or
- e. A similar additive.

(25) "Organically produced" means an agriculture product that is produced, handled or processed in accordance with this administrative regulation.

(26) "Person" means:

- (a) An individual;
- (b) A partnership;
- (c) A corporation;
- (d) An association;
- (e) A public organization; or
- (f) A private organization.

(27) "Pesticide" means a substance or mixture of substances that is intended for:

(a) Preventing, destroying, repelling, or mitigating a:

- 1. Plant pest; or
- 2. Nonplant pest; and

(b) Use as a plant:

- 1. Regulator;
- 2. Defoliant; or
- 3. Desiccant.

(28) "Pheromone" means a substance that:

- (a) Is secreted by an organism; and
- (b) Causes a specific reaction in a receiving organism of the same species.

(29) "Plant amendment" means an inoculant or foliar substance applied to seeds or plants that is intended to facilitate:

- (a) Nitrogen fixation;
 - (b) Germination;
 - (c) Growth;
 - (d) Yield;
 - (e) Product quality;
 - (f) Reproduction;
 - (g) Flavor; or
 - (h) Another desirable characteristic of a plant.
- (30) "Processing" means:

- (a) Cooking;
- (b) Baking;
- (c) Heating;
- (d) Drying;
- (e) Mixing;
- (f) Grinding;
- (g) Churning;
- (h) Separating;
- (i) Extracting;
- (j) Cutting;
- (k) Fermenting;
- (l) Eviscerating;
- (m) Preserving;
- (n) Dehydrating;
- (o) Freezing;
- (p) Manufacturing;
- (q) Packaging;
- (r) Canning; and
- (s) Jarring.

(31) "Propagation materials" means plant materials and includes a:

- (a) Seed;
- (b) Transplant;
- (c) Cutting;
- (d) Layering;
- (e) Bulb;
- (f) Tuber;
- (g) Slip;
- (h) Crown;
- (i) Offset;
- (j) Graft;
- (k) Budding;
- (l) Root stock; or
- (m) Another plant material used to cultivate a plant.

(32) "Raw manure" means solid and liquid agricultural animal excrement that has not, to improve its value as a biological activator, been:

- (a) Aged;
- (b) Aerated;
- (c) Composted;
- (d) Fermented;
- (e) Aerobically digested;
- (f) Humidified; or
- (g) Processed.

(33) "Semiochemical" means a:

- (a) Pheromone;
- (b) Allelochemic; or
- (c) Other naturally occurring substance involved in the chemical interaction between organisms.

(34) "Soil amendment" means an aggregate, additive or microbiological substance that is:

- (a) Naturally occurring;
- (b) Nonsynthetically modified; or
- (c) A nontoxic manufacturing by-product.

(35) "Synthetic" means a substance that is:

- (a) Formulated or manufactured by a chemical process;
- (b) Formulated by a process that chemically changes a substance extracted from a naturally occurring:

- 1. Plant;
- 2. Animal; or
- 3. Mineral source; and
- (c) Not created by a naturally occurring biological process.

(36) "Transitional period" means a thirty-six (36) month period from the last date of application of a prohibited material during which a farm or field unit may be certified as transitional-organic certification pending.

(37) "Toxin" means a chemical, drug, radiological agent, or

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biological agent that is present in an amount sufficient to cause a significant adverse effect in:

(a) A human;

(b) A crop;

(c) Livestock; or

(d) The environment. [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 compounding 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 plants.

(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, build humus, and stabilize soil nutrients.

(29) The term "field" means a clearly demarcated, contiguous tract of agricultural land leased, owned or otherwise held by and under the management of a certified producer or applicant for certification.

(30) The term "illegal quantities" means amounts that are not lawful under federal or state statutes or regulations.

(31) The term "organic certifying agent" means a private organic certification organization.

(32) The term "low ecological profile" means a soil crop or pest management practice that has a low degree of or no adverse effects on human health or the environment.

(33) "The organically produced" means an agriculture product that is produced, handled or processed in accordance with these rules.

(34) The term "person" means any individual, partnership, corporation, association, or public or private organization.

(35) The term "processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes the packaging, canning, jarring, or otherwise enclosing of food in a container.

(36) The term "propagation materials" means plant materials including seeds, transplants, cuttings, layering, bulbs, tubers, slips,

crowns, offsets, grafts, budding, and root stocks or other plant materials used to cultivate plants:

(37) The term "transitional period" means a period of thirty-six (36) months from the last date of application of a prohibited material during which a farm or field unit may be certified as transitional organic certification pending. Upon completion of the required transitional period, a field may be certified as organically produced.

(38) The term "handler" means any person engaged in the business of handling agricultural products except such term shall not include final retailers of agricultural products that do not process such products:

(39) The term "handling operation" means any operation or portion of an operation, that receives or otherwise acquires agricultural products and processes, packages, or stores such products:

(40) The term "genetic engineering" means any plant or biological control organism that has had its DNA altered or manipulated through biotechnology.]

Section 2. Standards for Certification of Organic Agricultural Products [Foods]. (1) The department shall certify an organic agricultural product, producer, processor, or handler if the product meets the following requirements: [producers, processors, and handlers of organic agriculture products [establish a program to certify organically produced food] that meets the following requirements:]

(a) [(+)] Is produced, harvested, cleaned, stored, transported, distributed, processed and packaged without the use of synthetic fertilizer and pesticide materials; except as permitted in Section 3 of this administrative regulation.

(b) Contains no added artificial:

1. Coloring;
2. Flavoring; or
3. Preservative;

(c) For a perennial crop, is grown for three (3) years before and throughout the growing and harvesting of the crop in soil or growth medium that is free of:

1. Applied synthetic pesticides;
2. Synthetic soil and plant amendments; and
3. Synthetic fertilizer material;

(d) For an annual or two (2) year crop, was grown in soil free of applied synthetic pesticides or fertilizer material for:

1. Three (3) years before planting or transplanting; and
2. Throughout the entire growing and harvesting of the crop;

(e) Contains not more than five (5) percent of a pesticide, fungicide, or herbicide level consider safe by the United States Food and Drug Administration;

(f) Is grown in soil or growth medium that is fifty (50) feet or less from other cultivated agricultural land;

(g) The farm has distinct boundaries between a:

1. Field under organic management; and
2. Conventional field.

(2) Postharvest handling and packing procedures shall:

(a) Be performed at a:

1. Certified organic handling facility; or
2. Handling facility that is inspected as a part of the grower's certification; and

(b) Insure that the organic product is not contaminated by conventional:

1. Crop practices; or
2. Postharvest practices.

(3) An operation shall demonstrate that the facility and audit trail ensure that the organic product is not contaminated with:

- (a) Synthetic material; or
- (b) A conventional crop.
- (4) A farm shall:

- (a) Retain complete records for:
1. Organic production; and

2. Conventional production; and

(b) Permit inspection of these records by the department.

[(2) Contains no added artificial coloring, artificial flavoring or artificial preservative:

(3) For perennial crops, is grown in soil or growth medium which is free of any applied synthetic pesticides, synthetic soil and plant amendments, and synthetic fertilizer materials, for three (3) years before and throughout the entire growing and harvesting of the crop:

(4) For annual crops and two (2) year crops, was grown in soil free of any applied synthetic pesticides or fertilizer material for three (3) years before planting or transplanting and throughout the entire growing and harvesting of the crop:

(5) Contains no more than ten (10) percent of the level of any pesticide, fungicide or herbicide which the United States Food and Drug Administration regards as a safe level:

(6) Is grown in soil or growth medium that is not less than fifty (50) feet in distance from other cultivated agricultural land:

(7) Growers and handlers will be responsible for all costs of residue testing deemed necessary by the department based on suspicion of violation:

(8) Growers' postharvest handling and packing procedures must insure that the organic product is not contaminated by conventional crop or conventional postharvest practices. All postharvest handling and packing procedures must be performed at a certified organic handling facility or a handling facility that is inspected as part of the growers' certification. All operations must demonstrate that facilities and audit trail adequately ensure that organic product is not contaminated with synthetic materials or conventional crop:

(9) Is a farm or part of a farm where there exists distinct defined boundaries between fields under organic management and other fields. Complete records for organic production and conventional production must be made available.]

Section 3. Soil Management Practices. [Establishing Permitted, Prohibited and Regulated Production Practices for Agricultural Crops [Food] Intended to be Certified as Organically Grown.] (1) A tillage system [Soil management practices are under the following guidelines:

(a) Tillage systems] shall incorporate crop residues and other organic wastes into topsoil.

(2) A [(b)] mowing, grazing or permacultural system may [systems are permitted to] minimize or eliminate tillage.

(3) Crop rotation shall be used for a crop that is not:

- (a) A perennial;
- (b) Included in a permaculture system; or
- (c) Grown in a container.

(4) The following may be used in crop rotation:

- (a) Alternation of a:
1. Root and row crop;
2. Heavy and light feeder; or
- (b) A:
1. Nitrogen-fixing crop;
2. Green manure crop;
3. Cover and nurse crop;
4. Deep-rooting crop;
5. Plant with allelopathic or mineral-accumulation properties.

(5) Raw manure may be applied to:

(a) A green manure crop in a rotation if a food crop will not be harvested for one (1) year;

(b) A perennial crop if the harvest will not be sold within one (1) year of application; and

(c) Soil, if a food crop will not be planted for at least one (1) year.

[(c) Crop rotation shall be used for all crops that are not:

1. Perennials;
2. Included in permaculture systems;
3. Grown in containers.

(d) Crop rotation may include:

1. ~~Alternation of root [Alteration of soil] and row crops;~~
2. ~~Nitrogen-fixing crops;~~
3. ~~Green manure crops;~~
4. ~~Cover and nurse crops;~~
5. ~~Deep-rooting crops;~~
6. ~~Alternation [Alteration] of heavy and light feeders;~~
7. ~~Plants with allelopathic or mineral-accumulating properties.~~

(e) ~~Raw manure may be applied to:~~

1. ~~Green manure crops in a rotation where no food crops will be harvested for one (1) year;~~
2. ~~Perennial crops provided no harvest for sale for one (1) year from application;~~
3. ~~Soil where food crops will not be planted for at least one (1) year.~~

(6) [(f)] Manure composted by aerobic digestion or controlled fermentation may be used. However, sheet compost shall not be applied within four (4) months of planting:

(a) Radishes;

(b) Leafy greens;

(c) A member of the beet family; or

(d) A known nitrate accumulator. [on radishes, leafy greens, the beet family and other known nitrate accumulators sheet compost (manure) may not be applied less than four (4) months before planting.]

(7) [(g)] Liquid manure slurry may be used if the slurry is aerated from a source that adds carbon to the slurry.

(8) [(h)] Sewage sludge shall not be used. [is not allowed.] [Raw manure shall not be applied in contact with food for consumption.]

Section 4. Soil Amendments, Fertilizers and Water. [(2) Soil amendments, fertilizers and water are under the following guidelines:]

(1) A source [(a) Sources] of nitrogen may include the following:

(a) Green manure; [1. Green manures;]

(b) A nitrogen-fixing crop; [2. Nitrogen-fixing crops;]

(c) A cover crop; [3. Cover crops;]

(d) Composted material; [4. Composted materials;]

(e) A nitrogen-fixing microorganism. [5. Nitrogen-fixing microorganisms;]

(2) A producer shall:

(a) Determine and document that supplemental nitrogen is free of contamination, prior to use; and

(b) Provide proof of noncontamination to the department upon request.

(3) If supplemental nitrogen is necessary, the following shall be used in the context of an overall farm plan:

(a) Vegetable meal;

(b) Blood meal; and

(c) Fish emulsion.

[6. Before using any supplemental nitrogen, a producer must ascertain that it is free of contamination. Evidence that the material is not contaminated must be made available to the department on request. If supplemental nitrogen is needed, the following materials must be used in the context of an overall farm plan: vegetable meals, blood meals, and fish emulsion.]

(4) The following nitrogen sources shall not be used:

(a) Anhydrous ammonia;

(b) Ammonium nitrate;

(c) Sewage sludge;

(d) Contaminated organic material.

(5) A source of phosphorus may include the following:

(a) Colloidal phosphate;

(b) Hard-rock phosphate;

(c) Soft-rock phosphate;

(d) Bone meal.

(6) The following source of phosphorus shall not be used:

(a) Super phosphate;

(b) Triple super phosphate;

(c) Acidifying material with a high salt index.

(7) A source of potassium may include:

(a) Wood ash;

(b) Rock dust, greensand, granite;

(c) Sulfate of potash magnesia;

(d) Natural potassium sulfate;

(e) Kanite;

(f) Recycled potassium-rich organic matter.

(8) The following sources of potash shall not be used:

(a) Muriate of potash potassium chloride; and

(b) A source with:

1. Excessive solubility;

2. High salt index; and

3. High chloride content.

(9) A source of calcium may include:

(a) Agricultural:

1. Limestone; or

2. Gypsum;

(b) Kiln dust;

(c) Calcified seaweed; or

(d) Corn calcium.

(10) The following sources of calcium shall not be used:

(a) Quicklime;

(b) Slaked lime;

(c) Hydrated lime; or

(d) Calcium oxide.

(11) The following sources of magnesium may be used:

(a) Dolomitic limestone;

(b) Kieserite;

(c) Sulfate of potash magnesia langbeinite.

(12) Elemental sulfur from a mined source may be used as an application to soil.

(13) The following may be used as a source of micronutrients:

(a) Liquid or powdered seaweed extract that is not chemically fortified;

(b) Kelp meal; and

(c) Rock powder.

(14) If a supplemental micronutrient is necessary, the following may be used in the context of an overall farm plan:

(a) Fish emulsion;

(b) Acid treated (sulfate or oxide) zinc;

(c) Boron;

(d) Copper;

(e) Iron;

(f) Manganese; and

(g) Molybdenum.

[(b)] [One (1) of the following nitrogen sources may be used one (1) time only on a field planted with a green manure crop:

1. Sodium nitrate;

2. Potassium nitrate;

3. Urea;

4. Ammonium sulfate.

(c)] 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) [(i)] 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) [(j)] 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.

~~(15) [(b)] [(e)] The following sources of micronutrients shall not be used:~~

- ~~(a) [1.] Chemically fortified liquid;~~
- ~~(b) An excessive dose of a [2. Excessive doses of any] micro-nutrient. [Powdered seaweed extract.]~~

~~(16) [(m)] [(p)] The following sources of growth regulators, growth promoters, activators and inoculants may be used:~~

- ~~(a) [1.] Dry or liquid seaweed extract;~~
- ~~(b) A natural enzyme; [2. Natural enzymes;]~~
- ~~(c) An herbal preparation; [3. Herbal preparations;]~~
- ~~(d) A biodynamic preparation; [4. Biodynamic preparations;]~~
- ~~(e) A rhizobial inoculant; [5. Rhizobial inoculants;]~~
- ~~(f) [6.] Free-living nitrogen-fixing bacteria;~~
- ~~(g) [7.] Blue-green algae;~~
- ~~(h) [8.] Cellulolytic bacteria;~~
- ~~(i) [9.] Natural rooting hormones;~~
- ~~(j) [10.] Humates;~~
- ~~(k) An approved adjuvant and wetting agent for a foliar application. [11. Approved adjuvants and wetting agents for foliar applications.]~~

~~(17) A synthetic growth promoter or regulator shall not be~~

~~used. [(n) [(q)] The following sources of growth regulators and growth promoters shall not be used:~~

1. Synthetic growth promoters;
2. Synthetic growth regulators.]

~~(18) If irrigation is necessary, an initial application for certification shall:~~

~~(a) Identify planned sources for irrigation; and~~

~~(b) Include an analysis of water quality. [(e) [(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.]~~

~~(19) Irrigation management shall conform to recognized organic practices and water conservation principles. A producer shall not use irrigation water contaminated with a toxic substance unless:~~

~~(a) There is not another available source of water;~~

~~(b) There is no toxic residue from contaminated water present in a certified crop; and~~

~~(c) The department or an organic certifying agent has granted written permission.~~

~~(20) A determination, pursuant to Section 3(19)(b), that no toxic residue is present in a certified crop shall be made by conducting a tissue test for:~~

~~(a) Each farm or field;~~

~~(b) Every third year after the initial test. [(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.]~~

~~[(s) 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.]

~~Section 5. Seeds and Seedlings. [(3) Seeds and seedlings are under the following guidelines:]~~

~~(1) A producer:~~

~~(a) Shall not use plant material produced with a synthetic pesticide;~~

~~(b) May use:~~

1. Untreated seeds and seedlings, bulbs, sets, and similar plant material;
2. Hot water, food grade hydrogen peroxide, and similar nontoxic seed treatments;
3. A legume inoculant; and
5. Fungicide-free pelletization.

~~(2) A producer may use the following if approved in writing by the department or another certifying agency:~~

~~(a) Insecticide treated seed for food or fiber if it is:~~

1. Required by a state or federal quarantine requirement; or
2. The only seed available in current commercial stock, and used for a one (1) time only planting;

~~(b) A commercial soil mix, vermiculite, or other media containing a small amount of soluble fertilizer for farm-produced seedlings;~~

~~(c) Plant material to which a synthetic pesticide has been applied if the material produced no crop that was harvested or sold within thirty-six (36) months of transplanting.~~

(3) A producer shall not:

(a) Use on a seedling or plant material produced for organic production, a synthetic:

1. Fungicide;
2. Pesticide; or
3. Soil-fumigant; and

(b) Sterilize greenhouse soil at a temperature higher than 180 degrees Fahrenheit.

~~[(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;]~~

Section 6. Weed Control. [(4) Weed control is under the following guidelines:]

(1) [(a)] The following weed control practices may be used:

(a) [1:] Mechanical or hand cultivation;

(b) Crop rotation and use of a smother crop; [2. Crop rotations and use of smother crops;]

(c) [3:] Mulching with organic material [materials];

(d) [4:] Mowing;

(e) [5:] Grazing;

(f) [6:] Use of electrical or flame weeding equipment;

(g) [7:] Biodynamic preparations.

(2) [(b)] If approved in writing by the department or other certifying agency, a producer may use:

(a) A biodegradable plastic mulch or row cover if:

1. Removed at the end of each harvest season; and

2. Not introduced into compost or mulch.

(b) A mulch made of recycled newspaper. However, glossy or colored print paper shall not be used.

(c) Solarization, if biodegradable plastic is:

1. Removed; and

2. Not introduced to compost or mulch;

(3) The following weed control chemicals shall not be used:

(a) Herbicides classified as:

1. Synthetically-compounded; or

2. Petroleum-distillate; and

(b) A synthetic growth regulator.

~~[1. Biodegradable plastic mulches or row covers if such materials are removed at the end of each harvest season and not introduced into compost or mulch;~~

~~2. Mulches made of recycled newspapers; no glossy paper or~~

~~colored print;~~

~~3. Solarization, provided any biodegradable plastic is removed and not introduced to any compost or mulch;~~

~~(c) The following weed control chemicals shall not be used:~~

~~1. Synthetically-compounded or petroleum-distillate herbicides;~~

~~2. Synthetic growth regulators;]~~

Section 7. Pest Control. [(5) Pest control is under the following guidelines:]

(1) A producer shall indicate in his farm plan that the following are used to prevent insect infestations:

(a) Production schedule;

(b) Crop selection;

(c) Location and sizing of planting;

(d) Other soil management practices.

(2) A producer may use the following pest control practices:

(a) Preventive management, including:

1. Planting resistant varieties;

2. Timing planting to avoid pest emergence cycle;

3. Intercropping;

4. Crop rotation; and

5. Avoidance of excessive fertilization;

(b) Biological controls, including:

1. Release of natural predators and parasites;

2. Manipulation of the habitat;

3. Supplemental food;

4. Hosts of natural predators and parasites;

(c) Sprays and dusts of low ecological profile, including:

1. Insecticidal soap;

2. Rock powder and diatomaceous earth;

3. An herbal preparation;

4. A dormant oil spray in an orchard;

5. A solution of pureed arthropods;

6. A solution of pureed plants, including hot peppers and garlic;

(d) A microbial or viral disease, if a petroleum-based synergist or carrier is not used;

(e) Pheromones used in traps, including use:

1. In monitoring pest occurrence, emergence, and life cycles; and

2. As a mating disruptive;

(f) An electrical device;

(g) Shooting;

(h) Food grade hydrogen peroxide.

~~[(a) The following pest control practices may be used:~~

~~1. A producer shall show in his or her farm plan that production schedules, crop selection, location and sizing of plantings, and soil management practices are in place to prevent insect infestations;~~

~~2. Preventive management, such as planting resistant varieties, timing plantings to avoid cycles of pest emergence, intercropping, crop rotations, and avoidance of excessive fertilizations;~~

~~3. [2.] Mechanical or electrical controls, including traps, repellent crops and apparatus, vacuuming, water jets, physical barriers, and sound;~~

~~4. [3.] Biological controls, such as release of natural predators and parasites and manipulation of the habitat, supplemental food, and/or hosts of natural predators and parasites;~~

~~5. [4.] Sprays and dusts of low ecological profile, including insecticidal soaps, rock powders and diatomaceous earth, herbal preparations, dormant oil sprays in orchards, and solutions of pureed arthropods or plants such as hot peppers and garlic;~~

~~6. [5.] Microbial and viral diseases such as Bacillus thuringiensis, provided no petroleum-based synergists or carriers are used;~~

~~7. [6.] Pheromones used in traps, including use in monitoring pest occurrence, emergence, life cycles and as mating disruptives;~~

~~8. [7.] Other semiochemicals, including pheromones and allelochemicals, in an ecologically sound manner for desired direct or indirect~~

manipulations of pests;

9. [8.] Electrical devices;

10. [9.] Shooting;

11. [10.] Food-grade hydrogen peroxide.

(b) If approved in writing by the department or other certifying agency, a producer may use:

1. Botanical insecticides;

2. Pheromone traps or bait sticks containing prohibited pesticides; providing that the pesticides do not contact soil or water.

(c) The following pest control practices shall not be used:

1. Synthetically-compounded pesticides;

2. Arsenic;

3. Lead salts.]

Section 8. Disease Control. (1) To prevent disease, a producer shall plan:

(a) A production schedule;

(b) Crop selection;

(c) Location of planting;

(d) Size of planting; and

(e) Soil management practice.

(2) To reduce disease incidence in a greenhouse, a producer shall manage:

(a) Ventilation;

(b) Humidity; and

(c) Temperature.

(3) A producer may use the following disease control practices:

(a) Planting of a resistant variety;

(b) Crop rotation;

(c) Intercropping; and

(d) Use of:

1. Herbal or plant-derived controls;

2. A mineral preparation not prohibited in this administrative regulation; and

3. Food grade hydrogen peroxide;

(4) If approved in writing by the department or another certifying agency, a producer may use a:

(a) Copper-based fungicide;

(b) Sulfur-based fungicide; or

(c) Micronutrients.

(5) The following shall not be used as a disease control practice:

(a) Synthetic fungicide;

(b) A sterilizing agent;

(c) A fumigant; and

(d) A bacterial agent.

[(6) Disease control is under the following guidelines:

(a) The following may be used as disease control practices:

1. A producer shall plan production schedules, crop selection, location and sizing of plantings and soil management practices to prevent diseases;

2. Planting resistant varieties;

3. [2.] Crop rotations;

4. [3.] Intercropping;

5. [4.] Use of herbal or plant-derived controls;

6. [5.] Use of mineral preparations not prohibited elsewhere in this section;

7. [6.] Use of food-grade hydrogen peroxide;

8. In greenhouses, a producer shall manage ventilation, humidity and temperature so as to reduce disease incidence.

(b) If approved in writing by the department or other certifying agency, a producer may use:

1. Copper-based fungicides;

2. Sulfur-based fungicides;

3. [Chlorine bleach in dilute solutions as a disinfectant;

4.] Micronutrients.

(c) The following shall not be used as disease control practices:

1. Synthetic fungicides;

2. Sterilizing agents;

3. Fumigants;

4. Bacterial agents.]

Section 9. Standards for Processing Organic Foods. (1) An ingredient in a processed product sold as organic shall be from a certified organic source;

(2) A processed product sold as organic may include:

(a) An ingredient that is not an agricultural product, including the following if approved under this chapter:

1. Yeast;

2. Salt;

3. Microbial cultures; and

4. Fermentation systems;

(b) Organically produced:

1. Honey;

2. Maple syrup; or

3. Other natural sweetener;

(c) A coloring agent;

(d) Natural ascorbic acid;

(e) Citric acid;

(f) Yeast;

(g) Microbial culture;

(h) Organically grown:

1. Fruit;

2. Plant extracts;

3. Herbs; or

4. Spices;

(i) Sea salt;

(j) A brine preparation; or

(k) An ingredient or processing aid that is:

1. Listed in the materials list; or

2. Approved in the applicable federal regulation.

(3) In packaging, an organic processed product may be:

(a) Frozen;

(b) Dried;

(c) Vacuum packed;

(d) Heat processed; or

(e) Wood smoked, if the wood has not been treated with a chemical.

(4) The following shall not be used for processing food certified as organic:

(a) A synthetic:

1. Preservative;

2. Coloring;

3. Flavoring;

4. Texturizer;

5. Emulsifier; or

6. Similar additive;

(b) A:

1. Sulfite;

2. Nitrate; or

3. Nitrite

(c) An irradiated ingredient; and

(d) Fortification with, or the addition of, a:

1. Synthetic additive; or

2. Artificially produced complex compound.

(5) A processor:

(a) Shall:

1. Conspicuously display a certificate of approval to handle and process organic food; and

2. Provide a flow chart showing movement of an organic product through storage and processing;

(b) Applying for certification, shall:

1. Complete an application;

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2. Submit an organic processing plan; and
3. Obtain a local health department certificate.

(6) A processor shall not represent as organic or transitional a food that is known to:

- (a) Contain a prohibited material; or
- (b) Have been commingled or contaminated during:
 1. Handling;
 2. Processing;
 3. Packaging; or
 4. Transportation.

[Section 4. Establishing Standards for Processing Organic Foods.

~~(1) Each ingredient of any processed product sold as organic shall be from a certified organic source. A processed product sold as organic may include:~~

~~(a) Ingredients that are not agricultural products, such as yeast, salts, or other microbial cultures, or fermentation systems which are approved under this chapter;~~

~~(b) Organically produced honey, maple syrup, other natural sweeteners;~~

~~(c) Coloring agents or other additives, such as natural ascorbic acid or citric acid; [The following may be used in processing food certified as organic:~~

- ~~(a) Minimal levels of salt;~~
- ~~(b) Minimal levels of natural sweeteners;~~
- ~~(c) Natural preservatives;~~
- ~~(d) Yeasts;~~
- ~~(e) Microbial cultures;~~
- ~~(f) Fermentation systems;~~
- ~~(g) Organically grown fruit, plant extracts, herbs or spices;~~
- ~~(h) Sea salt;~~
- ~~(i) Brine preparations;~~
- ~~(j) Other ingredients or processing aids in the materials list or the National List.~~

~~(k) Freezing, drying, vacuum packing, heat processing and wood smoking provided wood has not been treated with chemicals.~~

~~(2) The following shall not be used for processing food certified as organic:~~

- ~~(a) Synthetic preservatives, coloring, flavoring, texturizers, emulsifiers or additives of any kind.~~
- ~~(b) Added sulfites, nitrates or nitrites.~~
- ~~(c) Irradiated ingredients.~~
- ~~(d) Fortification with, or the addition of, synthetic additives or complex compounds artificially produced.~~

~~(3) Processors shall conspicuously display a certificate of approval to handle and process organic foods.~~

~~(4) Processors applying for certification shall complete an application, an organic processing plan, and obtain local health department certificate.~~

~~(5) A processor may not represent as organic or transitional any food that is known to contain prohibited materials or has been commingled or contaminated during storage, handling, processing, packaging, and transportation.~~

~~(6) Processors shall provide a flow chart showing movement of organic product throughout storage and processing.]~~

Section 10. [5:] Standards for the Harvesting, Storing, Postharvest Handling, Handling and Packaging of Organic Agriculture Products [Foods]. (1) The following practices shall [may] be used in the harvesting, postharvest handling, [and] handling, and storage of organic agricultural products [food]:

(a) Drying and curing of field crops to appropriate moisture level by:

1. Natural field drying;
2. Aeration; or
3. Another mechanical drying apparatus;
- (b) Maintenance of a constant low temperature for perishable

crops at every stage of transportation and distribution by means of:

1. Uncontaminated water bath;
2. Cold room; or
3. Icing;
- (c) Use of controlled-atmosphere storage:

1. Carbon dioxide; or
2. Nitrogen;

(d) Disinfection of crops of fruit flies or spoilage organisms by:

1. Hot water dipping; or
2. Vapor-heat treatment;

(e) Repelling of storage pests by use of:

1. Rock powder;
2. Diatomaceous earth;
3. An herbal preparation;
4. A natural biological control; or
5. Another nontoxic material;

(f) Use of approved, sanitized container in contact with food product;

(g) Application of food grade hydrogen peroxide.

(2) The following shall not be used in postharvest handling:

(a) Synthetic fumigant;

(b) Sprouting:

1. Inhibitor;
2. Ripener; or
3. Growth regulator;

(c) Preservative;

(d) Coloring agent;

(e) Ionizing radiation;

(f) Wax; or

(g) Oil.

(3) Packaging material shall be free of:

(a) Fungicide;

(b) Preservative; and

(c) Other chemical additives.

(4) A storage area for an organic product shall be:

(a) Ventilated;

(b) Sealed; and

(c) Protected from encroachment by:

1. Birds;
2. Rodents; or
3. Other pests.

(5) An organic product shall:

(a) Be stored in a manner that:

1. Minimizes contamination by pollution and prohibited substances; and

2. Will preserve the organic integrity of the commodity;

(b) Not be:

1. Transported in a manner that may compromise its organic integrity; and

2. Stored with a noncertified product unless it is packaged, labeled, or segregated in a manner that will preserve the organic integrity.

[(a) Dry and cure field crops to appropriate moisture levels by natural field drying, aeration, or other mechanical drying apparatus;

(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

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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 [food] 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 11. Records and the Certification Process. (1) A producer of an agricultural product certified as organic shall submit to the department the following:

- (a) Producer application, with farm plan;
- (b) Producer affidavit;
- (c) Regulated material list;
- (d) Off-farm input list;
- (e) Inventory control form;
- (f) Soil test, including:
 - 1. P;
 - 2. K;
 - 3. pH;
 - 4. Buffer pH;
 - 5. Calcium-magnesium;
 - 6. Zinc;
 - 7. Boron; and
 - 8. Organic matter;
- (g) Irrigation water test.

(2) A farm, farm unit, field, greenhouse, or other production unit shall:

- (a) Retain records relating to:
 - 1. Field-by-field fertilization;
 - 2. Cropping;
 - 3. Pest management history; and
 - 4. The application for certification; and
- (b) Provide these records to the department on request.
- (3) In connection with the application for certification, a yearly soil-test analysis shall be:

- (a) Performed; and
- (b) Submitted to the department.
- (4) All certification records shall be:
 - (a) Maintained by the department for a period of three (3) years; and
 - (b) Subject to the Kentucky Open Records Law.
- (5) The department shall conduct at least one (1) inspection per year of every:

- (a) Farm;
- (b) Farm unit;
- (c) Field; or
- (d) Other production entity.
- (6) Within sixty (60) days of receiving an application for certification, the Director of the Division of Market Services shall

schedule an inspection of the applicant's operation if there are crops in the field or greenhouse that are to be certified.

(7) The department inspector shall complete a field inspection report and the applicant shall be present during the initial inspection.

(8) Upon receipt of a field inspection report, the department shall, within thirty (30) days:

(a) Make a determination of certification:

1. Approval; or

2. Denial; and

(b) Notify the applicant in writing of:

1. Its decision; and

2. The reason for its determination.

(9) If a violation of this administrative regulation is discovered, the department may conduct:

(a) An additional inspection of a:

1. Farm;

2. Farm unit;

3. Field;

4. Handling facility; or

5. Other production entity; and

(b) The inspection unannounced.

(10) The period of certification shall be one (1) year.

Section 12. Certification of Livestock and Associated By-products. (1) Management of the environment and shelter of an animal shall provide:

(a) Sufficient:

1. Free movement;

2. Fresh air;

3. Natural daylight;

4. Food;

5. Water;

6. Laying or resting area; and

7. Bedding, if housed;

(b) Protection from excessive:

1. Sunlight;

2. Temperature;

3. Rain; and

4. Wind; and

(c) for a large farm animal, natural bedding material, if housed.

(2) If natural daylight is prolonged by artificial lighting, this shall not exceed twenty (20) hours, unless removal of lighting would endanger the well-being of an animal.

(3) Feed.

(a) A slaughter animal shall be fed organic feed, certified by:

1. The department; or

2. Other approved certifying agency.

(b) The following shall not be used:

1. Plastic roughage;

2. Urea intentional manure refeeding; and

3. Similar practices.

(c) An animal shall not be weaned earlier than:

1. Four (4) weeks, for a piglet;

2. Three (3) months, for beef; and

3. Two (2) months for a sheep or goat.

(4) White veal production shall not be considered as organic.

(5) The department may grant a written exemption for the purchase of organically grown transitional feed if:

(a) Organic forage crops are:

1. Unavailable; or

2. In short supply; and

(b) These circumstances are:

1. Sufficiently documented; and

2. Approved by the review and advisory committee.

(6) The following shall be acceptable as a supplement:

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- (a) Feed salt;
- (b) Calcium phosphate material, including bonemeal; or
- (c) Calcium carbonate material, including:
 - 1. Limestone; or
 - 2. Dolomite;
- (d) Free choice elements, including:
 - 1. Magnesium oxide;
 - 2. Greensand;
 - 3. Seaweed; or
 - 4. A natural mineral;
- (e) Selenium;
- (f) Vitamins from:
 - 1. Sprouted grain;
 - 2. Fish liver oil;
 - 3. Brewers yeast; or
 - 4. A similar natural source;
- (g) Synthetic vitamins, if:
 - 1. Forage is poor due to bad weather or a long winter; and
 - 2. Written permission is obtained from the department;
- (7) The following shall not be used:
 - (a) An antibiotic;
 - (b) A trace element used to stimulate growth; and
 - (c) A synthetic growth promoter.
- (8) Purchased animals.
 - (a) Slaughter stock shall be:
 - 1. Raised on a farm in accordance with department standards; or
 - 2. Purchased from a farm that meets department standards;
 - (b) Breeding stock:
 - 1. May, if not in the last third of the gestation period, be purchased from any source; and
 - 2. Shall not be sold as organic unless raised in accordance with department standards.
 - (c) Day-old poultry may be purchased from any source.
- (9) Herd health.
 - (a) An environmental problem shall be controlled through:
 - 1. Pasture rotation; and
 - 2. Disinfecting.
 - (b) The following cleaning agents and disinfectants may be used:
 - 1. Soap;
 - 2. Biodegradable detergent;
 - 3. Iodine five (5) percent;
 - 4. One (1) percent potassium permanganate solution;
 - 5. Alkali solution;
 - 6. Lime bleach; and
 - 7. Food grade hydrogen peroxide solution.
 - (c) Livestock and manure shall be removed before disinfecting a barn or shelter area.
 - (d) The following actions may be taken if a disease is known to exist in the farm environment and cannot be controlled by another technique:
 - 1. Vaccination;
 - 2. Vaccination to stimulate production of maternal antibodies;
 - 3. Probiotics; and
 - 4. Similar preventative techniques.
 - (e) If active intervention is necessary to save an animal, it shall:
 - 1. Not be sold as organic; and
 - 2. Be removed from the herd.
- (10) The method of animal breeding shall not unduly restrict the gene pool.
- (11) Slaughter.
 - (a) An animal shall be treated humanely during:
 - 1. Loading and unloading;
 - 2. Shipping;
 - 3. Holding; and

- 4. Slaughter.
 - (b) Slaughter shall be effected under sanitary conditions.
 - (c) During slaughter an animal shall be clearly identified to prevent confusion with nonorganic meat.
 - (d) Certified meat shall be:
 - 1. Slaughtered as a separate batch; or
 - 2. Hung apart from noncertified meat.
 - (12) An audit trail shall be maintained to permit the tracing of:
 - (a) The sources; and
 - (b) The amounts of:
 - 1. Feed;
 - 2. Supplements; and
 - 3. Medication.
 - (c) Each animal from birth to slaughter.
 - (13) Except for poultry, if an animal is not individually identified by a numbered tag, each animal that is treated with an active material shall be clearly identified by a tag specifying the:
 - (a) Material; and
 - (b) Date of treatment.
 - (14) Dairy production shall comply with the standards for meat production, except for the following:
 - (a) Certified organic milk shall be from an animal that has been fed certified organic feed for at least one (1) year during and prior to certification.
 - (b) In the case of a new and certifiable herd, a cow shall be fed certified organic feed for one (1) year prior to certification.
 - (c) Purchased production stock shall:
 - 1. Come from a certified source; or
 - 2. Be fed certified organic feed for one (1) year prior to certification.
 - (d) A dairy replacement on an organic dairy shall be fed that is nonmedicated, including milk replacer, at least one (1) year before certification.
 - (e) An antibiotic or hormone shall not be used in an organic dairy and the production of an animal that has been treated with an antibiotic or hormone, shall not be sold as organic.
 - (f) For a new herd and replacement, antibiotic hormone use shall not be permitted ninety (90) days prior to certifiable status.
 - (g) If a federal regulation requires cleaning and sanitizing with a prohibited material, equipment shall be rinsed twice that normally required.
 - (h) A cleaner and sanitizer shall:
 - 1. Meet all government regulations; and
 - 2. Not exceed the recommended parts per million.
 - (i) A caustic or alkaline wash shall be followed by:
 - 1. An acid wash;
 - 2. A rinse; and
 - 3. An appropriate sanitizer at the appropriate parts per million.
 - (j) Organic milk may follow conventional milk, if the first organic milk:
 - 1. Flushes the system; and
 - 2. Is not marketed.
 - (i) A dairy animal shall drink water with a level at or below ten (10) mg nitrate.
 - (15) Egg production.
 - (a) A pullet shall be fed 100 percent certified organic feed for at least four (4) months prior to certification of its eggs.
 - (b) If a pullet is purchased, it shall be treated in accordance with this administrative regulation for at least four (4) months prior to certification of its eggs.
 - (c) A hen shall have:
 - 1. At least two (2) square feet of floor space in the hen house; and
 - 2. Outdoor access if seasonally appropriate.
 - (d) If access to a pasture is not feasible, a flock shall be fed on a daily basis:

1. Sprouted grains;
2. Fresh plants; or
3. Hay.
- (e) An egg shall:
 1. Be free of manure; and
 2. Not be routinely washed.

Section 13. Requirements for Issuing Labels Certifying Organic Agricultural Products. (1) The department shall devise and distribute a label reading "Kentucky Department of Agriculture Certified Organic" that shall be used to refer to agricultural products that comply with this administrative regulation.

(2) A producer of agricultural products certified under this administrative regulation may, if related to a certified product, use the label in subsection (1) of this section on a:

- (a) Container;
- (b) Tag;
- (c) Sign;
- (d) Sticker;
- (e) Label;
- (f) Decal; or
- (g) Other:
 1. Packaging material;
 2. Promotional material; or
 3. Informational material.
- (3) A producer shall:
 - (a) Obtain permission from the department prior to using the label; and
 - (b) Not use a hand-drawn logo.

Section 14. Certification Review and Standards Advisory Committee. (1) The department shall:

- (a) Appoint a certification review and standards advisory committee; and
- (b) On the advice of the committee, annually:
 1. Review the implementation of this administrative regulation; and
 2. Propose an amendment, if necessary.
- (2) The certification review and standards advisory committee shall be:
 - (a) Made up of seven (7) members; and
 - (b) Be composed of at least three (3) farmers, with the balance composed of:
 1. Consumers;
 2. Advisors;
 3. Handlers; or
 4. Processors.
- (3) The committee shall:
 - (a) Review applications, pursuant to this administrative regulation, for:
 1. Certification; and
 2. Accreditation;
 - (b) Advise the department on:
 1. Revisions to this chapter and administrative regulation; and
 2. The creation and administration of an allowable list of items to be used on an organic agricultural product.
 - (4) Members of the committee:
 - (a) Shall:
 1. Serve a term of two (2) years; and
 2. Be familiar with organic production methods and this administrative regulation;
 - (b) May serve additional terms on the committee.

Section 15. Accreditation of Organic Certifying Agents. (1) To be accredited by the department, an organic certifying agent shall:

- (a) Submit an application; and
- (b) Pay a nonrefundable annual fee provided in Section 17 of this administrative regulation.
- (2) The department shall not issue a certificate of accreditation unless the applicant has:
 - (a) Certification standards equivalent to that of the department; and
 - (b) Complied with the policies and procedures of the department.
- (3) An organic certifying agent, accredited under this administrative regulation, shall, within thirty (30) days, provide a copy of all documents relating to its certification of a:
 - (a) Producer;
 - (b) Processor; or
 - (c) Handler.

Section 16. Methods of Enforcement and Penalties for Violation. (1) A person who believes that a provision of this administrative regulation has been violated, shall file a complaint with the department setting forth the facts of the alleged violation. The complaint may be:

- (a) Written; or
- (b) Oral.
- (2) The department shall:
 - (a) Investigate the complaint; and
 - (b) Report to the complainant, the:
 1. Results of the investigation; and
 2. Remedial action taken.
- (3) The department shall:
 - (a) Maintain for four (4) years, the records relating to:
 1. A complaint;
 2. An investigation; and
 3. Remedial action; and
 - (b) Make these records a part of the reviewing record for a proceeding involving a:
 1. Certified person; or
 2. Applicant for certification.
- (4) The department may:
 - (a) Inspect at a reasonable time, an area where an agricultural product certified as organic is:
 1. Processed;
 2. Manufactured;
 3. Stored; or
 4. Sold; and
 - (b) Revoke the certification of a product sold, labeled, or advertised in violation of this administrative regulation.
- (5) The department shall refuse certification to a person who has sold, labeled, or advertised a product in violation of this administrative regulation.

Section 17. Fees. (1) A food producer shall pay a fee of ten (10) dollars:

- (a) At the time of applying for certification; and
- (b) Each year that certification is requested.
- (2) An organic certifying agent shall pay a nonrefundable fee of ten (10) dollars:
 - (a) At the time of submitting his application; and
 - (b) Annually.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Kentucky Organic Certification 'Allowable' Materials List (October 1997)", Department of Agriculture; and
- (b) "Kentucky Department of Agriculture Organic Certification Program Application (October 1997)".
- (2) This material may be inspected, copied, or obtained at the Kentucky Department of Agriculture, 7th Floor, Capital Plaza

Tower, 500 Mero Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

[Section 6. Recordkeeping and Issuing Records and Labels Pertaining to Certified Organic Agricultural Products (Foods). (1) Producers of agricultural products (food) 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, [food 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 [food,] 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 vitamins may be permitted, with written permission, in cases of long winters or poor forage due to bad weather.

(f) Synthetic growth promoters (including antibiotics and trace elements used to stimulate growth) implanted, injected, or ingested are prohibited.

(4) Purchased animals:

(a) Slaughter stock must be raised on a farm in accordance with Kentucky Department of Agriculture (KDA) standards or purchased from a farm that meets KDA standards.

(b) Breeding stock may be bought from any source, provided the animal is not in the last third of gestation but it may only be sold as organic if raised in accordance with KDA standards.

(c) Day-old poultry may be bought from any source.

(5) Herd health:

(a) The first line of defense must be control of environmental problems through pasture rotation, disinfectant, etc.

(b) Cleaning agents and disinfectants should be chosen from among soaps, biodegradable detergents, iodine five (5) percent, one (1) percent potassium permanganate solutions, alkali solutions, lime bleach and food grade hydrogen peroxide solutions that are on the allowable list.

(c) Areas to be disinfected should be empty of livestock and manure should be physically removed as much as possible.

(d) Homeopathic remedies and plant concoctions must be used as per the allowable list.

(e) Vaccinations (including vaccination to stimulate production of maternal antibodies), probiotics and similar preventative techniques are permitted when diseases are known to exist in the farm environment and cannot be controlled by other techniques. Legally required vaccinations are allowed.

(f) When recourse to certain active materials is deemed necessary, slaughter animals may not be sold as organic.

(g) If an animal is dependent on active intervention, it should be

removed from the herd:

(6) Breeding:

(a) Natural service is the ideal.

(b) Since breeding methods have minimal effect on the quality of the meat produced, various other methods are tolerated, provided they do not unduly restrict the gene pool.

(7) Slaughter:

(a) Animals must be treated humanely during loading, unloading, shipping, holding and slaughter.

(b) Slaughter must be effected under sanitary conditions which shall usually mean government approved slaughter houses.

(c) Animals must be clearly identified in such manner as to preclude confusion with nonorganic meat. Ideally, certified meat should be slaughtered as a separate batch or hung apart from noncertified meat.

(8) Audit trail:

(a) An audit trail must be maintained which will permit tracing the sources and amounts of all feeds, supplements, medication, etc.

(b) With the exception of poultry, if animals are not individually identified by numbered tags, each animal that is treated with an active material must be clearly identified with a tag specifying that material and the date of treatment.

(c) Each animal must be traced from birth to slaughter.

(9) Standards for dairy and egg production:

(a) The standards are the same as for meat production, with the exception of the following additions and clarifications:

1. Certified organic milk shall be from animals that have been fed certified organic feed for at least one (1) year during and prior to certification.

2. In the case of new and certifiable herds, cows shall be fed certified organic feed for one (1) year prior to certification.

3. Purchased production stock should come from certified sources or be fed certified organic feed for one (1) year prior to certification.

4. Dairy replacements on an organic dairy must be fed feed which is nonmedicated including milk replacer up to the one (1) year before certification.

5. The use of antibiotics and all hormones is prohibited in an organic dairy. If recourse to antibiotics or hormones is deemed necessary, that animal's production cannot be sold as organic. For new herds and replacements, no antibiotic hormone use will be allowed ninety (90) days prior to certifiable status. All documentation should be made available.

6. All cleaning and sanitizing must meet any governmental regulations. If such regulations include the use of prohibited materials, all equipment must be rinsed at least two (2) times more than the usually required rinses.

7. Cleansers and sanitizers must meet all governmental regulations. All chemicals must not exceed recommended ppm.

8. Caustic or alkaline washes shall be followed by an acid wash, followed by a rinse, followed by an appropriate sanitizer at the appropriate ppm.

9. Organic milk may follow conventional milk as long as the first organic milk flushes the system and is not marketed.

10. All regulatory sanitation requirements and quality standards for bacteria and somatic cell count must be observed. All local regulations must be observed.

11. Dairy animals must drink water with a nitrate level at or below ten (10) mg nitrate and must satisfy all state requirements concerning bacteria and other microflora.

(b) Egg production:

1. Pullets must be fed 100 percent certified organic feed for at least four (4) months before eggs are certifiable.

2. When pullets are purchased, they must be treated in accordance with these standards for at least four (4) months before their eggs are certified.

3. Hens must have at least two (2) square feet per bird of floor space in the hen house.

4. Hens must have outdoor access when seasonally appropriate.

5. If access to pasture is not feasible, flocks must be fed sprouted grains or fresh plants or hay on a daily basis.

6. Eggs should be free of manure however, routine washing is discouraged.

Section 8. Requirements for Issuing Labels Certifying Organic Agricultural Products [Foods]. (1) The department shall [devise and] distribute a label reading "Kentucky Department of Agriculture Certified Organic" that shall be applied or used to refer to agricultural products [food] that meets the standards and requirements of this administrative regulation.

(2) A producer of agricultural products [food] certified under this administrative regulation may use the "Kentucky Department of Agriculture Certified Organic" label on containers, tags, signs, stickers, labels, decals or other packaging, promotional or informational materials pertaining to the certified agricultural products [food].

(3) No hand drawn logo may be used.

(4) No person shall use logo unless permission to do so has been granted.

Section 9. Certification Review and Standards Advisory Committee. (1) The department shall appoint a Certification Review and Standards Advisory Committee (the committee) which shall, at the department's request, review applications for certification and accreditation under this chapter. It shall advise the department on revisions to this chapter and administration of the Organic Standards and Certification Program, including the creation and review of an allowable list for use on organic agricultural products.

(2) The appointment of each member may be for a period of up to two (2) years and a member may receive additional appointments to the committee.

(3) The department, with the advice of the committee, shall conduct an annual review of implementation of this chapter and 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 [food] 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

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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 [food] 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

DEPARTMENT OF STATE POLICE (As Amended at ARRS, October 14, 1997)

502 KAR 45:145. Merit Award [Pay] Program.

RELATES TO: KRS 16.040, [~~16.050~~] 16.080

STATUTORY AUTHORITY: KRS 16.080(1) [~~16.040(1)~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~KRS 16.050 sets forth the compensation provisions for officers of the Department of State Police.~~] KRS 16.040 and 16.080 authorizes the [vests in] the commissioner [the authority] to promulgate [adopt] administrative regulations relating to the compensation of officers. This administrative regulation establishes the [procedure to be used to provide a] Merit Award [Pay] Program for officers of the Department of State Police.

Section 1. (1) Merit awards shall be made by:

(a) The payment of a lump sum equal to two (2) percent of an officer's annual salary; or

(b) An award of forty (40) hours of annual leave.

(2) Payment of the lump sum established by subsection (1) of this section shall be made if the commissioner determines that surplus funds are:

(a) Available; and

(b) Not required for expenditures necessary for the operation of the department. [The Commissioner of the Department of State Police may utilize up to fifty (50) percent of funds saved through a combination of high performance levels and staff reduction to grant merit pay awards to officers. Merit pay awards shall be contingent upon the availability of surplus funds within the commissioner's budget and shall be within the sole discretion of the commissioner. A merit pay award shall equal two (2) percent of the officer's annual salary and shall be paid in a lump sum. ~~In the alternative the commissioner may award officers forty (40) additional hours of annual leave.~~]

Section 2. If the commissioner has determined that a merit pay award may be made, an [The] officer shall be eligible for a merit award if he has met [meet] the following standards:

(1) Attainment of physical fitness standards.

(2) No more than one (1) accident during the twelve (12) month period involving a state police vehicle in which the officer was at fault.

(3) No disciplinary action resulting in an official written reprimand, reduction in pay or grade, or involuntary suspension from duty with or without pay.

(4) No more than forty (40) sick hours taken during the twelve

(12) month period, excluding absences due to duty related injuries.

(5) An officer shall have received an overall average rating of "above standard" (ninety (90) percent or more) on the officer inspection reports completed during each twelve (12) month evaluation period.

Section 3. An officer shall be eligible for only one (1) merit [pay] award [~~or award of forty (40) hours annual leave~~] in a twelve (12) month period.

[Section 4. In order to grant a merit pay award, the commissioner shall submit the personnel action form and written justification.]

GARY W. ROSE, Commissioner

APPROVED BY AGENCY: July 28, 1997

FILED WITH LRC: July 28, 1997 at 2 p.m.

TRANSPORTATION CABINET Department of Highways Permits Branch

(As Amended at IJC on Transportation, October 7, 1997)

603 KAR 3:080. Advertising devices.

RELATES TO: KRS 177.830 to 177.890, 23 USC 131, 23 CFR Part 750

STATUTORY AUTHORITY: KRS 177.860, 23 USC 131, 23 CFR Part 750

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.860 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from interstate, parkway, and federal-aid primary highways. KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally-erected advertising devices that are no longer in compliance with state law or administrative regulation. KRS 177.890 authorizes the Commissioner of Highways to enter into agreements with the United States Secretary of Transportation in order to carry out national policy relating to interstate, defense, and federal-aid primary highways within the state. Compliance with the "Highway Beautification Act", 23 USC Section 131 is required to receive federal highway funds. Control of outdoor advertising devices adjacent to the national highway system is required by 23 USC Section 131. 23 USC Section 131(d) conditions retention of additional federal funding on the establishment of controls over the placement of outdoor advertising devices which are more stringent than required by the general federal mandate. Commonwealth v. G.L.G., Inc., Ky., 937 S.W.2d 709 (1997) ruled that the exemption to the billboard advertising prohibition established by KRS 177.860(4) did not require a commercially or industrially developed area in which the billboard was located be zoned commercial or industrial if the billboard otherwise complied with applicable local zoning ordinances. [KRS 177.860 authorizes the Department of Highways to establish reasonable standards for advertising devices on or visible from interstate, parkway and federal-aid primary highways. This administrative regulation is the means used by the Department of Highways to establish those standards. In addition KRS 177.867 requires the Department of Highways to pay just compensation for the removal of legally-erected advertising devices which are not in compliance with current state law or administrative regulation. This administrative regulation sets forth standards for determining when the Department of Highways shall pay just compensation. There are two (2) federal laws which govern the control of outdoor advertising devices. The "Highway Beautification Act", 23 USC Part 131, as amended, is a federal mandate. However, states which comply with the earlier enacted "Bonus Act" must establish more stringent controls over the placement of outdoor advertising devices than the general federal mandate. Kentucky's

authorizing statutes, originally enacted in 1960, require the control of outdoor advertising devices to be consistent with the more stringent "Bonus Act" and Kentucky has entered into an agreement with the Federal Highway Administration setting forth the specific standards for the control of outdoor advertising devices; [This administrative regulation is consistent with the "Bonus Act" and our bonus agreement with the Federal Highway Administration. The inconsistency resulted from] [A recent Kentucky Supreme Court decision regarding zoning requirements necessitated a change in the administrative regulation. The change in the administrative regulation is consistent with the Supreme Court's decision and, the Transportation Cabinet believes, our Agreement with the Federal Highway Administration. The Federal Highway Administration is evaluating the Supreme Court decision to determine if they agree that consistency with the Bonus Act continues. A recent change in 23 USC Part 131 mandates that outdoor advertising devices be controlled on all road segments on the National Highway System. The few segments of that system on which outdoor advertising devices were not previously controlled have been included in this administrative regulation to comply with the federal mandate:]

Section 1. Definitions. (1) ["Advertising device" or "device" means as defined in KRS 177.830(5):

(2) ["Abandoned" or "discontinued" means that for a period of one (1) year or more that the device has:

- (a) [Has] Not displayed any advertising matter;
- (b) [Has] Displayed obsolete advertising matter; or
- (c) [Has] Needed substantial repairs.

A notice that the device is for sale, rent, or lease shall not be considered advertising matter.

(2) ["Advertising device" or "device" means as defined in KRS 177.830(5):

(3) ["Activity boundary line" means the delineation on a property of those regularly used buildings, parking lots, storage and process areas which are an integral part of and essential [contiguous] to the primary business activity which takes place on the property. In an industrial park, the service road shall be considered within the activity boundary line for the industrial park as a separate entity.

(3) ["Advertising device" or "device" means as defined in KRS 177.830(5).

(4) ["Allowed" means legal to exist without a permit from the Department of Highways.

(5) ["Billboard" or "off-premise advertising device" means a device that contains a message relating to an activity or product that is foreign to the site on which the device and message are located or an advertising device erected by a company or individual for the purpose of selling advertising messages for profit.

(6) ["Centerline of the highway" means a line equidistant from the edges of the median separating the main traveled ways of a divided highway, or the centerline of the main traveled way of a nondivided highway.

(7) ["Commercial or industrial activities" means as defined in KRS 177.830(9).

(8) ["Commercial or industrial enterprise" means any activity carried on for financial gain except that it shall not include:

- (a) Leasing of property for residential purposes;
- (b) Agricultural activity or animal husbandry; or
- (c) Operation or maintenance of an advertising device.

(9) ["Commercially or industrially developed area" means [as it is applied to interstate and parkway highways only]:

(a) Any area within 100 feet (thirty and five-tenths (30.5) meters) of, and including any area where there are located within the protected area at least ten (10) separate commercial or industrial enterprises, not one of the structures from which one (1) of the enterprises is being conducted is located at a distance greater than 1620 feet (493.8 meters) from any other structure from which one (1) of the other enterprises is being conducted; and

(b)1. Within the area there was a commercial or industrial enterprise in existence on September 21, 1959; or [The land use for the area as of September 21, 1959 was clearly established by state law as industrial or commercial; or]

2. The land use for the area was within an incorporated municipality as the boundaries existed on September 21, 1959 [and is currently zoned for commercial or industrial use at the time of the application for an advertising device permit] [- and

(c) Not less than ten (10) of the enterprises referred to in paragraph (a) of this subsection are at the time of the permit application and were on March 10, 1960, located in an area governed by state or local zoning laws and in compliance with the state and local zoning laws and administrative regulations. If there was no local zoning ordinance in effect on March 10, 1960 or if there is no local zoning ordinance in effect at the time of the permit application, the provisions of paragraph (a) of this subsection shall not be applicable].

(10) [(9)] "Commercial or industrial zone" means as defined in KRS 177.830(7).

(11) [(10)] "Comprehensively zoned" means, as it is applied to FAP highways only, that each parcel of land under the jurisdiction of the zoning authority has been placed in some zoning classification.

(12) [(11)] "Department" means the Department of Highways within the Kentucky Transportation Cabinet.

(13) ["Destroyed" means damage to an advertising device in excess of fifty (50) percent of the device:

(a) Including:

- 1. Supports;
- 2. Poles;
- 3. Guys;
- 4. Struts;
- 5. Panels;
- 6. Facing; and
- 7. Bracing; and

(b) That to be structurally and visually acceptable, requires adding:

- 1. A guy or strut;
- 2. New supports or poles by splicing or attaching to an existing support;
- 3. Separate new auxiliary supports or poles;
- 4. New or replacement peripheral or integral structural bracing or framing; or
- 5. New or replacement panels or facing. [(12)] ["Destroyed"

means that the advertising device has sustained damage by any means in excess of fifty (50) percent of the entire advertising device which includes supports, poles, guys, struts, panels, facing, and bracing. The damage is such that to be structurally and visually acceptable, one (1) or more of the following remedies is essential:

- (a) Adding guys or struts;
- (b) Adding new supports or poles by splicing or attaching to existing supports;
- (c) Adding separate new auxiliary supports or poles;
- (d) Adding new or replacement peripheral or integral structural bracing or framing; or
- (e) Adding new or replacement panels or facings.]

(14) ["Electronic sign" means an on-premise advertising device whose message may be changed by electrical or electronic process, and includes the device known as the electronically changeable message center for advertising on-premise activities.

(15) [(13)] "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any way bring into being or establish, but it shall not include any of the foregoing activities if [when] performed as an incident to:

- (a) The change of an advertising message; or;
- (b) Customary maintenance; or
- (c) Repair of an advertising device.

(16) [(14)] "Federal-aid primary highway" or "FAP highway" means as defined in KRS 177.830(3) and 23 USC 103(b) and as it existed

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on June 1, 1991. ~~[(13)]~~ [The FAP highways are listed in Section 11 of this administrative regulation.]

(17) ~~[(15)]~~ "Identifiable" means capable of being related to a particular product, service, business or other activity even though there is no written message to aid in establishing the relationship.

(18) ~~[(16)]~~ "Interstate highway" means as defined in KRS 177.830 (2) and 23 USC 131(t).

(19) "Legible" means capable of:

(a) Being read without visual aid by a person of normal visual acuity; or

(b) Conveying an advertising message to a person of normal visual acuity. ~~[(17)]~~ ["Legible" means capable of being read without visual aid by a person of normal visual acuity, or capable of conveying an advertising message to a person of normal visual acuity.]

(20) ~~[(18)]~~ "Main traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, each direction has its own main traveled way. It does not include such facilities as frontage roads, turning roadways, access ramps, or parking areas.

(21) "National highway system" or "NHS" means the Kentucky highways defined in 23 USC 103 which for the purpose of outdoor advertising shall exclude ~~[excluding]~~ the highways which are part of the interstate, parkway, or FAP system of highways.

(22) ~~[(19)]~~ "Nonbillboard off-premise advertising device" means, as it is applicable to FAP and NHS highways only, an advertising device not located on the property which it is advertising and limited to advertising for a city, church, or civic club which includes any nationally, regionally or locally known religious or nonprofit organization.

(23) "Nonconforming advertising device" means an off-premise advertising device that was lawfully erected but:

(a) Does not comply with the provisions of a subsequent:

1. State law; or

2. Administrative regulation; or

(b) Later fails to comply with state law or administrative regulation due to changed conditions similar to the following:

1. Zoning change;

2. Highway relocation;

3. Highway reclassification; or

4. Change in a restriction on size, spacing or distance. ~~[(20)]~~

~~["Nonconforming advertising device" means an off-premise advertising device which was lawfully erected but does not comply with the provisions of state law or administrative regulation passed at a later date or which later fails to comply with state law or administrative regulation due to changed conditions similar to the following:~~

~~(a) Zoning change [changes];~~

~~(b) Highway relocation;~~

~~(c) Highway reclassification; or~~

~~(d) Change in restriction [Changes in restrictions] on size, spacing or distance.;~~

(24) "Official sign" means a sign:

(a) Located within the highway right-of-way; and

(b) Installed by or on behalf of:

1. The Department of Highways; or

2. Another public agency having jurisdiction; and

(c) Which meets one (1) of the following purposes:

1. Denotes the location of underground utilities;

2. Is required by a federal, state, or local government to delineate the boundaries of a:

a. Reservation;

b. Park; or

c. District;

3. Identifies the street or highway;

4. Controls traffic; or

5. Is required by state law. ~~[(21)]~~ ["Official sign" means a sign located within the highway right-of-way installed by or on behalf of the Department of Highways or other public agency having jurisdiction.

Included ~~[in these signs]~~ are:

(a) A sign ~~[Signs]~~ denoting the location of underground utilities;

(b) A sign ~~[Signs]~~ required by a federal, state, or local government ~~[governments]~~ to delineate boundaries of a reservation, park, or district ~~[reservations, parks or districts];~~

(c) A street sign ~~[signs]~~ or traffic control sign ~~[signs];~~ or

(d) A sign ~~[Signs]~~ required by state law.;

(25) ~~[(22)]~~ "On-premise advertising device" means an advertising device that contains a message relating to an ~~[the primary]~~ activity conducted or the sale of goods and services ~~[a primary product]~~ within the boundaries of the property on which the device is located. It does not mean a sign which generates rental income.

(26) ~~[(23)]~~ "Parkway" means any highway in Kentucky originally constructed as a toll road whether or not a toll for the use of the highway is currently being collected. As it relates to an advertising device, a parkway ~~[advertising devices, parkways]~~ shall be considered the equivalent of an interstate highway ~~[highways]~~.

(27) ~~[(24)]~~ "Permitted" means legal to exist only if a permit is issued from the Department of Highways.

(28) ~~[(25)]~~ "Primary business or activity" means that the sale of one product or a business activity which takes precedence over ~~[any or all]~~ other product sales or business activities.

(29) ~~[(26)]~~ "Protected area" means all areas within the boundaries of this Commonwealth which are adjacent to and within 660 feet (210.17 [200.64] meters) of the state-owned highway right-of-way of the interstate, parkway, NHS, and FAP highways and those areas which are outside urban area boundary lines and beyond 660 feet (210.17 [200.64] meters) from the right-of-way of an ~~[all]~~ interstate, parkway, NHS, or ~~[and]~~ FAP highway ~~[highways]~~ within the Commonwealth. If this highway ~~[Where these highways]~~ terminate at a state boundary which is not perpendicular or normal to the center line of the highway, "protected area" also means all of these areas inside the boundaries of the Commonwealth which are adjacent to the edge of the right-of-way of an interstate highway in an adjoining state.

~~[(27)]~~ "Public service information" means information allowed on an on-premise advertising device which may be illuminated by any flashing, moving or intermittent light or lights and which shall be limited to time, temperature, date, and current weather conditions.

(28) "Public service sign" means, as it is applicable to FAP highways only, a sign erected or located on a school bus shelter.;

(30) ~~[(29)]~~ "Public service message" means a message pertaining to an activity or service which is performed for the benefit of the public and not for profit or gain of a particular person, firm or corporation or information such as time or temperature. ~~[This definition shall apply to signs on school bus shelters on FAP highways only.]~~

(31) ~~[(30)]~~ "Routine change of message" means, as it relates to a nonconforming advertising device, the message change on an advertising device from one (1) advertised product or activity to another. This includes the lamination or preparation of the existing panels or facings at a plant or factory for the changing of messages when this is the normal operating procedure of a company.

(32) ~~[(31)]~~ "Routine maintenance" means, as it relates to a nonconforming advertising device:

(a) The maintenance of an advertising device which is limited to replacement of nuts and bolts, nailing, riveting or welding, cleaning and painting, or manipulating to level or plumb the device;

(b) The routine change of message; and

(c) The lamination or preparation of existing panels or facings at a location other than that of the advertising device.

(d) Routine maintenance shall not mean:

1. Adding guys or struts for the stabilization of the device or substantially changing the device; or

2. Replacement or repair of panels, poles, or facings or the addition of new panels, poles, or facings;

(33) ~~[(32)]~~ "Traveled way" means the portion of a roadway dedicated to the movement of vehicles, exclusive of shoulders.

(34) ~~[(33)]~~ "Turning roadway" means a connecting roadway for

traffic, turning between two (2) intersecting legs of an interchange.

(35) [(34)] "Unzoned commercial or industrial area" means as defined in KRS 177.830(8).

(36) [(35)] "Urban area" means as defined in KRS 177.830(10).

(37) [(36)] "Visible" means capable of being seen, whether or not legible or identifiable without visual aid by a person of normal visual acuity and erected for the purpose of being seen from the traveled way.

Section 2. Signs on Highway Right-of-way. (1) Official signs allowed. An advertising device shall not be erected or maintained within or over the state-owned highway right-of-way except a directional or other official sign or signal [signs or signals] erected by or on behalf of the state or other public agency having jurisdiction.

(2) Types of official signs. The following official signs (with size limitations) may be allowed on state-owned highway right-of-way:

(a) Directional and other official device [devices] including a sign or device [signs or devices] placed by the Department of Highways;

(b) A sign or device [Signs or devices], limited in size to two (2) square feet (0.186 [0.184] square meters), denoting the location of underground utilities; or

(c) A sign [Signs], limited in size to 150 square feet (thirteen and nine-tenths [13.9] [eight-tenths (13.8)] square meters), erected by a federal, state, or local government [governments] to delineate boundaries of a reservation, park, or district [reservations, parks or districts].

Section 3. General Conditions Relating to Advertising Devices. The requirements of this section shall apply to an advertising device [devices] on an interstate, parkway, NHS, and FAP highway [highways].

(1) FHWA/Kentucky [Bonus] agreement for the control of outdoor advertising.

(a) An advertising device which is [devices which are] visible from an interstate highway, parkway, NHS, or FAP highway [highways; parkways, or FAP highways] shall be governed by the provisions of the agreement between the Kentucky Department of Highways and the Federal Highway Administration which was executed on December 23, 1971.

(b) This agreement is authorized by KRS 177.890 and 23 CFR Part 1.35 and required by 23 CFR Parts 190 and 750.

[(c) The agreement is incorporated by reference in Section 13 of this administrative regulation.]

(2) Advertising device allowed if not visible. An advertising device which is not visible from the main traveled way of the interstate, parkway, NHS, or FAP highway shall be allowed in protected areas.

(3) Visible from more than one (1) highway. If an advertising device is visible from more than one (1) interstate, parkway, NHS, or FAP highway on which control is exercised, the appropriate provisions of this administrative regulation or KRS 177.830 through 177.890 [Chapter 177] shall apply to each of these highways.

(4) Nonconforming advertising device may exist. An off-premise nonconforming, but otherwise legal, advertising device may continue to exist until just compensation has been paid to the owner, if [only so long as] it is:

(a) Not destroyed, abandoned or discontinued;

(b) Subjected to only routine maintenance;

(c) In conformance with local zoning or sign or building restrictions at the time of the erection; and

(d) In compliance with the provisions of Section 4(3) of this administrative regulation and KRS 177.863.

(5) Nonroutine maintenance on a nonconforming device. [(e)] Performance of other than routine maintenance on a nonconforming, but otherwise legal, advertising device shall cause it to lose its legal status and to be classified as illegal.

(6) [(5)] Vandalized nonconforming device.

(a) The owner of a nonconforming, but otherwise legal, advertising

device destroyed by vandalism or other criminal or tortious act may apply to the Department of Highways to reerect the advertising device in kind.

(b) The application for the reerection of the advertising device shall:

1. Be on Transportation Cabinet Form TC 99-31; and

2. Contain the following:

a. [1:] Plans and pictures showing the proposed new structure to be as exact a duplicate of the destroyed nonconforming advertising device as possible, including the same number of poles, type of stanchion, supports, material of poles or stanchion, and material of facing;

b. [2:] Sufficient proof that the destruction was the result of vandalism or other criminal or tortious act;

c. [3:] Ownership of the advertising device;

d. [4:] Dimensions of the destroyed advertising device;

e. [5:] Material used in erection of the destroyed advertising device;

f. [6:] Durability of the new device;

g. [7:] Stanchion type; and

h. [8:] Current lease from land owner.

(c) The Department of Highways shall not issue a notice to reconstruct until all of these conditions have been met.

(d) The owner of the vandalized nonconforming advertising device shall not reerect the advertising device until a notice to reconstruct has been issued by the Department of Highways.

(7) [(6)] Required measuring methods.

(a) To establish a protected area, the distance [protected areas; distances] from the edge of a state-owned highway right-of-way shall be measured horizontally along a line at the same elevation and at a right angle to the centerline of the highway for a distance of 660 feet (210.17 [200.64] meters) inside urban area boundaries and to the horizon outside urban area boundary lines.

(b)1. A V-shaped or back-to-back type billboard advertising device [devices] shall not be more than fifteen (15) feet apart at the nearest point between the two (2) sign facings and shall be connected by bracing or a maintenance walkway.

2. The angle formed by the two (2) sign facings shall not be greater than forty-five (45) degrees.

(c) The spacing between advertising devices shall be measured as described in KRS 177.863(2)(c).

(8) [(7)] Criteria for off-premise advertising devices. The following criteria are applicable to any off-premise advertising device located in a protected area:

(a) An off-premise advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a);

(b) A V-shaped, double-faced, or back-to-back billboard advertising device [devices] shall be considered as specified in KRS 177.863(2)(b);

(c)1. A billboard advertising device may contain two (2) messages per direction of travel if the device does not exceed the maximum size stated in KRS 177.863(3)(a);

2. If a billboard advertising device contains two (2) messages on a single facing or panel, each one (1) shall occupy approximately fifty (50) percent of the device;

3. If a billboard advertising device contains two (2) messages in one (1) direction of travel, each on a separate panel or facing where one (1) panel or facing is placed above or beside the other but where the two (2) separate panels or facings are not touching;

a. [(ii)] There may be a size differential in the panels if dictated by the terrain of the site of the billboard advertising device and if the differential is approved by the Transportation Cabinet prior to the erection of the device; and

b. [(iii)] The combined size of the two (2) faces or panels of the advertising device shall not exceed the maximum size stated in KRS 177.863(3)(a).

(d) An on-premise advertising device shall not affect spacing

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requirements for billboard advertising.

(e) If ~~lit~~, a billboard advertising device ~~shall~~ ~~[may-only]~~ be illuminated by white lights.

(9) ~~[(8)]~~ Criteria for on-premise advertising devices. The following criteria ~~shall be~~ ~~[are]~~ applicable to ~~an~~ ~~[all]~~ on-premise advertising device ~~[devices]~~ located in a protected area:

(a) An on-premise advertising device shall not exceed the maximum size specified in KRS 177.863(3)(a) if it is placed within fifty (50) feet (fifteen and two-tenths (15.2) meters) of the advertised activity boundary ~~line~~ ~~[lines]~~.

~~(b) 1. There shall not be more than one (1) on-premise device~~ ~~[Not more than-Only-one-(1)-on-premise device-may-be]~~ located at a distance greater than fifty (50) feet (fifteen and two-tenths (15.2) meters) from the activity boundary line.

2. An individual on-premise business sign erected to advertise one (1) of the businesses in a shopping center, mall, or other combined businesses location shall not be located more than fifty (50) feet (fifteen and two-tenths (15.2) meters) from the activity boundary line of the individual business.

(c) If further than fifty (50) feet from the activity boundary line, an on-premise advertising device shall not exceed:

1. Twenty (20) feet (6.09 meters) in:

a. Length;

b. Width; or

c. Height; or

2. 150 square feet (thirteen and eight-tenths (13.8) square meters) in area:

a. Including border and trim; and

b. Excluding supports. [An on-premise advertising device shall not exceed twenty (20) feet (6.09 [12.08] meters) in length, width, or height or 150 square feet (thirteen and eight-tenths (13.8) square meters) in area including border and trim but excluding supports if it is farther than fifty (50) feet from the activity boundary line.]

(d) 1. An on-premise advertising device shall not be located more than 400 feet (121.9 [124.6] meters), measured within the property boundary, from the advertised activity boundary line.

2. If using a corridor to reach the location of the device, the corridor shall be not less than 100 feet (thirty and five-tenths (30.5) [four-tenths (30.4)] meters) in width and shall be contiguous to an integral part of and of the same entitlement as the property on which the advertised activity is located.

3. Any other business activity which is in any manner foreign to the advertised activity shall not be located on or have use of the corridor between the advertised activity and the location of the device.

4. An activity incidental to the primary activity advertised shall not be considered in taking measurements.

5. If [When] taking measurements for the placement of an on-premise industrial park sign as described in paragraph (j) of this subsection, the access road into the industrial park shall be considered an integral part of the property on which the activity is taking place.

6. If [When] taking measurements for the placement of a single on-premise sign advertising a shopping center, mall, or other combined businesses location, the combined parking area shall be considered as within the activity boundary line.

(e) There shall not be requirements for spacing between on-premise advertising devices.

(f) An advertising device other than one (1) listed here shall not be located as to be visible from the main traveled way of an interstate, parkway, NHS, or FAP highway: [Only the following types of an on-premise advertising device [devices] shall be located so that they are visible from the main traveled way of an interstate, parkway, NHS, or FAP highway:]

1. One [Those] indicating the name and address of the owner, lessee or occupant of the property on which the advertising device is located;

2. One [Those] showing the name or type of business or profes-

sion conducted on the property on which the advertising device is located;

3. Information required or authorized by law to be posted or displayed on the property;

4. One [Those] advertising the sale or leasing of the property upon which the advertising device is located;

5. One [Those] setting forth the advertisement of an activity conducted on or the sale of a product or service [products] on the property where the advertising device is located; or

6. A sign [Signs] with a maximum area of eight (8) square feet (0.743 [0.736] square meters) noting credit card acceptance or trading stamps.

(g) An on-premise advertising device shall not advertise an activity, service, or business other than that ~~[advertise-only-the [primary]-activity, service, or [primary]-business]~~ conducted upon the property on which it is located.

(h) An on-premise electronic sign which contains, includes, or is illuminated by a [any] flashing, intermittent, or moving lights shall not [only] be used except to advertise an activity, service, business, or product available on the property on which the sign is located or to present a public service message.

1. The advertising message may contain words, phrases, sentences, symbols, trade-marks, or logos.

2. A single message or segment of a message shall have a display time of at least two (2) seconds including the time needed to move the message onto the sign board, with all segments of the total message to be displayed within ten (10) seconds.

3. A message consisting of [only] one (1) segment may remain on the sign board any amount of time in excess of two (2) seconds.

4. An electronic sign requiring more than four (4) seconds to change from one (1) single message to another shall be turned off during the change interval.

5. A display traveling horizontally across the sign board shall move between sixteen (16) and thirty-two (32) light columns per second.

6. A display may scroll onto the sign board but shall hold for two (2) seconds including the scrolling time.

7. A display shall not include an [any] art animation or graphic that portrays motion, except for movement of a graphic onto or off of the sign board.

(i) A brand or trade name [names] shall not be advertised on an on-premise advertising device if [when] the sale of a product or service [an item] with the brand or trade name is incidental to the primary activity, service, or business.

[(i) A marquee type on-premise advertising device, such as a device at a typical theater or cinema, may change messages from advertising one (1) legitimate on-premise activity to another. The message change shall not occur more than one (1) time per day.]

(j) An industrial park type on-premise advertising device [devices] which shall be limited in area to 150 square feet (thirteen and eight-tenths (13.8) square meters) may contain [only] the [following] [messages]:

1. [The] Name of the industrial park;

2. [The] City or county associated with the industrial park; or

3. [The] Name of the individual business or industry [industries] located in the industrial park.

(k) A single on-premise sign erected for a shopping center, mall, or other combined businesses location may:

1. Identify each of the individual businesses conducted at the location; or

2. Include a single display area used to advertise on-premise activities.

Section 4. Specific Requirements for Advertising Devices on Interstate and Parkway Highways. (1) Permit if visible. Except for a nonconforming advertising device, an advertising device which is located in a protected area and which is visible from the main traveled

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way of an interstate or parkway highway shall have an approved permit from the Transportation Cabinet, Department of Highways to be a legal advertising device. An advertising device [Advertising devices] closer than fifty (50) feet (fifteen and two-tenths (15.2) meters) to the edge of the main traveled way of any interstate or parkway highway shall not be issued a permit.

(2) Criteria for billboard advertising devices.

(a) 1. A billboard advertising device [Billboard advertising devices] may be erected or maintained in a protected area of an interstate or parkway highway if:

a. The area is a commercially or industrially developed area as defined in Section 1 of this administrative regulation; and

b. The advertising device complies with the following provisions:

(i) KRS 177.830 through 177.890;

(ii) This administrative regulation; and

(iii) Applicable county or city zoning ordinances. [if the area is a commercially or industrially developed area as defined in Section 1 of this administrative regulation and if the advertising device complies with the provisions of KRS 177.830 through 177.890 [Chapter 177] and this administrative regulation as well as applicable county or city zoning ordinances or administrative regulations.]

2. If a business or industry on which the designation as a commercially or industrially developed area was based is terminated or abandoned, leaving less than ten (10) separate enterprises, the billboard advertising device shall be reclassified as nonconforming.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(b) A billboard advertising device structure designed to be primarily viewed from an interstate or parkway highway shall not be erected within 500 feet (152.4 meters) of any other off-premise advertising device on the same side of the interstate or parkway highway unless separated by a building, natural obstruction or roadway in a [such] manner that only one (1) off-premise advertising device located within the 500 feet (152.4 meters) is visible from the interstate or parkway highway at any one time.

(3) [Prohibited advertising devices:] The erection or existence of an [the following] advertising device [devices] shall not be permitted [or allowed] in a protected area of an interstate or parkway highway if it [areas]:

(a) Advertises [An advertising device which is advertising] an activity that is illegal, pursuant to [under] state or federal law, [or administrative regulation];

(b) Is [An] obsolete [advertising device];

(c) Is not:

1. Clean;

2. Safe; and

3. In good repair; [An advertising device that is not clean, safe, and in good repair];

(d) [An advertising device that] Is not securely affixed to a substantial structure [which is] permanently attached to the ground;

(e) [An advertising device which] Attempts to:

1. [or appears to attempt to] Direct the movement of traffic; or

2. [which] Interfere with, imitate, or resemble an [any] official traffic sign, signal, or traffic control device;

(f) [An advertising device which] Prevents the driver of a vehicle from having a clear and unobstructed view of:

1. An official sign; [signs] or

2. Approaching or merging traffic;

(g) [An advertising device which contains:] Includes or is illuminated by [any] flashing, intermittent, or moving lights, except for an on-premise device that [which] meets the requirements of Section 3(9)(h) of this administrative regulation [providing public service information];

(h) [An advertising device which] Uses lighting, [in any way] unless it is:

1. [so] Effectively shielded [as] to prevent a beam [beams or rays] of light from being directed at [any portion of] the main traveled way

of a highway; or

2. [unless it is] Of [a] low intensity that will not cause glare or [or a low brilliance so as not to cause glare or not to] impair the vision of a [the] driver or interfere with the [of any motor vehicle or to otherwise interfere with a [any] driver's] operation of a motor vehicle;

(i) [An advertising device which] Moves or has [any] animated or moving parts;

(j) Is:

1. [An advertising device] Erected or maintained upon a tree;

2. [trees or] Painted or drawn on [upon] rocks or another natural feature [features];

(k) Exceeds [An advertising device exceeding] 1,250 square feet (116.1 [115] square meters) in area;

1. Including border and trim; and

2. [but] Excluding supports;

(l) Is [An advertising device] erected upon or overhanging the right-of-way of a [any] highway; or

(m) [An advertising device which] Interferes with an [any] official;

1. Sign;

2. Signal; or

3. Traffic control device.

(4)(a) To measure distances for the identification of a commercially or industrially developed area, two (2) lines shall be drawn perpendicular to the center line of the controlled interstate or parkway highway, extending from each side of the controlled highway.

(b) The first perpendicular line shall be drawn 100 feet from the outer edge of the first-encountered separate establishment which is within the area being considered as a commercially or industrially developed area.

(c) The second perpendicular line shall be drawn 100 feet from the outer edge of the last-encountered separate establishment which is within the area being considered as a commercially or industrially developed area.

(d) The distance between the first-encountered establishment and the last encountered establishment shall not exceed 1620 feet.

(e) Each perpendicular line shall extend for a distance of 660 feet from each edge of the right-of-way of the controlled highway.

(f) All area within the confines of the lines perpendicular to the center line of the highway shall be considered when establishing a commercially and industrially developed area.

(g) An enterprise or structure on either side of the controlled interstate or parkway highway within the confines of the lines perpendicular to the centerline of the highway may be counted as part of the ten (10) needed.

(h) A pictorial representation of an eligible commercially or industrially developed area is on the Transportation Cabinet document entitled "Measurement of Commercially or Industrially Developed Area". [The provisions of KRS 177.860(4) shall not be applicable to an advertising device erected or proposed to be erected in the protected area of an interstate or parkway highway unless it is in an area which is a commercially or industrially developed area as defined in Section 1 of this administrative regulation.]

Section 5. Specific Requirements for Advertising Devices on Federal-aid Primary and National Highway System Highways. (1) Billboard advertising devices on NHS and FAP highways. A billboard advertising device [Billboard advertising devices] may be permitted in a protected area of an NHS or FAP highway if it is [protected areas of FAP highways if they are] located in an unzoned commercial or industrial area [areas] or a commercial or industrial zone [zones] and if the device complies [devices comply] with applicable state, county, or city zoning ordinances or administrative regulations.

(a) 1. It shall be legal to have a permitted billboard advertising device in an unzoned commercial and industrial area of an NHS or FAP highway if [as long as] there is a commercial, business, or industrial activity in the area.

2. Upon the termination or abandonment of the business or

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industry on which the unzoned commercial or industrial area was based, the billboard advertising device shall be reclassified as nonconforming.

3. If the Department of Highways reclassifies the device as nonconforming, the owner shall be notified.

(b) Except for a nonconforming advertising device, a billboard advertising device which is visible from the main traveled way of an NHS or FAP highway and in a protected area shall have an approved permit from the Department of Highways.

(c) An unzoned commercial or industrial area shall not be created when a commercial or industrial activity is located more than 300 feet (ninety-one and four-tenths (91.4) meters) from the right-of-way of the NHS or FAP highway.

(d) 1. Minimum spacing between billboard advertising devices in an unzoned commercial or industrial area ~~areas~~ shall be 300 feet (ninety-one and four-tenths (91.4) ~~two-tenths (91.2)~~ meters) unless separated by a building, roadway, or natural obstruction in a manner that only one (1) device located within the required spacing is visible from the highway at any time.

2. The minimum spacing requirement shall be reduced to 100 feet (thirty and four-tenths (30.4) meters) within an incorporated municipality which does ~~[municipalities which do]~~ not have comprehensive zoning.

(e) Minimum spacing between billboard advertising devices in any comprehensively zoned commercial or industrial area shall be 100 feet (thirty and four-tenths (30.4) meters) unless separated by a building, roadway or natural obstruction in a manner that only one (1) sign located within the required spacing is visible from the highway at any time.

(f) An advertising device ~~[Advertising devices]~~ which meet the criteria set forth in KRS 177.863(1) shall be prohibited.

(2) Establishing limits of an unzoned commercial or industrial area.

(a) In measuring distances for the determination of an unzoned commercial or industrial area near an NHS or FAP highway ~~highways~~, two (2) lines shall be drawn from the activity boundary line perpendicular to the centerline of the main traveled way to encompass the greatest longitudinal distance along the center line of the highway.

(b) Measurements for establishing unzoned commercial or industrial areas shall begin at the outside edge of the activity boundary lines and shall be measured 700 feet (213.4 [212.8] meters) in each direction.

(3) Nonbillboard off-premise advertising devices on NHS and FAP highways permitted.

(a) The owner of a nonbillboard off-premise advertising device shall apply for a permit in accordance with the procedures set forth in Section 6 of this administrative regulation. A metal tag corresponding to the permit shall not be issued by the Department of Highways.

(b) A nonbillboard off-premise advertising device shall not be permitted on or over the state-owned right-of-way of a NHS or ~~[any]~~ FAP highway.

(c) ~~More than one (1) nonbillboard off-premise advertising device relating to a particular city, church, or civic organization shall not be erected in each direction of travel on a NHS or FAP highway. [Only one (1) nonbillboard off-premise advertising device relating to a particular city, church, or civic organization may be erected in each direction of travel on any one (1) NHS or FAP highway.]~~

(d) Spacing between two (2) nonbillboard off-premise advertising devices shall be 100 feet (thirty and four-tenths (30.4) meters).

(e) A nonbillboard off-premise advertising device shall not affect the spacing requirements for billboards.

(f) ~~A church or civic club type nonbillboard advertising device [devices] which shall be limited in area to eight (8) square feet (0.743 [0.736] square meters) shall not contain a message other than the following: [may contain only the following messages:]~~

1. Name and address of the church or civic club;

2. Location and time of meetings, and a directional arrow; or

3. Special events such as Vacation Bible School, revival, etc. These temporary messages shall be in lieu of the original or a part of the original message and shall not exceed the maximum of eight (8) square feet (0.743 [0.736] square meters) in area.

(4) Public service sign criteria. A public service sign ~~[signs]~~ may be allowed on school bus shelter if it conforms ~~[if they conform]~~ to the following requirements:

(a) The maximum size for a public service sign shall be thirty-two (32) square feet (2.97 [2.944] square meters) in area including border and trim.

(b) 1. The public service sign shall contain a message of benefit to the public which occupies not less than fifty (50) percent of the area of the sign.

2. The remainder of the sign may identify the donor, sponsor or contributor of the school bus shelter.

3. The sign shall not contain any other message.

(c) Only one (1) public service sign on each school bus shelter shall face in any one (1) direction of travel.

Section 6. Required Permits for Advertising Devices. (1) Permit required.

(a) Except for a nonconforming advertising device, a permit shall be required from the Department of Highways for any off-premise advertising device located in a protected area of an interstate, parkway, NHS, or FAP highway route.

(b) A permit shall be required for each on-premise advertising device on interstate and parkway highway routes.

(c) Compliance with the provisions of this administrative regulation shall be ~~[is]~~ required for an on-premise advertising device ~~[devices]~~ on NHS and FAP routes.

(d) By January 1, 1994 each permitted off-premise advertising device shall have a metal tag supplied by the department attached to the device.

(2) Application for an advertising device permit.

(a) 1. Application for an advertising device permit shall be made on ~~Transportation Cabinet~~ form TC 99-31 as revised in October [August] [March] 1997 [December 1995]. The application form, completed in triplicate, shall be submitted to the jurisdictional highway district office of the proposed advertising device. ~~[The application form is hereby incorporated by reference in Section 13 of this administrative regulation.]~~

2. The issuance of approved advertising device applications as they relate to the required spacing between billboards shall be determined on a "first-come, first-served" basis.

(b) The application for an advertising device permit shall be accompanied by the following:

1. Vicinity map;

2. Applicant's plot plan;

3. Location, milepoint and sign plans for the advertising device;

4. A copy of all applicable local permits;

5. A copy of the ~~executed~~ lease or ownership of the proposed billboard site, if applicable; and

6. If the request is for an on-premise advertising device, the application shall include a detailed description of the exact wording of the message to be conveyed on the device. This information may be furnished either by photograph, ~~[or]~~ drawing, or illustration.

(c) The applicant shall submit three (3) copies of all required documentation.

(3) An approved advertising device application shall be valid for ~~[only]~~ one (1) year. If the device has not been constructed and inspected for compliance in that year, the applicant shall apply for renewal of the approved application prior to the end of the year of validity.

Section 7. Illegal or Unpermitted Advertising Devices. (1) Unpermitted advertising devices. The jurisdictional chief district

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engineer or his representative shall notify the sign and property owner of an unpermitted or illegal advertising device by registered letter that the advertising device is in violation of Kentucky's advertising device laws or administrative regulation under the following conditions:

(a) The advertising device which is not located on state-owned highway right-of-way has not been issued a permit; or

(b) The advertising device which is not located on state-owned highway right-of-way for which a permit has been issued is found in violation of state law or this administrative regulation.

(2) Content of notice.

(a) 1. If the advertising device appears to be eligible for a permit, the owner shall be given a period of ten (10) days from the date of notification by registered letter, to make application for a permit.

2. If by the end of the ten (10) days the owner does not submit a completed application to the Department of Highways, the owner shall be sent a new notice allowing him a period of thirty (30) days from the date of the second notice to remove the device.

(b) If an advertising device previously issued a permit is changed after the device received approval from the Department of Highways, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making the adjustments or corrections necessary to bring the advertising device into compliance with state law or administrative regulation.

(c) If a permit is not necessary for a particular advertising device but the advertising device is not in compliance with KRS Chapter 177 or this administrative regulation, the owner shall be allowed a period of thirty (30) days from the date of notification by registered letter for making any necessary adjustments or corrections to the advertising device.

(d) An advertising device which is ineligible for a permit or otherwise in violation of KRS Chapter 177 or this administrative regulation shall be declared to be a public nuisance and the advertising device shall be removed by the permittee or owner within thirty (30) days after written notification that the advertising device is in violation.

(e) If after the thirty (30) days the noncompliant advertising device remains, the Department of Highways shall notify the owner or permittee of the action which it intends to take to have the noncompliant advertising device removed or otherwise brought into compliance.

(3) Request for reconsideration. [~~Appeal of notice.~~]

(a) If the permittee or owner disagrees with a [any] notice received from the Department of Highways, within twenty (20) days of receipt of the notice, he may:

(a) Contact the person who sent the notice to:

1. Request reconsideration;

2. [~~unofficially protest the notice and to~~] Attempt to correct a problem [any problems] with his advertising device; or

3. [to] Provide additional information to the Department of Highways.

(b) File an appeal in accordance with Section 9 of this administrative regulation. [~~If the owner or permittee is not satisfied with the result of his action taken pursuant to paragraph (a) of this subsection, he may appeal to the Transportation Cabinet, Office of General Counsel, 501 High Street, 10th Floor, State Office Building, Frankfort, Kentucky 40622, within twenty (20) days of the date of the Department of Highway's written response.~~]

(c) ~~The owner or permittee may appeal directly to the Transportation Cabinet, Office of General Counsel at the address set forth in paragraph (b) of this subsection without following the procedure set forth in paragraph (a) of this subsection.~~]

Section 8. Just Compensation for the Removal of an Advertising Device. (1) Payment of just compensation shall be determined by:

(a) An appraisal; or

(b) A value finding;

(2) A nonconforming advertising device shall not qualify for just

compensation if it:

(a) Is:

1. Destroyed;

2. Abandoned; or

3. Discontinued;

(b) Receives more than routine maintenance; or

(c) Does not comply with the provisions of:

1. Section 4(3) of this administrative regulation; or

2. KRS 177.863. [(1) Buying rights, title, etc. When the Transportation Cabinet determines that it is necessary to remove either a legal or nonconforming advertising device, just compensation shall be paid for the following:

(a) The taking from the owner of the advertising device all right, title, leasehold and interest in the advertising device; or

(b) The taking from the owner of the real property on which the advertising device is located or the right to erect and maintain the advertising device thereon.

(2) Just compensation procedures:

(a) Payment of just compensation shall be determined by an appraisal or value finding.

(b) A nonconforming advertising device shall not qualify for just compensation if:

1. It is destroyed, abandoned, or discontinued;

2. It receives more than routine maintenance; or

3. It does not comply with the provisions of Section 4(3) of this administrative regulation and KRS 177.863.]

Section 9. Appeal Procedure. (1)(a) A [Any] party aggrieved by the action of the Transportation Cabinet pursuant to the provisions of this administrative regulation within twenty (20) days of the date of the notice or action may file a written appeal with the Office of General Counsel in the Transportation Cabinet, 501 High Street, Frankfort, Kentucky 40622.

(b) The appeal shall set forth the nature of the complaint and the grounds for the appeal.

(2) The administrative hearing and subsequent procedures shall be conducted pursuant to the provisions of KRS Chapter 13B.

[(3) If the appellant wishes to continue the appeal after the administrative hearing set forth in KRS Chapter 13B, the court of proper jurisdiction for the filing of an appeal shall be Franklin Circuit Court.]

Section 10. Scenic Byways. (1) On any NHS, FAP, interstate, or parkway highway designated by the Transportation Cabinet as a scenic byway [pursuant to 603-KAR-3:090], additional outdoor advertising devices shall not be erected, allowed or permitted after the date of the designation of the highway as scenic.

(2) The outdoor advertising devices legally in existence at the time of designation of the highway as scenic may continue to have routine maintenance.

(3) The sponsor of a scenic byway application [pursuant to 603-KAR-3:090] for a highway which is not an NHS, FAP, interstate, or parkway highway may petition the Transportation Cabinet to impose the outdoor advertising device restrictions set forth in this section.

(4) The following NHS and FAP highways in Kentucky have been designated as scenic byways [pursuant to 603-KAR-3:090]:

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	From	To
	Milepoints	
(a) Cordell Hull Highway in Barren County:		
KY 70 - From I-65 overpass to KY 90.	5.118	5.359
KY 90 - From KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).	.000	9.923
US 31E - From KY 90 to US 68.	14.849	14.258
US 31EX - From US 68 to Washington Street around Courthouse Square in Glasgow.	1.386[1.516]	1.516[1.384]
<u>US 68 - From US 31E to US 31EX.</u>	<u>11.741</u>	<u>12.577</u>
(b) Old Kentucky Turnpike in Larue County:		
US 31E - From the entrance to the Abraham Lincoln Birthplace National Historic Site via Hodgenville to the Nelson County Line.	7.3[0]00	20.725
(c) Old Kentucky Turnpike in Nelson County:		
US 31E - From the Larue County Line to US 62 in Bardstown.	.000	14.205
US 62 - From US 31E to US 150.	14.294	14.653
US 150 - From US 62 to entrance of My Old Kentucky Home State Park.	0.000	0.240[975]
(d) Shakertown Road in Mercer County:		
US 68 - From 1.2 miles east of Shaker Village to 1.2 miles west of Shaker Village.	15.652	13.252
(e) Duncan Hines Scenic Highway in Warren County:		
KY 101 - From US 31W (south) to Edmonson County Line.	11.641	12.850
US 31W [E] - From Duncan Hines former home to KY 446 overpass.	16.559	17.569
(f) Duncan Hines Scenic Highway in Edmonson County:		
KY 101 - From Warren County Line to KY 259 at Rhoda.	0.000	4.131
KY 259 - From KY 101 at Rhoda to KY 70 (east).	9.242	12.096
KY 70 - From KY 259 (south) to KY 259 (north).	12.388	9.939
KY 259 - From KY 238 at Bee Spring to KY 738.	18.998	17.568
(g) Great River Road in Fulton County:		
KY 239 - From Hickman County Line to KY 94 in Cayce.	6.379	3.617
KY 94 - From the Tennessee State Line to KY 1099 west of Hickman.	0.000	10.902
KY 94 - From KY 1099 east of Hickman to KY 239 in Cayce.	13.642	22.121
(h) Great River Road in Hickman County:		
KY 239 - From Fulton County Line to KY 123.	0.000	3.753
KY 123 - From KY 239 to Proposed FAP 94 at Hailwell.	10.048	15.788
KY 123 - From Bottery Road in South Columbus to KY 58.	20.882	21.787
(i) Pine Mountain Road in Letcher County:		
US 119 - From KY 15 in Whitesburg to KY 806 near Oven Fork.	17.308	9.155
(j) US 68 Segment 1 in Boyle County:		
US 68 - From US 150 in Perryville to US 150 in Perryville.	7.369	7.475
(k) [US 68 Segment 1 in Jessamine County:		
US 68 - From Mercer County Line to 0.5 miles south of KY 1980.	0.000	11.610
(h) US 68 Segment 1 in Mercer County:		
US 68 - From US 127 at Mooreland Avenue to Jessamine County Line.	6.752	20.104
(l) US 68 Segment 1 in Jessamine County:		
US 68 - From Mercer County Line to 0.5 miles south of KY 1980.	0.000	10.610
(m) US 68 Segment 2 in Fayette County:		
US 68 - From Swigert Avenue to Bourbon County Line.	10.565	15.767
(n) US 68 Segment 2 in Bourbon County:		
US 27/68 - From Fayette County Line to US 68X in Paris.	0.000	6.765
US 68X - From 10th Street to 8th Street in Paris.	1.366	1.487
US 68X - From Paris Bypass to North Middletown Road in Paris.	2.583	2.772
US 68 - From US 68X to the Nicholas County Line.	2.360	10.814
(o) [f] US 68 Segment 2 in Nicholas County:		
US 68 - From Bourbon County Line to KY 32/36.	0.000	3.717
(p) [e] US 68 Segment 3 in Nicholas County:		
US 68 - From the Licking River Bridge to the Robertson County Line.	11.687	12.211
(q) [p] US 68 Segment 3 in Robertson County:		
US 68 - From Nicholas County Line to the Fleming County Line.	0.000	1.357
(r) [q] US 68 Segment 3 in Fleming County:		
US 68 - From Robertson County Line to the Mason County Line.	0.000	5.423
(s) [r] US 68 Segment 3 in Mason County:		
US 68 - From Fleming County Line to US 62 in Washington.	0.000	11.854
US 62 - From KY 2515 to Ohio State Line.	13.381	18.000
(t) KY 89 (US 421 in Jackson County:		
US 421 - From the junction with KY 89 north to the junction with KY 89 south.	14.261	14.808

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Section 11. Identification of NHS and FAP Highways. The following are the FAP highway segments as designated on June 1, 1991 and the current NHS highway segments which are governed by the provisions of this administrative regulation. If in existence, a noncardinal, one (1) way couplet shall also be part of the NHS and FAP system.

	From	Milepoint To
(1) Adair County:		
KY 55 - From Cumberland Parkway in Columbia to the Taylor County Line.	10.059	19.006
KY 80 - From KY 55 (Courthouse Square) via Burkesville RD in Columbia to KY 61 N.	11.775	12.282
KY 61 - From KY 80 in Columbia to Green County Line.	15.248	23.997
(2) Allen County:		
US 231 - From US 31E northwest of Scottsville to Warren County Line.	.000	9.075
US 31E - From Tennessee State Line via Scottsville Bypass to Barren County Line.	.000	19.189
(3) Anderson County:		
US 127 - From Mercer County Line to US 127 Bypass.	.000	2.535
US 127B - From US 127 south of Lawrenceburg to US 127 north of Lawrenceburg.	.000	6.656
US 127 - From US 127 Bypass to Franklin County Line.	8.897	11.120
KY 151 - From US 127 Bypass to Franklin County Line.	.000	4.587
(4) Ballard County:		
US 51 - From Carlisle County Line via 4th Street in Wickliffe to Illinois State Line.	.000	8.297
US 60 - From Green Street in Wickliffe via 4th Street and Lee Street via Barlow and Kevil to McCracken County Line.	.000	16.937
KY 121 - From Carlisle County Line to 4th Street in Wickliffe.	.000	8.609
(5) Barren County:		
KY 70 - From I 65 at Cave City to KY 90.	5.118	5.359
US 68 - From US 31E (South Green Street) to KY 90 at Broadway.	12.577	12.650
KY 90 - From KY 70 at Cave City via Happy Valley Road to US 31E (Glasgow Bypass).	.000	9.923
KY 90 - From US 68 (Broadway) in Glasgow to Metcalfe County Line.	9.923	22.022
US 68 - From US 31E (Glasgow Bypass) via Main Street to US 31EX (Business) (N Race).	11.741	12.577
US 31EX - From Washington Street in Glasgow via South Green Street to US 68 (E Main St).	1.384	1.461
US 31EX - From US 68 (East Main Street) via West Main Street to North Race Street.	1.461	1.516
US 31E - From Allen County Line via Glasgow Bypass to KY 90.	.000	14.849
(6) Bell County:		
US 25E - From Tennessee [Virginia] State Line to Knox County Line.	.000	18.711
		[19.714]
US 119 - From US 25E to Harlan County Line.	.000	15.756
KY 3085 - From KY 2014 via Old US 25E to Knox County Line.	.000	2.025
(7) Bourbon County:		
US 27 - From Fayette County Line via Lexington Road and Paris Bypass to Harrison County Line.	.000	15.435
US 68 - From US 27 in Paris via Paris Bypass to Nicholas County Line.	.000	10.814
US 460 - From Scott County Line to Paris Bypass.	.000	7.696
US 68X - From 10th Street via Main Street to 8th Street in Paris.	1.366	1.487
US 68X - From Paris Bypass via Carlisle Road to North Middletown Road in Paris.	2.583	2.772
US 460 - From US 68X (Carlisle Road) via North Middletown Road to the Montgomery County Line.	9.150	21.933
KY 627 - From Clark County Line via 10th Street to US 68X (Main Street).	.000	9.511
US 460 - From US 68X (Main Street) via 8th Street to US 27 (Paris Bypass).	7.696	9.150
(8) Boyd County:		
US 23 - From Lawrence County Line via Court Street in Catlettsburg, and Greenup Avenue and Winchester Avenue in Ashland to Greenup Co. Line.	.000	21.042
KY 180 - From south limits of I-64 Interchange to US 60.	.627	2.518
US 60 - From KY 180 near Cannonsburg via 13th Street to Winchester Avenue in Ashland.	4.023	12.198
US 23S - From US 60 (Winchester Avenue) via 13th Street Bridge to Ohio State Line.	.000	.591
(9) Boyle County:		
KY 34 - From US 150 (Main Street) in Danville via Lexington Road to Garrard County Line.	12.406	17.770
KY 52 - From US 150 to Garrard County Line.	.000	5.114
US 127 - From Lincoln County Line to US 150 (3rd and Main Street intersection).	.000	5.440
US 127 - From US 127B near KY 2186 to Mercer County Line.	8.083	10.319
existing alignment near Bonta Lane.	.000	2.000
US 127 - From proposed alignment near Bonta Lane to south urban limits of Danville.	1.864	2.972
US 127B - From US 127 via the Danville Bypass to US 127 near [at] KY 2168.	.000	5.270
US 127 - From KY 2168 to Mercer County Line.	7.867	9.849
US 127 - From US 127B in Danville via 4th and 3rd Streets to US 150 (Main Street).	2.972	4.957
US 150 - From Washington County Line to US 68 in Perryville.	.000	4.495[504]
US 68 - From US 150 in Perryville to US 150 in Perryville.	7.369	7.475
US 150 - From US 68 in Perryville to Lincoln County Line.	4.495	18.766
US 127 - From US 150 at Maple Street Intersection via Main St. to US 150 at 3rd Street Intersection.	5.978	5.440

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US 150B - From US 127 (Hustonville Road) to US 150 (Standford Road).	[5.495]	[4.957]
(10) Bracken County:	.000	2.272
KY 9 - From Mason County Line to Pendleton County Line.	.000	19.857
(11) Breathitt County:		
KY 15 - From Perry County Line to Wolfe County Line.	.000	27.505
(12) Breckinridge County:		
KY 259 - From Grayson County Line to KY 79.	.000	7.901
KY 79 - From KY 259 to US 60.	5.294	14.990
KY 3199 - From Hancock County Line to US 60X (Business).	.000	1.260[056]
US 60X - From KY 3199 to US 60 west.	.000	2.500
US 60 - From US 60X (Business) via the <u>Cloverport and Hardinsburg Bypass</u> to the Meade County Line.	3.500	31.788
(13) Bullitt County:		
US 31E - From Spencer County Line <u>via the Harold Bradley Allgood Memorial Highway to the Jefferson County Line.</u>	.000	5.185
[to US 31E Mainline (Main St in Mt. Washington.)]	.000	2.913
US 150 - From point on US 31E Mainline via Mt. Washington Bypass to another point on US 31E Mainline.	.000	2.000
US 31E - From proposed Mt. Washington Bypass to Jefferson County Line.	5.320	5.465]
(14) Caldwell County:		
US 641 - From Lyon County Line to Crittenden County Line.	.000	4.269
(15) Calloway County:		
KY 121 - From US 641 to Graves County Line.	14.075	24.156
US 641 - From Tennessee State Line via Murray to Marshall County Line.	.000	17.444
(16) Campbell County:		
[US 27 - From Pendleton County Line to US 27 South.	.000	22.250]
US 27 - From Pendleton County Line <u>[US 27 South (York St.)]</u> via new bridge to Ohio State Line.	.000	22.622[-400]
<u>KY 8 - From the Kenton County Line to the I-471 underpass.</u>	.000	.998
KY 1120 - From Kenton County Line to York Street.	.000	.668
KY 1998 - From US 27 to KY 8.	2.813	5.014
KY 471 - From US 27 to <u>I-471</u> (Eastbound I-275 Overpasses).	.000	.729
KY 9 - From Pendleton County Line to north limits of I-275 Interchange.	.000	17.978
(17) Carlisle County:		
US 51 - From Hickman County Line to proposed location of the Great River Road.	.000	10.725
US 51 - From a point on US 51 Mainline via the proposed Great River Road to the Ballard County Line.	.000	1.800
US 94 - From Hickman County Line via the proposed Great River Road to proposed US 51.	.000	9.000
KY 121 - From Graves County Line to Ballard County Line.	.000	9.714
(18) Carter County:		
KY 7 - From Elliot County Line to US 60 in Grayson.	.000	10.865
KY 1 - From US 60 to KY 9.	10.646	11.934
KY 9 - From KY 1 <u>and KY 7</u> to Lewis County Line.	.000	18.262
(19) Casey County:		
US 127 - From Russell County Line to Lincoln County Line.	.000	23.715
(20) Christian County:		
US 41A - From Tennessee State Line to end of north exit ramp of Pennyryle Parkway.	.000	13.611
US 41LP - From KY 107 to northwest urban limits of Hopkinsville at KY 91/1682.	.000	5.100
KY 3493 - From US 41A at a point south of Hopkinsville to KY 107.	.000	1.892
US 41 - From Todd County Line to southbound exit ramp of the Pennyryle Parkway.	.000	10.325
US 41 - From US 68 to US 68 in Hopkinsville.	11.909	12.441
US 68 - From Trigg County Line to Todd County Line.	.000	21.126
KY 1682 - From US 68 to Pennyryle Parkway.	.000	3.904
(21) Clark County:		
KY 627 - From Madison County Line to KY 1958.	.000	6.360
KY 1958 - From KY 627 to north limits of the <u>I-64</u> interchange.	.000	2.860
KY 627 - From southern limits of I-64 Interchange to Bourbon County Line.	9.154	14.812
(22) Clay County:		
KY 80 - From south limits of interchange ramps of Daniel Boone Parkway to US 421.	7.101	7.537
US 421 - From KY 80 to Jackson County Line.	16.915	32.841
(23) Clinton County:		
KY 90 - From Cumberland County Line to Wayne County Line.	.000	12.816
US 127 - From Tennessee State Line to Russell County Line.	.000	20.967
(24) Crittenden County:		
US 60 - From Livingston County Line to Union County Line.	.000	23.018
US 641 - From Caldwell County Line to US 60.	.000	7.494
(25) Cumberland County:		
KY 90 - From Metcalfe County Line to Clinton County Line.	.000	22.450

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KY 61 - From Tennessee State Line to KY 90 West.	.000	13.701
(26) Daviess County:		
Proposed FAP 10 - From US 60 near Maceo to Indiana State Line.	.000	3.800
US 60 - From Owensboro Beltline to US 60 (Lewisport Road).	.000	2.600
US 60 - From US 60 Bypass West of Owensboro to Hancock County Line.	10.179	27.979
US 60B - From US 60 to US 60 (Lewisport Road).	.000	10.212
US 60S - From KY 54 to Owensboro Beltline.	.000	.500
KY 54 - From US 431 (Frederica Street) east limits of US 60 Bypass Interchange.	.000	2.663
US 431 - From McLean County Line to 2nd Street.	.000	14.670
KY 2245 - From US 431 (Frederica Street) via 5th Street to US 631 (Lewis Street).	.000	.246
US 231 - From US 60 Bypass via Hartford Road, Breckinridge Street, 5th Street, Lewis Street and Ohio River Bridge to Indiana State Line.	11.243	15.721
KY 2235 - From US 60 via Triplet Street to US 60.	.000	.145
KY 1467 - From US 231 (5th Street) via Breckinridge Street and Leitchfield Road to 2nd Street.	.000	.234
(27) Edmonson County:		
KY 101 - From Warren County Line to KY 259 at Rhonda.	.000	4.131
KY 259 - From KY 101 at Rhonda to KY 70 eastbound.	9.242	12.096
KY 70 - From KY 259 southbound to KY 259 northbound.	9.939	12.388
KY 259 - From KY 70 westbound to Grayson County Line.	12.096	22.692
(28) Elliott County:		
KY 7 - From Morgan County Line to Carter County Line.	.000	19.312
(29) Fayette County:		
US 27 - From Jessamine County Line via Nicholasville Road, South Limestone, Euclid Avenue, South Upper, Bolivar, [and South] Broadway, and Paris Pike to Bourbon County Line.	.000	15.767
[to US-25.	.000	6.941]
US 25 - From Main Street (US 421) via Newtown Pike to KY 922 at Georgetown Street.	14.632	15.237
KY 4 - The entire length of New Circle Road.	.000	19.283
KY 922 - From US 25 (Georgetown Road) via Newtown Pike to north limits of I-75 Interchange.	.000	3.055
[US 27 - From KY 4 (New Circle Road) via Paris Pike to Bourbon County Line.	8.450	15.767]
US 60 - From Woodford County Line to I-75	.000	12.805
[US 27/68.	.000	8.162]
US 68 - From southeast urban limits of Lexington at Jessamine County Line via Harrodsburg Road to KY 4.	.000	3.110
US 421 - From KY 4 via West Main Street to US 25.	.000	1.798
US 25 - From KY 418 via Richmond Road, East Main Street, and West Main Street to US 421.	8.244	14.632
KY 418 - From US 25 to southeast limits of I-75 Interchange.	.000	2.602
(30) Fleming County:		
KY 32 - From Rowan County Line to KY 11 at a point southwest of Flemingsburg.	10.615	28.293
KY 11 - From junction with KY 32 at point southwest of Flemingsburg to Mason County Line.	10.630	17.105
	[10.860	17.263]
US 68 - From Robertson County Line to Mason County Line.	.000	5.423
(31) Floyd County:		
KY 114 - From Magoffin County Line to KY 1428 in Prestonsburg.	.000	12.430
US 23 - From Pike County Line to Johnson County Line.	.000	21.878
[KY 114 ramp.	.000	15.389]
KY 80 - From Knott County Line to US 23.	.000	14.435
KY 1428 - From KY 114 in Prestonsburg to KY 321 in Prestonsburg.	15.605	16.091
KY 321 - From KY 1428 in Prestonsburg to KY 3 [US 23] south of Auxier.	.000	4.278
KY 3 - From KY 321 south of Auxier to KY 321 near Auxier.	1.060	2.672
KY 321 - From KY 3 to Johnson County Line.	4.278	5.172
[US 23 - From KY 321 south of Auxier to Johnson County Line.	21.502	24.014]
(32) Franklin County:		
US 127 - From Anderson County Line via Capital Plaza-West Frankfort Connector Wilkerson Boulevard to Owen County Line.	.000	21.507
		[22.098]
US 421 - From US 127 (Owenton Road) via Thornhill Bypass to US 460 (Georgetown Road).	3.072	4.523[9]
KY 151 - From Anderson County Line to I-64.	.000	2.222
US 60 - From US 460 at Georgetown Road in Frankfort via Versailles Road to Woodford County Line.	10.716	14.038
US 421 - From US 127 to Henry County Line.	4.523[9]	17.886
US 460 - From US 60 at Versailles Road in Frankfort via Georgetown RD to Scott County Line.	.000	6.114
KY 676 - From US 127 (Lawrenceburg Road) via East-West Connector in Frankfort to US 60 (Versailles Road).	.000	5.287
(33) Fulton County:		
US 51 - From south limits of Purchase Parkway to Hickman County Line.	.000	5.472
KY 239 - From Hickman County Line to KY 94 in Cayce.	6.379	3.617
KY 94 - From the Tennessee State Line to KY 1099 west of Hickman.	0.000	10.902

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KY 94 - From KY 1099 east of Hickman to KY 239 in Cayce.	13.642	22.121
KY 1099 - Fulton Bypass from KY 94 west of Hickman to KY 94 east of Hickman.	.000	2.966
(34) Gallatin County:		
KY 35 - From Owen County Line at Sparta to I-71.	.000	2.128
(35) Garrard County:		
US 27 - From Lincoln County Line to Jessamine County Line.	.000	16.510
KY 34 - From Boyle County Line to US 27.	.000	1.610
KY 1295 - From KY 52 to Madison County Line.	.000	6.928
KY 52 - From Boyle County Line to KY 954.	.000	13.476
KY 954 - From KY 52 to Madison County Line.	.000	7.564
(36) Graves County:		
US 45 - From southern interchange of Purchase Parkway to McCracken County Line.	18.950	31.580
KY 80 - From Purchase Parkway via West Broadway to US 45 at 7th Street in Mayfield.	9.638	11.461
KY 58 - From US 45 at 7th Street via East Broadway to Marshall County Line.	5.530	14.881
KY 121 - From Calloway County Line via Murray Road and 5th Street to KY 58 at Broadway.	.000	10.623
US 45 - From KY 80 at Broadway via North 8th Street to KY 121 at Housman Street.	17.219	17.952
KY 121 - From US 45 (North 8th Street) via Housman Street to Carlisle County Line.	10.623	22.559
(37) Grayson County:		
KY 259 - From Edmonson County Line to US 62 westbound.	.000	12.954
US 62 - From KY 259 southbound to KY 259 northbound.	20.787	21.296
KY 259 - From US 62-Eastbound to Breckinridge County Line.	12.954	21.459
(38) Green County:		
KY 61 - From Adair County Line to US 68.	.000	8.194
US 68 - From KY 61 southbound to West Hodgenville Avenue in Greensburg.	11.954	13.616
KY 61 - From KY 88 north of Greensburg to Larue County Line.	9.796	24.344
(39) Greenup County:		
KY 8 - From Lewis County Line to KY 8 Spur at South Portsmouth.	.000	1.956
US 23 - From Boyd County Line to south end of US Grant Bridge.	.000	28.760
KY 8 - From KY 8 Spur to US 23 at south limits of U.S. Grant Bridge in South Portsmouth.	1.956	3.023
KY 8S - From KY 8 via Carl Perkins Bridge to Ohio State Line.	.000	.610
KY 10 - From Lewis County Line to the second landward pier from river's edge in Ohio.	.000	12.844
(40) Hancock County:		
US 60 - From Daviess County Line to KY 3199 in Hawesville.	.000	10.782
KY 3199 - From US 60 in Hawesville to another junction with US 60.	.000	3.301
US 60 - From KY 3199 to Squirrel Tail Hollow Road.	13.666	14.270
		[15.220]
KY 3199 - From another junction with US 60 to the Breckinridge County Line.	3.301	5.558
KY 69 - From US 60 at Hawesville to Indiana State Line.	13.080	13.972
	[14.126]	15.018]
(41) Hardin County:		
US 31WB - From Western Kentucky Parkway to US 31W.	.202	3.704
US 31W - From US 31W Bypass to Meade County Line.	18.818	33.040
US 31W - From Meade County Line to Jefferson County Line.	33.040	37.143
KY 61 - From Larue County Line to US 31W.	.000	5.309
(42) Harlan County:		
US 119 - From Bell County Line <u>along existing and [to] proposed routes [relocation east of Cumberland</u>	.000	38.082
US 119 - From a point on the US 119 Mainline near Cumberland] to Letcher County Line.	.000	39.182
		[1.100]
US 421 - From Virginia State Line to Leslie County Line.	.000	27.632
(43) Harrison County:		
US 27 - From Bourbon County Line to Pendleton County Line.	.000	19.472
(44) Henderson County:		
US 41 - From Pennyrlle Parkway to Indiana State Line (north urban limits of Henderson).	13.414	21.193
<u>US 41A - From Dixon Street to the northern most loop of the interchange with US 41.</u>	<u>13.235</u>	<u>17.760</u>
US 60 - From Union County Line to <u>US 41A (Dixon Road) (Henderson Bypass).</u>	.000	<u>10.435</u>
		[8.712]
KY 425 - From US 60 (Morganfield Road) via Henderson Bypass to end of the northbound ramp junction with the Pennyrlle Parkway.	.000	6.201
(45) Henry County:		
KY 55 - From Shelby County Line to KY 22 west in Eminence.	.000	1.408
KY 22 - From KY 55 south to KY 55 north.	7.420	7.522
KY 55 - From KY 22 east to US 421.	1.408	4.490
US 421 - From Franklin County Line to Shelby County Line at Pleasureville.	.000	6.434
US 421 - From Shelby County Line near Pleasureville to Trimble County Line.	6.434	25.144
(46) Hickman County:		
US 51 - From Fulton County Line to Carlisle County Line.	.000	14.451
KY 239 - From Fulton County Line to KY 123.	0.000	3.753

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KY 123 - From KY 239 to Proposed FAP 94 at Hailwell.	10.048	15.788
KY 123 - From Bottery Road in South Columbus to KY 58.	20.882	21.787
Proposed FAP 94 - From KY 123 at Hailwell <u>along Cole and Chalk Bluff Roads to KY 123 at South Columbus.</u>	.000	6.000
[to .??]	.000	19.095]
KY 58 - From KY 123 to KY 80 at Columbus.	0.573	0.761
KY 80 - From KY 58 to KY 123.	0.000	1.526
KY 123 - From KY 80 to Carlisle County Line.	21.787	22.958
(47) Hopkins County:		
KY 281 - From east limits of interchange ramps of Pennyrile Parkway to US 41.	.000	.712
US 41A - From US 41 and KY 281 to Webster County Line.	.000	13.278
(48) Jackson County:		
KY 30 - From Laurel County Line to Owsley County Line.	.000	20.919
US 421 - From Clay County Line to Rockcastle County Line.	.000	29.585
(49) Jefferson County:		
US 31W - From Hardin County Line via Dixie Highway, Bernheim Lane, 22nd Street, Dumesnil Street and 21st Street [to Main Street.	.000	20.292
US 31W - From 21st Street via Market Street] to US 31 east [3E] at Main and 2nd Streets.	.000	22.135
	[20.292	22.135]
US 150 - From Main Street via 21st Street and 22nd Street to I-64.	.000	.741
US 150T - From 22nd Street to 21st Street.	.000	.089
US 31 - From US 31E (Main Street) via George Rogers Clark Bridge to 0.02 mile north of 4th Street in Jeffersonville, Indiana.	.000	1.122
US 31E - From Bullitt County Line to US 31W at Main and 2nd Streets.	.000	17.987[814]
US 42 - From Baxter Avenue to US 60.	.000	.805
US 42 - From I-264 to KY 841.	5.779	8.951
KY 841 - From US 31W at Dixie Highway via Gene Snyder Freeway to I-65.	.000	10.250
KY 841 - From I-71 ramps to US 42.	34.758	37.006
KY 1934 - From KY 1230 (Cane Run Road) to I-264.	.000	7.593
US 60 - From US 42 to Story Avenue.	.000	.123
(50) Jessamine County:		
US 27 - From the Garrard County Line to Fayette County Line.	.000	15.070
US 68 - From Mercer County Line to Fayette County Line.	.000	12.060
(51) Johnson County:		
US 23 - From Floyd County Line to Lawrence County Line.	.000	18.386
US 460 - From Magoffin County Line to US 23 near Paintsville.	.000	7.809
KY 321 - From Floyd County Line to US 23 north of Paintsville.	.000	9.562
KY 40 - From US 460 to KY 321.	8.741	9.293
	[.000	7.700]
(52) Kenton County:		
KY 8 - From 4th Street to the Campbell County Line.	6.434	7.662
KY 1120 - From I-75 to Campbell County Line.	.000	1.212
(53) Knott County:		
KY 15 - From Letcher County Line to Perry County Line.	.000	9.380
KY 80 - From Perry County Line to Floyd County Line.	.000	20.093
(54) Knox County:		
US 25E - From Bell County Line to Laurel County Line.	.000	26.571
KY 90 - From Whitley County Line to 1.621 miles south of US 25E at KY 3041 (Proposed).	.000	2.100
KY 3041 - From 1.621 miles south of US 25E to US 25E.	.000	1.621
KY 3085 - From Bell County Line via Old US 25E to junction with US 25E.	.000	2.140
(55) Larue County:		
KY 61 - From Green County Line via Hodgenville Bypass to Hardin County Line.	.000	13.603
US 31E - From KY 61 south via Hodgenville to Nelson County Line.	6.900	20.725
(56) Laurel County:		
US 25E - From Knox County Line in Corbin to west limits of I-75 ramps.	.000	2.024
US 25 - From Daniel Boone Parkway in London to KY 490.	13.612	16.315
KY 490 - From US 25 to KY 30 at East Bernstadt.	.000	.877
KY 30 - From KY 490 to Jackson County Line.	1.404	9.806
KY 80 - From Pulaski County Line to the Daniel Boone Parkway and US 25 near London.	.000	11.083
KY 192 - From west ramps of I-75 to the Daniel Boone Parkway east of London.	18.190	22.041
(57) Lawrence County:		
US 23 - From Johnson County Line to Boyd County Line.	.000	28.947
KY 645 - From US 23 to Martin County Line.	.000	5.205
(58) Lee County:		
KY 11 - From Owsley County Line via Beattyville to Wolfe County Line.	.000	14.845
(59) Leslie County:		
US 421 - From Harlan County Line via Main Street in Hyden to KY 118 (Hyden Spur).	.000	22.613

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KY 118 - From US 421 in Hyden via Hyden Spur to Daniel Boone Parkway.	.000	3.524
(60) Letcher County:		
KY 15 - From US 119 at Whitesburg to KY 7 North at Isom.	.000	9.230
KY 7 - From KY 15 to KY 15.	13.497	14.157
KY 15 - From KY 7 South in Isom to Knott County Line.	9.230	10.675
US 23 - From Virginia State Line along existing and proposed alignment [to US 119] to Pike County Line.	.000	7.07[0]0
US 119 - From Harlan County Line to proposed US 23 near Virginia State Line.	.000	27.798
(61) Lewis County:		
KY 9 - From Carter County Line to Mason County Line.	.000	31.218
KY 8C - From KY 10 to KY 8 south of Quincy.	.000	.127
KY 8 - From KY 8C south of Quincy to Greenup County Line.	28.575	36.910
KY 10 - From KY 9 Greenup County Line.	6.788	19.834
(62) Lincoln County:		
US 27 - From Pulaski County Line via Stanford to Garrard County Line.	.000	21.982
US 127 - From Casey County Line via Hustonville to Boyle County Line.	.000	10.847
US 150 - From Boyle County Line to US 150 Bypass.	.000	4.347
US 150B - From US 150 to US 150.	.000	3.522
US 150 - From US 150/US 150 Bypass near Preacherville Road to Rockcastle County Line.	8.705	19.665
(63) Livingston County:		
US 60 - From McCracken County Line via Smithland, Burna, and Salem to Crittenden County Line.	.000	29.059
US 62 - From Marshall County Line via Lake City to Lyon County Line.	.000	2.854
(64) Logan County:		
US 79 - From Todd County Line via Clarksville Road and 9th Street to US 431 North.	.000	12.135
US 68 - From Todd County Line via Hopkinsville Road, 4th Street and Franklin Street to Warren County Line.	.000	26.567
US 431 - From Tennessee State Line to Muhlenberg County Line.	.000	31.898
<u>US 68X - From US 68 west of Auburn via Old US 68 to US 60 east of Auburn.</u>	<u>.000</u>	<u>3.035</u>
<u>KY 3172 - From KY 73 via Old US 68 to Warren County Line.</u>	<u>.000</u>	<u>2.515</u>
(65) Lyon County:		
US 62 - From Livingston County Line to US 641 at Fairview.	.000	10.465
US 641 - From US 62 at Fairview to Caldwell County Line.	.000	5.715
(66) McCracken County:		
US 45 - From Graves County Line via Lone Oak Road and Jackson Street to US 60 East (Jackson Street).	.000	10.820
US 60 - From Ballard County Line via Hinkleville Road and Park Avenue to US 45 (28th Street) at Laclede.	.000	13.544
US 60 - From US 45 (28th Street) via Jackson Street, 21st Street, Beltline Highway, and Division Street to the Livingston County Line.	13.544	20.028
US 62 - From US 60 to US 68.	12.881	15.513
US 68 - From US 62 to Marshall County Line.	.000	2.677
(67) McCreary County:		
US 27 - From Tennessee State Line to Pulaski County Line.	.000	22.252
KY 90 - From US 27 to Whitley County Line.	.000	11.920
(68) McLean County:		
US 431 - From Muhlenberg County Line to Daviess County Line.	.000	11.573
(69) Madison County:		
KY 1295 - From Garrard County Line to KY 52.	.000	4.529
KY 52 - From KY 1295 via Lancaster Avenue to KY 876.	5.444	10.910
KY 954 - From Garrard County Line to KY 21.	.000	.139
KY 21 - From KY 954 via Lancaster Road and Chestnut Street in Berea to US 25 at Mt. Vernon Road.	6.176	9.115
US 25 - From KY 21 West via Chestnut Street in Berea to KY 21 East.	2.863	3.810
KY 21 - From US 25 at Estill Street via Prospect Street and Big Hill Road in Berea to US 421.	9.115	14.196
KY 876 - From west limits of I-75 interchange in Richmond to KY 52 (Irvine Road).	7.097	10.755
US 25 - From US 421 via Big Hill Avenue to KY 876.	11.960	15.500
US 421 - From US 25 to Rockcastle County Line.	.000	13.031
US 421S - From KY 52 (Irvine Road) to north urban limits of Richmond at US 25.	.000	3.900
US 25 - From proposed Richmond Bypass to northwest limits of I-75 interchange at Richmond.	19.188	20.158
KY 627 - From US 25 west of I-75 to Clark County Line.	.000	6.118
(70) Magoffin County:		
[US 460 - From Mountain Parkway to KY 114.]	12.546	14.635
KY 114 - From US 460 to Floyd County Line.	.000	5.026
US 460 - From Morgan County Line to [Mountain Parkway West.]	.000	12.546
US 460 - From KY 114 to Johnson County Line.	.000	20.426
	[14.635	20.426]
(71) Marion County:		
US 68 - From Taylor County Line to KY 55 (Walnut St.).	.000	10.690
KY 55 - From US 68 (Main Street) via Walnut Street to KY 49 (St. Marys Road).	.000	.389

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KY 49 - From KY 55 (St. Marys Road) via Walnut Street to KY 49 (Proctor Knott Avenue).	17.815	17.968
KY 55 - From KY 55 (Proctor Knott Avenue) via Walnut and Spalding Avenue to Washington County Line.	.389	4.669
(72) Marshall County:		
KY 58 - From Graves County Line to KY 80.	.000	2.156
KY 80 - From KY 58 to US 68.	.000	16.926
US 68 - From McCracken County Line to Trigg County Line.	.000	28.085
US 641 - From Calloway County Line to US 62.	.000	19.422
US 62 - From I-24 to Livingston County Line.	8.805	12.081
US 641S - From US 641 to Purchase Parkway.	.000	3.519
<u>KY 348 - From Purchase Parkway to US 641.</u>	<u>7.448</u>	<u>8.325</u>
(73) Martin County:		
KY 645 - From KY 40 at a point west of Inez Bypass to KY 3 northbound south of Inez.	4.682	6.605
KY 3 - From KY 645 westbound via Inez Bypass to KY 645 eastbound.	9.709	10.019
KY 645 - From KY 3 southbound via Inez Bypass to KY 40 southeast of Inez.	6.605	7.632
KY 40 - From KY 645 southeast of Inez to West Virginia State Line.	11.900	20.280
KY 645 - From Lawrence County Line to KY 40 at a point west of Inez.	.000	4.682
(74) Mason County:		
KY 11 - From Fleming County Line to KY 9.	.000	8.452
US 68 - From Fleming County Line to US 62 in Washington.	.000	11.854
US 62 - From US 68 in Washington via Lexington Road, Forest Avenue, and Aberdeen Bridge to Ohio State Line.	12.672	18.000
KY 9 - From Lewis County Line to Bracken County Line.	.000	19.554
KY 546S - From KY 9 to Ohio State Line via proposed New Bridge.	.000	4.600
(75) Meade County:		
US 31W - From Hardin County Line to Hardin County Line.	.000	3.827
US 60 - From Breckinridge County Line to US 31W.	.000	15.644
KY 144 - From US 60 to KY 448 near Buck Grove.	25.390	28.665
KY 448 - From KY 144 to KY 1051 (Brandenburg Bypass).	.000	4.392
KY 1051 - From KY 448 via Brandenburg Bypass to KY 79.	.000	2.218
KY 79 - From KY 1051 via Brandenburg Bypass to Indiana State Line.	8.237	9.912
(76) Menifee County:		
US 460 - From Montgomery County Line to Morgan County Line.	.000	19.750
(77) Mercer County:		
US 127 - From Boyle County Line via Danville Road to US 68.	.000	4.402
US 68 - From US 127 at Mooreland Avenue to Jessamine County Line.	6.752	20.104
US 127 - From US 68 to Anderson County Line.	4.402	17.150
(78) Metcalfe County:		
KY 90 - From Barren County Line to Cumberland County Line.	.000	11.719
(79) Montgomery County:		
US 460 - From Bourbon County Line to KY 686 (Mount Sterling Bypass).	.000	8.281[9]
KY 686 - From US 460 (Maysville Road) via Mount Sterling Bypass to US 460 (Frenchburg Road) at south urban limits of Mount Sterling.	.000	3.460
US 460 - From south urban limits of Mount Sterling to Menifee County Line.	10.702	22.151
(80) Morgan County:		
KY 7 - From US 460 in West Liberty to Elliot County Line.	.000	11.683
KY 203 - From Wolfe County Line to US 460.	.000	3.761
US 460 - From Menifee County Line via West Liberty to Magoffin County Line.	.000	28.634
(81) Muhlenberg County:		
US 431 - From Logan County Line to McLean County Line.	.000	27.779
(82) Nelson County:		
US 31E - From Larue County Line via New Haven Road, Cathedral Street, and Stephen Foster Avenue to Spencer County Line.	.000	27.588
US 62 - From US 31E to US 150.	14.294	14.653
US 150 - From US 62 to Washington County Line.	.000	7.682
(83) Nicholas County:		
US 68 - From Bourbon County Line to Robertson County Line.	.000	12.211
(84) Owen County:		
US 127 - From Franklin County Line to KY 35 at Bromley.	.000	24.687
KY 35 - From US 127 to Gallatin County Line.	.000	4.132
(85) Owsley County:		
KY 30 - From Jackson County Line to KY 11-North.	.000	11.206
KY 11 - From KY 30 to Lee County Line.	14.227	17.307
(86) Pendleton County:		
US 27 - From Harrison County Line to Campbell County Line.	.000	19.422
KY 9 - From Bracken County Line to Campbell County Line.	.000	4.339
(87) Perry County:		

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KY 15 - From Knott County Line at Vicco to Breathitt County Line.	.000	25.179
KY 80 - From KY 15 to Knott County Line.	7.910	15.862
(88) Pike County:		
US 23 - From Letcher County Line along proposed <u>and existing</u> alignments to (four lane east of Dorton	.000	4.200
US 23 - From KY 610 at Dorton via Pikeville to] Floyd County Line.	.000	35.123
	[6.589	35.123]
US 119 - From US 23 north of Pikeville to West Virginia State Line.	.000	29.748
US 460 - From US 23 north of Shelbiana to Virginia State Line.	.000	24.865
		[25.445]
(89) Powell County:		
KY 11 - From Wolfe County Line to Mountain Parkway.	.000	3.504
(90) Pulaski County:		
US 27 - From McCreary County Line to Lincoln County Line.	.000	30.693
KY 80B - From US 27 to KY 80.	.000	2.315
KY 80 - From KY 80 Bypass to Laurel County Line.	21.636	40.393
KY 90 - From Wayne County Line to US 27.	.000	4.169
KY 461 - From KY 80 to Rockcastle County Line.	.000	8.441
(91) Robertson County:		
US 68 - From Nicholas County Line to Fleming County Line.	.000	1.357
(92) Rockcastle County:		
US 150 - From Lincoln County Line to US 25 in Mount Vernon.	.000	10.511
US 25 - From I-75 to US 150.	11.764	13.882
US 421 - From Jackson County Line to Madison County Line.	.000	.601
KY 461 - From Pulaski County Line to US 25.	.000	9.404
US 25 - From KY 461 to I-75.	15.018	15.678
(93) Rowan County:		
KY 32 - From Fleming County Line to south limits of I-64 interchange.	.000	5.784
(94) Russell County:		
US 127 - From Clinton County Line to Casey County Line.	.000	26.998
(95) Scott County:		
US 460 - From Franklin County Line to proposed Georgetown Bypass near Great Crossings.	.000	7.100
Proposed Georgetown Bypass - From US 460 Mainline near Great Crossings to US 25.	.000	3.400
US 460B - From US 25 via US 460 (Georgetown Bypass) to US 62/US 460.	.000	2.891
US 460 - From US 62/US 460B to Bourbon County Line.	8.583	15.421
(96) Shelby County:		
KY 55 - From I-64 [to southwest urban limits of Shelbyville] via Taylorsville Road to <u>US 60</u>	<u>6.246</u>	<u>7.898</u>
<u>KY 55 - From KY 43/KY 2268 to Henry County Line.</u>	<u>9.131</u>	<u>17.850</u>
[and Boone Station Road to Henry County Line.	6.246	17.850]
US 60 - From KY 55 South (Taylorsville Road) via Midland Trail and Main Street to KY 55 North (Boone Station Road).	8.589	11.398
<u>KY 2268 - From south end of Clear Creek Bridge via 7th Street and Pleasureville Road to KY 55.</u>	<u>0.000</u>	<u>1.308</u>
KY 53 - From I-64 to US 60 (Frankfort Road) via Mt Eden Road.	6.188[0]	7.978
US 421 - From Henry County Line to Henry County Line.	.000	.661
(97) Simpson County:		
US 31W - From south limits of I-65 Interchange to KY 100.	2.300	6.252[488]
KY 100 - From US 31W Mainline to the I-65 ramps east of I-65.	9.675	12.875
(98) Spencer County:		
US 31E - From Nelson County Line to Bullitt County Line.	.000	2.433
(99) Taylor County:		
KY 55 - From Adair County Line to US 68 (Broadway).	.000	10.293
US 68 - From KY 55 via Broadway to Marion County Line.	4.939	13.600
(100) Todd County:		
US 41 - From Tennessee State Line to Christian County Line.	.000	12.458
US 79 - From Tennessee State Line to Logan County Line.	.000	10.606
US 68 - From Christian County Line to Logan County Line.	.000	14.060
(101) Trigg County:		
US 68 - From Marshall County Line to Christian County Line.	.000	28.115
<u>US 68X - From US 68 west of Cadiz to US 68 east of Cadiz.</u>	<u>0.000</u>	<u>4.519</u>
<u>KY 3468 - From US 68 east of Cadiz via Old US 68 to US 68 west of I-24.</u>	<u>0.000</u>	<u>2.840</u>
		[28.224]
(102) Trimble County:		
US 421 - From Henry County Line to US 42 South.	.000	6.704
US 42 - From US 421 South in Bedford to US 421 North in Bedford.	8.078	8.249
US 421 - From US 42 North to Indiana State Line.	6.704	19.287
(103) Union County:		
KY 56 - From Illinois State Line to proposed Morganfield Bypass.	.000	11.600
KY 56 - From existing US 56 via proposed Bypass to US 60.	.000	1.400

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US 60 - From Crittenden County Line to proposed Morganfield Bypass.	.000	15.500
US 60 - From existing US 60 via proposed Bypass to US 60 east of Morganfield.	.000	2.900
US 60 - From proposed Bypass east of Morganfield to Henderson County Line.	18.100	26.069
KY 109 - From Webster County Line to US 60.	.000	1.536
(104) Warren County:		
KY 101 - From I-65 to US 31W.	7.861	11.641
US 31W - From KY 101 south to KY 101 north.	27.869	28.557
KY 101 - From US 31W to Edmonson County Line.	11.641	12.850
US 68 - From Logan County Line to US 31W.	.000	13.060
US 31W - From US 68 to KY 446 Overpass.	14.670	17.569
KY 446 - From US 31W to I-65.	.000	1.090
KY 880 - From KY 185 to US 68.	.000	5.128
KY 185 - From KY 880 to US 68.	.000	.292
US 231 - From Allen County Line to I-65.	.000	9.106
<u>KY 3172 - From Logan County Line via Old US 68 to KY 240.</u>	<u>.000</u>	<u>0.300</u>
(105) Washington County:		
KY 55 - From Marion County Line to US 150.	.000	4.551
KY 555 - From US 150 to north end of Bluegrass Parkway Interchange.	.000	14.738
US 150 - From Nelson County Line to Boyle County Line.	.000	21.359
(106) Wayne County:		
KY 90 - From Clinton County Line to Pulaski County Line.	.000	25.235
(107) Webster County:		
US 41A - From Hopkins County Line to KY 670.	.000	1.324
KY 670 - From US 41A to KY 109.	.000	2.712
KY 109 - From KY 670 to Union County Line.	2.876	14.664
(108) Whitley County:		
KY 90 - From McCreary County Line to US 25W.	.000	8.328
US 25W - From KY 90 to east limits of I-75 ramps.	22.183	29.677
KY 90 - From US 25W along proposed alignment to Knox County Line.	.000	2.000
(109) Wolfe County:		
KY 15 - From Breathitt County Line to KY 191.	.000	9.515
KY 15S - From KY 15 to <u>westbound land</u> of Mountain Parkway.	.000	1.054
KY 11 - From Lee County Line to Powell County Line.	.000	5.317
KY 191 - From KY 15 Spur to KY 203.	.000	10.342
KY 203 - From KY 191 to Morgan County Line.	.000	1.323
(110) Woodford County:		
US 60 - From Franklin County Line to Fayette County Line.	.000	13.039

Section 12. No Encroachment Permits for Vegetation Control. An encroachment permit shall not be issued pursuant to the provisions of 603 KAR 5:150 for the clearing or trimming of [any] vegetation on state-owned right-of-way which is in front of an outdoor advertising device.

Section 13. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "The FHWA/Kentucky [Bonus] Agreement for the Control of Outdoor Advertising" between the Kentucky Department of Highways and the Federal Highway Administration, executed December 23, 1971; and

(b) "Application for an Advertising Device Permit," Form TC 99-31, October [August] [March] 1997 [December 1995] edition;

(c) "Measurement of Commercially or Industrially Developed Area," a Transportation Cabinet document effective March 1997.

(2) Material incorporated by reference as a part of this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Permits Branch, 11th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4105. The business hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: August 5, 1997

FILED WITH LRC: August 5, 1997 at 11 a.m.

EDUCATION, ARTS, AND HUMANITIES CABINET

Kentucky Board of Education

Department of Education

Bureau for Learning Support Services

(As Amended at ARRS, October 14, 1997)

704 KAR 3:455. Instructional material and textbook adoption process.

RELATES TO: KRS 156.400 to 156.476, 157.100 to 157.190, 160.345

STATUTORY AUTHORITY: KRS 156.410, 156.433, 156.437, 156.439, 156.474, 156.476, 157.110, 157.130, 157.140, 157.150, 157.160

NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 156.400 to 156.476 set up the Kentucky Textbook Commission and the statutory policies and procedures for the adoption, purchase, use and distribution of textbooks to be utilized in the schools of the Commonwealth; KRS 157.100 to 157.190 require that the Department of Education set up management procedures for the textbook program.]~~ KRS 156.433 and 156.439 require that administrative regulations be promulgated [written] to: define instructional materials; identify instructional materials eligible for purchase with state textbook funds; identify instructional materials which are subject to review before being approved for use; establish a procedure for the review of instructional material and a process for adding an instructional material to the approved list; establish a method for calculating and distributing a school district's textbook and instructional material allocation; and design a planning instrument for each school to use in documenting

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its textbook and instructional material needs during each adoption period. This administrative regulation establishes the standards and procedures which are necessary to carry out the statutory requirements dealing with textbooks and instructional materials.

Section 1. Definition. "Instructional material" means any print, nonprint or electronic medium of instruction designed to assist students.

Section 2. The content areas included in each year of the textbook and instructional material adoption cycle shall be:

(1) Grouped based on the:

(a) Content areas in the academic expectations, which are established in [(703 KAR 4:060;)] and

(b) The Kentucky Instructional Results Information System (KIRIS) testing groups; and [The subjects included in the "Program of Studies for Kentucky Schools", 704 KAR 3:303;]

(2) [shall be] Arranged into six (6) groups as follows:

(a) Group I - Language Arts and Reading P-12; [Social Studies P-12;]

(b) Group II - Social Studies P-12; [Language Arts P-12;]

(c) Group III - Science P-12;

(d) Group IV - Mathematics P-12; [Music P-12 and Vocational Education 1-12;]

(e) Group V - Vocational Studies and Practical Living P-12; and [Mathematics P-12 and Computer Education 6-12;]

(f) Group VI - Arts and Humanities P-12, [Reading P-12, Literature, Art, Foreign Language, Health P-12, and Driver Education 10-12;]

Section 3. (1) Vendors submitting bids shall ship adequate textbook and instructional material samples to the Department of Education, individual State Textbook Commission members, and to the state review site before the beginning of the review process. All other pertinent bid information shall be provided by the bid opening.

(2) When the review process has been completed and the individual commission members have no further need for samples in their possession, the samples shall be disposed of in the following manner:

(a) Reclaimed by the publishers; or

(b) Transferred to local school districts, institutions of higher education, or other appropriate agencies.

Section 4. (1) Each adoption year before establishing the state list, the State Textbook Commission shall conduct a hearing for the following purposes:

(a) Interviewing publisher agents, representatives and vendors of textbooks and instructional materials; and

(b) Hearing any person or organization that may have complaints or concerns about a textbook or instructional material being considered for listing.

(2) Parties desiring to be heard shall file with the Secretary of the State Textbook Commission a written request two (2) weeks prior to the hearing. The request shall clearly state:

(a) Name and address of the person or organization requesting the hearing;

(b) Title, author, International Standard Book Number, and copyright date of the textbook or instructional material in question;

(c) Sections of the textbook or instructional material being questioned and nature of concern;

(d) Anticipated problems that would be created if the textbook or instructional material is adopted; and

(e) Suggested alternatives.

(3) One (1) spokesperson shall represent a group or organization.

(4) The commission's position and action shall be forwarded to the concerned parties after the state list has been established.

Section 5. (1)(a) The Kentucky State Textbook Commission may inquire into and ascertain if any vendor has:

1. Violated an applicable administrative regulation or statute;
or

2. [this administrative regulation or the Kentucky Revised Statutes, or if the vendor has] Used undue influence or unethical tactics to secure bids or to assure local adoption.

(b) Undue influence or unethical tactics shall include actions such as:

1. Unsolicited contact by vendors or their representatives with members of the State Textbook Commission; and

2. The buying for or giving to State Textbook Commission members, local district personnel or [and] review committee members meals, gifts, trips, or entertainment to assure the listing, adoption, or [and] purchase of their textbooks or instructional materials.

(c) If there is sufficient evidence that a vendor is guilty, the vendor shall be called before the State Textbook Commission to determine:

1. If violations did occur; and

2. What course of action shall be taken.

(2) Vendors proposing to give local districts free-of-charge items such as blackline masters, teachers editions, workbooks, and extra textbooks, if the districts adopt and purchase their items, shall file a list of gratis items as an official part of their bid.

(3) In addition to textbook sampling required under KRS 156.440, vendors may sample gratis items to local districts or schools for use in the adoption process. Gratis sampling shall be minimal and not be done in a manner to assure the adoption and purchase of a vendor's textbooks or instructional materials.

(4) The State Textbook Commission may refuse to execute or may cancel a vendor contract upon discovery that the vendor:

(a) Has violated [any part of] this administrative regulation; or

(b) Does not have the ability to perform all the terms and conditions of the contract.

(5) All bidders for textbook or instructional material contracts shall file with the Department of Education the name and address of a Kentucky person, firm, or corporation upon whom process may be served.

Section 6. Vendors and local school districts or school councils may agree to pilot new textbook and instructional material programs for one (1) school year on a selective and controlled basis to determine the effectiveness of a particular textbook or instructional material program.

(1) Piloting shall not be conducted during the fiscal [adoption] year (July 1-June 30 [April]) if [when] purchasing plans are being developed for a subject under consideration [being considered] for adoption by the local districts.

(2) The chief state school officer shall approve all piloting programs. The local school district superintendent shall file the request for approval with the chief state school officer. The request shall clearly state:

(a) [(+)] The vendor that will conduct the pilot;

(b) [(2)] The purpose of the pilot;

(c) [(3)] The subject and grade levels in which the pilot shall be conducted;

(d) [(4)] The schools where the pilot shall be conducted;

(e) [(5)] The name of the school district staff member supervising the pilot;

(f) [(6)] Beginning and ending date of pilot; and

(g) [(7)] Brief summary of evaluation procedures.

Section 7. Any school administrator, school council chair, or teacher shall not receive directly or indirectly any gift, reward, or promise of a reward for his influence in reviewing and selecting textbooks and instructional materials.

Section 8. (1) Each textbook submitted for adoption in Kentucky

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shall meet the "Manufacturing Standards and Specifications for Textbooks", developed and approved by the National Association of State Textbook Administrators, in consultation with the Association of American Publishers and the Book Manufacturer's Institute, as revised August 1, 1988. This edition is incorporated by reference and is on file in and can be inspected, copied, and obtained from the Division of Curriculum Development, Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Monday-Friday, 8 a.m. - 4:30 p.m].

(2)(a) Publishers may submit an old copyright with the official bid, [; however,] A revised edition shall be submitted before the commission hearing.

(b) Publishers may submit a galley proof, incomplete book, or statement of intent with the official bid, [; however,] The book shall be complete and on file with the State Textbook Commission before the date of the commission hearing.

(c) Ancillary materials, including workbooks and teacher editions, shall be completed on or before the July 1 contract date.

Section 9. Inaccurate information, defective binding, workmanship or material shall be reported by school personnel to the vendor as soon as detected.

(1) Vendors shall be held responsible for all inaccurate or defective textbooks and instructional materials.

(2) Textbooks and instructional materials that show manufacturing defects in the first or second year of use shall be replaced by the vendor on a one-for-one basis.

(3) After the first two (2) years of use, a replacement agreement shall be negotiated between the local district and the vendors. School districts shall start the replacement process as soon as it has been determined that textbooks or instructional materials are inaccurate or defective.

Section 10. (1) A request to substitute revised editions of textbooks or instructional materials under contract shall be considered at the first regular meeting of the calendar year of the State Textbook Commission to be held on or before May 1.

(2) Substitutions shall not be permitted for textbooks or instructional material to be used the last year of a contract.

(3) The vendor shall agree to supply either the listed or the substituted item in accordance with the local school district's request.

(4) The revised edition shall be at the same price at which the textbook or instructional material was bid and the content shall be compatible for use with the old edition.

(5) The physical materials and workmanship of the revised edition shall be of equal or better quality than the older edition.

(6) Ancillary materials for a substituted textbook or program shall be available at the time the publisher submits the substitution request.

(7) Thirty (30) days prior to the date of the commission meeting publishers shall provide a sample of the substituted textbook or instructional material and a list of the changes with page numbers of the revised edition or other reference data that compares it with the textbook or program presently listed.

Section 11. The retail price for textbooks or instructional materials to be used in Kentucky shall not be more than twenty (20) percent in excess of the publisher wholesale price.

Section 12. (1) The State Textbook Commission shall direct the process for including instructional materials used in lieu of basal programs on the state list. The commission shall receive assistance in the review and selection of instructional materials from professional educators and lay citizens who may serve on a contractual basis.

(2) The Commissioner of Education shall recommend to the State Textbook Commission names of instructional material reviewers with knowledge about the area or areas being considered for adoption.

(3) The State Textbook Commission shall:

(a) Appoint, from the [a] list of qualified applicants prepared by the Commissioner of Education, twelve (12) instructional material reviewers;

(b) Approve the evaluative criteria and instruments of evaluation developed by the instructional material reviewers; and

(c) Select, approve, and publish a list of high quality instructional materials using the information submitted by the reviewers.

(4) The instructional material reviewers shall:

(a) Be comprised of twelve (12) individuals.

1. Four (4) shall be classroom teachers with expertise in the content area considered for adoption and shall be actively employed in a public school;

2. Two (2) shall be other educators;

3. Two (2) shall have expertise and experience working with instructional technology;

4. One (1) shall be a library/instructional media specialist;

5. One (1) shall have expertise in alternative ways of learning; and

6. Two (2) shall be parents with children currently enrolled in the public schools;

(b) Represent gender, grade level, geographic, and ethnic diversity;

(c) Attend meetings and training sessions as requested by the Department of Education;

(d) Develop and submit to the State Textbook Commission an instrument of evaluation to be used in reviewing instructional materials;

(e) Review instructional material except those that are ancillary to basal textbook programs to determine those of high quality using the instrument of evaluation approved by the State Textbook Commission; and

(f) Submit to the State Textbook Commission their recommendations for instructional material to be placed on the state's approved list and shall submit the instruments used in the evaluation process.

(5) Electronic instructional materials shall be reviewed and approved by the Kentucky Education Technology System and shall not be subject to approval by the State Textbook Commission.

Section 13. (1) Schools may use state textbook funds for the purchase of adopted textbooks, instructional materials, or programs in any combination based on identified pupil needs. Purchases may include the following:

(a) Textbooks on the commission's approved list;

(b) Instructional materials on the commission's approved list;

(c) Electronic instructional materials on the Kentucky Education Technology System approved list; and

(d) Items not on the above named approved lists but that meet selection criteria.

(2) Instructional material not subject to state review but eligible for purchase shall include the following:

(a) Reference books, trade books, pamphlets, periodicals, and other supplemental print material for student use;

(b) Supplementary video tapes, cassette tapes, slides, and recordings;

(c) Graphic materials, transparencies, globes, maps, music material, math and science manipulatives, calculators, and similar material; and

(d) Supplementary electronic instructional materials.

(3) The following materials and services shall not be eligible to be purchased with state textbook funds:

(a) Furniture, personnel services, testing programs, supplies and materials consumed in initial use such as workbooks, raw and blank materials.

(b) Audio visual equipment, major audio-visual installations such as public address systems, sound laboratories [for language], computers, televisions (including receiving sets and related equipment) and other equipment; and

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(c) Teacher resources including teachers' guides, manuals, and backline master books.

Section 14. (1) Every school in the Commonwealth with grades primary through eight (8) shall complete an annual plan identifying purchases, including necessary replacements, to be made with textbook funds according to the adoption cycle [~~including necessary replacements~~]. These plans may be revised.

(2) Each school's plan shall be kept on file in the district's central office, and the superintendent shall certify by a letter to the Kentucky Department of Education that all approved plans have been received and meet Kentucky Department of Education standards.

Section 15. (1) Pupils in grades primary through twelve (12) with impaired vision shall be considered eligible for the use of textbooks and materials in clear type of eighteen (18) to twenty-four (24) points upon certification by an eye specialist as follows:

(a) Pupils who cannot read more than 20/70 on a Standard Snellan Chart with the better eye after correction; and

(b) Pupils with progressive eye difficulties, including:

1. Pupils [those] with progressive myopia, even though glasses may bring the vision nearly to normal; or

2. [-and] Pupils who suffer from;

a. Noncommunicable diseases of the eye; or

b. Diseases of the body that seriously affect the vision.

(2) Certification of pupils' visual impairment shall be made by local school districts to the Department of Education.

(3) Request for large print textbooks and material shall be directed to the Kentucky School for the Blind.

(4) The local board of education shall assume responsibility for the care of large print textbooks and return them to the Kentucky School for the Blind when no longer needed.

(5) Large print textbooks and materials provided by the Kentucky School for the Blind shall not be charged to the textbook account of the local school.

Section 16. (1) The Department of Education shall prepare textbook and instructional material budgets annually and allocate funds to local school districts, based upon the Kentucky General Assembly biennial appropriation, for the purpose of purchasing basal textbook and instructional material programs during each adoption or funding cycle. The funds shall be used for students in primary through grade eight (8), exclusively.

(2) When allocating funds for the purchase of textbooks and instructional materials, the Department of Education shall use the pupil membership at the close of the second [~~first~~] month of the current school year.

(3) After receiving a statement of funds allocated, the superintendent shall notify within thirty (30) days the school council, or if none exists, the principal, of the per-pupil allotment to be expended by each school.

(4) Money appropriated in the current fiscal year shall be spent on textbooks and instructional materials in that year's adoption cycle. Money carried over to the next fiscal year may be spent by each school on textbooks and instructional materials in accordance with its plan.

(5) After July 1, checks shall be issued to districts having on file in the Kentucky Department of Education a statement from the superintendent certifying the receipt of all approved plans.

(6) Local school districts shall establish and maintain accounts that reflect the receipt and expenditures of state textbook and instructional material funds. These accounts shall be subject to audit.

Section 17. (1) Local school districts shall:

(a) Establish and maintain a textbook rental program for grades nine (9) through twelve (12); or

(b) Use [-This shall not prohibit local districts from using] local

funds to provide a free textbook program.

(2)(a) Local school districts not providing a free textbook program for grades nine (9) through twelve (12) shall establish annually a textbook rental fee. The maximum rental fee shall be based on eight (8) [six-(6)] dollars per one (1) Carnegie credit [two-(2) semester] course that requires the use of basal textbooks.

(b) Local school districts~~[-at their option;]~~ may charge a deposit fee not to exceed four (4) [three-(3)] dollars per one (1) Carnegie credit [two-(2) semester] course to be refunded if textbooks are returned in satisfactory condition.

(c) Textbook rental fees for pupils enrolled for less than a full school year shall be prorated based on the number of days of membership.

(3) Local school districts shall establish and maintain accounts for the textbook rental program subject to audit. The school council, or if none exists, the principal, shall be notified regarding the school's balance.

Section 18. (1) All textbooks shall be labeled as property of the Commonwealth of Kentucky. For economy in administration, the uniform label shall be affixed by the publishers in accordance with the "Manufacturing Standards and Specifications for Textbooks." The purchase date and the issue date shall be recorded on the uniform label.

(2) Textbook uniform labels shall not be completed until an examination of the shipment shows that it agrees in detail with the purchase order. A textbook with label completed shall be classified as a used textbook.

(3) A complete record shall be kept by the school for all state-provided textbooks and instructional materials for grades primary through eight (8) and all textbooks purchased with pupil rental fees for grades nine (9) through twelve (12).

Section 19. Pupils or parents shall compensate schools for textbooks and instructional materials lost, damaged, or destroyed while in their possession.

(1) [and] The compensation shall be as follows:

(a) 100 percent of retail cost for one (1) and two (2) year old textbooks and instructional materials;

(b) Seventy-five (75) percent of retail cost for three (3) and four (4) year old textbooks and instructional materials; and

(c) Twenty-five (25) percent of retail cost for five (5) and six (6) year old textbooks and instructional materials.

(2) Funds collected shall be credited to the school's textbook account.

Section 20. (1) The local superintendent shall assume responsibility for the disposal of textbooks no longer suitable for classroom instruction and shall [may] dispose of them in one (1) or more of the following methods [~~the following manner~~]:

(a) Make the textbooks available to teachers for use in grouping, reference, supplementary and other classroom activities;

(b) Make the textbooks available to pupils within the school district;

(c) Publicize in the local newspaper that textbooks are available to individual residents of the local district. Textbooks disposed of in this manner shall not be made available to used textbook dealers;

(d) Make the textbooks available to civic organizations or others for the purpose of distribution to underdeveloped countries or disadvantaged students;

(e) Make the textbooks available to recycling operations;

(f) Sell textbooks to used textbook dealers; or

(g) Destroy textbooks in any manner that is practical and in the best interest of the state and local school district.

(2) Any funds from the sale of the textbooks shall be credited to the school's textbook account.

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Section 21. (1) ~~A~~ [No] child shall not be denied full participation in any educational program due to an inability to purchase any necessary textbooks. Local school districts shall make available free textbooks to all children in grades nine (9) through twelve (12) who are unable to rent or purchase textbooks, using the eligibility guidelines for the free and reduced price lunch program. The parents of these children may be asked to contribute financially toward the rental and deposit cost of their children's textbooks the same percentage that they contribute financially toward the cost of their children's lunches.

(2) Local school districts shall adopt policies and procedures so that, at the beginning of the school year, pupils or their parents are given written notice of how to obtain free and reduced rental textbooks. The policies and procedures shall also insure that any written communication regarding payment of fees for textbooks shall include a form that parents can use to request waiver or partial waiver of textbook fees.

(3) Local districts shall keep records that include:

(a) The numbers of pupils in grades nine (9) through twelve (12) receiving free lunches and reduced price lunches;

(b) The number of pupils in grades nine (9) through twelve (12) who request or apply for, or whose parents request or apply for, free or reduced rental textbooks and the number of pupils receiving free or reduced rental textbooks; and

(c) Copies of any forms, notices or instructions used by schools in the collection of textbook fees or the provision of free or reduced rental textbooks.

(4) In the provision of textbooks to indigent children, a [no] child shall not be discriminated against because of race, sex, color, national origin, age, or disability and there shall not be an [no] overt identification of any indigent children.

Section 22. (1) Every public school student shall have access to necessary textbook(s) or instructional material(s) which shall be furnished free of charge in grades primary through eight (8), and, except for students otherwise partially or wholly exempted from the rental fee, shall have the textbook(s) available for the reasonable rental fee set forth in Section 17 of this administrative regulation for each subject studied in grades nine (9) through twelve (12).

(2) Quantities of textbooks and instructional materials needed for each student and each classroom shall be determined at the school level.

Section 23. Incorporation by Reference. (1) The "Manufacturing Standards and Specifications for Textbooks", dated September 1, 1996, is incorporated [herein] by reference.

(2) It [and] may be obtained, copied, and inspected at the Division of Curriculum and Assessment Development, Department of Education, 18th Floor, Capital Plaza Tower, Frankfort, Kentucky, 40601, Monday-Friday, 8 a.m. through 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this proposed administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

Wilmer S. Cody, Commissioner

JOSEPH W. KELLY, Chairman

APPROVED BY AGENCY: August 11, 1997

FILED WITH LRC: August 11, 1997 at 11 a.m.

PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Office of State Fire Marshal (As Amended at ARRS, October 14, 1997)

815 KAR 35:015. Certification of electrical inspectors.

RELATES TO: KRS 227.450, 227.489, 227.490, 227.4901 [Chapter 227]

STATUTORY AUTHORITY: KRS [13A:100:] 227.489, 227.490(6) NECESSITY, FUNCTION, AND CONFORMITY: KRS 227.489 requires the Commissioner of the Department of Housing, Buildings and Construction [is required by KRS 227.489] to certify electrical inspectors based on standards of the National Electrical Code. This administrative regulation establishes [is needed to establish] the procedures for achieving and maintaining the certification. This amendment is necessary to establish a minimum number of continuing education hours each inspector shall attend each year and clarify that the use of a temporary sticker is at the discretion of the inspector.

Section 1. Definitions. (1) "Applicant" means the person seeking to be certified as an electrical inspector.

(2) "Authority having jurisdiction" [as used in the National Electrical Code] means the Department of Housing, Buildings and Construction.

(3) "Certified electrical inspector" means a [any] person who has:

(a) Met the requirements established in [criteria established by the commissioner;

(b) ~~Satisfactorily passed the examination as required by~~ this administrative regulation; and

(b) [(c)] Received a certificate of compliance [attesting thereto].

[(d)] The categories of certified electrical inspector are:

~~1. [(a)] One (1) and two (2) family - a person who has [persons who have] passed the applicable NCPCCI examination and a person [persons] classified as a residential inspector [inspectors] on the effective date of this administrative regulation. These inspectors shall be deemed qualified to perform electrical inspections and approve electrical installations related to one (1) and two (2) family dwellings and mobile homes;~~

~~2. [only:~~

(b) General - ~~a person who has [persons who have] passed the applicable NCPCCI examination [of the same name] and a person [persons] classified as a commercial inspector [inspectors] on the effective date of this administrative regulation. These inspectors shall be deemed qualified to inspect and approve all types of residential, commercial, industrial and other properties which require electrical inspection.]~~

(4) "Code" means the National Electrical Code (NEC), which is incorporated by reference in 815 KAR 7:105 as part of the Kentucky Building Code. [and any amendments adopted by the department.]

(5) "Commissioner" means the Commissioner of the Department of Housing, Buildings and Construction.

(6) "Department" is defined by KRS 227.450(5). [means the Department of Housing, Buildings and Construction.]

(7) "Electrical" is defined by KRS 227.450(3). [means the installation of wires and conduits for the purpose of transmitting electricity and the installation of related fixtures and equipment.]

(8) "Electrical industry" means the industry [these] engaged in the generation, transmission and distribution of electricity and the design, manufacture, construction, installation, alteration or repair of electrical wiring facilities and apparatus for the utilization of electricity.

(9) "Employee" means a person [one] who is employed on a full-time, part-time, or contractual basis.

(10) "Temporary certification" means a certificate issued by the department under the provisions of Section 4 of this administrative regulation which is valid for a limited period of time. [The depart-

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ment shall issue temporary certification to qualified persons under the conditions of Section 4 of this administrative regulation.]

(11) "NCPCCI" means National Certification Program for Construction Code Inspectors which administers examinations developed by national code enforcement organizations in collaboration with the Educational Testing Service for the purpose of providing nationally recognized evidence of competence in construction code enforcement.

Section 2. Applicability. This administrative regulation shall apply to an electrical inspector in Kentucky and to an applicant. [all electrical inspectors in the Commonwealth of Kentucky and to applicants] for certification as an electrical inspector [electrical inspectors].

Section 3. Categories of Certified Electrical Inspectors. A certified electrical inspector shall be classified as an electrical inspector one (1) and two (2) family or an electrical inspector general.

(1) An electrical inspector one (1) and two (2) family shall:

(a) Be a person who:

1. Has passed the applicable NCPCCI examination; or
2. Was classified as a residential inspector; and

(b) Be qualified to perform an electrical inspection and approve an electrical installation related to a:

1. One (1) or two (2) family dwelling; or
2. Mobile home.

(2) An electrical inspector general shall:

(a) Be a person who:

1. Has passed the applicable NCPCCI examination; or
2. Was classified as a commercial inspector; and

(b) Be qualified to inspect and approve all types of residential, commercial, industrial, or other property which requires electrical inspection. [Responsibilities of the Commissioner of the Department of Housing, Buildings and Construction: (1) The Commissioner of the Department of Housing shall require inspectors to be certified. Examinations shall be based on the edition of the National Electrical Code adopted in the Kentucky Building Code.

(2) The commissioner shall administer this administrative regulation; provide for continuing education of certified electrical inspectors and schedule examinations at regular intervals.

(3) [It shall be the duty of] The commissioner shall [to] investigate all complaints of alleged misconduct of any electrical inspector as certified under this administrative regulation [if, in the opinion of the commissioner,] there is sufficient evidence to suggest that misconduct exists.]

Section 4. Applications Requirements for Temporary Certification.

(1) Before an applicant may sit for the examination for temporary certification as an electrical inspector, the applicant shall:

(a) 1. Have at least five (5) years of experience immediately preceding the application in the installation and design of all types of:

a. Residential wiring systems installed in accordance with the National Electrical Code, if the applicant is applying for certification as an electrical inspector one (1) and two (2) family; or

b. Residential, commercial, and industrial wiring systems installed in accordance with the National Electrical Code, if the applicant is applying for certification as an electrical inspector general; or

2. Be a registered professional electrical engineer engaged in his profession for at least three (3) years;

(b) Possess:

1. The ability to read and write the English language; and

2. A general educational level satisfactory to perform his duties;

(c) Submit a completed Form SFM-EL-1, Application for

Electrical Inspector, which shall be:

1. Notarized; and

2. Received by the department at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and

(d) Submit with the application:

1. A written statement of need for certification from the local official responsible for the electrical or building inspection program; and

2. A fee of twenty-five (25) dollars in the form of a check or money order payable to the State Treasurer, Commonwealth of Kentucky.

(2) If an applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(a) of this section, the applicant may request to appear before the Electrical Advisory Committee to establish his background in electrical construction familiarity through other means. The Electrical Advisory Committee shall:

(a) Review the documentation; and

(b) Approve the applicant if it is satisfied that the level of exposure to construction practices is substantially equivalent. [Prior to being examined by the department for "temporary certification" as an electrical inspector, an applicant[s] shall comply with the following:

(1) An applicant [Applicants] under "one (1) and two (2) family dwelling" category shall meet the following requirements:

(a) An applicant shall have not less than five (5) years of experience immediately preceding the application in the installation and design of all types of residential wiring systems installed in accordance with the National Electrical Code or shall be a registered professional electrical engineer engaged in his profession for not less than three (3) years; and

EXCEPTION: In circumstances where an applicant cannot show the precise experience required above, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the documentation and approve the applicant under this section if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(b) The applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties; and

(c) The applicant shall submit a duly notarized application, which shall be supplied by the department on request, containing all pertinent personal information and experience. The application [Applications] shall be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting; and

(d) An application [Applications] for temporary certification shall be accompanied by a written statement of need for certification from the local official responsible for the electrical or building inspection program; and

(e) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the State Treasurer, Commonwealth of Kentucky.

(2) An applicant [Applicants] under the "general" category shall meet the following requirements:

(a) An applicant shall have not less than five (5) years of experience immediately preceding the application in the installation and/or design of all types residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code or shall be a registered professional electrical engineer engaged in his profession for not less than three (3) years.

EXCEPTION: In circumstances where an applicant cannot show the precise experience required above, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means.

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The electrical advisory committee shall review the documentation and approve the applicant under this section if it is satisfied that the level of exposure to construction practices is substantially equivalent.

(b) ~~An [The]~~ applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties; and

(c) ~~An [The]~~ applicant shall submit a duly notarized application, which shall be supplied by the department on request, containing all pertinent personal information and experience. ~~The application [Applications]~~ shall be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting; and

(d) ~~An application [Applications]~~ for temporary certification shall be accompanied by a written statement of need for certification from the local official responsible for the electrical or building inspection program; and

(e) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the State Treasurer, Commonwealth of Kentucky;]

(3) An applicant [Applicants] shall receive credit earned for an [any] electrical course [courses] satisfactorily completed from an [any] accredited vocational school or college on a year-for-year basis. Credit for education to replace an applicant's experience requirements shall be limited to a total of two (2) years.

(4) The electrical advisory committee shall review an applicant [all applicants] for temporary certification to determine his [their] eligibility to sit for the examination.

(5) Temporary certification shall expire at the end of nine (9) months from the time of initial certification and shall not be reissued.

Section 5. Examinations for Temporary Certification. (1) Following the review and acceptance of the applicant's qualifications by the electrical advisory committee, the applicant shall pass the department's written examination for the class of temporary certification.

(2) An examination shall be:

(a) Administered within thirty (30) days after acceptance by the Electrical Advisory Committee at the department's office in Frankfort, Kentucky, unless another location is specifically designated; and

(b) Open book based on the National Electrical Code, which is incorporated by reference in 815 KAR 7:105 as part of the Kentucky Building Code. [Examinations for qualified applicants shall be administered within thirty (30) days after acceptance by the electrical advisory committee. Examinations required under this section shall be administered at the department's office in Frankfort, Kentucky, unless another location is specifically designated.]

(3) Examinations shall be based on the edition of the National Electrical Code adopted in the Kentucky Building Code and the examination shall be open book;]

(3) [(4)] A grade of seventy (70) percent shall be considered passing. An applicant, otherwise qualified, who fails to make a passing score may reapply to be scheduled for the next examination date upon payment of an additional fee of ten (10) dollars.

(4) [(5)] An applicant shall not be permitted to retake the examination more than three (3) times.

Section 6. Requirements for Full Certification as an Electrical Inspector: General and One (1) and Two (2) Family. (1) An applicant for full certification as an electrical inspector shall:

(a) 1. Have at least five (5) years of experience immediately preceding the application in the installation and design of all types of residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code;

2. Be a registered professional electrical engineer engaged in his profession for at least three (3) years;

(b) Possess:

1. The ability to read and write the English language; and

2. A general educational level satisfactory to perform his duties;

(c) Submit a completed Form SFM-EL-1, Application for Electrical Inspector, which shall be:

1. Notarized; and

2. Received by the department at least thirty (30) days prior to the next scheduled Electrical Advisory Committee meeting; and

(d) Submit with the application:

1. A fee of twenty-five (25) dollars in the form of a check or money order payable to the State Treasurer, Commonwealth of Kentucky; and

2. Proof of successful completion of the NCPCCI examination for:

a. Electrical inspector general; or

b. Electrical inspector one (1) and two (2) family.

(2) If an applicant is not able to demonstrate compliance with the experience requirements established in subsection (1)(a) of this section, the applicant may request to appear before the Electrical Advisory Committee to establish his background in electrical construction familiarity through other means. The Electrical Advisory Committee shall:

(a) Review the documentation; and

(b) Approve the applicant if it is satisfied that the level of exposure to construction practices is substantially equivalent. ~~[An [The] applicant shall possess the ability to read and write the English language and possess a general educational level satisfactory to perform his duties:~~

~~(2) An [The] applicant shall have had not less than five (5) years of experience immediately preceding the application in the installation and/or design, of all types of residential, commercial and industrial wiring systems installed in accordance with the National Electrical Code or shall be a registered professional electrical engineer engaged in his profession for not less than three (3) years:~~

EXCEPTION: In circumstances where an applicant cannot show the precise experience required by this subsection, the applicant may request to appear before the electrical advisory committee to establish his background in electrical construction familiarity through other means. The electrical advisory committee shall review the documentation and approve the applicant under this section if it is satisfied that the level of exposure to electrical construction practices is substantially equivalent.

(3) ~~An [Each] applicant for electrical inspector certification shall submit the Application for Electrical Inspector on Form SFM-EL-1, April, 1996[, hereby incorporated by reference, to the Department of Housing. Copies of the application form are available at the Department of Housing, Buildings and Construction, Electrical Section, 1047 U.S. 427 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday]. Applications shall be received by the department at least thirty (30) days prior to the next scheduled electrical advisory committee meeting:~~

~~(4) A fee of twenty-five (25) dollars shall accompany the application, consisting of a check or money order payable to the State Treasurer, Commonwealth of Kentucky:~~

~~(5) An [The] applicant shall provide proof of successful completion of the NCPCCI examination for electrical inspector general or the NCPCCI examination for electrical inspector one (1) and two (2) family:]~~

(3) [(6)] Following the review and approval of an [the] applicant's qualifications and examination results by the electrical advisory committee, the department shall issue certification for the appropriate electrical inspector classification and the inspector shall be authorized to conduct inspections as specified in Section 3 [(4)] of this administrative regulation.

(4) A certificate [(7)-Certificates] issued pursuant to this section shall be valid from July 1 to June 30.

(5) A fully-certified inspector [(8)-Fully-certified inspectors] shall,

upon request, be placed on "inactive" status upon payment of fees and otherwise complying with this administrative regulation, including keeping current with continuing education hours. **A person holding an inactive certificate shall not make an electrical inspection while his certificate is in inactive status.** ~~[The "inactive" certificate shall be converted to "active" in order to be authorized to make electrical inspections.]~~

(6) ~~[(9)]~~ Each ~~[All]~~ certified electrical ~~inspector~~ ~~[inspectors]~~ holding a valid certification under a previous law shall be exempt from the testing requirements of this administrative regulation.

Section 7. Renewals of "General" and "One (1) and Two (2) Family" Certificates. (1) Certification shall:

(a) Be issued to **an individual; and**

(b) **Not issued to a corporation, partnership, company, or other entity.** ~~[Individuals and shall not be issued to corporations, partnerships, companies or any other entities.]~~

(2) Each applicant seeking to renew his electrical inspector certification shall submit the Renewal Application for Electrical Inspector Certification on Form SFM-EL-1A ~~[April 1996]~~, hereby incorporated by reference, to the Department of Housing. Copies of the application form are available at the Department of Housing, Buildings and Construction, Electrical Section, 1047 U.S. 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

(3) Each ~~[All]~~ electrical inspector ~~certification~~ ~~[certifications]~~, except **a temporary certificate** ~~[temporary certificates]~~, shall expire on June 30 every year. The department shall mail each certified inspector, prior to the date of expiration, a renewal application form and the certification shall be renewed subject to the **provisions** ~~[terms and conditions]~~ of this administrative regulation.

(4) A renewal fee ~~[in the sum]~~ of twenty-five (25) dollars shall be paid by each certified electrical inspector ~~[The fee shall be paid]~~ before June 30 in each succeeding year ~~[in order]~~ to maintain certification.

(5) **Delinquent renewal fee.** A certified electrical inspector who fails to submit the application for renewal on or before July 1 of each year shall pay a delinquent fee of fifty (50) dollars in addition to the renewal fee. If both fees are not paid and all required continuing education completed by January 1 of the following year, the certification shall be canceled and shall not be renewed.

(6) **Reinstatement.** A certificate that has been revoked or canceled may be reinstated upon petition to the commissioner ~~[and]~~ for good reason ~~[shown in his sole discretion].~~

(7) **An applicant for reinstatement shall pay a reinstatement fee of \$100; and shall:**

(a) **1. Pay the delinquent renewal fees; and**

2. Submit proof of continuing education for each year the certificate was revoked or cancelled; or

(b) **Pass the NCPCCI examination within the current year.** ~~[The applicant for reinstatement shall:~~

~~(a) Pay a reinstatement fee of \$100;~~

~~(b) Pay all delinquent renewal fees; and~~

~~(c) Submit proof of continuing education for each preceding year;~~
or

~~(8) Alternatively, the applicant for reinstatement shall pay a fee of \$100 and shall pass the NCPCCI examination within the current year.]~~

Section 8. Duties and Responsibilities of a Certified Electrical Inspector. (1) Each certified electrical inspector shall attend at least one (1) continuing education program of a minimum of twelve (12) hours each year. ~~The [These] program [programs]~~ shall be ~~[acceptable [only] if]~~ approved by the electrical advisory committee.

(2) Each ~~[All]~~ electrical ~~inspection~~ ~~[inspections]~~ shall be made in compliance with the edition of the National Electrical Code, **which is incorporated by reference in 815 KAR 7:105 as part of the**

Kentucky Building Code. ~~[set forth in the Kentucky Building Code (815-KAR-7:105 (7-100)).]~~

(3) In addition to the National Electrical Code, the electrical inspector shall familiarize himself with the applicable building codes or fire safety codes governing buildings in the area **in which he performs an inspection** ~~[where he performs inspections to the extent that it is necessary]~~ to determine the occupancy load of a facility.

(4) Temporary service approval shall require a red sticker.

(5) The electrical inspector shall make a rough-in and final inspection on a building's electrical system installation and other inspections ~~[as may be]~~ necessary to approve the installation.

(a) Upon completion of the rough-in inspection, the inspector shall attach a red sticker with his signature and certification number on the main service equipment or at some other appropriate location.

(b) **A "service only" approval** ~~[approvals]~~ may be issued by the inspector to provide temporary power for heating and lighting and shall not authorize occupancy of the facility. The sticker issued for "service only" approval shall be yellow. ~~[The issuance of a temporary yellow sticker shall be at the sole discretion of the inspector.]~~

(c) Upon final approval of an electrical installation, the inspector shall:

1. Attach a green sticker to the main service equipment;

a. With his signature and certification number, name of the project and location; **and**

b. Stating that the system has been inspected for compliance with the National Electrical Code; **and**

2. ~~[The inspector shall also]~~ Provide the owner or the owner's agent with a certificate of compliance.

(6) **A red, yellow or [and] green sticker or a certificate** ~~[stickers and certificates]~~ of compliance to be used by the electrical inspector shall be issued or approved by the department.

(7) Each electrical inspector shall make and retain for a minimum of three (3) years a complete record of each inspection. ~~The record [These records]~~ shall contain, as a minimum, the following information:

(a) Sufficient information to identify the location of the structure inspected;

(b) The date of the inspection;

(c) The type of structure, whether residential, commercial, industrial or other;

(d) The designation of **a required permit** ~~[any required permits]~~ and the agency granting the permit;

(e) The size and complexity of the structure;

(f) Deficiencies in meeting code requirements and ~~the~~ ~~[any]~~ action required to comply; and

(g) ~~[Any]~~ Other pertinent information considered necessary to allow for a review of the inspection.

(8) ~~The [These]~~ records shall be available for examination by **an** ~~[any]~~ authorized representative of the department upon request.

Section 9. Complaints and Grievance Procedures. (1) A person **may file a complaint against a certified electrical inspector if the person believes that an act or omission of the inspector in the performance of his duties caused an undue hardship to the person.** ~~[who believes that an [any] act or omission of an electrical inspector certified by the department has caused him an undue hardship [on him] as a result of the alleged misconduct in the performance of his duties, may file a complaint against the inspector.]~~

(2) **A complaint or allegation** ~~[All complaints or allegations]~~ of misconduct shall be submitted in writing to the commissioner ~~and~~ ~~[:]~~ shall ~~[include]:~~

(a) **Include** the nature of the alleged misconduct, with specific details as to acts, names, dates and witnesses; and

(b) ~~[Shall]~~ Specify the action requested of the commissioner.

(3) Following an investigation, the commissioner **shall:**

(a) **Cause the matter to be heard and recommendation rendered by the Electrical Advisory Committee;**

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(b) Set the matter for public hearing; or

(c) Take other appropriate action to resolve or correct the matter. [may, at his discretion, cause the matter to be heard and a recommendation rendered by the electrical advisory committee; or, he may set the matter for public hearing or take any other appropriate action to resolve or correct the matter.]

Section 10. Suspension and Revocation of Certification. The commissioner shall revoke, suspend or refuse to renew the certificate of an electrical inspector who is determined, by the commissioner after a departmental hearing, to have:

(1) Engaged in an activity which constitutes a conflict of interest, including:

(a) Work as an electrical contractor or electrician;

(b) Involvement in an activity in the electrical industry; or

(c) Having a pecuniary or associational interest; [-worked as an electrician or engaged in any other activity in the electrical industry or has pecuniary or associational interests which constitutes a conflict of interest; or]

(2) Engaged in fraud, deceit or misrepresentation in obtaining certification; [or]

(3) Been guilty of negligence, incompetence or misconduct as established [set forth] by this administrative regulation in the field of electrical inspection; [or]

(4) Affixed or caused to be affixed a seal of approval or issued a certificate [issuing certificates] of approval for an [any] electrical installation subject to his inspection if [when] he has not personally inspected the installation and found it to be satisfactory in accordance with the code; [or]

(5) Operated as an electrical inspector in a [any] locality where a court of competent jurisdiction has adjudged him to be in conflict with state or local laws, ordinances, or regulations; [or]

(6) Knowingly overruled the proper findings of another electrical inspector or attempted to supplant, overrule or otherwise invalidate the judgment of another electrical inspector without first obtaining express written consent from the original inspector; or

(7) Maintained inaccurate or inadequate recordkeeping as required by Section 8 of this administrative regulation.

Section 11. Electrical Inspections by State Employed Certified Electrical Inspectors. (1) [All] State-owned property including each building [all buildings] being constructed by the state under the authority of the Finance and Administration Cabinet shall be inspected by a certified electrical inspector who is an employee of the state.

(2) A state employed certified electrical inspector shall [inspectors shall also] inspect, for a fee, if a certified electrical inspector has not been made available by the local government.

(3) A state employed certified electrical inspector [inspectors] shall assert jurisdiction for the electrical inspection of a a [any] project subject to state plan review under the Kentucky Building Code.

(4) A state employed certified electrical inspector [inspectors] may inspect a state leased facility [facilities], upon request.

Section 12. Interpretations. If a [any] provision of the National Electrical Code can be shown to be unreasonable or impractical as applied to a particular installation and if deviation from strict compliance would not create a safety hazard because of a particular use or condition, an individual may request to appear before the electrical advisory committee of the Department of Housing, Buildings and Construction to request a variance from the code. Upon advice from the committee, the department shall render its decision in the matter and the decision shall be appealable to the Board of Housing, Buildings and Construction [where appropriate].

Section 13. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Form SFM-EL-1, "Application for Electrical Inspectors

(April 1996 Edition)". Department for Housing, Buildings and Construction; and [Application for Electrical Inspectors.]

(b) Form SFM-EL-1A, "Renewal Application for Electrical Inspector Certification (April 1996 Edition)", Department for Housing, Buildings and Construction. [Renewal Application for Electrical Inspector Certification.]

(2) This material may be inspected, copied, or obtained [Copies of the application forms may be obtained from, examined or copied] at the Department of Housing, Buildings and Construction, Electrical Section, 1047 US 127 South, Suite 1, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m., Monday through Friday.

CHARLES A. COTTON, Commissioner

LAURA M. DOUGLAS, Secretary

APPROVED BY AGENCY: July 15, 1997

FILED WITH LRC: July 23, 1997 at 2 p.m.

CABINET FOR HEALTH SERVICES Department for Medicaid Services (As Amended at ARRS, October 14, 1997)

907 KAR 1:160. Home and community based waiver services.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 440.180, 42 USC 1396a, b, d, n, 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 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 authorizes [empowers] the cabinet, by administrative regulation, to comply with a [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 establishes [sets forth] the coverage provisions applicable to home and community based waiver services provided to an eligible recipient [recipients] as an alternative to nursing facility services. These services are provided pursuant to a waiver granted by the United States Department of Health and Human Services.

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

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

(3) "NF" means nursing facility.

Section 2. [4-] General Coverage Provisions. (1) Except as provided in subsection (2) of this section, the [home and community based-]HCB[)] services shall be provided [only] to an individual [those individuals] eligible for Medicaid;

(a) Who meets [meet] patient status criteria for nursing facility care in accordance with 907 KAR 1:022;

(b) Who is [as set forth in 907 KAR 1:022 -]. The HCB services are designed to prevent or reduce institutionalization at the nursing facility care level. HCB services shall be provided only to individuals in a community residence living situation and whose placement in [situations who would be admitted to] a nursing facility shall be appropriate if HCB services were not available;

(c) [-Individuals requiring only minor home adaptations or minor home adaptations and case management shall not be considered HCB services eligible. These services are provided pursuant to a waiver granted by the United States Department of Health and Human Services. Excluded from coverage shall be those individuals for whom the cost of HCB services would reasonably be expected (on

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an overall basis) to exceed the cost of the appropriate level of institutional services, and inpatients of hospitals, nursing facilities and intermediate care facilities for the mentally retarded. HCB services shall be provided only to those individuals] For whom the HCB services are an appropriate alternative to institutionalization; [~~who meet appropriate patient status;~~] and

(d) Who chooses the HCB services option.

(2) The HCB services shall not be provided to an individual who:

(a) Does not require a service other than minor home adaptations or minor home adaptations and case management; or

(b) Is an inpatient of a hospital, nursing facility, or 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[s and orders] relating to the need for HCB services; and

(b) Having a team of their employees to perform [care, and for performing] the required comprehensive assessment and care planning that includes the following members:

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

2. Two (2) registered nurses.

(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 with the department by the HCB agency. [~~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 services provider [providers] shall meet the [all] applicable certification and licensure requirements for providing in-home and community based wave 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 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 and reassessment including [~~The assessment includes~~] the collection of data and documentation necessary to determine the appropriateness of HCB service for the client, and care [case] planning. [(1) A patient care plan shall [te] include services required, duration and frequency[and estimated cost]]. For [only] the [each] assessment [or reassessment], the recipient's attending physician shall certify that if HCB services were not available, he may [would] order NF [nursing facility] services and the recipient may [individual would] be admitted in the immediate future.

(2) Case management, which [~~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) A [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, which [~~Homemaker services~~] are services relating to general household activities, including [such as] meal preparation and routine household care. Homemaker services [~~and~~] shall be provided by a [trained] homemaker who is qualified by the agency, supervised by a registered nurse and not a member of the recipient's family 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, which [~~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 care. Personal care services:

(a) Shall be [treatment and] provided by an individual who is qualified by the agency, supervised by a registered nurse and not a member of the recipient's [client's] family;

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

(5) Respite care services.

(a) Respite care services may include:

1. [are] Homemaker or personal care [home health] aide; or

2. Relief [level] services provided on a temporary basis due to the absence or need for relief of the informal caregiver.

(b) Respite care shall be provided:

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

2. [Provided] At a care level that safely meets the medical needs of the patient;

3. By an individual appropriately trained and qualified by the agency, who is not a family member; [with appropriate training and qualifications;] and

4. If [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 a [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, which [~~This~~] is the addition to or modification of the patient's home environment when the patient's medical condition necessitates a modification of the existing home situation.

(a) [~~and may include such items as rails, ramps, grab bars, etc., including labor and necessary supplies;~~] Prior approval for a minor home adaptation [adaptations] shall be [is] required.

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

(7) Adult day health care services.

(a) Adult day health care services shall be [are] adult day health care services provided in an appropriately licensed facility according to 904 KAR 20:066. Basic services shall include: one (1) meal per day (including special diets); snacks, as appropriate; registered nurse and other supervision; regularly scheduled daily activities; routine services required to meet daily personal and health care needs; incidental supplies necessary to provide adult day health care services; and 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

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necessary ongoing supervision and follow-up of the maintenance program by the therapist].

(c) Respite care may be provided in the center by the adult day health care provider. The respite care per recipient limitations established in subsection (5)(d) of this section shall apply.

(d) Patient transportation from the home to adult day health care center and the return trip shall:

1. Not be covered under the service element; and

2. Be ~~[-but is]~~ a separately reimbursable service under the provisions of ~~[pursuant to]~~ 907 KAR 1:060 and 907 KAR 1:061.

(8) Attendant care services.

(a) Attendant care service shall provide [provides] hands-on care, appropriate to the skill level of the care provider, specific to meet the needs of an individual who is medically stable but functionally dependent.

(b) Attendant care services shall:

1. Be provided to a recipient who has a service performed for him on a part-time and voluntary basis, by family or a friend who is employed outside the home of the family or friend and who may live with the recipient;

2. Be limited to forty-five (45) hours per week;

3. Include supervision by a registered nurse, licensed by the Commonwealth of Kentucky, at least every sixty (60) days; ~~[and]~~

4. Have a plan of care which shall:

a. Identify the need for this service;

b. Determine the amount of time required to meet the recipient's needs utilizing all other existing services and resources available to the recipient; and

c. Be developed by the team, the recipient, and the recipient's family;

5. Not be provided by a member of the recipient's family; and

6. Be a service option which precludes a recipient from receiving personal care, homemaker or adult day care services. ~~[Respiratory therapy services. The service shall be available only for ventilator dependent recipients who are receiving home health agency services and shall be in accordance with the physician's written plan of treatment.]~~

Section 5. ~~[4.]~~ Prior Authorization for Services; Hearing Rights. (1) The department ~~[cabinet]~~ shall prior authorize HCB services to ensure that:

(a) Patient status is met; and

(b) ~~[that HCB]~~ Services are adequate to meet ~~[for]~~ the needs of the client.

(2) The department may exclude from coverage those individuals for whom the cost of HCB services would reasonably be expected to exceed the cost of the appropriate level of institutional services. ~~[-and that HCB services would not reasonably be expected to exceed the cost of institutional care (on an overall basis).]~~

(3) A client found unsuitable by the department for failure to meet the specified criteria shall be denied HCB services.

(b) An individual, if eligible for HCB services, shall be given the option of HCB services or other appropriate institutional alternative.

(5) A ~~[or traditional nursing facility services. Any]~~ denial of service to be appealed shall ~~[may]~~ be appealed in accordance with 907 KAR 1:560. ~~[pursuant to 904 KAR 2:055.]~~

Section 6. ~~[5.]~~ Contracting and Subcontracting. An HCB service shall be provided:

(1) By the participating provider; or

(2) Through a contract or subcontract; and

(3) In accordance with 907 KAR 1:671, 907 KAR 1:672, and 907 KAR 1:673.

Section 7. Incorporation by Reference. (1) "Home and Community Based Waiver-Adult Day Health Manual", June 1997 edition, Department for Medicaid Services, is incorporated by reference.

(2) It may be inspected, copied or obtained at the Department for Medicaid Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [All HCB services, whether provided directly by the participating provider or through contract or subcontract, shall be in accordance with the terms and conditions specified herein, and the contractor or subcontractor shall meet applicable requirements of law and administrative regulations governing the performance of the service.]

Section 6. Auditing and Reporting. All participating providers, contractors and subcontractors shall be required to maintain fiscal and service records and to provide the reports determined necessary by the cabinet for the effective functioning and administration of the program. The providers, contractors and subcontractors shall be required to make available upon request all service and financial records (including records of ownership, home office costs, etc.) to the Cabinet for Human Resources, the United States Department of Health and Human Services, and the Comptroller General, and their representatives or designees, for auditing and monitoring purposes.]

LARRY MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 7, 1997

FILED WITH LRC: August 15, 1997 at 11 a.m.

CABINET FOR HEALTH SERVICES Department for Medicaid Services (As Amended at ARRS, October 14, 1997)

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

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 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 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 authorizes [empowers] the cabinet, by administrative regulation, to comply with a [any] requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the payment provisions applicable to home and community based waiver services provided to an eligible recipient as an alternative to nursing facility care. [methods of payment for home and community based services provided 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. ~~[is defined in 907 KAR 1:160].~~

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

(3) "HCB" means home and community based. ~~[is defined in 907 KAR 1:160.]~~

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:

(a) Meet patient status criteria for ~~[skilled]~~ nursing ~~[or intermediate]~~

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care] facility care; and

(b) Is [who are] prior authorized for the HCB service.

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

Section 3. Payment Amounts for Covered Services. (1) A provider [2. Payments. Payment amounts for HCB services shall be determined in accordance with the provisions and principles contained in this administrative regulation.

(1) ~~Assessment, case management, homemaker services, personal care services, respiratory therapy~~ shall be paid using an interim payment method as defined in 907 KAR 1:002 with a year-end settlement to the lower of actual reasonable costs or [reasonable] charges utilizing Medicare principles of reimbursement, as established in 42 CFR 413 Subparts A-g for the following HCB services:

(a) Assessment or reassessment;

(b) Case management;

(c) Homemaker services; and

(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. All other applicable limits shall apply.

(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 [(not to exceed charges, b)] 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 limits; and

(d) Payable to a home and community-based provider or licensed adult day health care center, per recipient, subject to the limitations established [indicated] in paragraphs (a) through (c) of this subsection.

(4) [(3)] Minor home adaptations shall be:

(a) Paid on the basis of actual billed charges;

(b) Paid at [-with reimbursement for an individual for a calendar year limited to] a maximum of \$500 per calendar year for [all] modifications;

(c) [-The service shall have been] Appropriately prior authorized and [have been] provided prior to reimbursement;

(d) Paid for [-The billed charge shall include only] the actual cost of the minor home adaptations, plus actual overhead costs incurred by the provider; and

(e) Subject to [-There will be] a year-end settlement to actual costs, or charges if lower, not to exceed the upper limit.

(5) Payment for attendant care services shall be based on a fee for service with a maximum fee set and reviewed periodically by the department. Costs of attendant care services shall be reported as a nonreimbursable cost in an HCB provider's cost report and not subject to cost settlement. For a person [persons] receiving attendant care, the total waiver services cost shall not exceed the cost of an

appropriate institutional alternative. Attendant care shall be limited to forty-five (45) hours per week.

(6) Payment [(4) Payments] for adult day health care services.

(a) Payment shall be made directly to a licensed participating [participation] adult day health care center [centers] on the basis of an interim rate with a year-end cost settlement to the lower of actual reasonable allowable costs or charges for adult day health care services.

(b) The maximum daily reimbursement rate for an adult day health basic daily service unit shall be thirty-seven and one-half (37 1/2) ~~The basic rate shall not exceed eighty (80)~~ percent of the average nursing facility [maximum intermediate care] reimbursement rate for routine services as established on July 1 of each year. An adult day health basic daily service unit shall care for one (1) patient for a minimum of three (3) hours per day up to a maximum of two (2) units which is six (6) or more continuous hours.

(c) Payment for therapy services shall [Reimbursement for ancillary services shall] not exceed eighty (80) percent of the approved maximum reimbursement rate for therapy services under the home health program [element].

Section 3. ~~Audits shall be performed as necessary to ensure that final payments are in accordance with the payment provisions contained in this administrative regulation].~~

Section 4. ~~A home health agency~~ [agencies] providing ~~HCB~~ [home and community-based] services to an eligible Kentucky Medicaid recipient [medical assistance recipients] shall [also] comply with the provisions established [contained] in 907 KAR 1:030 and 907 KAR 1:031.

Section 5. An audit of facility records shall be performed by the department as deemed necessary by the department to ensure that final payment is made in accordance with the payment provisions established in this administrative regulation.

Section 6. Incorporation by Reference. (1) "Home and Community Based-Adult Day Health Reimbursement Manual", Department for Medicaid Services, June 1997 edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Third Floor East, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 7, 1997

FILED WITH LRC: August 15, 1997 at 11 a.m.

CABINET FOR HEALTH SERVICES
Department for Medicaid Services
Division of Administration and Development
(As Amended at ARRS, October 14, 1997)

907 KAR 1:560. Medicaid hearings and appeals for recipients.

RELATES TO: KRS Chapter 13B, 205.231, 205.237, 205.520, 42 CFR 431 subpart E, 42 USC 1396

STATUTORY AUTHORITY: KRS [Chapter 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 authorizes [empowers] the cabinet, by

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administrative regulation, to comply with a [any] requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [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 or its designee.

(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 a Medicaid recipient who is enrolled in a partnership or a managed behavioral health care organization. [is 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) An [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 if an [when any] action is taken affecting his eligibility in accordance with KRS 13B.050.

(2) An [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) An [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 or authorized representative shall clearly indicate a desire for a hearing by submitting a statement [in]:

(a) In written form; or

(b) Verbally [orally] and [later] followed up in writing.

(3) An applicant, recipient or authorized representative may use Form PAFS-78, Request for Hearing, Appeal, or Withdrawal, to submit the written request.

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 or authorized representative with regard to an action or a delay in taking a timely 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; or

4. Reduction of Medicaid coverage; or

(c) A time period equal to the delay in action by the agency.

[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:

(a) Rendered if the request results from dissatisfaction regarding a:

1. Proposed discontinuance;

2. Proposed increase in patient liability; or

3. Proposed reduction of Medicaid coverage; and

(b) [is] Received within ten (10) days of the date of the advance notice of adverse action or notice of decrease or discontinuance from the Department for Medicaid Services or its designee.

(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 established [contained] in Section 4(2) of this administrative regulation.

(3) Subsection (1) of this section shall not apply if the applicant, [or] recipient or authorized representative 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) A continued or reinstated benefit [benefits] shall be considered an overpayment [overpayments] if the agency decision is upheld.

(6) A time limited benefit [benefits] shall not be extended based on a request for an appeal or hearing.

Section 6. Acknowledgement of the Request. (1) A hearing request shall be acknowledged by the designated hearing agency.

(a) The acknowledgement letter shall contain information regarding the hearing process, including the right to case record review prior to the hearing, the right to representation, and a statement that the local office can provide information regarding the availability of free representation by legal aid or a welfare rights organization within the community.

(b) Subsequent notification shall comply with the requirements of KRS 13B.050.

(2) [All] A party [Parties] to the hearing shall be provided at least twenty (20) days timely notice of the hearing to permit adequate preparation of the case. Less timely notice may be requested by the applicant, [or] recipient or authorized representative to expedite the scheduling of the hearing.

(3) A hearing complying with the requirements of KRS Chapter 13B shall be scheduled on a timely basis to assure no more than ninety (90) days shall elapse from the date of the request to the date

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of the decision, with the exception that a [any] hearing determination regarding a community spouse income or resource allowance shall be held within thirty (30) days of the hearing request date.

Section 7. Withdrawal or Abandonment of Request. (1) The applicant, [or] recipient or authorized representative:

(a) May withdraw his request for a hearing prior to release of the hearing officer's decision; and

(b) ~~[-but he]~~ Shall be granted the opportunity to discuss withdrawal with his legal counsel or representative~~[-if any,]~~ prior to finalizing the action.

(2) Abandonment of request.

(a) A hearing request shall be considered abandoned if the applicant, [or] recipient or authorized representative fails without prior notification to report for the hearing.

(b) A hearing request shall not be considered as abandoned without extending to the applicant or recipient, and, if applicable, his legal counsel or representative, a period of ten (10) days to establish that the failure was for good cause in accordance with the good cause criteria established ~~[contained]~~ in Section 4(2) of this administrative regulation.

Section 8. Applicant's or Recipient's Rights Prior to a Hearing. (1) An applicant or recipient shall receive notice consistent with KRS 13B.050 including the [-his] right to:

(a) Legal counsel or other representation;

(b) ~~[the right to]~~ Review the case record relating to the issue; and

(c) ~~[the right to]~~ Submit additional information in support of his claim.

(2) If the hearing involves medical issues;

(a) A medical assessment by other than a [the] person [or persons] involved in the original decision shall be obtained at the department's expense if the hearing officer considers it necessary; and

(b) If a medical assessment at the department's expense is requested by the applicant, [or] recipient or authorized representative and denied by the hearing officer, the reason for denial shall be set forth in writing.

Section 9. Postponement of a Hearing. (1) The applicant, [or] recipient or authorized representative may request and shall be entitled to a postponement of a hearing if the request is made:

(a) Before the hearing; and

(b) ~~[-the request is]~~ [for an essential reason beyond the control of the applicant or recipient] In accordance with the good cause criteria established ~~[contained]~~ in Section 4(2) of this administrative regulation.

(2) The decision to grant the postponement shall be made by the hearing officer.

(a) The postponement of the hearing shall not exceed thirty (30) days from the date of the request.

(b) The time limit for action on the decision shall be extended for as many days as the hearing is postponed.

Section 10. Corrective Action for Medicaid. (1) The department may determine that corrective action to provide or restore services or coverage is appropriate if:

(a) A hearing has been requested;

(b) A hearing decision has not been rendered; and

(c) The department's action or proposed action made the applicant or recipient ineligible for a service or coverage to which he was entitled.

(2) After corrective action has been taken:

(a) The applicant, recipient or authorized representative shall be given the opportunity to withdraw the hearing request; and

(b) The hearing process shall continue if the applicant, recipient or authorized representative wishes to pursue the

request. [If [after] a hearing has been requested [review of the case record] but a hearing decision has not yet been rendered the department may determine [prior to scheduling a hearing, the hearing officer determines] that corrective action is appropriate to provide or restore services or [taken or proposed to be taken by the agency is incorrect, he shall authorize corrective action in the form of eligibility or] coverage to which the applicant or recipient would have been entitled [or to continuing eligibility or coverage if the issue was a proposed action,] but for the action or proposed action by [incorrect decision of] the department. After corrective action has been taken, [agency,] the applicant or recipient shall [then] be given the opportunity to withdraw the hearing request; however, [but] the hearing process shall continue [be scheduled] if the applicant or recipient wishes to pursue the request.]

Section 11. Conduct of a Hearing. (1) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

(2) Impartiality.

~~[(a)]~~ The hearing officer shall be impartial and shall disqualify himself as required by ~~[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.]

(3) ~~[(2)]~~ The hearing shall be conducted in-state where the applicant, [or] recipient or authorized representative may attend without undue inconvenience.

(4) ~~[(3)]~~ If necessary to receive full information on the issue, the hearing officer may examine each party who appears and his witnesses.

(5) ~~[(4)]~~ The hearing officer may schedule a hearing and take additional evidence as is deemed necessary. Evidence shall be taken in accordance with the provisions of KRS 13B.080 and 13B.090.

~~[(a) A party [Parties] to a telephonic hearing who wishes to introduce a document [documents] or written material [materials] not yet supplied to an opposing party [parties] into the record at the hearing shall immediately mail a copy or transmit a facsimile [copies] of the document [documents] to the hearing officer and to the opposing party.~~

~~[(b) A party [All parties] to a telephonic hearing shall submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to the convening of the hearing.~~

~~[(c) Failure to provide both the hearing officer and the opposing party with a copy [copies] of evidence referenced in paragraphs (a) and (b) [and (c)] of this subsection may result in its being excluded from the record.]~~

Section 12. The Decision. (1) After the hearing is concluded, the hearing officer shall issue a decision ~~[set forth] in~~ accordance with the requirements of KRS 13B.110. ~~[writing [his finding of facts and conclusions 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 [issues], contain a finding of fact [facts], present the hearing officer's conclusion[s] of law, state the decision with regard to the issue [issues], and contain a statement explaining the appellant's further hearing rights.]~~

(2) A decision ~~[Decisions]~~ with regard to a community spouse's income allowance shall be subject to a downward adjustment ~~[adjustments]~~ as deemed necessary by the agency as circumstances causing financial duress change or no longer exist.

(a) The resource allowance shall be subject to this adjustment [only] with regard to a resource that is:

1. [resources] Attributed to the community spouse; and

2. [but] Not transferred within [the] six (6) months of the Medicaid approval date.

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(b) This adjustment shall be [is] appealable pursuant to Section 5 of this administrative regulation.

(3) A copy of the decision shall be mailed to the applicant or recipient and his representative.

(4) The decision, with respect to the issue [issues] considered, shall be final unless further appeal is initiated within twenty (20) days from the date of mailing of the decision.

Section 13. Appeal from Decision of Hearing Officer for an Applicant and Recipient [Applicants and Recipients]. (1) An [Any] applicant, [or] recipient or his authorized representative wishing to appeal the decision of a hearing officer shall file [may do so by filing] an appeal to an appointed appeal board.

(2) [(1)] The appeal request shall be considered timely if [-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 established in Section 4(2) 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:

(a) Filed:

1. In writing; or

2. Verbally, if a written request is subsequently sent; and

(b) Considered filed on the day the request is received.

(5) An applicant, recipient or authorized representative may use Form PAFS-78, Request for Hearing, Appeal or Withdrawal, to submit the written request. [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.]

(6) [(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 an 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 or authorized representative specifically requests permission to file additional proof.

(2) If [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 the introduction of additional evidence or to rebut or refute the [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) A Medicaid case action [actions] following a decision of a hearing officer or the appeal board shall be made promptly and shall include:

(a) The month of application; or

(b) If [-providing] it is established that the applicant or recipient was eligible during an entire period, the month in which the incorrect action of the department adversely affected the applicant or recipient.

(2) For a reversal [reversals] involving a 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 shall contract [contracts] with a peer review organization [organizations] to provide a level of care determination [determinations] for an individual in a nursing facility. For an individual [those individuals in nursing facilities: For those 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) A reconsideration hearing shall be held within:

1. Ten (10) working days of the request if the recipient is in the facility; and

2. Thirty (30) days of the request if the request for reconsideration is received after the recipient has left the facility. [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 as required by [for any reason established [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 accordance with the requirements of KRS 13B.110. [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. A [-any] request may be filed with the utilization review agency or directly with

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the department.

(b) If filed with the utilization review agency, the agency [they] shall forward the request with appropriate medical records and [any] other necessary documentation to the department.

(7) ~~(6)~~ If [When] a negative decision has been appealed to the department, the appeal shall be processed as established [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 the requirements [all policies and procedures] for making a complaint, filing a grievance and requesting a hearing:

(a) By the partnership in which a member is enrolled in accordance with 907 KAR 1:705; and

(b) By the managed behavioral health care organization in which a member is enrolled in accordance with 907 KAR 1:710.

(2) If the of the partnership or the managed behavioral health care organization [partnership's] decision is adverse to the member, the member or his authorized representative:

(a) May request a hearing regarding the [any] action or inaction on the part of the partnership, the managed behavioral health care organization or [and] its subcontracted provider to the department in accordance with Sections 3 through 12 of this administrative regulation; and

(b) Shall not be required to employ or exhaust the [any] other complaint or grievance resolution processes contained within the partnership or managed behavioral health care organization plan.

(3) A [Any] member or his authorized representative wishing to appeal the decision of a hearing officer shall file [may do so by filing] an appeal to an appointed appeal board.

(4) An appeal shall be processed as established [set forth] in Sections 14, 15 and 16 of this administrative regulation.

Section 20. Limitation of Fees. (1) Pursuant to KRS 205.237, [Although the department and its officers and employees, either in their official or personal capacity, shall not be liable for payment of any attorney fee [fees], the department shall in accordance with KRS 205.237, set] the maximum fee that an attorney may charge the applicant or recipient for the representation in all categories of Medicaid shall be [as follows]:

(a) Seventy-five (75) dollars for preparation and appearance at a hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation (brief [briefs] included) of an appeal [appeals] to the appeal board;

(c) \$175 for preparation and presentation, including a pleading [pleadings] and appearance in court, of an appeal [appeals] to the circuit court;

(d) \$300 for preparatory work and briefs and all other matters incident to an appeal [appeals] to the Court of Appeals.

(2) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the recipient. The fee shall not be deducted[, either in whole or in part,] from a public assistance payment [payments] otherwise due and payable to the recipient.

Section 21. ~~[20:] A hearing or an appeal~~ [Hearings and appeals] relating to a decision [decisions] to reclassify or transfer a person [persons] with mental retardation in a state institution. [Institutions: Hearings and appeals relating to decisions to reclassify or transfer persons with mental retardation in state institutions] shall be in accordance with the requirement of KRS 210.270.

Section 22. ~~[24:] Burden of Proof.~~ In accordance with KRS 13B.090(7), in a proceeding [all proceedings] conducted pursuant to this administrative regulation, the burden of proving eligibility or coverage shall be borne by the applicant or recipient.

Section 23. Incorporation by Reference. [22-Material Incorporated by Reference:] (1) [The] Form PAFS-78, [revised] May 1996 edition, Department of Medicaid Services, [necessary for a hearing and appeal [hearings and appeals] in the Medicaid Program] is [shall be] incorporated by reference [in this administrative regulation].

(2) It [The form incorporated by reference] may be inspected, copied, or obtained [reviewed] at the [Office of the Commissioner,] Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621[.

~~(3) The form shall be available for review during the normal business week, Monday through Friday, 8 a.m. to [through] 4:30 p.m. [eastern standard time], excluding state holidays.]~~

LARRY MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 7, 1997

FILED WITH LRC: August 15, 1997 at 11 a.m.

CABINET FOR HEALTH SERVICES Department For Medicaid Services Division of Administration and Development (As Amended at ARRS, October 14, 1997)

907 KAR 1:720. 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, 42 CFR 431.615, 42 USC 1471-1485

STATUTORY AUTHORITY: KRS 194.050, 200.660(7), 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 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes requirements 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 or its designee.

(2) "Early intervention services" is defined by KRS 200.654(7).

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

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

(2) The service to be provided shall be a service 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 coordinated and information exchanged with the child's assigned primary care physician in the Health Care Partnership in accordance with 907 KAR 1:705. Information shall also be exchanged with a provider participating [providers] in a [the] managed behavioral health care organization established pursuant to 907 KAR 1:710 [waiver] with appropriate consent.

(4) 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, through a subcontractor ~~or through subcontractors~~, or through agreement with the Department for Mental Health and Mental Retardation Services.

(2) If the Department for Mental Health and Mental Retardation Services seeks to subcontract for the provision of services, the Department for Mental Health and Mental Retardation Services shall subcontract for the provision of services in accordance with the provisions of the agreement.

(3) A service which is provided by the Departments for Public Health or Mental Health and Mental Retardation Services or their subcontractors shall meet the appropriate requirements for the service, as established in 908 KAR 2:160.

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

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

(2) The amount ~~Amounts~~ paid for a Department for Mental Health and Mental Retardation Services subcontracted service ~~services~~ shall:

(a) Be at the service rate ~~rates~~ established by the Department for Mental Health and Mental Retardation Services in 908 KAR 2:200, Section 3; and

(b) ~~shall~~ Not be adjusted except as necessary to correct a billing or payment error ~~errors~~.

(3) An amount ~~Amounts~~ paid for a Department for Public Health subcontracted service ~~services~~ shall be at a rate ~~rates~~ not to exceed the rate established by the Department for Mental Health and Mental Retardation Services in 908 KAR 2:200.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: August 8, 1997

FILED WITH LRC: August 15, 1997 at 11 a.m.

CABINET FOR HEALTH SERVICES
Department for Mental Health and
Mental Retardation Services
Division of Mental Retardation
(As Amended at ARRS, October 14, 1997)

908 KAR 2:200. Coverage and payment for Kentucky Early Intervention Program 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. Executive Order 96-862, effective July 2, 1996, reorganized the 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 establishes ~~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 carrier" means a commercial carrier, including a taxi cab, that is licensed to transport a member of the general public. ~~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 an activity or contact that is:

(a) ~~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, a professional or ~~professionals, and~~ other service provider ~~providers~~, or other significant person; and

(b) Not the direct supervision of a paraprofessional by a professional. ~~[persons. This does not include direct supervision of paraprofessionals by professionals:]~~

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

(5) ~~[(6)]~~ "Noncommercial group carrier ~~carriers~~" means a vendor ~~those vendors~~ who provides ~~provide~~ bus or bus-type transportation to an identifiable segment of the population eligible for service from the carrier ~~those carriers~~.

(6) ~~[(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.

(7) ~~[(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.

(8) "Provider" means an agency, person, or other entity that meets ~~[(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 signs ~~sign~~ an agreement with the department.

(9) ~~[(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) An early intervention provider that requests ~~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 agent ~~agents~~, for compliance with 908 KAR 2:100 through 908 KAR 2:180;

(b) Meet, or employ or contract with a professional or ~~professionals and~~ staff who meets ~~meet~~ the qualifications established ~~[specified]~~ in 908 KAR 2:150;

(c) 1. Ensure that each professional or staff who is employed by the provider and provides a service ~~Professionals and staff who provide services]~~ in the First Steps Program shall attend a minimum of a one (1) day, not to exceed an eight (8) hour period, training on First Steps' philosophy, practices, and procedures provided by First Steps representatives prior to providing First Steps services; and

2. Ensure that each professional or staff who is employed by the provider and presently providing a First Steps service shall have ~~[For professionals and staff presently providing First Steps~~

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services] evidence of equivalent training [~~shall be required~~];

(d) Agree to provide First Steps services according to an individualized family service plan as required in 908 KAR 2:130;

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

(f) Establish a contractual arrangement with the Cabinet for Health Services for the provision of First Steps services; **and**

(g) 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 **the** tax identification number and usual and customary charges.

(2) The Department for Mental Health and Mental Retardation Services **shall** [~~may~~] grant provider approval for participation to **a provider who meets** [~~those providers who meet~~] the criteria **established** in subsection (1) of this section.

Section 3. Reimbursement. The department shall reimburse **a** participating First Steps **provider** [~~providers~~] the lower of **the** actual billed **charge** [~~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) **A charge** [~~Charges~~] submitted to the department shall be the provider's usual and customary **charge** [~~charges~~] for the same **service** [~~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 **or** [~~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 **or** [~~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-six (86)** [~~eighty-three (83)~~] dollars per hour of direct contact service.

b. In the home or community site, the fee shall be **\$112** [~~108~~] per hour of direct contact service.

8. For an occupational therapist:

a. In the office or center based site, the fee shall be **eight-six (86)** [~~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 of direct contact service.

10. For a physical 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.

11. For a speech 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.

12. For a social worker:

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

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

13. For a teacher of the deaf and hard of hearing:

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.

14. For a teacher of the visually impaired:

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.

15. For an assistive technology specialist:

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.

(e) Therapeutic intervention and collateral services:

1. For an audiologist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

2. For a family therapist:

a. In the office or center based site, the fee shall be seventy (70) per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) per hour of direct contact service.

3. For a licensed psychologist **or** [~~and~~] certified psychologist with autonomous functioning:

a. In the office or center based site, the fee shall be \$155 per

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hour of direct contact service.

b. In the home or [and] community site, the fee shall be \$226 per hour of direct contact service.

4. For a certified psychological associate:

a. In the office or center based site, the fee shall be \$116 per hour of direct contact service.

b. In the home or community site, the fee shall be \$170 per hour of direct contact service.

5. For a developmental interventionist:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

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

6. For a developmental associate:

a. In the office or center based site, the fee shall be fifty-one (51) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

7. For a developmental assistant, in the office or center based site, the fee shall be ten (10) dollars per hour of direct contact service.

8. For a registered nurse:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

9. For a licensed practical nurse:

a. In the office or center based site, the fee shall be twenty-four (24) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be thirty-two (32) dollars per hour of direct contact service.

10. For a nutritionist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

11. For a dietitian:

a. In the office or center based site, the fee shall be seventy (70) [sixty-eight (68)] dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) [ninety-one (91)] dollars per hour of direct contact service.

12. For an occupational therapist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

13. For an occupational therapist assistant:

a. In the office or center based site, the fee shall be fifty-two (52) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be seventy (70) dollars per hour of direct contact service.

14. For an orientation and mobility specialist:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

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

15. For a physical therapist:

a. In the office or center based site, the fee shall be seventy (70) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

16. For a physical therapist assistant:

a. In the office or center based site, the fee shall be fifty-two (52) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be seventy (70) dollars per hour of direct contact service.

17. For a speech therapist:

a. In the office or center based site, the fee shall be seventy (70)

dollars per hour of direct contact service.

b. In the home or community site, the fee shall be ninety-four (94) dollars per hour of direct contact service.

18. For a speech therapist assistant:

a. In the office or center based site, the fee shall be fifty-two (52) dollars per hour of direct contact service.

b. In the home or community site, the fee shall be seventy (70) dollars per hour of direct contact service.

19. For a social worker:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

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

20. For a teacher of the deaf and hard of hearing:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

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

21. For a teacher of the visually impaired:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

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

22. For a physician providing a collateral service [services] in the office or center based site, the fee shall be seventy-six (76) dollars per hour of direct contact service. A physician [Physicians] shall not receive reimbursement for therapeutic intervention.

23. For an assistive technologist specialist:

a. In the office or center based site, the fee shall be sixty-eight (68) dollars per hour of direct contact service.

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

(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, a payment [payments] for professional or [and] staff services listed in subsection (2) of this section shall be based on a unit [units] of service in [which shall be] fifteen (15) minutes increments.

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

(5) A payment for an [Payments for] assistive technology device [devices] shall be based on the 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 a commercial transportation carrier, an amount derived by multiplying one (1) dollar by the actual number of loaded miles;

(b) For a private automobile carrier, an amount equal to [carriers at the basic fee of] twenty-five (25) cents per loaded mile transported;

(c) For a noncommercial group carrier, an amount equal to [carriers at the rate of] fifty (50) cents per eligible child per mile transported.

(7) A payment for a group intervention service, with a minimum of one (1) discipline who can practice without direct supervision shall be thirty-six (36) dollars per hour of direct contact service.

(8) A payment for an interdisciplinary group intervention service, with a minimum of two (2) disciplines who can practice without direct supervision, shall be forty-six (46) dollars per hour of direct contact service. [Payments for services provided in a group setting shall be per hour fee divided by two:]

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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) ~~A~~ [No] service assessment payment shall not be made for the provision of routine therapeutic intervention services by a discipline in the general practice of ~~that~~ [their] discipline. Payment for a unit of service assessment shall be restricted to the needs for additional testing or other activity [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, except ~~if~~ [in these circumstances where] the professional or discipline and ~~paraprofessional is~~ [paraprofessionals are] participating in a group. In a group setting, the service time for each professional or discipline and paraprofessional may extend to the time period of the group, not to exceed two and one-half (2 1/2) hours per day 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 professional or discipline 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) The ratio of staff to children in group therapeutic intervention shall be limited to a maximum of three (3) [eligible] children per professional or discipline and paraprofessional per group, unless preauthorized by the department.

(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: August 8, 1997

FILED WITH LRC: August 11, 1997 at 9 a.m.

ADMINISTRATIVE REGULATIONS AS AMENDED AFTER PUBLIC HEARING
OR RECEIPT OF WRITTEN COMMENTS

LABOR CABINET
Department of Workers' Claims
(Amended After Hearing)

803 KAR 25:175. Filing of insurance coverage and notice of policy change or termination.

RELATES TO: KRS 342.0011(22), 342.340(2)
STATUTORY AUTHORITY: KRS 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.340 requires an insurance carrier [carriers] to file proof of insurance coverage for an employer [employers] and notice of policy change or termination on a form [forms] prescribed by the commissioner. KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to carry on the work of the department. This administrative regulation establishes the requirements for filing [requires insurance carriers to file] proof of coverage and policy change or termination of coverage [on Form POC-1 with NCCI. Then NCCI shall file the information electronically with the Department of Workers' Claims].

Section 1. Definitions. (1) ~~["EDI" means electronic data interchange:~~

(2) "Insurance carrier" is defined in KRS 342.0011(22).

(3) ~~"IAIABC" means International Association of Industrial Accident Boards and Commissions:]~~

(2) (4) "NCCI" means the National Council on Compensation Insurance.

Section 2. Reporting Requirements. (1) Beginning on January 1, 1998, each insurance carrier shall file the information required on the Form POC-1 with NCCI pursuant to the time requirements established [set forth] in KRS 342.340(2), ~~[-and]~~

(2) NCCI shall electronically file the information filed pursuant to subsection (1) with the Department of Workers' Claims.

(3) The time requirements established in KRS 342.340(2) are satisfied once the insurance carrier makes the appropriate filing with NCCI.

(4) In the first year, 1998, of filing with NCCI, an insurance carrier shall file the information required on the POC-1 for each new policy, renewal policy, and a change or termination of a policy.

(5) In any year following 1998, an insurance carrier shall file the information required on the POC-1 for each new policy and a change or termination of a policy. ~~[The electronic filing shall be done in accordance with the IAIABC EDI Implementation Guide for Proof of Coverage:]~~

Section 3. (1) If an insurance carrier wants acknowledgment of a filing, then the insurance carrier shall file a copy of the POC-1 form with a request for acknowledgment to NCCI with the original filing.

(2) Reports that are incomplete or provide incorrect information:

(a) Shall be returned by NCCI; and

(b) Shall not be considered as compliance with KRS 342.340(2) until the information is completed or corrected and refiled with NCCI. ~~[The department shall make the following in an electronic format in accordance with IAIABC EDI Implementation Guide for Proof of Coverage through the NCCI to each insurance carrier:~~

(1) ~~Acknowledgments of accepted filings made pursuant to this~~

~~administrative regulation; and~~

(2) ~~Requests for resubmission of reports due to incomplete or incorrect information:]~~

Section 4. Incorporation by Reference. (1) The following is [are] incorporated by reference:

[(a)] POC-1 Form (December 1996 Edition) ~~[-and~~

(b) ~~IAIABC EDI Implementation Guide for Proof of Coverage (Feb. 1996 Edition)]].~~

(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 - 220 B. North 8th Street, Paducah, Kentucky 42001; and

(c) Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: October 7, 1997

FILED WITH LRC: October 7, 1997 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: Approximately 525 workers' compensation insurers and 22 group self-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: The department does not anticipate an effect on the cost of living or employment in Kentucky.

(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: Insurance carriers were already filing similar forms with the department. They will now file POC-1 form with the same information with NCCI either in hard copy or electronically. Insurance carriers who are not members are not required to become members of NCCI. Nonmembers pay a filing rate of \$4 per proof of coverage and \$2 per change in policy. Members pay a rate of \$2 per proof of coverage and \$1 per change in policy.

(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 already file these forms with the Department of Workers' Claims. Now these documents will be filed with NCCI. Costs would increase only to the extent of the rate to be paid to NCCI for each filing as stated above.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Department of Workers' Claims should not have any effect on monetary costs or savings. There will be a time savings since all reports will come from one source electronically. There will be a space savings because the department will not have to save all hard copies of forms.

2. Continuing costs or savings: See above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: As stated earlier the department will be able to save time and space. Time will also be

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saved because all rejections will be done electronically to avoid the time consuming job of calling insurance carriers and returning hard copies of documents.

(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: There will be no fee for the department to receive this information from NCCI. The normal budget will be in place for enforcement of the administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: The only economic impact will be for the insurance carriers as stated in (2)(b).

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This option to have the information filed electronically by NCCI will save time and space. It will allow for more timely receipt of proof of coverage and cancellation. It is a free service to the department. To not move forward with this project would prevent better service from the department.

(8) Assessment of expected benefits: As stated earlier, time and space will be saved. Reporting will be more accurate and delivered to the department in a timely manner to allow the department more up-to-date information on workers' compensation coverage.

(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: N/A

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

(10) Tiering: Tiering is not applied because this administrative regulation is applied to workers' compensation insurers and group self-insurers equally.

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, OCTOBER 15, 1997

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(Amendment)

201 KAR 2:030. [Reciprocity; temporary] License transfer.

RELATES TO: KRS Chapter 315

STATUTORY AUTHORITY: KRS 315.191, 315.210

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is to provide for interstate reciprocity of pharmacists licensure. It establishes uniform minimum standards and requirements.

Section 1. "License transfer [by reciprocity]" means a license to practice pharmacy issued by the Kentucky Board of Pharmacy ("board") pursuant to this administrative regulation.

Section 2. An applicant shall have had the legal qualifications at the time of examination and registration in the state from which he applies which would have enabled [enable] him to qualify for registration by the board.

Section 3. An applicant who has failed a Kentucky Board of Pharmacy examination shall not be eligible for license transfer pursuant to this administrative regulation [by reciprocity]. The board shall consider only those official applications for license transfer [reciprocity] approved by the board. An applicant shall include the transfer [reciprocal] registration fee fixed by the board with his application for [reciprocal] licensure transfer.

Section 4. The board may accept license transfer [reciprocity] from jurisdictions [states] which are active members of the National Association of Boards of Pharmacy and which under equivalent conditions will grant [reciprocal] licensure transfer to pharmacists duly licensed by examination by the board. The applicant shall be in good standing in the state from which he applies.

Section 5. All applicants for license by transfer [reciprocity] shall appear in person before the board or a member thereof, for an examination before any certificate of registration will be issued. Applicants shall be required to take an examination in jurisprudence. An applicant who has not actively engaged in the practice of pharmacy as a registered pharmacist during the year preceding the time of filing the application may be required to take a practical examination.

[Section 6. The board reserves the right to deny any reciprocal application for a good and just reason, and if imposed, seventy-five (75) percent of the fee paid to the board shall be refunded.]

MICHAEL B. WYANT, President

JOHN GRANT, J.D., Assistant Attorney General

APPROVED BY AGENCY: October 15, 1997

FILED WITH LRC: October 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held at 2:30 p.m. on November 25, 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 November 18, 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.

REGULATORY IMPACT ANALYSIS

Contact person: Mr. Michael A. Moné

(1) Type and number of entities affected: Only those pharmacists who request license transfer into the Commonwealth. It is unknown the number of pharmacists who will elect to move into 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 other than the cost of licensure as a pharmacist which is required of everyone who is actively engaged in the practice of the profession in Kentucky.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs for the:

1. First year following implementation: None other than those required of all licensees.

2. Second and subsequent years: None other than those required of all licensees.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Processing of the applications.

2. Continuing costs or savings: Application renewals.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Application for license.

(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 pharmacists will be available to the citizens on an expedited or fast-track basis for licensure.

(b) State whether a detrimental effect on environment and public health would result if not implemented: The failure to adopt this proposed administrative regulation could result in a shortage of pharmacists in the Commonwealth at times during the year when pharmacists move into and out of the jurisdiction.

(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 pharmacists who elect this process are treated identically by this amended administrative regulation.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Nursing
(Amendment)**

201 KAR 20:390. Nursing Incentive Scholarship Fund.

RELATES TO: KRS 314.025, 314.026, 314.027

STATUTORY AUTHORITY: KRS 314.026(1), 314.131

NECESSITY, FUNCTION, AND CONFORMITY: The Nursing Incentive Scholarship Fund Program was created by the General Assembly. This administrative regulation implements the administration of the program.

Section 1. Definitions. (1) "Academic year" means, for a registered nursing program, a minimum of two (2) semesters or its equivalent; and for a practical nursing program, the completion of the required program.

(2) "Board" means the Kentucky Board of Nursing.

(3) "Committee" means the Nursing Incentive Scholarship Fund Committee.

(4) "Program of nursing" means either a prelicensure, BSN completion or graduate nursing program.

(5) "Resident" is defined by 13 KAR 2:045, Section 1(13).

(6) "Successful academic progression" means:

(a) For prelicensure and BSN completion nursing programs, the completion of a minimum of eight (8) credit hours per semester of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in a program of nursing; or

(b) For graduate nursing programs, the completion of a minimum of six (6) credit hours per semester of published requirements for the program of nursing and maintenance of a minimum grade point average which would allow continuation in the graduate program.

Section 2. Application. (1) To be eligible for a nursing incentive scholarship, an applicant shall:

(a) Be a Kentucky resident; and

(b) Have been accepted for admission to a program of nursing.

(2) An applicant shall submit a completed "Nursing Incentive Scholarship Application" by the date specified on the application. (3) An applicant shall attach to the application a copy of the Student Aid Report from the Free Application for Federal Student Aid (FAFSA) for the current year.

Section 3. The Committee. (1) Members of the committee shall serve for two (2) years and may be reappointed.

(2) The committee shall meet at least annually by July 15 and more often if necessary to decide on scholarships for the upcoming academic year.

(3) The committee shall serve without compensation but may be reimbursed for actual and necessary expenses related to serving on the committee.

Section 4. Criteria for Awards. The committee shall consider the following criteria in evaluating applicants and shall award points as designated herein:

(1) Preference categories as specified in KRS 314.025(2) - licensed practical nurses, twenty-five (25) points; registered nurses pursuing graduate nursing education, twenty-five (25) points; financially needy residents, twenty-five (25) points. Financial need shall be determined by the annual FAFSA Pell Grant Indicator of Eligibility for Financial Aid.

(2) Potential for academic success, as follows:

(a) High school, vocational school, college or university grade point average of three and five-tenths (3.5) to four (4.0) = twenty-five (25) points, three (3) to three and four-tenths (3.4) = twenty (20) points, and two and five-tenths (2.5) to two and nine-tenths (2.9) = fifteen (15) points.

(b) Successful progression in a program of nursing shall be equal to five (5) points for each semester or quarter, to a maximum of ten (10) points.

(3) Previous health care experience, either paid or volunteer, shall be equal to five (5) points for each year in which service is validated, to a maximum of ten (10) points.

Section 5. Amount of Award. (1) The committee shall be notified by the board's fiscal officer as to the current fund balance prior to making awards.

(2) The committee shall first make awards to those recipients who received awards in the previous year and remain eligible to receive awards pursuant to Section 7 of this administrative regulation in the current year.

Section 6. Procedure for Disbursement of Awards. (1) Disbursement of funds shall be made directly to the [school-by-the-board-on behalf-of-the] recipient.

(2) Disbursement shall be made annually. [~~by semester. Disbursement of the second semester's payment shall be contingent on successful academic progression during the first semester upon verification by the educational institution on a "Nursing Incentive Scholarship Fund Verification of Academic Progression" form.~~]

(3) Each educational institution shall certify to the board no later than thirty (30) days from the beginning of each semester, that the recipient has enrolled and is in good standing in the nursing program. [~~The educational institution shall send the certification to the board on the "Certification of Enrollment" form.~~]

Section 7. Continuing Eligibility Criteria. (1) A recipient of a nursing incentive scholarship shall be eligible to continue to receive an award provided successful academic progression through the program is maintained and there is continued maintenance of any preference categories. The recipient shall submit to the board by the date specified on the "Nursing Incentive Scholarship Fund Continuance" form. The educational institution shall immediately notify the board of any change in a recipient's enrollment status.

(2) Award recipients in practical nursing programs are not eligible for continued awards while enrolled in such programs.

Section 8. Disbursement Contract. Prior to disbursement of initial funds, the recipient shall sign a "Nursing Incentive Scholarship Fund Contract". The recipient shall sign a "Nursing Incentive Scholarship Fund Promissory Note" for each year in which funds are disbursed.

Section 9. Repayment and Deferral. (1) If a recipient fails to complete the nursing program in which he is enrolled within the time specified by the program of nursing or if he fails to complete the required employment as specified in the contract, he shall immediately become liable to the board to pay the sum of all scholarships received and accrued interest thereon.

(2) Written notification of demand for repayment shall be sent by the board to the scholarship recipient's last known address and shall be effective upon mailing. The board may agree, in its sole discretion, to accept repayment in installments in accordance with a schedule

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established by the board. Payments shall first be applied to interest and then to principal on the earliest unpaid contracts.

(3) Repayment may be deferred in the case of disability, major illness or accident which prevents a recipient from completing a program of nursing or being employed as a nurse in Kentucky.

(4) A student enrolled in a program of nursing may defer repayment if the student fails to achieve successful academic progression. This deferral shall only apply for one (1) academic year. If the student fails to achieve successful academic progression after that time, repayment shall be due. If the student achieves successful academic progression within the allotted time, he may apply for a continuation award pursuant to Section 7 of this administrative regulation.

(5) If a deferral is requested, the recipient shall submit the request to the committee on a "Nursing Incentive Scholarship Fund Request for Deferral" form.

(6) If a recipient fails to pass the licensure examination within two (2) years of graduation, the sum of all nursing incentive scholarships received by the recipient, and accrued interest thereon, shall become due and payable.

Section 10. Verification. (1) Verification of employment as a nurse in Kentucky pursuant to the contract shall be submitted to the board when the recipient's employment commitment begins and when it is completed. Any termination of employment prior to completion shall be reported to the board within thirty (30) days by the employer and the recipient.

(2) Recipients shall notify the board immediately of any change of name or address or enrollment status in school.

Section 11. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) "Nursing Incentive Scholarship Fund Application (10/96)";
- (b) "Nursing Incentive Scholarship Fund Request for Continuance (10/96)";
- (c) [~~"Nursing Incentive Scholarship Fund Verification of Academic Progression (8/94)";~~]
- (d) [~~"Nursing Incentive Scholarship Fund Request for Deferral (10/96)";~~]
- (d) [(e)] "Nursing Incentive Scholarship Fund Contract (10/96)";
- (e) [(f)] "Nursing Incentive Scholarship Fund Promissory Note (10/96)"; and
- (g) [~~"Certification of Enrollment" (8/96)].~~

(2) These forms may be inspected, copied, or obtained at the Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, 8:30 a.m. to 4:30 p.m., Monday through Friday.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: October 10, 1997

FILED WITH LRC: October 14, 1997 at 10 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on November 24, 1997 at 9 a.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 17, 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 the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, (502) 329-7000.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Nathan Goldman, General Counsel

(1) Type and number of entities affected: Applicants for Nursing Incentive Scholarship Funds. Number unknown.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: NA

(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: NA

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

1. First year following implementation: NA

2. Second and subsequent years: NA

(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: Agency operating 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: NA

(b) Kentucky: NA

(7) Assessment of alternative methods; reasons why alternatives were rejected: NA

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: NA

(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: NA

(9) Identify any statute, administrative regulation, or governmental policy, which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed regulation if in conflict: NA

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applicable.

GENERAL GOVERNMENT CABINET Kentucky Board of Examiners of Psychology (Amendment)

201 KAR 26:145. Code of conduct. [Ethical violations:]

RELATES TO: KRS 319.082

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(2) gives the board the authority to set requirements for disciplining licensees or certificate holders. This administrative regulation establishes a code of conduct for persons practicing [violations in the practice of] psychology.

Section 1. Section 1. Definitions. (1) "Client" means a receiver of psychological services. A corporate entity or other organization may be a client when the professional contract is to provide services of benefit primarily to the organization rather than to individuals. In the case of individuals with legal guardians, including minors and legally incompetent adults, the legal guardian shall be the client for decision making purposes, except that the individual receiving services shall be the client for:

- (a) Issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships; and
- (b) Issues specifically reserved to the individual, and agreed to by the guardian prior to rendering of services, such as confidential communication in a therapy relationship.

(2) "Confidential information" means information revealed by a client or clients or otherwise obtained by a credential holder, where there is reasonable expectation that because of the relationship between the client and the credential holder, or the circumstances under which the information was revealed or obtained, the information shall not be disclosed by the credential holder without the informed written consent of the client. When a corporation or other organization is the client, rules of confidentiality apply to information pertaining to the organization, including personal information about individuals when obtained in the proper course of that contract. Any information about individuals is subject to confidential control of the organization, not of the individual, and can be made available to the organization, unless there is reasonable expectation by such individual that such information was obtained in a separate professional relationship with that individual and is therefore subject to confidentiality requirements in itself.

(3) "Court order" means the written or oral communication of a member of the judiciary, or other court magistrate or administrator, if such authority has been lawfully delegated to such magistrate or administrator.

(4) "Credential holder" means a licensed psychologist, a certified psychologist, a certified psychologist with autonomous functioning, or a psychological associate.

(5) "Professional relationship" means a mutually agreed upon relationship between a credential holder and a client for the purpose of the client obtaining the credential holder's professional expertise.

(6) "Professional service" means all actions of the credential holder in the context of a professional relationship with a client.

(7) "Supervisee" means any person who functions under the extended authority of the credential holder to provide psychological services pursuant to KRS Chapter 319.

Section 2. Competence. (1) Limits on practice. The credential holder shall limit practice and supervision to the areas of competence in which proficiency has been gained through education, training, and experience.

(2) Maintaining competency. The credential holder shall maintain current competency in the areas in which he practices, through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge.

(3) Adding new services and techniques. The credential holder, when developing competency in a service or technique that is either new to the credential holder or new to the profession, shall engage in ongoing consultation with other psychologists or relevant professionals and shall seek appropriate education and training in the new area. The credential holder shall inform clients of the innovative nature and the known risks associated with the services, so that the client can exercise freedom of choice concerning such services.

(4) Referral. The credential holder shall make or recommend referral to other professional, technical, or administrative resources when a referral is clearly in the best interests of the clients.

(5) Sufficient professional information. A credential holder rendering a formal professional opinion about a person shall not do

so without direct and substantial professional contact with or a formal assessment of that person.

(6) Maintenance and retention of records.

(a) The credential holder rendering professional services to an individual client, or services billed to a third party payor, shall maintain professional records that include:

- 1. The presenting problem or purpose or diagnosis;
- 2. The fee arrangement;
- 3. The date and substance of each billed or service-count contact or service;
- 4. Any test results or other evaluative results obtained and any basic test data from which they were derived;
- 5. Notation and results of formal consults with other providers; and
- 6. A copy of all test or other evaluative reports prepared as part of the professional relationship.

(b) To meet the requirements of this administrative regulation, so as to provide a formal record for review, but not necessarily for other legal purposes, the credential holder shall assure that all data entries in the professional records are maintained for a period of not less than five (5) years after the last date that service was rendered. The credential holder shall also abide by other legal requirements for record retention, even if longer periods of retention are required for other purposes.

(c) The credential holder shall store and dispose of written, electronic and other records in a manner which shall insure their confidentiality.

(d) For each person supervised pursuant to KRS Chapter 319, the credential holder shall maintain for a period of not less than five (5) years after the last date of supervision a record of each supervisory session that shall include, among other information, the type, place, and general content of the session.

(7) Continuity of care. The credential holder shall make arrangements for another appropriate professional or professionals to deal with emergency needs of his clients, as appropriate, during periods of his foreseeable absences from professional availability.

Section 3. Impaired Objectivity and Dual Relationships. (1) Impaired credential holder. The credential holder shall not undertake or continue a professional relationship with a client when the credential holder is, or could reasonably be expected by the board to be, impaired due to mental, emotional, physiologic, pharmacologic, or substances abuse conditions. If a condition develops after a professional relationship has been initiated, the credential holder shall terminate the relationship in an appropriate manner, shall notify the client in writing of the termination, and shall assist the client in obtaining services from another professional.

(2) Prohibited dual relationships.

(a) The credential holder shall not undertake or continue a professional relationship with a client when the objectivity or competency of the credential holder is, or could reasonably be expected by the board to be, impaired because of the credential holder's present or previous familial, social, sexual, emotional, financial, supervisory, political, administrative, or legal relationship with the client or a relevant person associated with or related to the client.

(b) The credential holder, in interacting with a client or former client to whom the credential holder has at anytime within the previous twenty-four (24) months rendered counseling, psychotherapeutic, or other professional psychological services for the treatment or amelioration of emotional distress or behavioral inadequacy, shall not:

- 1. Engage in any verbal or physical behavior toward the client or former client which is sexually seductive, demeaning, or harassing; or
- 2. Engage in sexual intercourse or other physical intimacies with the client or former client; or
- 3. Enter into a financial or other potentially exploitive relationship with the client or former client.

(c) The prohibitions established in paragraph (b) of this subsection

shall not be limited to the twenty-four (24) month period but and shall extend indefinitely if the client is proven to be clearly vulnerable, by reason of emotional or cognitive disorder, to exploitive influence by the credential holder.

Section 4. Client Welfare. (1) Providing explanation of procedures. The credential holder shall give a truthful, understandable, and appropriate account of the client's condition to the client or to those responsible for the care of the client. The credential holder shall keep the client fully informed as to the purpose and nature of any evaluation, treatment, or other procedures, and of the client's right to freedom of choice regarding services provided.

(2) Termination of services. Whenever professional services are terminated, the credential holder shall offer to help locate alternative sources of professional services or assistance if indicated. The credential holder shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the relationship, and shall prepare the client appropriately for such termination.

(3) Stereotyping. The credential holder shall not impose on the client any stereotypes of behavior, values, or roles related to age, gender, religion, race, disability, nationality, sexual preference, or diagnosis which would interfere with the objective provision of psychological services to the client.

(4) Sexual or other dual relationship with a client. The credential holder shall not enter into a sexual or other dual relationship with a client, as specified in Section 3(2) of this administrative regulation.

(5) Solicitation of business by clients. The credential holder providing services to an individual client shall not induce that client to solicit business on behalf of the credential holder.

(6) Referrals on request. The credential holder providing services to a client shall make an appropriate referral of the client to another professional when requested to do so by the client.

Section 5. Welfare of Supervisees and Research Subjects. (1) Welfare of supervisees. The credential holder shall not exploit a supervisee sexually, financially or otherwise.

(2) Welfare of research subjects. The credential holder shall respect the dignity and protect the welfare of his research subjects, and shall comply with all relevant statutes and administrative regulations concerning treatment of research subjects.

Section 6. Protecting the Confidentiality of Clients. (1) General. The credential holder shall safeguard the confidential information obtained in the course of practice, teaching, research, or other professional services. With the exceptions set forth below, the credential holder shall disclose confidential information to others only with the informed written consent of the client.

(2) Disclosure without informed written consent. The credential holder may disclose confidential information without the informed written consent of the client when the credential holder judges that disclosure is necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on the client or another person. In that case, the credential holder shall limit disclosure of the otherwise confidential information to only those persons and only that content which shall be consistent with the standards of the profession in addressing such problems. When the client is an organization, disclosure shall be made only after the credential holder has made a reasonable and unsuccessful attempt to have the problems corrected within the organization.

(3) Services involving more than one (1) interested party. In a situation in which more than one (1) party has an appropriate interest in the professional services rendered by the credential holder to a client or clients, the credential holder shall, to the extent possible, clarify to all parties prior to rendering the services the dimensions of confidentiality and professional responsibility that shall pertain in the rendering of services. This clarification is specifically indicated when the client is an organization.

(4) Multiple clients. When service is rendered to more than one (1) client during a joint session, the credential holder shall at the beginning of the professional relationship clarify to all parties the manner in which confidentiality will be handled. All parties shall be given opportunity to discuss and to accept whatever limitations to confidentiality adhere in the situation.

(5) Legally dependent clients. At the beginning of a professional relationship, to the extent that the client can understand, the credential holder shall inform a client who is below the age of majority or who has a legal guardian, of the limit the law imposes on the right of confidentiality with respect to his communications with the credential holder.

(6) Limited access to client records. The credential holder shall limit access to client records to preserve their confidentiality and shall assure that all persons working under the credential holder's authority comply with the requirements for confidentiality of client material.

(7) Release of confidential information. The credential holder may release confidential information upon court order, as defined in Section 1 of this administrative regulation, or to conform with state, federal or provincial law, rule, or regulation.

(8) Reporting of abuse of children and vulnerable adults. The credential holder shall be familiar with any relevant law concerning the reporting of abuse of children and vulnerable adults, and shall comply with such laws.

(9) Discussion of client information among professionals. When rendering professional services as part of a team or when interacting with other appropriate professionals concerning the welfare of the client, the credential holder may share confidential information about the client provided the credential holder takes reasonable steps to assure that all persons receiving the information are informed about the confidential nature of the information and abide by the rules of confidentiality.

(10) Disguising confidential information. When case reports or other confidential information is used as the basis of teaching, research, or other published reports, the credential holder shall exercise reasonable care to insure that the reported material is appropriately disguised to prevent client identification.

(11) Observation and electronic recording. The credential holder shall ensure that diagnostic interviews or therapeutic sessions with a client are observed or electronically recorded only with the informed written consent of the client.

(12) Confidentiality after termination of professional relationship. The credential holder shall continue to treat as confidential information regarding a client after the professional relationship between the credential holder and the client has ceased.

Section 7. Representation of Services. (1) Display of license. The credential holder shall display his current credential to practice psychology, on the premises of his professional office.

(2) Misrepresentation of qualifications. The credential holder shall not misrepresent directly or by implication his professional qualifications such as education, experience, or areas of competence.

(3) Misrepresentation of affiliations. The credential holder shall not misrepresent directly or by implication his affiliations, or the purposes or characteristics of institutions and organizations with which the credential holder is associated.

(4) False or misleading information. The credential holder shall not include false or misleading information in public statements concerning professional services offered.

(5) Misrepresentation of services or products. The credential holder shall not associate with or permit his name to be used in connection with any services or products in a way which misrepresents:

- (a) The services or products;
- (b) The degree of his responsibility for the services or products;
- or
- (c) The nature of his association with the services or products.

(6) Correction of misrepresentation by others. The credential holder shall correct others who misrepresent the credential holder's professional qualifications or affiliations.

Section 8. Fees and Statements. (1) Disclosure of cost of services. The credential holder shall not mislead or withhold from the client, a prospective client, or third party payor, information about the cost of his professional services.

(2) Reasonableness of fee. The credential holder shall not exploit the client or responsible payor by charging a fee that is excessive for the services performed or by entering into an exploitive bartering arrangement in lieu of a fee.

Section 9. Assessment Procedures. (1) Confidential information. The credential holder shall treat an assessment result or interpretation regarding an individual as confidential information.

(2) Communication of results. The credential holder shall accompany communication of results of assessment procedures to the client, parents, legal guardians or other agents of the client by adequate interpretive aids or explanations.

(3) Protection of integrity of assessment procedures. The credential holder shall not reproduce or describe in popular publications, lectures, or public presentations psychological tests or other assessment devices in ways that might invalidate them.

(4) Information for professional users. The credential holder offering an assessment procedure or automated interpretation service to other professionals shall accompany this offering by a manual or other printed materials which fully describes the development of the assessment procedure or service, the rationale, evidence of validity and reliability, and characteristics of the normative population. The credential holder shall explicitly state the purpose and application for which the procedure is recommended and identify special qualifications required to administer and interpret it properly. The credential holder shall ensure that the advertisements for the assessment procedure or interpretive service are factual and descriptive.

Section 10. Violations of Law. (1) Violation of applicable statutes. The credential holder shall not violate any applicable statute or administrative regulation regulating the practice of psychology.

(2) Use of fraud, misrepresentation, or deception. The credential holder shall not use fraud, misrepresentation, or deception in:

- (a) Obtaining a credential to practice psychology;
 - (b) Passing a psychology examination;
 - (c) Assisting another to obtain a credential to practice psychology or to pass a psychology examination;
 - (d) Billing clients or third party payors;
 - (e) Providing psychological service;
 - (f) Reporting the results of psychological evaluations or services;
- or
- (g) Conducting any other activity related to the practice of psychology.

Section 11. Aiding Illegal Practice. (1) Aiding unauthorized practice. The credential holder shall not aid or abet another person in misrepresenting his professional credentials or in illegally engaging in the practice of psychology.

(2) Delegating professional responsibility. The credential holder shall not delegate professional responsibilities to a person not appropriately credentialed or otherwise appropriately qualified to provide psychological services.

(3) Providing supervision. The credential holder shall exercise appropriate supervision over supervisees, as established in 201 KAR 26:171. (†) A licensee or certificate holder shall not engage in sexual contact with a student or supervisee during the period of the professional relationship, or with a client during the period of the professional relationship, nor for at least two (2) years after cessation or termination of the professional relationship.

~~(2) A licensee or certificate holder shall not solicit, enter into, or promise a client, student, or supervisee another scientific, personal, professional, financial or other relationship if it appears likely that such a relationship would impair the licensee's or certificate holder's objectivity or otherwise interfere with the licensee's or certificate holder's effectively performing his functioning as a professional, or might otherwise harm or exploit the client. A licensee or certificate holder shall refrain from taking on professional or scientific obligations when preexisting relationships would create a risk of harm. A licensee or certificate holder shall not exploit any client, student or supervisee.]~~

DONALD E. RALPH, Ph.D., Chairman
MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: October 3, 1997

FILED WITH LRC: October 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1997 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons holding licensure as a licensed psychologist or certification as a certified psychologist, certified psychologist with autonomous functioning, or certified psychological associate.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no costs associated with this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There will be no costs associated with this regulation.

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

1. First year following implementation: Each person holding a credential from the board must comply with the code of conduct.

2. Second and subsequent years: Each person holding a credential from the board must comply with the code of conduct.

(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: Trust and agency funds

ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The board intends to provide guidance to its credential holders of the requirements for practice.

(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 credentialing of psychologists provides protection to the public. This code of conduct will provide additional protection to the consumers or psychological 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: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(Amendment)**

201 KAR 26:155. Application procedures and temporary license or certificate.

RELATES TO: KRS 319.050, 319.064

STATUTORY AUTHORITY: 319.032

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth procedures for applying for a license or a certificate and specifies conditions of temporary licensure and certification.

Section 1. Application. (1) An application for a license to practice psychology may be submitted upon receipt of a doctoral degree in psychology and completion of one (1) year of supervised professional experience prior to the granting of the degree, or completion of the first year of a two (2) year postdoctoral supervised professional experience. The application shall be accompanied by the appropriate fee and documentation of education and professional experience.

(2) An application for a certificate to perform functions as a psychological associate may be submitted upon receipt of a master's degree in psychology. The application shall be accompanied by the appropriate fee and documentation of education and professional experience.

Section 2. Temporary Licensure. Upon acceptance of the application for licensure, the candidate may request permission to practice psychology on a temporary basis under the supervision of a licensed psychologist approved by the board. Unless temporary licensure is granted, the applicant may not engage in the practice of

psychology until the examination process has been successfully completed.

(1) Supervision during the period of temporary licensure shall be a minimum of one (1) hour of individual, face-to-face supervision on a weekly basis.

(2) Reports of supervision shall be submitted on a regular basis as specified in 201 KAR 26:171, Section 6.

(3) During the period of temporary licensure, the candidate may not supervise certified psychologists, psychological associates, other applicants for licensure, or temporarily licensed persons, nor shall he engage in an independent practice, except under the employment of his supervising psychologist.

(4) The candidate shall take the Examination for Professional Practice in Psychology (EPPP) at the next regularly-scheduled date.

(5) The period of temporary licensure shall be terminated upon successful completion of all credentials and examination procedures or upon the candidate's failure to pass the third administration of the oral examination or upon the withdrawal of the application.

(6) Upon successful completion of the examination procedures, the candidate for licensure may use the title "Licensed Psychologist".

Section 3. Postdoctoral Supervisory Experience. (1) The one (1) year of postdoctoral required by KRS 319.050(2)(c) shall be a focused professional experience. [A candidate for licensure in clinical, counseling or school psychology who has not completed one (1) full year of postdoctoral supervised professional experience or the second year of a two (2) year postdoctoral supervised professional experience shall be considered to be temporarily licensed until such experience has been certified for the satisfaction of the board and all examination procedures have been successfully completed.]

(2) Qualified postdoctoral experience may be obtained in a variety of settings wherein psychological services are offered. [A candidate for licensure in clinical, counseling or school psychology who is exempt from the requirement of a year of postdoctoral supervised experience or who is applying for licensure by reciprocity may petition the board to be temporarily licensed until all examination procedures have been successfully completed.]

(3) During the year of postdoctoral experience, the candidate shall be required to:

(a) Obtain and maintain a temporary license as required in Section 2 of this administrative regulation;

(b) Be under supervision as required by 201 KAR 26:171; and

(c) Be employed as follows:

1. By a qualified organization; or

2. In the private practice and employment of the supervisor. [Upon certification of completion of all supervised professional experience requirements and passage of the EPPP, the candidate for licensure shall be scheduled for the oral examination.]

(4) The postdoctoral year may be served:

(a) In a formalized postdoctoral internship program in a health care facility; or

(b) In an informal arrangement that meets the requirements of subsection (5) of this section.

(5) The supervised professional experience shall include a planned and organized sequence of activities that includes explicit training and supervision in the following areas:

(a) Clinical skill development;

(b) Legal and regulatory issues;

(c) Ethical dilemmas and issues; and

(d) Supervisory skill development.

(6) The candidate and the supervisor of record shall design and describe the proposed experience, including the areas listed in subsection (5) of this section, at the time of application for temporary licensure.

(7) A supervisory experience at a university may be proffered by full-time faculty members as qualifying experience provided that the plan contains each of the areas established in subsection (5) of this

section. This university-based supervision shall include a minimum of 400 hours of direct and indirect client involvement and shall be supervised by a licensed psychologist. These hours shall include:

- (a) Supervising student clinical work;
- (b) Diagnostic and interviewing activity that occurs within clinical research projects; or
- (c) Clinical work in the context of teaching psychotherapy, interviewing, or psychological testing.
- (8) The board may refuse to grant a request for temporary licensure which does not contain an explicit and acceptable plan for the postdoctoral experience as required by this section.

Section 4. Temporary Certification. Upon acceptance of the application for certification, the candidate may request permission to perform certain functions within the practice of psychology on a temporary basis under the supervision of a licensed psychologist approved by the board. Unless temporary certification is granted, the applicant may not engage in the practice of psychology until the examination process has been successfully completed.

(1) Supervision during the period of temporary certification shall be a minimum of one (1) hour of individual, face-to-face supervision on a weekly basis.

(2) Reports of supervision shall be submitted on a regular basis as specified in 201 KAR 26:171, Section 6.

(3) During the period of temporary certification, the candidate may not engage in an independent practice, except under the employment of his supervising psychologist.

(4) The candidate shall take the Examination for Professional Practice in Psychology (EPPP) at the next regularly-scheduled date.

(5) The period of temporary certification shall be terminated upon successful completion of all credentials and examination procedures or upon the candidate's failure to pass the third administration of the EPPP or upon the withdrawal of the application.

(6) Upon successful completion of the examination, the candidate for certification may use the title "Psychological Associate".

DONALD E. RALPH, Ph.D., Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: October 3, 1997

FILED WITH LRC: October 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1997 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons applying for licensure as a licensed psychologist or certification as a certified psychological associate.

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

(a) Cost of living and employment in the geographical area in

which the administrative regulation will be implemented, to the extent available from the public comments received: There are no costs associated with this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There are no costs associated with this regulation.

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

1. First year following implementation: Each person desiring to be licensed shall comply with the requirements for the postdoctoral experience. They are also required to apply for and hold a temporary license.

2. Second and subsequent years: Each person desiring to be licensed shall comply with the requirements for the postdoctoral experience. They are also required to apply for and hold a temporary license.

(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: An application for temporary license will have to be reviewed and processed.

(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: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having applicants for licensure under temporary licensure during their year of postdoctoral experience.

(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 credentialing of psychologists provides protection to the public.

(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: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

**GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(Amendment)**

201 KAR 26:160. Fee schedule.

RELATES TO: KRS 319.050, 319.058, 319.062, 319.064
STATUTORY AUTHORITY: KRS 319.032(l), (m)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessitated by KRS 319.050, 319.058, 319.062 and 319.064 and sets forth in detail all fees charged by the board.

Section 1. (1) The fee for application for licensure as a psychologist shall be computed as follows:

(a) A fifty (50) dollar application review fee;

(b) A \$250 fee for the taking of the Examination for Professional Practice in Psychology (EPPP). Effective 04/01/99 the fee for taking the EPPP shall be \$350; and

(c) A fifty (50) dollar fee for the taking of the structured oral examination. If a candidate has previously taken the EPPP in another state and achieved a score which would be considered as passing in Kentucky, paragraph (b) of this subsection of the application fee shall be waived.

(2) The fee for application for certification as a psychological associate shall be computed as follows:

(a) A fifty (50) dollar application review fee;

(b) A \$250 fee for the taking of the Examination for Professional Practice in Psychology (EPPP). Effective 04/01/99 the fee for taking the EPPP shall be \$350. If a candidate has previously taken the EPPP in another state and achieved a score which would be considered as passing in Kentucky, paragraph (b) of this subsection of the application fee shall be waived.

(3) Upon successful completion of all portions of the application and examination processes, the initial licensure or certification fees shall be as follows:

(a) Applicants for licensure shall pay \$200 for the first three (3) year period;

(b) Applicants for certification as a psychological associate shall pay \$150 for the first three (3) year period.

(4) Every three (3) years licensed psychologists and certified psychologists with autonomous functioning shall pay to the board a renewal fee of \$300 and shall receive a renewal license or certificate.

(5) Every three (3) years certified psychologists and psychological associates shall pay to the board a renewal fee of \$200 and shall receive a renewal certificate.

Section 2. (1) If the applicant fails the Examination for Professional Practice in Psychology (EPPP) and applies to retake this examination, the fee shall be \$250.

(2) If the applicant fails the structured oral examination and applies to retake this examination, the fee shall be fifty (50) dollars.

(3) An application for licensure or certification by reciprocity shall be accompanied by a fee of \$100.

Section 3. (1) The board may refund the fee for the EPPP and the fee for the structured oral examination, if applicable, if the application has been approved, but is withdrawn prior to the applicant taking the examination for professional practice in psychology.

(2) The board may refund the fee for the EPPP and the fee for the structured oral examination, if applicable, if the application to sit for these examinations is denied.

DONALD E. RALPH, Ph.D., Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: October 3, 1997

FILED WITH LRC: October 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on November 26, 1997 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons applying for licensure as a licensed psychologist or certification as a certified psychological associate.

(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: The examination fee will increase from \$250 to \$350 effective 4/1/99.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There are no costs associated with this regulation.

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

1. First year following implementation: Persons desiring to be credentialed must take the examination (EPPP). That cost will increase due to an increase in the amount of the cost of the exam.

2. Second and subsequent years: Each person desiring to be licensed shall comply with the requirements for the postdoctoral experience. Persons desiring to be credentialed must take the examination (EPPP). That cost will increase due to an increase in the amount of the cost of the exam.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The cost of the exam will increase by \$100.

2. Continuing costs or savings: The cost of the exam will increase by \$100.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The reporting requirements will not be changed.

(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: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having applicants continue to be examined. There are no appropriate alternative examinations.

(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 credentialing of psychologists provides protection to the public.

(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: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(Amendment)

201 KAR 26:171. Requirements for supervision.

RELATES TO: KRS 319.050, 319.058, 319.064

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032 requires administrative regulations governing the supervision of certified psychologists, psychological associates, candidates for licensure and certification, and license or certificate holders sanctioned by the board. This administrative regulation defines the requirements for the supervision.

Section 1. All supervisory arrangements shall have the prior approval of the board, with both supervisor and supervisee petitioning the board in writing. The supervisor and supervisee shall submit to the board the description of the supervisory arrangement or any change in the supervisory arrangement at least thirty (30) days prior to the effective date.

Section 2. All supervision requirements shall be met with individual, face-to-face, weekly contact between supervisor and supervisee unless otherwise approved by the board and shall include additional supervision sessions as needed. Other formats of supervision such as two (2) way interactive video (telesupervision) may be substituted for face-to-face supervisory contact, upon specific approval by the board. [specified in these administrative regulations:]

Section 3. (1) A certified psychologist or psychological associate may petition the board to be relieved of their obligation to maintain supervision during which period they may not practice psychology.

(2) The certified psychologist or psychological associate shall obtain a supervisor approved by the board before the resumption of practice.

(3) Upon renewal, the certified psychologist or psychological associate shall document compliance with continuing education requirements and shall report on their professional activities and employment during the period without supervision.

Section 4. (1) A licensed psychologist who currently functions as a supervisor with the permission of the board, shall attend a board-approved training session in supervisory practices by December 30,

1996. Failure to do so shall result in suspension of board approval as a supervisor.

(2) A licensed psychologist, who obtains for the first time board approval to function as a supervisor, shall attend a board approved training session in supervisory practices within twelve (12) months of obtaining supervisory status.

(3)(a) Beginning July 1, 1999, each board approved supervisor shall obtain a minimum of three (3) continuing education hours in the area of supervision theory or techniques during each licensure renewal period.

(b) This requirement shall be a part of the thirty (30) hours of continuing education required by 201 KAR 26:175 and not in addition thereto.

(c) This requirement shall commence with the renewal period immediately following the period in which the original supervisory training required by subsections (1) and (2) of this section is received.

(d) Failure to obtain the continuing education required in this subsection shall result in suspension of board approval as a supervisor.

Section 5. (1) The supervisor shall make all reasonable efforts to be assured that each supervisee's practice is in compliance with this administrative regulation.

(2) The supervisor shall be responsible for reporting to the board any apparent violation of the statutes or administrative regulations on the part of the supervisee.

(3) The supervisor shall be required to inform the board immediately of any change in the ability to supervise, or any change in the ability of any supervisee to function in the practice of psychology in a competent manner.

(4) The supervisor shall have the right and the responsibility to control, direct or limit the supervisee's practice in any way deemed appropriate to insure that the supervisee's practice of psychology is competent.

(5) The supervisor of record is responsible for the practice of psychology by the supervisee. If the board initiates an investigation concerning a supervisee, that investigation shall also include the supervisor of record.

(6) For each person supervised pursuant to KRS Chapter 319, the supervisor shall maintain for a period of not less than five (5) years after the last date of supervision a record of each supervisory session that shall include, among other information, the type, place, and general content of the session.

Section 6. (1) "Equivalent experience" shall be defined as 2,000 hours of supervised practice equaling one (1) year of supervised experience. All qualifying experience shall be postcertification.

(2) The supervisor shall provide reports to the board of the supervision of each supervisee according to the following schedule:

Credential Status	Reporting Period	Report Due Date(s)
Psychological Associate or Certified Psychologist	Yearly	January 15th
[Certified Psychologist]	Yearly	January 15th]
Psychological Associate or Certified Psychologist (with 4[5] or more years of full-time practice or its equivalent)	Every 2 Years (with prior board approval)	January 15th
Temporarily Licensed Psychologist	Every 6 Months and (w/month prior to oral exam)	

Temporarily Certified Psychological Associate	Every 6 Months	April and October 15th
Sanctioned Psychologist	Quarterly	January, April, July and October 15th

(3) [(2)] The reports shall include a description of the frequency, format and duration of supervision, an assessment of the functioning of the supervisee, including the strengths, weaknesses, and any other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) When a supervisee has more than one (1) board-approved supervisor, these supervisors shall be in direct contact with one another at least once every six (6) months, and they shall provide [annual] supervisory plans and reports to the board and copies to one another.

(2) A request to have more than two (2) supervisors at one (1) time shall require a special application to the board which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 8. If the supervisee is either a psychological associate, or a certified psychologist with less than four (4) [five (5)] years of full-time, postcertification practice, or its equivalent, or a licensure candidate with temporary permission to practice, the supervisor of record shall:

- (1) Review and countersign all psychological assessments;
- (2) Review treatment plans, progress notes and correspondence on an as-needed basis to assess the competency of the supervisee to render psychological services;
- (3) Jointly establish with the supervisee and submit a supervisory plan to the board at the beginning of the supervisory relationship. The plan shall:
 - (a) Be updated or revised [annually] and submitted to the board with the regular report of supervision;
 - (b) Include intended format, and goals to be accomplished through the supervisory process; and
 - (c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.
- (4) Have direct observation of the supervisee's work at least once every two (2) months. Direct observation can be accomplished through audiotaping, video camera, videotaping, one (1) way mirror or as a cotherapist;
- (5) Have direct knowledge of the size and complexity of the supervisee's caseload;
- (6) Limit and control the caseload as appropriate to the supervisee's level of competence;
- (7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and
- (8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 9. If the supervisee is a psychological associate or certified psychologist with more than four (4) [five (5)] years of full-time, postcertification practice, or its equivalent, the supervisor of record shall:

- (1) Review and countersign psychological assessments as needed or appropriate;
- (2) Review treatment plans, notes, and correspondence as needed or appropriate;
- (3) Jointly establish with the supervisee and submit a supervisory plan to the board at the beginning of the supervisory relationship. The plan shall:

- (a) Be updated or revised [annually] and submitted to the board with the regular report of supervision;
- (b) Include intended format, and goals to be accomplished through the supervisory process; and
- (c) Include methods that the supervisor and supervisee shall employ to evaluate the supervisory process.
- (4) Have direct observation of the supervisee's work on an as-needed basis;
- (5) Have direct knowledge of the size and complexity of the supervisee's caseload;
- (6) Limit and control the caseload as appropriate to the supervisee's level of competence;
- (7) Have knowledge of the therapeutic modalities and techniques being used by the supervisee; and
- (8) Have knowledge of the supervisee's physical and emotional well-being when it has a direct bearing on the supervisee's competence to practice.

Section 10. (1) The supervisee shall be responsible for:

- (a) Keeping the supervisor adequately informed at all times of their activities and their ability to function; and
 - (b) Seeking supervision as needed in addition to regularly scheduled supervisory sessions.
- (2) The supervisee shall:
- (a) Participate with the supervisor in establishing [yearly] supervisory goals and in completing the regular supervisory reports;
 - (b) Be jointly responsible with the supervisor for ensuring that supervisory reports and plans have been sent to the board in keeping with the reporting schedule;
 - (c) Be responsible for reporting to the board any apparent violation of the statutes or administrative regulations, on the part of the supervisor.

Section 11. Identification of Provider. The actual deliverer of services shall be identified to the client and on all billings for services rendered, indicating services performed by the certified psychologist, [or] psychological associate, trainee, or other provider and supervised by the licensed psychologist.

Section 12. Frequency of Supervision. (1)[(a)] Psychological associates shall have a minimum of one (1) hour of individual face-to-face supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following certification.

(2) [(b)] After two (2) years of full-time, postcertification practice, or its equivalent, the supervisor and supervisee may petition the board to alter the format, frequency or duration of supervision as long as proposed changes include a minimum of two (2) one (1) hour individual face-to-face meetings every four (4) weeks, and the total amount of supervision is not less than four (4) hours per four (4) week period.

(3)(a) After four (4) years of full-time, postcertification practice, or its equivalent, the supervisor and supervisee may petition the board for further modification of the format, frequency, or duration of supervision, with a minimum amount of one (1) hour of face-to-face supervision per month. Board approval of additional modification of the format, frequency or duration of supervision may be reviewed upon request made to the board.

(b) Upon change of supervisor, a new plan for supervision shall be submitted by the supervisor and supervisee to the board for approval. This plan may require additional supervision than was previously approved by the board.

(c) Upon termination of the supervisor-supervisee relationship, the final report of supervision shall be submitted to the board.

[(2)(a)] Certified psychologists shall have a minimum of one (1) hour of individual face-to-face supervision on a weekly basis for the first two (2) years of full-time practice or its equivalent following certification.

(b) After the requirements of paragraph (a) of this subsection have been met, the supervisor and supervisee may petition the board for modification of the supervisory arrangement, with a minimum amount of supervision of one (1) hour per month;]

Section 13. Supervision of a Disciplined Psychologist. (1) The board shall appoint an approved supervisor to supervise a [the] disciplined psychologist for the period of time defined by the board.

(2) The disciplined [The sanctioned] psychologist shall be responsible for paying the fee for supervision.

[(1) The board shall appoint a board member to serve as a liaison between the board and the approved supervisor;

(2) The board liaison shall be responsible for defining in writing to the supervisor and the supervisee cause for the disciplined psychologist to be receiving board-mandated supervision and the expected goals or outcomes of the supervision;]

(3) The supervisor shall have completed the board approved training course in supervision. [The approved supervisor and the sanctioned psychologist shall establish a written plan for supervision that incorporates the goals or expected outcomes as defined by the board liaison. This plan shall have board approval;]

(4) The responsibilities of the supervisor shall be as follows:

(a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;

(b) Meet with the disciplined psychologist and the board liaison to:

1. Summarize the actions and concerns of the board;

2. Review the goals and expected outcomes of supervision submitted by the board liaison;

3. Develop a specific plan of supervision; and

4. Review the reporting requirements that shall be met during the period of supervision;

(c) Meet with the disciplined psychologist at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;

(d) [The approved supervisor shall] Submit quarterly reports to the board which reflect progress, problems, and any other information relevant to the need for board-mandated supervision;

(e) Make all reasonable efforts to insure that the disciplined psychologist's practice is in compliance with KRS Chapter 319 and the administrative regulations promulgated thereunder;

(f) Report to the board any apparent violation of the statutes or administrative regulations on the part of the disciplined psychologist;

(g) Report to the board immediately any change in the ability to supervise, or any change in the ability of the disciplined psychologist to function in the practice of psychology in a competent manner;

(h) Review and countersign psychological assessments as needed or appropriate;

(i) Review treatment plans, notes, and correspondence as needed or appropriate;

(j) Have direct observation of the disciplined psychologist's work on an as-needed basis;

(k) Have direct knowledge of the size and complexity of the disciplined psychologist's caseload;

(l) Have knowledge of the therapeutic modalities and techniques being used by the disciplined psychologist; and

(m) Have knowledge of the disciplined psychologist's physical and emotional well-being when it has direct bearing on the disciplined psychologist's competence to practice.

(5) The supervisor shall have the right and the responsibility to control, direct or limit the disciplined psychologist's practice in any way deemed appropriate to insure that the disciplined psychologist's practice is competent.

[(5) The board, at its discretion, may reduce the supervision requirement or may alter the original supervisory requirement if there is sufficient evidence presented to the board that the goals or expected outcomes of supervision have been accomplished;](6) The supervisor shall contact the board liaison with concerns or problems

with the disciplined psychologist, his practice or the supervision process. [The board, at its discretion, may alter the goals or expected outcomes of the supervision, or may approve a change of supervisors, or may direct a change of supervisors if there is sufficient evidence presented to the board that the goals or expected outcomes of supervision or are not being met;]

(7) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision. The meeting shall include the supervisor, disciplined psychologist and board liaison. A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 14. Board Liaison for Disciplined Psychologist. The board shall appoint a board member to serve as a liaison between the board and the approved supervisor. The responsibilities of the board liaison are as follows:

(1) Recruit the supervising psychologist from a list provided by the board;

(2) Provide the supervising psychologist with the originating complaint, agreed order or findings of the hearing and supply any other material relating to the disciplinary action as deemed appropriate by the liaison;

(3) Insure that the supervising psychologist is provided with the necessary documentation for liability purposes to clarify that he is acting as an agent of the board and has immunity commensurate with that of the board;

(4) Provide the supervising psychologist with a written description of the responsibilities of the supervisor and a copy of the responsibilities of the liaison;

(5) Insure that the board has informed the disciplined psychologist, in writing, of the name of the supervising psychologist. Insure that this notification letter specifies that the disciplined psychologist shall meet with the supervising psychologist and the liaison within thirty (30) days of the date of the notification letter;

(6) Meet with the supervising psychologist and disciplined psychologist within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the statute and administrative regulations regarding supervision requirements for disciplined psychologists and assist with the development of a plan of supervision. The plan of supervision shall be written at this first meeting;

(7) Submit the report of supervision to the board for approval. The liaison shall be responsible for placing the report of supervision on the agenda for review and approval at the next regularly scheduled board meeting. In the interim, the supervising psychologist and disciplined psychologist shall continue to meet;

(8) Remain available to the supervising psychologist to provide assistance and information as needed;

(9) Report any problems or concerns to the board regarding the supervision and communicate the directives of the board to the supervising psychologist;

(10) Review the quarterly report of supervision and forward to the supervision committee of the board for approval; and

(11) Meet with the supervising psychologist and the disciplined psychologist at the end of the term of supervision to summarize the supervision.

DONALD E. RALPH, Ph.D., Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: October 3, 1997

FILED WITH LRC: October 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1997 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency

in writing by November 19, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons practicing psychology under the supervision of a licensed psychologist.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no change in costs.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There will be no change in costs.

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

1. First year following implementation: Supervisors will be required to submit reports on the activities of supervisees as set forth in the regulation.

2. Second and subsequent years: Supervisors will be required to submit reports on the activities of supervisees as set forth in the 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: The reporting requirements will be changed for supervisory reports as set forth in the regulation. Generally the requirements will be decreased in frequency from the present.

(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: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having certain persons supervised.

(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 credentialing of psychologists provides protection to the public.

(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: It

would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET Kentucky Board of Examiners of Psychology (Amendment)

201 KAR 26:175. Continuing education.

RELATES TO: KRS 319.050, 319.058, 391.064

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032 requires administrative regulations governing the completion of continuing education as a condition for renewal of license or certificate. This administrative regulation establishes the continuing education requirements for renewal of a license or certificate.

Section 1. Definitions. (1) "Continuing education" means participation in approved programs beyond the basic educational requirements that provide specific content planned and evaluated to improve the license or certificate holder's professional competence, make possible acquisition of new skills and knowledge required to maintain competence, and strengthen the habits of critical inquiry and balanced judgment.

(2) "Continuing education (CE) hour" means a fifty-five (55) minute clock hour of instruction.

Section 2. (1) Each license or [License and] certificate holder shall be required to document the completion of at least thirty (30) continuing education (CE) hours approved by the board within each three (3) year renewal period.

(2) Continuing educational hours shall not carry over from one (1) renewal period to the next.

(3)(a) Beginning July 1, 1999, each licensed psychologist providing supervision to a certified psychologist or a psychological associate shall obtain a minimum of three (3) continuing education hours in the area of supervision theory or techniques during each licensure renewal period.

(b) This requirement shall be a part of the thirty (30) hours of continuing education required by subsection (1) of this section and not in addition thereto.

(c) This requirement shall commence with the renewal period immediately following the period in which the original supervisory training required by 201 KAR 26:171, Section 4(1) and (2), is received. [Following the effective date of this administrative regulation, the initial requirement shall be prorated as follows:

(1) Holders of licenses or certificates with renewal dates between July 1, 1994 and June 30, 1995 shall have successfully completed ten (10) approved continuing education hours for that renewal period only. For each renewal period after this renewal, the requirement shall be thirty (30) CE hours approved by the board.

(2) Holders of licenses or certificates with renewal dates between July 1, 1995 and June 30, 1996 shall have successfully completed twenty (20) approved continuing education hours for that renewal

period only. For each renewal period after this renewal, the requirement shall be thirty (30) CE hours approved by the board:

(3) Holders of licenses or certificates with renewal dates between July 1, 1996 and June 30, 1997 shall have successfully completed thirty (30) approved continuing education hours for this and for each ensuing renewal period.]

Section 3. Hours required to satisfy the continuing education requirement shall be completed and reported at the time of license or certificate renewal. It shall be the responsibility of the license or certificate holder to maintain and provide adequate records including certificates of attendance and documentation of completion of approved programs of continuing education hours.

Section 4. Only continuing education activities approved by the board shall satisfy continuing education requirements for renewal of a license or certificate. It shall be the responsibility of the license or certificate holder to determine prior to attending that the specific continuing education program has been approved by the board or is offered or sponsored by an organization approved by the board to sponsor continuing education programs.

Section 5. Approved Sponsoring Organizations and Approved Programs. (1) The following organizations are authorized to offer or sponsor continuing education programs for which participation shall satisfy the requirements of this administrative regulation:

(a) The American Psychological Association; American Medical Association; American Psychiatric Association; National Association of Social Workers, or any of their affiliated state chapters;

(b) Recognized state, regional, national, or international psychological associations;

(2) the following programs shall be approved for continuing education:

(a) [(e)] Courses for graduate-level academic credit or workshops in psychology or psychiatry offered by national, regional, or state accredited academic institutions or their affiliated hospitals or medical centers;

(b) [(d)] The Kentucky Mental Health Institute and The Kentucky School of Alcohol and Other Drug Studies sponsored by the Kentucky Department for [of] Mental Health and Mental Retardation Services.

(c) Home study courses provided by the American Psychological Association; and

(d) Interactional videoconferencing provided by organizations listed in subsection (1) of this section.

(3) [(2)] The board may approve other organizations as sponsors of continuing education at its discretion.

(a) The application for approval shall be accompanied by a fee of fifty (50) dollars.

(b) Each approved sponsor shall submit an annual report of programs offered, and any other information as the board shall request.

(c) The board may renew its approval of a sponsor of continuing education on an annual basis and may charge a fee not to exceed fifty (50) dollars for renewal.

(4) [(3)] The board may approve specific continuing education programs at its discretion.

(a) The application for approval shall be accompanied by a fee of fifty (50) dollars.

(b) The program shall meet the criteria established in Section 6 of this administrative regulation.

(c) The program shall only be presented one (1) time following its approval by the board; a request may be made for a repeated offering by submission of a request form and a renewal fee of ten (10) dollars for each request.

Section 6. Continuing education programs which satisfy the requirements for license or certificate renewal shall meet the following

criteria:

(1) The program is offered or sponsored by an organization which has been approved by the board, or the specific program has been approved by the board;

(2) The program has a clearly-stated purpose and defined content area and is consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;

(3) Presenters are professionals qualified in the defined content area;

(4) The program's time is clearly stated. Actual contact time shall be a minimum of one (1) continuing education hour;

(5) Attendance is recorded by the program's sponsor;

(6) Documentation of completion is provided to the participant;

(7) Participants are required to complete an evaluation of the program.

Section 7. Equivalencies. (1) A graduate-level psychology course taken at an accredited academic institution shall earn CE hours on the following basis:

(a) Each one (1)-hour semester course shall be judged to be the equivalent of fifteen (15) CE hours for the purposes of meeting the requirements of this administrative regulation; and

(b) Each one (1)-hour quarter course be the equivalent of nine (9) CE hours for the purposes of meeting the requirements of this administrative regulation.

(2) The teaching of a graduate-level course in psychology at an accredited academic institution shall earn CE hours on the following basis: teaching a three (3)-hour semester or quarter course shall be judged to be the equivalent of six (6) CE hours for purposes of meeting the requirements of this administrative regulation. Within any given renewal period, credit may be obtained not more than once for teaching a particular course. No more than six (6) CE hours may be completed through these teaching activities.

(3) The teaching of approved continuing education workshops and programs shall earn CE hours on a one-to-one (1 to 1) basis within any given renewal period, credit may be obtained not more than once for teaching a particular workshop or program. No more than six (6) CE hours may be completed through these teaching activities.

(4) A home study course or interactive videoconference by an approved provider shall earn continuing education hours on the following basis:

(a) A home study course shall be deemed to be the equivalent of six (6) continuing education hours for the purpose of meeting the requirements of this administrative regulation. Within any given renewal period, credit may be obtained not more than once for completing a particular study course. No more than six (6) continuing education hours may be obtained through home study in any renewal period.

(b) Teleconferencing in an interactive setting shall earn one (1) continuing education hour for each clock hour of participation for the purpose of meeting the requirements of this administrative regulation. Within any given renewal period, no more than six (6) continuing education hours may be obtained for interactive teleconferencing participation.

DONALD E. RALPH, Ph.D., Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: October 3, 1997

FILED WITH LRC: October 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1997 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing

is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons practicing psychology are required to receive continuing education as a condition of renewal.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no change in costs.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There will be no change in costs.

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

1. First year following implementation: Reporting requirements will remain the same.

2. Second and subsequent years: Reporting requirements will remain the same.

(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: Reporting requirements will remain the same.

(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: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having credentialed persons receive continuing education.

(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 credentialing of psychologists provides protection to the public.

(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: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET Kentucky Board of Examiners of Psychology (Amendment)

201 KAR 26:180. Requirements for granting licensure or certification in psychology by reciprocity.

RELATES TO: KRS 319.032

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032 requires the adoption of administrative regulations for the granting of license or certificate through reciprocity. This administrative regulation establishes the requirements for licensure or certification.

Section 1. The board may issue a license or certificate to any applicant who qualifies for a license or certificate pursuant to an agreement of reciprocity entered into by the board of this jurisdiction with the board or boards of any other jurisdiction or multiple jurisdictions.

Section 2. The applicant for licensure or certification in psychology by reciprocity shall:

(1) Hold a current valid license or certificate in good standing to practice psychology which has been granted by at least one (1) state or the District of Columbia or a Canadian province which maintains a psychology registration board that is a constituent member of the Association of State and Provincial Psychology Boards and with whom this board has an agreement of reciprocity;

(2) Have a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and

(3) Have no reports of disciplinary action filed with the Association of State and Provincial Psychology Boards.

Section 3. The board shall conduct a face-to-face examination of an applicant for licensure by reciprocity. The applicant shall demonstrate an acceptable level of knowledge of Kentucky mental health law.

Section 4. An applicant for licensure with the health service provider designation shall demonstrate that he is qualified in at least one (1) of the specialty areas of clinical, counseling, or school psychology.

Section 5. When the applicant has no postdoctoral supervised year of experience, a determination may be made by the board of the applicant's practice experience, with five (5) years of full-time practice after licensure or certification as an equivalent of the required year of postdoctoral experience.

DONALD E. RALPH, Ph.D., Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: October 3, 1997

FILED WITH LRC: October 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1997 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.

Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons applying for a credential by means of reciprocity.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no change in costs.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There will be no change in costs.

(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 candidate for credential by reciprocity shall have five years of practice in the other jurisdiction as well as no disciplinary actions. Reporting requirements will remain the same.

2. Second and subsequent years: A candidate for credential by reciprocity shall have five years of practice in the other jurisdiction as well as no disciplinary actions. Reporting requirements will remain the same.

(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: Reporting requirements will remain the same. Each applicant will now be reviewed for disciplinary actions on ASPPB data bank.

(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: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having applicants have five years of practice in another state and no disciplinary actions.

(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 credentialing of psychologists provides protection to the public.

(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: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET Kentucky Board of Examiners of Psychology (Amendment)

201 KAR 26:185. Requirements for granting licensure or certification in psychology to an applicant licensed or certified in another state.

RELATES TO: KRS 319.032

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth procedures for the granting of a license or certificate to an applicant who is licensed or certified in another state which does not have an agreement of reciprocity with this board.

Section 1. (1) The board may consider an applicant for licensure or certification in psychology in Kentucky who:

(a) Is licensed or certified in another state which does not have an agreement of reciprocity with the Kentucky Board of Examiners of Psychology; and

(b) Holds a current valid license or certificate to practice psychology which has been granted by:

1. At least one (1) state;

2. The District of Columbia; or

3. A Canadian province which maintains a psychology registration board that is a constituent member of the Association of State and Provincial Psychology Boards;

(c) Has a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and

(d) Has no reports of disciplinary action filed with the Association of State and Provincial Psychology Boards.

(2) The board shall consider the following criteria in reviewing the credentials of the applicant:

(a) A graduate degree in psychology shall be required:

1. At the doctoral level for licensure;

2. At the master's level for certification; and

3. Other educational requirements as specified in 201 KAR 26:200.

(b) Standards of training and experience as specified in 201 KAR 26:190. If the applicant for licensure has less than one (1) year of postdoctoral supervised experience, a determination may be made by the board of the applicant's practice experience, with five (5) years of full-time practice after licensure or certification as an equivalent of the required year of postdoctoral experience.

(3) An applicant for licensure shall:

(a) Submit to an examination composed of the Examination for Professional Practice in Psychology (EPPP):

1. Developed by the Professional Examination Service; and

2. Owned by the Association of State and Provincial Psychology

Boards; and

(b) Obtain a score equal to passage of seventy (70) percent of the test items.

(4) The board shall review the applicant's:

(a) Record as to complaints, or hearings held in previous jurisdictions; and

(b) Professional references.

Section 2. An applicant for licensure shall submit to a structured oral examination administered by two (2) licensed psychologists, ~~at least one (1) of whom is licensed in the candidate's specialty area~~.

(1) The examination shall cover ethical principles, professional practice in the candidate's specialty area, and Kentucky mental health law.

(2) Each examiner shall independently rate the applicant's performance.

(3) The applicant shall demonstrate an acceptable level of knowledge in each of the three (3) areas in order to pass the examination.

(4) An applicant who receives a pass rating from at least two (2) examiners shall have successfully passed the oral examination.

Section 3. An applicant for licensure with the health service provider designation shall demonstrate that he is qualified in at least one (1) of the specialty areas of clinical, counseling, or school psychology.

DONALD E. RALPH, Ph.D., Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: October 3, 1997

FILED WITH LRC: October 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1997 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons applying for a credential who are currently credentialed in another state that does not have reciprocity with 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: There will be no change in costs.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There will be no change in costs.

(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 candidate for credential under this regulation shall have five years of practice in the other jurisdiction as well as no disciplinary actions. Reporting requirements will remain the same.

2. Second and subsequent years: A candidate for credential under this regulation shall have five years of practice in the other jurisdiction as well as no disciplinary actions. Reporting requirements will remain the same.

(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: Reporting requirements will remain the same. Each applicant will now be reviewed for disciplinary actions on ASPPB data bank.

(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: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having applicants have five years of practice in another state and no disciplinary actions.

(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 credentialing of psychologists provides protection to the public.

(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: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET

Kentucky Board of Examiners of Psychology (Amendment)

201 KAR 26:215. Nonresident status.

RELATES TO: KRS 319.015

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.015(8)

allows a nonresident psychologist temporarily employed in the state to render psychological services for no more than thirty (30) days every two (2) years. This administrative regulation establishes the requirements for this practice.

Section 1. (1) Upon written registration with the board, a licensee or certificate holder from another state may, upon board approval, render psychological services in this state for not more than thirty (30) days every two (2) years.

(2) Board approval shall be contingent upon:

(a) Receipt of documentation that the nonresident psychologist holds a valid license or certificate in good standing from another jurisdiction; and

(b) Confirmation of no reports of disciplinary action filed with the Association of State and Provincial Psychology Boards.

(3) Temporary approval may be granted to begin nonresident practice upon review and approval of the chairman of the board. Temporary approval may extend only until the next regularly scheduled meeting of the board.

Section 2. Upon the completion of the thirty (30) day period, the nonresident licensee or certificate holder shall submit a written report to the board of each date on which psychological services were rendered in this state, and the location of the site of those services.

Section 3. For purposes of this administrative regulation, the provision of psychological services on a given date, regardless of the period of time of those services, shall constitute one (1) day.

Section 4. The provisions of this administrative regulation shall not be used to begin practice in Kentucky by an applicant for temporary or regular licensure or certification pending credentials review.

DONALD E. RALPH, Ph.D., Chairman
MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: October 3, 1997

FILED WITH LRC: October 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1997 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: Persons credentialed in another state wishing to practice for less than thirty days 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: There will be no change in costs.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There will be no change in costs.

(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 candidate for registration under this regulation shall have confirmation of a credential in good standing from another jurisdiction as well as no disciplinary actions. Reporting requirements will remain the same.

2. Second and subsequent years: A candidate for registration under this regulation shall have confirmation of a credential in good standing from another jurisdiction as well as no disciplinary actions. Reporting requirements will remain the same.

(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: Reporting requirements will remain the same. Each applicant will now be reviewed for disciplinary actions on ASPPB data bank.

(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: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having registrants have good standing in another state and no disciplinary actions.

(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 credentialing of psychologists provides protection to the public.

(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: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

GENERAL GOVERNMENT CABINET Kentucky Board of Examiners of Psychology (Amendment)

201 KAR 26:230. Examinations.

RELATES TO: KRS 319.050, 319.058, 319.064

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032 requires administrative regulations governing the examination of applicants for licensure and certification. This administrative regulation

outlines requirements concerning examinations.

Section 1. General Requirements. (1) The board shall publish pertinent instructions and establish the examination schedule which shall include the:

- (a) Place;
- (b) Time; and
- (c) Final date by which the board shall have received the applicant's materials.

(2) An applicant for examination shall submit a complete application and pay the required fee to the board in a timely manner. Once the application has been approved by the board, the applicant shall be scheduled to take the examination at the next regularly scheduled date.

(3) If an applicant fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee.

(4) If an applicant fails to appear for or to complete the examination without a valid reason, the applicant shall forfeit all fees paid.

(5) If an applicant fails to appear for a second scheduled examination without presenting a valid reason in writing such as illness or death in the immediate family, the application shall be terminated on the date of the examination, and the applicant shall be denied licensure or certification on the basis of failure of the examination by default. The applicant may not practice psychology or use the title "psychologist."

Section 2. Examination for Licensure. (1) An applicant for licensure shall submit to an examination composed of the Examination for Professional Practice in Psychology (EPPP) developed by the Professional Examination Service and owned by the Association of State and Provincial Psychology Boards. The applicant shall obtain a score equal to passage of seventy (70) percent of the test items.

(2) An applicant for licensure who has been approved to sit for the objective examination (EPPP) and whose supervisory arrangement has been approved by the board shall be considered to be functioning under a temporary license until all requirements for licensure have been completed.

(3) If an applicant for licensure fails the objective examination, the candidate may, with payment of the required fee, be rescheduled to take the examination at its next regularly scheduled date.

(a) The candidate shall continue to function under the supervision of the board-approved supervisor.

(b) The candidate may not be scheduled for the oral examination until the objective examination (EPPP) has been successfully passed and 1,800 hours of supervised experience have been approved by the board.

(c) The candidate shall continue to function under the supervision of the approved supervisor until all examinations are successfully completed.

(4) If an applicant for licensure fails the oral examination, the board may, upon the development of a remediation plan acceptable to the board, reissue the temporary license to function under supervision until the results of the next examination are known. Under no circumstances shall a temporary license be renewed by the board more than two (2) times.

(5) If an applicant for licensure fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee and with the approved application still constituting a temporary license to function under supervision.

(6) If an applicant for licensure fails to appear for or to complete the examination without a valid reason, the applicant shall forfeit all fees paid. The approved application shall no longer constitute a

temporary license and the applicant for licensure may not practice psychology, or use the title "psychologist."

(7) An applicant for licensure shall submit to a structured oral examination administered by two (2) licensed psychologists [~~at least one (1) of whom is licensed in the candidate's specialty area~~].

(a) This examination shall cover ethical principles, professional practice [~~in the candidate's specialty area~~] and Kentucky Mental Health Law.

(b) Each examiner shall independently rate the applicant's performance.

(c) The applicant shall demonstrate an acceptable level of knowledge in each of the three (3) areas in order to pass the examination.

(d) An applicant who receives a pass rating from at least two (2) examiners shall have successfully passed the oral examination.

(8) If the applicant fails the first oral examination, the applicant may reapply with a remediation plan.

(a) Upon completion of the remediation plan approved by the board, the applicant shall be administered an oral examination by a second team composed in the same manner as the first team.

(b) If the second oral examination is failed, the applicant may reapply with a remediation plan.

(c) Upon completion of the approved remediation plan, the applicant shall be administered an examination by a team of the licensed members of the board and appointed examiners as needed.

(d) A majority of the examining team shall rate the applicant as having passed in each of the three (3) areas in order to pass the examination.

(9) If the applicant for licensure fails to pass the examination, and wishes to apply for certification, a completed application for certification and the appropriate fee, if required, shall be submitted with the proposed area of competency and supervision indicated. The board shall accept the applicant's previous examination results to satisfy the certification requirements as to criteria level and area of competency.

Section 3. Examination for Certification as a Psychological Associate. (1) An applicant for certification as a psychologist associate shall submit to an examination composed of the Examination for Professional Practice in Psychology (EPPP) developed by the Professional Examination Service and owned by the Association of State and Provincial Psychology Boards. The applicant shall obtain a score equal to or greater than passage of sixty (60) percent of the test items.

(2) An applicant for certification as a psychological associate who has been approved to sit for examination and whose supervisory arrangement has been approved by the board shall be considered to be functioning under a temporary certificate until the results of the next regularly scheduled examination are known.

(3) If an applicant for certification fails the examination, the board may, upon the development of a remediation plan acceptable to the board, reissue the temporary certificate to function under supervision until the results of the next regularly scheduled examination are known. Under no circumstances shall a temporary certificate be renewed by the board more than two (2) times.

(4) If an applicant for certification fails to appear for the scheduled examination and presents a valid reason in writing for missing the examination, such as illness or death in the immediate family, the examination may be deferred until the next scheduled date without forfeiture of the examination fee and with the approved application still constituting a temporary certificate to function under supervision.

(5) If an applicant for certification fails to appear for or to complete the examination without a valid reason, the applicant shall forfeit all fees paid. The approved application shall no longer constitute a temporary certificate and the applicant for certification shall not practice psychology, or use the title "psychologist" or "psychological associate".

DONALD E. RALPH, Ph.D., Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: October 3, 1997

FILED WITH LRC: October 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1997 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: Persons applying for licensure as a psychologist.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no change in costs.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no change in costs.

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The change in this regulation simply removes the requirement that a member of the oral examination team have the same specialty area as the candidate. The examination process will be facilitated by this change.

(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 credentialing of psychologists provides protection to the public.

(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: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

JUSTICE CABINET Department of Corrections Division of Adult Institutions (Amendment)

501 KAR 6:060. Northpoint Training Center.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Northpoint Training Center.

Section 1. (1)(a) Northpoint Training Center policies and procedures, October 14 [May 14], 1997, are incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(2) Northpoint Training Center policies and procedures include:

NTC 01-05-01	Extraordinary Occurrence Reports
NTC 01-10-01	Legal Assistance for Corrections Staff
NTC 01-11-01	Political Activities of Merit Employees
NTC 01-15-01	Establishment of the Warden as Chief Executive Officer
NTC 01-17-01	Relationships with Public, Media and Other Agencies (Amended 10/14/97)
NTC 02-02-02	Warden's Participation in the Agency Budgeting Process
NTC 02-03-01	Accounting for Appropriations and Expenditures of Funds
NTC 02-04-01	Internal Control and Monitoring of Accounting Procedures
NTC 02-07-02	Chapel Fund
NTC 02-08-01	Inmate Canteen (Amended 10/14/97)
NTC 02-10-01	Insurance Coverage (Amended 10/14/97)
NTC 02-12-01	Inmate Accounts (Amended 10/14/97)
NTC 04-01-01	Training and Staff Development
NTC 04-04-01	Firearms and Chemical Agents Training
NTC 06-01-01	Offender Records

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NTC 06-01-02	Records - Release of Information	NTC 16-02-03	Honor Dorm and Outside Detail Dorm Visiting
NTC 06-01-03	Taking Offender Record Folders onto the Yard	NTC 16-02-04	Controlled Visitation
NTC 08-05-01	The Fire and Safety Officer	NTC 16-03-01	Inmate Furloughs
NTC 08-05-02	Fire Procedures	NTC 16-05-01	Telephone Use and Control
NTC 08-05-03	Fire Prevention	NTC 17-01-01	Personal Property Control
NTC 08-05-04	Storage of Flammables and Dangerous Chemicals and Their Use	NTC 17-01-02	Authorized Inmate Personal Property
NTC 08-07-01	Safety Standards	NTC 17-01-03	Unauthorized Inmate Property
NTC 10-01-01	Special Management Unit	NTC 17-01-04	Disposition of Unauthorized Property
NTC 10-03-01	Protective Custody	NTC 17-01-05	State Issue and Required Inmate Clothing
NTC 11-03-01	Food Services: General Guidelines	NTC 17-03-01	Assessment and Orientation
NTC 11-04-02	Menu, Nutrition and Special Diets	NTC 18-01-01	Preparole Progress Report
NTC 11-05-02	Health Standards and Regulations for Food Service Employees (Amended 10/14/97)	NTC 18-02-01	Classification
NTC 11-06-01	Inspection and Sanitation	NTC 18-02-02	Classification - 48 Hour Notification
NTC 11-07-01	Purchasing and Storage of Food Products	NTC 18-03-01	Special Notice Form
NTC 12-01-01	Institutional Inspection	NTC 18-05-01	Transfers of Inmates
NTC 12-02-01	Personal Hygiene for Inmates; Clothing and Linens [(Amended 5/14/97)]	NTC 18-05-02	Transfer of Inmates to Kentucky Correctional Psychiatric Center
NTC 12-02-02	Issuance of Personal Hygiene Products	NTC 19-01-01	Inmate Work Program [(Amended 5/14/97)]
NTC 12-07-01	Grooming and Hair Care Standards	NTC 19-01-03	Temporary Leave from Job Assignment
NTC 13-01-01	Emergency Medical Care Plan	NTC 19-02-01	Correctional Industries
NTC 13-01-02	Emergency and Specialized Health Services	NTC 19-02-02	Guidelines for Correctional Industries
NTC 13-02-01	Administration and Authority for Health Services [(Amended 5/14/97)]	NTC 20-01-01	Educational Programs
NTC 13-03-01	Sick Call and Pill Call	NTC 20-02-02	Live Work Projects in Vocational School Classes
NTC 13-04-01	Utilization of Pharmaceutical Products [(Amended 5/14/97)]	NTC 21-01-01	Library Services
NTC 13-05-01	Dental Services	NTC 22-03-01	Conducting Inmate Organizational Meetings and Programs (Amended 10/14/97)
NTC 13-05-03	Dental Radiation Levels	NTC 23-01-01	Religious Services (Amended 10/14/97)
NTC 13-05-04	Attest Steam Incubator	NTC 23-03-01	Marriage of Inmates (Amended 10/14/97)
NTC 13-06-01	Licensure and Training Standards	NTC 24-04-01	Honor Housing (Amended 10/14/97) [Status]
NTC 13-07-01	Provisions for Health Care Delivery	NTC 24-05-01	Unit Management [(Amended 5/14/97)]
NTC 13-08-01	Medical and Dental Records	NTC 25-01-01	Release Preparation Program (Amended 10/14/97)
NTC 13-09-01	Special Diets	NTC 25-01-02	Temporary and [Release]/Community Center Release (Amended 10/14/97)
NTC 13-11-01	Inmate Health Screening and Evaluation [(Amended 5/14/97)]	NTC 25-01-03	Graduated Release (Amended 10/14/97)
NTC 13-12-01	Special Health Care Programs [(Amended 5/14/97)]	NTC 25-02-01	Funeral Trips and Bedside Visits (Amended 10/14/97)
NTC 13-13-01	Inmate Self-administration of Medication	NTC 25-03-01	Inmate Release Procedure (Amended 10/14/97)
NTC 13-17-01	Inmates Assigned to Health Services	NTC 26-01-01	Citizen Involvement and Volunteer Services Program (Amended 10/14/97)
NTC 13-19-01	Mental Health Care Program		
NTC 13-19-03	Suicide Prevention and Intervention Program [(Amended 5/14/97)]		
NTC 13-20-01	Infectious Disease		
NTC 13-20-02	Infection Control		
NTC 13-20-03	Disposal of Biohazard Waste		
NTC 13-21-01	Vision Care and Optometry Services		
NTC 13-22-01	Informed Consent		
NTC 13-23-01	Special Needs Inmates		
NTC 14-01-01	Legal Services Program		
NTC 14-01-02	Receiving, Viewing, Handling and Storage of Video Tapes		
NTC 14-02-01	Inmate Grievance Procedure		
NTC 14-03-01	Inmate Rights and Responsibilities		
NTC 14-03-02	Board of Claims		
NTC 15-01-01	Restoration of Forfeited Good Time		
NTC 15-02-01	Due Process/Disciplinary Procedures		
NTC 15-02-02	Extra Duty Assignments		
NTC 15-02-03	Hearing Officer		
NTC 15-03-01	Rules for Inmates Assigned to Outside Detail		
NTC 15-03-02	Rules and Regulations for General Population Dormitories		
NTC 15-04-01	Inmate Identification		
NTC 15-05-01	Drug Abuse and Intoxicants Testing		
NTC 16-01-01	Mail Regulations		
NTC 16-02-01	Visiting (Amended 10/14/97)		
NTC 16-02-02	Extended and Special Visits		

DOUG SAPP, Commissioner

JACK T. DAMRON, Staff Attorney

APPROVED BY AGENCY: October 6, 1997

FILED WITH LRC: October 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 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 November 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 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 T. Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, FAX: (502) 564-6494.

ADMINISTRATIVE REGISTER - 1136

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 283 employees of the correctional institutions, 1,134 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
Department of Corrections
Division of Adult Institutions
(Amendment)**

501 KAR 6:170. Green River Correctional Complex.

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: 196.035, 197.020, 439.470, 439.590,

439.640

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Green River Correctional Complex.

Section 1. Incorporation by Reference. (1)(a) Green River Correctional Complex Policies and Procedures, October 14 [April 14], 1997, is incorporated by reference.

(b) It may be inspected, copied, or obtained at the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday 8 a.m. to 4:30 p.m.

(2) Green River Correctional Complex Policies and Procedures include:

GRCC 02-06-01 Inmate Canteen

GRCC 02-07-01 Inmate Personal Funds

GRCC 08-03-01 Escape Plan

GRCC 08-05-01 Emergency Squad: Selection, Training and Evaluation

GRCC 08-06-01 Response Units

GRCC 09-02-01 Drug Abuse Testing

GRCC 09-03-01 Procedure for Operation in Event of Dense Fog, Inclement Weather or Loss of Power

GRCC 09-04-01 Inmate Death

GRCC 09-06-01 Entry and Exit Procedures

GRCC 09-09-01 Contraband Control: Collection, Preservation and Disposition of Contraband and Identification of Physical Evidence

GRCC 10-01-01 Special Management Unit (Amended 10/14/97)

GRCC 11-01-01 Food Service Guidelines

GRCC 11-02-01 Food Service: Security

GRCC 11-03-01 Dining Room Guidelines

GRCC 11-04-01 Food Service: Meals

GRCC 11-04-02 Food Service: Menu, Nutrition and Special Diets

GRCC 11-06-01 Health Requirements of Food Handlers

GRCC 11-07-01 Food Service: Inspections and Sanitation

GRCC 12-01-01 Clothing, Bedding, Hygiene Supplies and Barber Services

GRCC 13-01-01 Organization of Medical Services

GRCC 13-02-01 Medical Services: Sick Call, Physician's Clinics and Pill Call

GRCC 13-02-03 Continuing of Care: Health Evaluations, Intra-System Transfer and Individual Treatment Plans

GRCC 13-03-01 Use of Pharmaceutical Products (Amended 10/14/97)

GRCC 13-04-01 Health Records

GRCC 13-04-02 Psychological and Psychiatric Reports

GRCC 13-05-01 Management of Serious and Infectious Diseases

GRCC 13-06-01 Mental Health Services

GRCC 13-07-01 Medical Restraints

GRCC 13-08-01 Eye Care

GRCC 13-09-01 Dental Care

GRCC 13-10-01 Transfers and Medical Profiles

GRCC 13-11-01 Informed Consent

GRCC 13-12-01 Infirmary Care

GRCC 13-13-01 Inmate Self-administration of Medication

GRCC 13-15-01 Health Education Program and Detoxification

GRCC 14-01-01 Inmate Rights and Responsibilities

GRCC 14-02-01 Legal Services Program

GRCC 15-01-01 GRCC Adjustment Program and Procedures

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GRCC 16-01-01 Inmate Visiting (Amended 10/14/97)
 GRCC 16-02-01 Inmate Correspondence and Privilege Mail
GRCC 16-02-02 Inmate Correspondence and Privileged Mail (Added 10/14/97)
 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
 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 Process (Amended 10/14/97) [Program]
 GRCC 25-02-01 Parole Hearing Procedure

DOUG SAPP, Commissioner

JACK T. DAMRON, Staff Attorney

APPROVED BY AGENCY: October 6, 1997

FILED WITH LRC: October 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 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 November 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 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 T. 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

Agency Contact Person: Michael R. Riley, Procedures Officer

(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.

TRANSPORTATION CABINET Department of Highways Division of Transportation Planning Division of Operations (Amendment)

603 KAR 5:230. The extended weight coal or coal by-products haul road system and associated bridge weight limits.

RELATES TO: KRS 177.9771, 189.230

STATUTORY AUTHORITY: KRS 177.9771(10)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 177.9771(2) requires the Secretary of the Transportation Cabinet to certify those public highways which meet certain criteria as the extended weight coal or coal by-products haul road system. KRS 177.9771(1) requires that roads which are currently, or have been in the past, state-maintained toll roads always be included on the extended weight coal or coal by-products haul road system. KRS 189.230 provides that the Department of Highways may prescribe gross vehicle weight limits for bridges lower than the limits prescribed in KRS 177.9771 on any bridge which may be damaged or destroyed to the point of cata-

strophic failure if gross vehicle weights exceed certain limits. This administrative regulation identifies in an official order which is incorporated by reference the extended weight coal or coal by-products haul road system and the bridges on the system which the Department of Highways has judged may be so damaged and prescribes the maximum weight limit for each of these bridges. Further, KRS 177.9771(9) requires the Transportation Secretary to meet with certain local governing bodies and give consideration to their concerns before adding to or deleting from the extended weight coal or coal by-products haul road system and establishes procedures to be followed by local governing bodies requesting this consideration. The official order incorporated by reference sets forth the road segments which were reported to the Transportation Cabinet as having had 50,000 tons or more of coal or coal by-products transported over them during calendar year 1995, the toll roads, and the bridges which are posted for lower weight limits.

Section 1. Definitions. The following terms when used in this administrative regulation or the material incorporated by reference in the administrative regulation shall have the following meanings:

(1) "AASHTO" means the American Association of State Highway and Transportation Officials.

(2) "Catastrophic failure" means a failure that is marked by sudden or unpredictable damage ranging from extreme misfortune to utter ruin.

(3) "CO" means county.

(4) "Coal by-products" means any of the following: fly ash, bottom ash, wet bottom boiler slag, scrubber sludge, burned coal waste (red dog), coal slag, and coal cinders.

(5) "CR" means a public highway, road, or street not maintained by the Kentucky Department of Highways.

(6) "FROM" means the beginning milepoint and terminus of a road segment on the extended weight coal or coal by-product haul road system.

(7) "I" means an interstate and defense highway maintained by the Kentucky Department of Highways.

(8) "KY" means a state numbered highway maintained by the Kentucky Department of Highways.

(9) "LN" means line.

(10) "Local governing body" means the fiscal court of any county, the city council or commission of a city of the first through fourth classes or the council of an urban county government.

(11) "P" means parallel bridge.

(12) "PKWY" means parkway.

(13) "TO" means the ending milepoint and terminus of a road segment on the extended weight coal or coal by-product haul road system.

(14) "TY I" means a single unit truck consisting of two (2) single axles.

(15) "TY II" means a single unit truck consisting of one (1) steering axle and two (2) axles in tandem arrangement.

(16) "TY III" means a single unit truck consisting of one (1) steering axle and three (3) axles in tridem arrangement.

(17) "TY IV" means a tractor-semitrailer combination with five (5) or more axles.

(18) "US" means a United States numbered highway maintained by the Kentucky Department of Highways.

Section 2. Evaluation of Bridges. (1) The department shall determine which bridges on the extended weight coal or coal by-products haul road system may be damaged or destroyed to the point of catastrophic failure by a vehicle operating at the weight authorized by KRS 177.9771 by using the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 interim revisions.

(2) The load factor method of analysis shall be used if a bridge is known to have been designed by this method.

(3) If the allowable stress method of analysis is used, the maximum allowable stress in steel members shall not exceed sixty-nine (69) percent of the yield strength of the steel.

(4) If neither the load factor or allowable stress method of analysis can be used, the Department of Highways shall conduct an on-site inspection to determine if the bridge shows appreciable signs of deterioration or distress or otherwise poses a significant hazard to the traveling public.

Section 3. Limiting Weight on Bridges. The department shall use the guidelines in the AASHTO Manual for Maintenance Inspection Bridges to set a weight limit for a bridge deemed at risk of catastrophic failure pursuant to KRS 189.230(2).

Section 4. Dimension Limits on the Extended Weight Coal Haul Road System. A motor vehicle displaying a valid extended weight coal haul decal or cooperative license plate issued pursuant to KRS 177.9771 and being operated on a road segment set forth in Transportation Cabinet Official Order 97984 [97+84, Official Order 97246, or Official Order 97311;] shall not exceed, the dimension limits set forth in 603 KAR 5:070, Section 4.

Section 5. The Extended Weight Coal and Coal By-product Highway System and Limited Bridges. (1) [Except as amended by Official Order 97246 and Official Order 97311;] The highways or portions of highways listed in Transportation Cabinet Official Order 97984 [97+84] are designated as the extended weight coal and coal by-products haul road system.

(2) The bridges listed in Transportation Cabinet Official Order 97984 [97+84] have been determined by the department to be at risk of damage or destruction to the point of catastrophic failure and a weight limit has been established.

Section 6. Restricted Bridge Use. A person shall not operate, or knowingly cause to be operated, on a bridge listed in Official Order 97984 [97+84] a vehicle whose gross vehicle weight exceeds the weight limits specified for that bridge.

Section 7. Bridge Posted Weight Limits. In accordance with KRS 189.230(3), the Department of Highways shall post the gross vehicle weight limits for each bridge listed in Official Order 97984 [97+84].

Section 8. Additional Bridge Restrictions. A person shall not operate, or knowingly cause to be operated, on a bridge on the extended weight coal or coal by-products haul road system a vehicle whose gross vehicle weight exceeds the limits specified by a notice posted pursuant to KRS 189.230(3).

Section 9. (1) A resolution of a local governing body making a recommendation to the secretary, pursuant to KRS 177.9771(9), shall be submitted to Secretary of Transportation, Transportation Cabinet, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(2) The resolution shall set forth:

(a) A specific description of the road or road segment under consideration; and

(b) A specific description of the inherent and definite hazardous condition; or

(c) The factors which may create a special condition.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference in this administrative regulation:

(a) AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions; and

(b) Transportation Cabinet Official Order 97984 [97+84] adopted by the Transportation Cabinet on September 30, 1997 [August, 1996;

(c) Transportation Cabinet Official Order 97246 issued by the Transportation Cabinet on August 30, 1996;

(d) Transportation Cabinet Official Order 97311 issued by the Transportation Cabinet on October 7, 1996].

(2) A copy of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions may be viewed at the Transportation Cabinet, Department of Highways, Division of Operations, 7th Floor, State Office Building, 501 High Street, Frankfort, Kentucky. Office hours are 8 a.m. until 4:30 p.m., eastern time on weekdays. Copies of the AASHTO Manual for Maintenance Inspection of Bridges, 1983 edition and 1984 and 1985 Interim Revisions may be obtained from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, N.W., Suite 225, Washington, D.C. 20001.

(3) All of the official orders incorporated by reference in this administrative regulation may be viewed, copied, or obtained from the Office of the General Counsel [Secretary], 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-7650 [4890]. The business hours are 8 a.m. until 4:30 p.m. eastern time on weekdays.

J. M. YOWELL, P.E., State Highway Engineer
JAMES C. CODELL III, Secretary

HELEN HELTON, Office of General Counsel

APPROVED BY AGENCY: September 9, 1997

FILED WITH LRC: October 3, 1997 at 10 a.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 21, 1997 at 3:30 p.m. local prevailing time in the Fourth Floor Hearing Room of the State Office Building, 501 High Street, Frankfort, Kentucky. Any person who intends to attend this meeting must in writing by November 14, 1997 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by November 14, 1997. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on November 21, 1997. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, 1016 State Office Building, 501 High Street, Frankfort, Kentucky 40622, Phone: (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis

(1) Type and number of entities affected: The 6,000 coal transporters operating in Kentucky as well as all other persons using the highways included in the Extended Weight Coal Haul Road System.

(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: The administrative regulation is to be implemented state-wide but the largest concentration of roads are located in the coal fields of eastern and western Kentucky. The general perception of the public is that if there are more highways in the Extended Weight Coal Haul Road System, there will be more mining jobs created and therefore an improvement in the economy. This hypothesis has neither been proven nor disproven. However, it is quite true that the more roads there are in the system, the fewer trucks that will be needed to transport the coal which is mined. This means fewer jobs for the coal transporters and

a down-turn in their economy.

(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: It will cost less for the coal owners to have the coal transported in those areas with road segments in the system. However, there is insufficient Road Fund money to maintain the extended weight roads at what is generally considered to be an acceptable level of service. Therefore, more maintenance is required on all of the vehicles routinely using the roads in the Extended Weight Coal Haul Road System, thus increasing the price 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: Savings incurred as a result of being allowed to transport coal at extended weights over additional roads. At the same time a number of roads are being deleted from the system causing an additional cost for the coal transporters who have been operating on those routes. The savings and cost to the industry as a whole should balance. However, individual companies can see a large swing in their cost/savings.

2. Second and subsequent years: Same as 1.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The road segments added to the extended weight system will require more maintenance.

1. First year: The cost of additional maintenance for roads added to the system will be thousands of dollars. Almost all the highways which are being deleted from the system will still have to have additional maintenance or reconstruction because of the earlier transportation of coal at extended weights. Therefore, there will be no off-setting savings for the Transportation Cabinet.

2. Continuing costs or savings: Same as 1.

3. Additional factors increasing or decreasing costs: The lifespan of bridges which are used at these extended weights is considerably shortened. Therefore, the cost to the Transportation Cabinet over the life of the extended weight coal haul road system will be additional millions of dollars.

(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: Road Fund - Department of Vehicle Regulation, Division of Motor Vehicle Enforcement and Department of Highways.

(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: It is generally perceived that including roads in the Extended Weight Coal Haul Road System has a positive effect on the economy of a coal producing region, and a neutral to negative effect elsewhere. Conversely, removing roads from the Extended Weight Coal haul Road System (unless all mines in the area are permanently closed) is generally perceived as having a negative impact on the economy in a coal producing region.

(b) Kentucky: See (a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS 177.9771 mandates the annual update of the extended weight coal haul road system listing. Therefore, legally there was no alternative to the annual update. However, KY 205 was removed from the Extended Weight Coal Haul Road System because of the extremely unsafe condition of the highway. The Transportation Cabinet chose to remove the road from the Extended Weight Coal Haul Road System rather than having to close the road to all traffic.

(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

roads on the Extended Weight Coal Haul Road System will suffer much more damage than the other state-maintained highways. A road which is not in good condition is much unsafer than one in good condition.

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

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: Most of the impacts of the administrative regulation, both positive and negative are mandated by KRS 177.9771. Unless there is a change in state law, there are very few effects generated by the implementation of the administrative regulation.

(11) TIERING: Is tiering applied? Yes. The entire administrative regulation is a tiering of weight and axles allowed on certain roads.

**EDUCATION, ARTS, AND HUMANITIES CABINET
Education Professional Standards Board
(Proposed Amendment)**

704 KAR 20:210. Substitute teachers and emergency school personnel.

RELATES TO: KRS 161.020, 161.028, 161.030, 161.100

STATUTORY AUTHORITY: KRS 161.020, 161.028, 161.030, 161.100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.020 requires that a teacher [teachers] and other professional school personnel hold a certificate [certificates] of legal qualification [qualifications] for the [their] respective position [positions]. KRS 161.100 provides for the issuance of emergency certificates. This administrative regulation establishes a Certificate for Substitute Teaching and establishes the priority status of this certificate in comparison with other regular certificates and in comparison with emergency certificates.

Section 1. (1) The Certificate for Substitute Teaching shall be issued in accordance with the pertinent Kentucky statutes and administrative regulations of the Education Professional Standards Board to an applicant [applicants] who:

(a) Holds [Hold] a valid statement of eligibility for a Kentucky teaching certificate; or

(b) Has [Have] previously held any type of Kentucky certificate for classroom teaching for which the completion of a four (4) year program of teacher preparation and a bachelor's degree were required.

(2) The Certificate for Substitute Teaching shall be issued initially for a duration period of five (5) years and may be reissued or renewed upon recommendation of the employing school district superintendent.

(3) The Certificate for Substitute Teaching shall be valid only for substitute teaching. The Certificate for Substitute Teaching shall not be valid for continuous part-time employment for classroom teaching or as a permanent replacement for a teacher of record for the remainder of the school year.

Section 2. Whenever a substitute teacher [teachers] must be employed to serve during the absence of the teacher of record for a [the] position, priority in selection and employment shall be in accordance with the following order:

(1) A teacher [Teachers] who holds [hold] appropriate regular

certification corresponding to the grade level of the teaching assignment;

(2) A teacher [Teachers] who holds [hold] regular certification for classroom teaching at any grade level;

(3) A teacher [Teachers] who holds [hold] the Certificate for Substitute Teaching;

(4) Except as provided in subsection (5) of this section, a person [persons] certified on an emergency basis for substitute teaching pursuant to 704 KAR 20:120, shall be called according to the following descending order relating to the amount of college hours completed:

(a) A Bachelor's degree;

(b) At least ninety-six (96) semester hours of college credit;

(c) From sixty-four (64) to ninety-five (95) semester hours of college credit;

(5) A person [Persons] certified on an emergency basis for substitute teaching in any health, technical, or industrial occupation with a minimum of four (4) years of occupational experience in the area to be taught and a high school diploma or its equivalent as determined by evidence of an acceptable score on the General Education Development Test.

Section 3. Whenever a substitute teacher, identified through the priority selection found in Section 2 of this administrative regulation, cannot be employed, a district may utilize a person through an approved Education Professional Standards Board One (1) Year Pilot Plan for Emergency Personnel. The One (1) Year Pilot Plan for Emergency School Personnel shall be available to no more than five (5) districts during the 1997-98 school year.

(1) The One (1) Year Pilot Program for Emergency School Personnel shall be reviewed for approval by the Education Professional Standards Board based upon the following documented components:

(a) The number of teaching days not filled with an appropriately certified teacher or appropriately certified emergency substitute in the preceding year;

(b) The extent and anticipated usage of emergency school personnel;

(c) A plan to eliminate the need for emergency school personnel in the future;

(d) The steps taken by the district to recruit and retain emergency certified personnel;

(e) The recruitment of persons with a high school diploma, age twenty-five (25) or over, excluding an individual enrolled in an approved teacher education program;

(f) Recruitment of instructional assistants, parents or other paraprofessionals assigned to the school;

(g) A detailed outline of the eighteen (18) to twenty-one (21) clock hour orientation program required of emergency personnel, emphasizing student safety and a review of district policies and procedures; and

(h) An outline of the screening process, including the required criminal record and reference check.

(2) Upon Education Professional Standards Board approval of the pilot plan, the district shall:

(a) Submit a list, by name, Social Security number, and school, of personnel meeting the requirements in this subsection;

(b) Utilize personnel only in the school for which approval has been granted;

(c) Submit quarterly reports to the Education Professional Standards Board identifying the number of days personnel were utilized under this pilot plan; and

(d) Submit a year-end evaluation of the One (1) Year Pilot Plan for Emergency School Personnel.

ROSA WEAVER, Chair
ROBERT SHERMAN, Attorney

ADMINISTRATIVE REGISTER - 1141

APPROVED BY AGENCY: June 23, 1997

FILED WITH LRC: October 8, 1997 at 1 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 21, 1997, at 10 a.m., in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 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. Susan Leib, Interim Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Phone: (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact person: Ronda Tamme

(1) Type and number of entities affected: 176 local school 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 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: Quarterly reports from local districts.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No additional costs.

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Quarterly reporting from local districts.

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

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

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: None

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

(b) Kentucky:

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Education Professional Standards Board can establish teacher certification standards only be 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: 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:

(11) TIERING: Is tiering applied? No. Certification requirements are applied uniformly to all applicants.

EDUCATION, ARTS, AND HUMANITIES CABINET

Education Professional Standards Board

(Proposed Amendment)

704 KAR 20:305. Written examination prerequisites for teacher certification.

RELATES TO: KRS 161.028, 161.030

STATUTORY AUTHORITY: KRS 161.028, 161.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030

requires that all new teachers, including out-of-state teachers with less than two (2) years' experience, successfully complete appropriate written tests prior to initial certification in Kentucky. The tests are required to measure communication skills, general knowledge, professional education concepts, and knowledge in the specific teaching field of the applicant. The Education Professional Standards Board is required to select the tests; determine the minimum acceptable level of achievement on each test; establish a reasonable fee related to the cost of administration of the tests, with the fees to be paid by the teacher applicants; and establish procedures for persons having less than minimum levels of performance on a test to repeat that test and be informed of strengths and weaknesses in performance areas. This administrative regulation implements these duties relative to teacher testing.

Section 1. All teacher applicants [A new teacher applicant and an out-of-state applicant] for certification [with less than two (2) years of teaching experience as defined in 704 KAR 20:045] shall successfully complete the appropriate written tests identified in this administrative regulation prior to initial Kentucky certification. Scores on tests completed [five (5) or] more than five (5) years prior to application for certification shall not be acceptable.

Section 2. The following NTE Core Battery Tests and passing scores shall be required of each new teacher applicant and an out-of-state applicant with less than two (2) years of teaching experience as defined in 704 KAR 20:045:

(1) Communication skills - 646;

(2) General knowledge - 643;

(3) Professional knowledge - 644.

Section 3. Specialty tests and passing scores shall be required of each new teacher applicant and any teacher seeking additional certificates as identified in this section.

(1) An applicant for interdisciplinary early childhood education, birth to primary, certification shall take an Education Professional Standards Board test for interdisciplinary early childhood, with a passing score of 150.

(2) An applicant for elementary certification shall take the NTE Early Childhood Education Test (10020) with a passing score of 480 through September 30, 1997. After this date, an applicant for elementary certification shall take Elementary Education: Curriculum and Instruction (10011) with a passing score of 143.

(3) An applicant for middle school certification shall take Education in the Elementary School Test (20010) with a passing score of 510.

(4) An applicant for certification for teacher of exceptional children

(except for communication disorders) shall take the Special Education Test (10350) with a passing score of 500 through September 30, 1997. After this date, an applicant for certification for teacher of exceptional children shall take each specialty test based on the applicant's specialty with the corresponding passing score as identified in this subsection:

- (a) Communication disorders:
 1. Application for Core Principal Across Categories of Disabilities (10352) - 127; and
 2. Speech Language Pathology (10330) - 450;
 - (b) Learning behavior disorder:
 1. Application of Core Principles Across Categories of Disabilities (10352) - 127; and
 2. Teaching Student with Behavioral Disorders/Emotional Disturbances (20371) - 147;
 - (c) Moderate and severe disabilities:
 1. Application of Core Principles Across Categories of Disabilities (10352) - 127; and
 2. Teaching Students with Mental Retardation (20321) - 139;
 - (d) Hearing impaired: Special Education Test (10350) - 500;
 - (e) Visually impaired: Special Education Test (10350) - 500.
- (5) An applicant for certification at the secondary level shall take each specialty test corresponding to the teaching area or major with the passing score identified in this subsection. An applicant whose teaching specialty is in a major for which no appropriate specialty test is available shall take the specialty test corresponding to the minor teaching specialty.
- (a) Biology:
 1. Biology: Content Knowledge Part 1 (20231) - 139; and
 2. Biology: Content Essays (30233) - no passing score;
 - (b) Chemistry:
 1. General Science: Content Knowledge Part 2 (10432) - 150; and
 2. Either:
 - a. Chemistry: Content Knowledge (20241) - 144; or
 - b. Physics: Content Knowledge (10261) - 141;
 - (c) Dramatics:
 1. English Language and Literature: Content Knowledge (10041) - 138; and
 2. English Language, Literature and Composition Essays (20042) - no passing score;
 - (d) Dramatics-speech:
 1. English Language and Literature: Content Knowledge (10041) - 138; and
 2. English Language, Literature and Composition Essays (20042) - no passing score;
 - (e) English:
 1. English Language and Literature: Content Knowledge (10041) - 138; and
 2. English Language, Literature and Composition Essays (20042) - no passing score;
 - (f) History:
 1. Social Studies: Content Knowledge (10081) - 146; and
 2. Social Studies: Interpretation of Materials (20083) - no passing score;
 - (g) History - political science:
 1. Social Studies: Content Knowledge (10081) - 146; and
 2. Social Studies: Interpretation of Materials (20083) - no passing score;
 - (h) Mathematics:
 1. Mathematics: Content Knowledge (10061) - 141; and
 2. Mathematics: Proofs, Models, and Problems (20063) - no passing score;
 - (i) Mathematics - physical science: select from either:
 1. Mathematics Test (10060) 500; or
 2. Chemistry, Physics, and General Science Test (10070) - 510;
 - (j) Physics:
 1. General Science: Content Knowledge, Part 2 (10432) - 150; and

- 2. Either:
 - a. Chemistry: Content Knowledge (20241) - 144; or
 - b. Physics: Content Knowledge (10261) - 141;
 - (k) Physical science:
 1. General Science: Content Knowledge Part 2 (10432) - 150; and
 2. Either:
 - a. Chemistry: Content Knowledge (20241) - 144; or
 - b. Physics: Content Knowledge (10261) - 141;
 - (l) Political science:
 1. Social Studies: Content Knowledge (10081) - 146; and
 2. Social Studies: Interpretation of Materials (20083) - no passing score;
 - (m) Science: select from either:
 1. Biology and General Science Test (10030) - 550; or
 2. Chemistry, Physics and General Science Test (10070) - 510;
 - (n) Speech:
 1. English Language and Literature: Content Knowledge (10041) - 138; and
 2. English Language, Literature and Composition Essays (20042) - no passing score.
- (6) Effective October 1, 1997, tests designated with no passing scores in subsection (5) of this section shall have the following passing scores:
- (a) English Language, Literature, and Composition: Essays (20042) with a passing score of 135;
 - (b) Biology: Content Essays (30233) with a passing score of 139;
 - (c) Mathematics Proofs, Models and Problems, Part I (20063) with a passing score of 141;
 - (d) Social Studies: Interpretation of Materials (20083) with a passing score of 150.
- (7) An applicant for certification in all grades shall take the specialty test(s) with the passing score as identified in this subsection.
- (a) Art - Art Education Test (10130) - 510;
 - (b) French - French (10170) - 510;
 - (c) German - German (20180) - 490;
 - (d) Health - Educational Professional Standards Board Test for Health Education - 67;
 - (e) Music (Vocal and Instrumental) Music Education (10110) - 510;
 - (f) Physical education:
 1. Physical Education: Content Knowledge (10091) - 152; and
 2. Physical Education: Movement Forms-Analysis and Design (30092) - no passing score;
 - (g) Spanish:
 1. Spanish Content Knowledge (10191) - 145; and
 2. Spanish: Productive Language Skills (20192) - no passing score;
 - (h) School Media Librarian: Library Media Specialist (10310) - 590.
- (8) Effective October 1, 1997, an applicant for certification in all grades in the following specialty areas shall take the specialty test(s) with the passing score as identified in this subsection.
- (a) Art:
 1. Content Knowledge (10133) - 139; and
 2. Art Making (20131) - no passing score;
 - (b) French:
 1. French: Content Knowledge (10173) - 144;
 2. French: Productive Language Skills (20171) - no passing score;
 - (c) German: German: Content Knowledge (20181) - 143;
 - (d) Health: Health Education (10550) - 550;
 - (e) Music:
 1. Music: Content Knowledge (10113) - 137; and
 2. Music: Concepts and Processes (30111) - 140.
- (9) Effective October 1, 1997 tests designated with no passing scores in subsection (7) of this section shall have the following passing scores:
- (a) Physical Education: Movement Forms - Analysis and Design

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(30092) - 135;

(b) Spanish: Productive Language Skills (20192) - 156.

(10) An applicant for certification to teach in grades five (5) through twelve (12) with one (1) or more of the following specializations shall take the specialty tests with the passing scores as identified in this subsection:

(a) Agriculture: Agriculture (10700) - 530;

(b) Business and Marketing Education - Business Education (10100) - 540;

(c) Comprehensive Business - Business Education (10100) - 540;

(d) Distributive Education - Business Education - 540;

(e) Family and Consumer Sciences [Home Economics] - Home Economics Education (10120) - 540;

(f) Industrial Education - Technology Education (10050) - 550.

(11) Effective October 1, 1997, an applicant for certification to teach in grades five (5) through twelve (12) with one (1) or more of the following specializations shall take the specialty test with passing score as identified in this subsection:

(a) Business and Marketing Education - Business Education (10100) - 570;

(b) Comprehensive Business - Business Education (10100) - 570;

(c) Distributive Education - Business Education (10100) - 570;

(d) Industrial Education - Technology Education (10050) - 570.

(12) Specialty tests for an applicant who successfully completes the new test(s) identified in subsections (2), (4), (8), and (9) of this section prior to October 1, 1997, shall be accepted for the issuance of the corresponding certification. Specialty tests required prior to October 1, 1997, shall be accepted for the issuance of the corresponding certification for a teacher applicant who successfully completed the tests prior to that date and apply for certification no later than September 30, 1998.

Section 4. (1) An applicant for initial certification may take the NTE Core Battery Tests and Praxix II: Subject Assessments and Specialty Area Tests on any of the dates established by the Educational Testing Service for national administration or on any date established by the Education Professional Standards Board for special administration.

(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service to the Kentucky Department of Education and to the appropriate teacher preparation institution.

(3) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration as required by the Educational Testing Service. It shall be the responsibility of each applicant to seek information regarding the dates and location of the tests and to make application for the appropriate examinations prior to the deadlines established and sufficiently in advance of anticipated employment to permit test results to be received by the Department of Education and processed in the normal certification cycle.

Section 5. An applicant shall pay the appropriate examination fee for each relevant test required to be taken, to the Educational Testing Service, publisher of the National Teacher Examinations, unless a lesser fee has been negotiated by the Department of Education. Fees for specialty tests developed by the Department of Education shall be equivalent to the current fees for the tests administered by the Educational Testing Service.

Section 6. An applicant who fail to achieve at least the minimum score on one (1) or more of the core battery examinations (communication skills, general knowledge, professional knowledge) or on the specialty examination appropriate to the teaching field shall be permitted to retake the test or tests during one (1) of the scheduled test administrations.

Section 7. The Education Professional Standards Board shall

collect data and conduct analyses of the score and institutional reports provided by the Educational Testing Service to determine the impact of these tests and permit a review of this administrative regulation on an annual or biennial basis.

ROSA WEAVER, Chair

ROBERT SHERMAN, Attorney

APPROVED BY AGENCY: September 29, 1997

FILED WITH LRC: October 3, 1997 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on November 21, 1997, at 10 a.m., in the First Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 1997, five work days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Betty Lindsey, Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive, Frankfort, Kentucky 40601, Phone: (502) 573-4606, FAX: (502) 573-1610.

REGULATORY IMPACT ANALYSIS

Contact person: Ronda Tamme

(1) Type and number of entities affected: All new teacher applicants for certification.

(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: New teacher applicants will save \$75 to \$85 in assessment fees.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

No effect.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 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: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternatives were rejected because of the increased cost to new teacher applicants.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: Cost savings to teacher applicants as mentioned in 2a.

(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: Not applicable.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied. The test scores for all teacher applicants who apply for certification after October 1, 1997 and September 30, 1998 will abide by the same certification requirements.

**WORKFORCE DEVELOPMENT CABINET
Department for Employment Services
Division of Unemployment Insurance
(Amendment)**

787 KAR 1:200. Maximum weekly benefit rate.

RELATES TO: KRS 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.380 requires the Secretary for Workforce Development to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1997 [1996], and prior to July 1, 1998 [1997]. This administrative regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

(1) The "total monthly employment" reported by subject employers for the calendar year of 1996 [1995] was 18,934,441 [18,593,452];

(2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,577,870 [1,549,454];

(3) The "total wages" reported by subject employers for the calendar year of 1996 [1995] was \$38,182,050,349 [36,017,761,705];

(4) The "average weekly wage" for the calendar year of 1996 [1995] for insured employment, obtained by dividing the average monthly employment into total wages for such year and dividing by fifty-two (52), was \$465.36 [447.03];

(5) Fifty-five (55) percent of the average weekly wage of \$465.36 [447.03] for the calendar year of 1996 [1995] was \$255.95 [245.87].

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July 1997 [1996], and prior to the first day of July 1998 [1997], shall be \$256 [246].

RODNEY S. CAIN, Secretary

MARGARET WHITTET, Commissioner

BEVERLY HAVERSTOCK, General Counsel

APPROVED BY AGENCY: August 29, 1997

FILED WITH LRC: September 17, 1997 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, November 25, 1997, at 9:30 a.m. at the Health Services Cabinet Auditorium, 275 East Main Street, First Floor, Health Services Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this

agency in writing by, Tuesday, November 18, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Beverly Haverstock, General Counsel, Workforce Development Cabinet, Capital Plaza Tower, 2nd Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-6606, Fax: (502) 564-7916.

REGULATORY IMPACT ANALYSIS

Contact Person: Beverly Haverstock

(1) Type and number of entities affected: All eligible UI recipients for the year July 1, 1997, through June 30, 1998.

(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: An additional \$9.8 million paid to eligible UI recipients.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: An additional \$9.8 million paid from the Unemployment Insurance Trust Fund to UI recipients.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: The number of people filing UI claims may increase or decrease.

(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: 100% federal funds (BCAA).

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods available in accordance with statutory 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: None

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

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: NA

(10) Any additional information or comments: This regulation satisfies the statutory requirements of KRS 341.380(3), which mandates that the secretary determine the maximum weekly unemployment insurance benefit rate prior to July 1 of each year.

(11) TIERING: Is tiering applied? Tiering was not applied as all claimants are treated equally.

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. All local government agencies could be affected, but only if they have unemployment insurance claims filed against them.

3. State the aspect or service of local government to which this administrative regulation relates. Relates to their payment of unemployment benefits to former employees.

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 (+/-): None

Expenditures (+/-): Nondeterminable

Other Explanation: Effective July 1, 1997, the maximum weekly benefit rate will increase to \$256, an increase of \$10 per claim over the present rate of \$246. If a local government agency chooses to file and pay unemployment insurance taxes quarterly, this potential \$10 increase per claim could deplete their reserve account faster and create a deficit. If this were to occur, their tax rate would go up. If a local government agency chooses to be a reimbursing employer, where they would pay out of the reserve account dollar for dollar for every claim filed against them, their expenditures will likely increase.

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 2:060. Employers' responsibilities.

RELATES TO: KRS Chapter 13A, 29 CFR Part 1903 [338]

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to the authority granted the Kentucky Labor Cabinet [Occupational Safety and Health Standards Board] by KRS 13A.120 to adopt administrative regulations required by federal law, [338.051:] this administrative regulation identifies the responsibility place upon the employer to post notices furnished by the Occupational Safety and Health Program, Department of Workplace Standards, verify abatement of cited hazards to the department, and also to furnish certain information to employees for their safety and protection. Necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.011).

Section 1. Definitions. (1) "Abatement" means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by Department of Workplace Standards during an inspection.

(2) "Abatement date" means:

(a) For an uncontested citation item, the later of:

1. The date in the citation for abatement of the violation;

2. The date approved by Department of Workplace Standards or established in litigation as a result of a petition for modification of the abatement date (PMA); or

3. The date established in a citation by an informal settlement agreement.

(b) For a contested citation item for which the Kentucky Occupational Safety and Health Review Commission (KOSHRC) has issued a final order affirming the violation, the later of:

1. The date identified in the final order for abatement; or

2. The date computed by adding the period allowed in the citation for abatement to the final order date;

3. The date established by a formal settlement agreement.

(3) "Affected employees" means those employees who are exposed to the hazard(s) identified as violation(s) in a citation.

(4) "Final order date" means:

(a) For an uncontested citation item, the 15th working day after the employer's receipt of the citation;

(b) For a contested citation item:

1. The 30th day after the date on which a decision or order of a commission hearing officer has been docketed with the commission, unless a member of the commission has directed review; or

2. Where review has been directed, the 30th day after the date on which the commission issues its decision or order disposing of all or pertinent part of a case; or

3. The date on which an appeals court issues a decision affirming the violation in a case in which a final order of KOSHRC has been stayed.

(5) "Movable equipment" means a hand-held or nonhand-held machine or device, powered or unpowered, that is used to do work and is moved within or between worksites.

(6) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed, (for example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Department of Workplace Standards. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of Section 2 of this administrative regulation.

Section 2. Purpose and Scope. (1) KRS Chapter 338 requires, in part, that every employer shall furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. Covered employers shall comply with the occupational safety and health standards promulgated pursuant to KRS Chapter 338. Employees shall comply with standards, rules, administrative regulations and orders issued under KRS Chapter 338 which are applicable to their own actions and conduct.

(2) The Department of Workplace Standards is authorized to conduct inspections and issue citations and proposed penalties for alleged violations.

Section 3. [2:] Posting of Notice, Availability of Act, Administrative Regulations, and Applicable Standards. (1) Each employer shall post and keep posted a notice or notices to be furnished by the Occupational Safety and Health Program, Department of Workplace Standards, Labor Cabinet, informing employees of the protections and obligations provided for in KRS Chapter 338, and that for assistance and information, including health standards, employees should contact the employer or the Department of Workplace Standards. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced or covered by other material that obscures the poster.

(2) ~~["Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Department of Workplace Standards. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of subsection (1) of this section of this administrative regulation.~~

(3) Copies of KRS Chapter 338, all administrative regulations filed pursuant thereto, and all applicable standards will be available at the Department of Workplace Standards. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.

(3) [(4)] Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of KRS 338.991.

Section 4. Abatement Verification. (1) Purpose. Inspections by the Department of Workplace Standards are intended to result in the abatement of violations of KRS Chapter 338. This section sets forth the procedures the Department of Workplace Standards will use to ensure abatement. These procedures are tailored to the nature of the violation and the employer's abatement actions.

(2) Scope and application. This section applies to employers who receive a citation for a violation of KRS Chapter 338.

(3) Abatement certification.

(a) Within ten (10) calendar days after the abatement date, the employer must certify to the Department of Workplace Standards (the agency) that each cited violation has been abated, except as provided in paragraph (b) of this subsection.

(b) The employer is not required to certify abatement if the compliance officer, during the on-site portion of the inspection:

1. Observes, within twenty-four (24) hours after a violation is identified, that abatement has occurred; and

2. Notes in the citation that abatement has occurred.

(c) The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required

by subsection (8) of this section, the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement. Note to this subsection: Appendix A (incorporated by reference in Section 5 of this administrative regulation) contains a sample abatement certification letter.

(4) Abatement documentation.

(a) The employer must submit to the agency, along with the information on abatement certification required by subsection (3)(c) of this section, documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the agency indicates in the citation that such abatement documentation is required.

(b) Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

(5) Abatement plans.

(a) The agency may require an employer to submit an abatement plan for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than ninety (90) calendar days. If an abatement plan is required, the citation must so indicate.

(b) The employer must submit an abatement plan for each cited violation within twenty-five (25) calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete. Note to this subsection: Appendix B (incorporated by reference in Section 5 of this administrative regulation) contains a sample abatement plan form.

(6) Progress reports.

(a) An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:

1. That periodic progress reports are required and the citation items for which they are required;

2. The date on which an initial progress report must be submitted, which may be no sooner than thirty (30) calendar days after submission of an abatement plan;

3. Whether additional progress reports are required; and

4. The date(s) on which additional progress reports must be submitted.

(b) For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken. Note to this subsection: Appendix B (incorporated by reference by Section 5 of this administrative regulation) contains a sample progress report form.

(7) Employee notification.

(a) The employer must inform affected employees and their representative(s) about abatement activities covered by this section by posting a copy of each document submitted to the agency or a summary of the document near the place where the violation occurred.

(b) Where such posting does not effectively inform employees and their representatives about abatement activities (for example, for employers who have mobile work operations), the employer must:

1. Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or

2. Take other steps to communicate fully to affected employees and their representatives about abatement activities.

(c) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the agency.

1. An employee or an employee representative must submit a

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request to examine and copy abatement documents within three (3) working days of receiving notice that the documents have been submitted.

2. The employer must comply with an employee's or employee representative's request to examine and copy abatement documents within five (5) working days of receiving the request.

(d) The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the agency and that abatement documents are:

1. Not altered, defaced, or covered by other material; and
2. Remain posted for three (3) working days after submission to the agency.

(8) Transmitting abatement documents.

(a) The employer must include, in each submission required by this section, the following information:

1. The employer's name and address;
2. The inspection number to which the submission relates;
3. The citation and item numbers to which the submission relates;
4. A statement that the information submitted is accurate; and
5. The signature of the employer or the employer's authorized representative.

(b) The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the agency receives the document is the date of submission.

(9) Movable equipment.

(a) For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites. Note to this paragraph: Attaching a copy of the citation to the equipment is deemed by Department of Workplace Standards to meet the tagging requirement of paragraph (a) of this subsection as well as the posting requirement of 803 KAR 2:125.

(b) The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued. Note to this paragraph: Nonmandatory Appendix C in the material incorporated by reference in Section 5 of this administrative regulation contains a sample tag that employers may use to meet this requirement.

(c) If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:

1. For hand-held equipment, immediately after the employer receives the citation; or
2. For nonhand-held equipment, prior to moving the equipment within or between worksites.

(d) For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) (incorporated by 803 KAR 2:402) and 29 CFR 1926.200(h) (incorporated by 803 KAR 2:406) is deemed to meet the requirements of this section when the information required by paragraph (b) of this subsection is included on the tag.

(e) The employer must assure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

(f) The employer must assure that the tag or copy of the citation attached to movable equipment remains attached until:

1. The violation has been abated and all abatement verification documents required by this administrative regulation have been submitted to the agency;
2. The cited equipment has been permanently removed from service or is no longer within the employer's control; or
3. The commission issues a final order vacating the citation.

Section 5. Incorporation by Reference. (1) The appendices to 29 CFR 1903.19, as published in the Federal Register, Volume 62, pages 15324-15340, March 31, 1997 are incorporated by reference.

(2) This material may be inspected, obtained, and copied at the

Kentucky Labor Cabinet, Division of OSH 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

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: October 9, 1997

FILED WITH LRC: October 13, 1997 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 25, 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 November 18, 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: These amendments to this regulation affect all employers 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:

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

(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: Though the federal standard incorporated into this proposed amendment requires that employers certify abatement, or in some cases explain abatement procedures, of hazards that have been cited in the workplace, the Occupational Safety and Health Administration (OSHA) estimates that the requirement will actually reduce costs to cited employers. This conclusion is based on evidence that most cited employers already supply federal and state-plan enforcement agencies with more information on abatement procedures than is required by this change. In addition, OSHA estimates that cited employers will also save because they will no longer expend time and money to respond to dunning efforts to insure that abatement has taken place. OSHA estimates the total savings to employers, nationwide, to be \$6,000,000 annually; a \$2,000,000 savings in reduced paperwork to complete abatement verification forms and a \$4,000,000 in reduced personnel time and effort to respond to enforcement inquiries about the status of abatement.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs: OSHA estimates that Federal and State-Plan enforcement agencies will experience resource savings of \$4.5 million annually in personnel costs formerly expended in dunning activity and in follow-up inspections.

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

(4) Assessment of anticipated effect on state and local revenues: The federal standard incorporated in this revision will save the state enforcement agency in personnel costs as it frees personnel formerly involved in securing abatement information and in follow-up inspections.

(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 amendments incorporate federal standards published in the Federal Register and amend the regulation to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: This proposed amendment will enhance workers safety throughout Kentucky by assuring abatement of hazards, employees will have greater awareness of the hazards cited, and become more aware of the employer's abatement activities.

(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 this amendment.

(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. If no, explain why tiering was not applied. 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 incorporate federal standards and amend the regulation to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. These amendments incorporate the "Abatement Verification" rule published in the Federal Register, Volume 62, March 31, 1997.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? These amendments will pose no stricter or additional requirements or responsibilities than does the federal standard.

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 any local government entity that has been cited by the agency for being in violation of occupational safety and health regulations.

3. State the aspect or service of local government to which this administrative regulation relates. These amendments affect the safety and health of employees of local government who have been working in conditions in violation of occupational safety and health regulations.

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 and to amend the regulation to meet KRS Chapter 13A considerations. There will be no increase or decrease in local government revenues or significant expenditures. These amendments will not affect the number of local government employees. These amendments require that the employer certify to the KYOSH Program abatement measures taken, or in some cases certify that abatement has been accomplished, in those cases where the employer has been cited as a result of an enforcement inspection.

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(3) [and 338.061] authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [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

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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.

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, 1996 [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 1910.19, "Special provisions for air contaminants", as published in the Federal Register, Volume 61, Number 214, November 4, 1996. [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 62, Number 7, January 10, 1997, [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

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: October 9, 1997

FILED WITH LRC: October 13, 1997 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 25, 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 November 18, 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: Tim 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 employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

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

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

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

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

1. First year following implementation:

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

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

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

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

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

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

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

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

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

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

(8) Assessment of expected benefits:

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

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

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

FEDERAL MANDATE ANALYSIS COMPARISON

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

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

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1910.19, "Special provisions for air contaminants," as published in the Federal Register, Volume 62, Number 7, January 10, 1997.

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 may affect local government entities that have employees with occupational exposure to methylene chloride.

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

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

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 2:320. Air contaminants.

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) [and 338.061] authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards [is also given to the board]. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

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

(a) "Act" means KRS Chapter 338.

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

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

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

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

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

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

(h) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or U.S. Department of Labor.

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

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

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

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

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

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

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

(g) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(h) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) which may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

(i) "External environment" means any environment external to regulated and nonregulated areas.

(j) "Isolated system" means a fully enclosed structure other than the vessel= of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(k) "Laboratory type hood" means a device enclosed on three sides and the top and bottom designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(l) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted no controlled.

(m) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, 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 Section 1(1)(m) of this administrative regulation [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, or fully buttoned laboratory coat.

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

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

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

nonregulated areas or the external environment unless decontaminated.

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

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

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

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

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

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

3. Employees shall be required to remove and leave protective clothing and equipment when leaving the work area at the end of the work day or at any time solution is spilled on such clothing or equipment. Used clothing and equipment shall be placed in impervious containers for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)2, 3, and 4 of this section.

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

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

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

- a. Covered daily or after any spill with a clean covering;
- b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

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

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

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

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

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

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

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

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers

of beverages, storage or application of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

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

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

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

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

(d) Contamination control.

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

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

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

4. Dry sweeping and dry mopping are prohibited.

(4) Signs, information and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT
Authorized Personnel Only

2. Entrances to regulated areas containing operations covered in subsection (3)(e) of this section shall be posted with signs bearing the legend:

Cancer-Suspect Agent Exposed
In this Area
Impervious Suit Including Gloves,
Boots, and Air-Supplied Hood
Required At All Times
Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(b) Container contents identification.

1. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5 and (f)7b, and (f)7b, and (g)3 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 inplant 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, notless 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 handled shall be protected from contamination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. 29 CFR 1910.1000 to 29 CFR 1910.1030(d)(3)(viii); and
2. 29 CFR 1910.1030(d)(3)(x) through 29 CFR 1910.1500.

(b) The revisions to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 63, Number 7, January 10, 1997, are incorporated by reference.

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

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

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

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

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

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

(i) [(h)] The revisions to 29 CFR 1910.1008, "bis-Chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(j) [(i)] The revisions to 29 CFR 1910.1009, "beta-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(k) [(j)] The revisions to 29 CFR 1910.1010, "Benzidine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(l) [(k)] The revisions to 29 CFR 1910.1011, "4-Aminodiphenyl", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(m) [(l)] The revisions to 29 CFR 1910.1012, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(n) [(m)] The revisions to 29 CFR 1910.1013, "beta-Propiolactone", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(o) [(n)] The revisions to 29 CFR 1910.1014, "2-Acetylaminofluorene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(p) [(o)] The revisions to 29 CFR 1910.1015, "4-Dimethylaminoazobenzene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(q) [(p)] The revisions to 29 CFR 1910.1016, "N-Nitrosodimethylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(r) [(q)] 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.

(s) [(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.

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(t) [(s)] 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.

(u) [(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.

(v) 29 CFR 1910.1051, "Occupational Exposure to Methylene Chloride", as published in the Federal Register, Volume 61, Number 7, January 10, 1997, is incorporated by reference.

(w) [(t)] 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.

(x) [(v)] 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.

(y) [(w)] 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.

(z) [(x)] 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(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix).

(5) 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

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: October 9, 1997

FILED WITH LRC: October 13, 1997 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 25, 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 November 18, 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: Tim 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 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 methylene chloride regulation, 29 CFR 1910.1052, will

annually cost industry \$101 million dollars nationwide.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: OSHA estimates that the methylene chloride regulation, 29 CFR 1910.1052, will cost the industry \$101 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 methylene chloride 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 methylene chloride 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 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.

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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 a new standard, 29 CFR 1910.1052, "Occupational Exposure to Methylene Chloride", as published in the Federal Register, Volume 62, Number 7, January 10, 1997 update 29 CFR 1910.1000, "Air Contaminants", to reflect the changes to the permissible exposure limit for methylene chloride.

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 methylene chloride.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed amendments affect the safety and health of employees of local government who work with methylene chloride.

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 2:403. 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(3) [and 338.061] authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [and standards. Express authority to] incorporate by reference established federal standards and national consensus standards [is also given to the board]. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

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

(1) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet;

(2) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet;

(3) "U.S. Department of Labor" means Kentucky Labor Cabinet.

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

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

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

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

(d) 29 CFR 1926.55, Appendix, is revised as follows:

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

2. Revisions to 29 CFR 1926.55, Appendix A, "1970 American Conference of Governmental Industrial Hygienists' Threshold Limit Values", as published in Federal Register, Volume 62, Number 7, January 10, 1997, are incorporated by reference.

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

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

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

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

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

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

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

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

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

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

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: October 9, 1997

FILED WITH LRC: October 13, 1997 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 25, 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 November 18, 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: Tim 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 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 January 10, 1997, which changes the entry for the methylene chloride in the "Substance" column of Appendix A of 29 CFR 1926.55, and refers the reader to the new applicable standard, 29 CFR 1910.1052, for the permissible exposure limit values of methylene chloride.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will essentially be little cost effect from this revision. OSHA has made this general industry standard applicable to construction in order to avoid gaps in coverage and to protect workers in the construction industry where the use of methylene chloride is not prevalent.

(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. This regulation incorporates by reference, a publication in the Federal Register, dated January 10, 1997, which changes the entry for the methylene chloride in the "substance" column of Appendix A of 29 CFR 1926.55, and refers the reader to the new applicable standard, 29 CFR 1910.1052, for the permissible exposure limit values of methylene chloride.

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 2:411. Scaffolds.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926

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

NECESSITY, FUNCTION, AND FUNCTION: KRS 338.051(3) [~~and 338.061~~] authorizes the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [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 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.

(c) The revisions to 29 CFR 1926, Subpart L, "Scaffolds", as published in the Federal Register, Volume 61, Number 228, November 25, 1997, 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.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: October 9, 1997

FILED WITH LRC: October 13, 1997 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 25, 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 November 18, 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 amendment to this regulation affects 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. The amendment to this regulation incorporates, by reference, a publication in the Federal Register, November 25, 1996, which makes minor corrections to the final rule on safety standards used in 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 this revision 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 this revision.

(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 change.

(4) Assessment of anticipated effect on state and local revenues: This revision 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 this proposed amendment incorporates by reference corrections to federal standards 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: This proposed amendment 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 this amendment.

(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. This amendment adopts corrections to federal standards.
3. Minimum or uniform standards contained in the federal mandate. The amendment incorporates corrections, as published in the Federal Register, Volume 61, Number 228, November 25, 1996, to the previously adopted regulations in 29 CFR 1926.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This amendment is identical to the federal standard.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This revision imposes 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 amendment 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 amendment 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. The amendment 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 2:425. Toxic and hazardous substances.

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(3) [and 338.061] authorizes the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [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 1926.1100-1148 revised as of July 1, 1996 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) [29 CFR 1926.1101, "Occupational Exposure to Asbestos", is amended, as follows:

1. The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 134, July 13, 1995 is incorporated by reference.

2. The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 60, Number 189, September 29, 1995 is incorporated by reference.

3.] The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 61, Number 165, August 23, 1996 is incorporated by reference.

(c) The addition of 29 CFR 1910.1152, "Methylene Chloride", as published in the Federal Register, Volume 62, Number 7, January 10, 1997, is incorporated by reference. [The revision to 29 CFR 1926.1102, "Coal tar pitch volatiles; interpretation of term", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference:

(d) 29 CFR 1926.1103, "13 Carcinogens", is revised, as follows:

1. The amendment to 29 CFR 1926.1103, "13 Carcinogens", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1103, "13 Carcinogens (4-Nitrobiphenyl, etc.)", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(e) 29 CFR 1926.1104, "alpha-Naphthylamine", is revised, as follows:

1. The amendment to 29 CFR 1926.1104, "alpha-Naphthylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

2. The amendment to 29 CFR 1926.1104, "alpha-Naphthylamine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(f) 29 CFR 1926.1106, "Methyl chloromethyl ether", is revised, as follows:

1. The amendment to 29 CFR 1926.1106, "Methyl 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 1926.1106, "Methyl chloromethyl ether", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(g) 29 CFR 1926.1107, "3,3'-Dichlorobenzidine (and its salts)", is revised, as follows:

1. The amendment to 29 CFR 1926.1107, "3,3'-Dichlorobenzidine (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. 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:

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

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

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

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

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

1. The amendment to Appendix A to 1926.1127, as published in

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

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

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

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

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

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

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

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

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

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

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

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

(z) 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

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: October 9, 1997

FILED WITH LRC: October 13, 1997 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 25, 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 November 18, 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 to: Tim 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 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 January 10, 1997, which creates a new standard for methylene chloride in the construction industry, which is identical to the to the standard newly created for general 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. This regulation incorporates, by reference, a publication in the Federal Register, dated January 10, 1997, which creates a new standard for methylene chloride in the construction industry, which is identical to the to the standard newly created for general industry.

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 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 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(3) [and 338.061] authorizes the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety

and health administrative regulations. KRS 338.061(2) provides that the board may [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, 1996 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

1. The revision to 29 CFR 1915.1000, "Air Contaminants", as published in the Federal Register, Volume 62, Number 7, January 10, 1997, is incorporated by reference.

2. 29 CFR 1910.1052, "Methylene Chloride", as published in the Federal Register, Volume 62, Number 7, January 10, 1997, is incorporated by reference. [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. 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. 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. 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. The revisions to 29 CFR 1915.1007, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revision to 29 CFR 1915.1007, "3,3'-Dichlorobenzidine (and its salts)", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

25. 29 CFR 1915.1008, "bis-Chloromethyl ether" is amended, as follows:

a. The revisions to 29 CFR 1915.1008, "bis-Chloromethyl ether", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

b. The revision to 29 CFR 1915.1008, "bis-Chloromethyl ether", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

26. 29 CFR 1915.1009, "beta-Naphthylamine" is amended, as follows:

a. The revisions to 29 CFR 1915.1009, "beta-Naphthylamine", as

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published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

b. The revision to 29 CFR 1915.1009, "beta-Naphthylamine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference:

27. 29 CFR 1915.1010, "Benzidine" is amended, as follows:

a. The revisions to 29 CFR 1915.1010, "Benzidine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

b. The revisions to 29 CFR 1915.1010, "Benzidine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

28. 29 CFR 1915.1011, "4-Aminodiphenyl" is amended, as follows:

a. The revisions to 29 CFR 1915.1011, "4-Aminodiphenyl", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

b. The revisions to 29 CFR 1915.1011, "4-Aminodiphenyl", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

29. 29 CFR 1915.1012, "Ethyleneimine", is amended, as follows:

a. The revisions to 29 CFR 1915.1012, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

b. The revisions to 29 CFR 1915.1012, "Ethyleneimine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

30. 29 CFR 1915.1013, "beta-Propiolactone" is amended, as follows:

a. The revisions to 29 CFR 1915.1013, "beta-Propiolactone", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

b. The revisions to 29 CFR 1915.1013, "beta-Propiolactone", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

31. 29 CFR 1915.1014, "2-Acetylaminofluorene" is amended, as follows:

a. The revisions to 29 CFR 1915.1014, "2-Acetylaminofluorene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

b. The revisions to 29 CFR 1915.1014, "2-Acetylaminofluorene", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

32. 29 CFR 1915.1015, "4-Dimethylaminoazobenzene" is amended, as follows:

a. The revisions to 29 CFR 1915.1015, "4-Dimethylaminoazobenzene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

b. The revisions to 29 CFR 1915.1015, "4-Dimethylaminoazobenzene", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

33. 29 CFR 1915.1016, "N-Nitrosodimethylamine" is amended, as follows:

a. The revisions to 29 CFR 1915.1016, "N-Nitrosodimethylamine", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference:

b. The revisions to 29 CFR 1915.1016, "N-Nitrosodimethylamine", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

34. The revisions to 29 CFR 1915.1017, "Vinyl Chloride", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

35. The revisions to 29 CFR 1915.1018, "Inorganic Arsenic", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

36. The revisions to 29 CFR 1915.1020, "Access to Employee Exposure and Medical Records", as published in the Federal Register,

Volume 61, Number 120, June 20, 1996, are incorporated by reference:

37. The revisions to 29 CFR 1915.1025, "Lead", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

38. The revisions to 29 CFR 1915.1027, "Cadmium", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

39. The revisions to 29 CFR 1915.1028, "Benzene", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

40. The revisions to 29 CFR 1915.1030, "Bloodborne Pathogens", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

41. The revisions to 29 CFR 1915.1044, "1,2-dibromo-3-chloropropane", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

42. The revisions to 29 CFR 1915.1045, "Acrylonitrile", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

43. The revisions to 29 CFR 1915.1047, "Ethylene Oxide", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

44. The revisions to 29 CFR 1915.1048, "Formaldehyde", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

45. The revisions to 29 CFR 1915.1050, "Methylenedianiline", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:]

3. [46.] The revisions to 29 CFR 1915.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 61, Number 165, August 23, 1996.

[47. The revisions to 29 CFR 1915.1120, "Redesignated as 29 CFR 1915.1020", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

48. The revisions to 29 CFR 1915.1200, "Hazard Communication", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:

49. The revisions to 29 CFR 1915.1450, "Occupational Exposure to Hazardous Exposure to Hazardous Chemicals in Laboratories", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference:]

(b) Chapter 29 Part 1917 of the Code of Federal Regulations, revised as of July 1, 1996 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(c) Chapter 29 Part 1918 of the Code of Federal Regulations, revised as of July 1, 1996 [1995], published by the Office of the Federal Register, National Archives and Record Services, General Services Administration.

(d) Chapter 29 Part 1919 of the Code of Federal Regulations, revised as of July 1, 1996 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(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

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: October 9, 1997

FILED WITH LRC: October 13, 1997 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 25, 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 November 18, 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: Tim 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, a publication in the Federal Register, dated January 10, 1997, which creates a new standard for methylene chloride in the shipyard industry, which is identical to the to the standard newly created for general industry. This regulation also changes the incorporation by reference of the Code of Federal Regulations to include the most recently published applicable version.

(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.

(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 entail the production and retention of training and medical records for covered employees.

(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 correct and clarify a definition.

3. Minimum or uniform standards contained in the federal mandate. This regulation incorporates, by reference, a publication in the Federal Register, dated January 10, 1997, which creates a new standard for methylene chloride in the shipyard industry, which is identical to the to the standard newly created for general industry. This regulation also changes the incorporation by reference of the Code of Federal Regulations to include the most recently published applicable version.

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

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

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that conduct maritime operations.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations in Section 2 affect the safety and health of employees of local government who work in maritime operations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of the amendments to Section 2 is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government

employees.

CABINET FOR HEALTH SERVICES
Department for Public Health
Division of Environmental Health and Community Safety
(Amendment)

902 KAR 55:095. Prescription for Schedule II controlled substance - facsimile transmission or partial filling.

RELATES TO: KRS 218A.070, 218A.180, 218A.200, 902 KAR 55:080, 21 CFR 1306.05, 1306.11 to 1306.14 [15]

STATUTORY AUTHORITY: KRS 194.050, 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.250 directs the Cabinet for Health Services [Human Resources] to promulgate administrative regulations for carrying out the provisions of KRS Chapter 218A relating to controlled substances. The purpose of this administrative regulation is to permit the transmission of prescriptions for Schedule II controlled substances between the prescriber and dispenser via facsimile, on a limited basis, in order to facilitate the delivery of medications to certain patients whose medication needs change quickly and whose prescription should be communicated rapidly. This administrative regulation also permits the partial filling of prescriptions for Schedule II controlled substances to certain patients whose medication needs may be long term but who wish to store limited quantities or in situations where the pharmacy is unable to supply the full quantity prescribed.

Section 1. Definitions. (1) "Hospice" means a hospice program licensed by the Cabinet for Health Services. [~~"Home infusion pharmacy" means a pharmacy which compounds solutions for direct administration to a patient in a private residence, long-term care facility or hospice setting by means of parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion.~~]

(2) "Long-term care facility" means a nursing home, skilled nursing facility, nursing facility as defined in PL 100-203, intermediate care facility, or intermediate care facility for the mentally retarded.

Section 2. Transmission by Facsimile of a Prescription for a Schedule II Controlled Substance. (1) A prescription prepared in accordance with KRS 218A.180, 21 CFR 1306.05 and 902 KAR 55:080 for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion may be transmitted by a practitioner or the practitioner's agent to the dispensing [~~a home infusion~~] pharmacy by facsimile.

(2) A prescription prepared in accordance with KRS 218A.180, 21 CFR 1306.05 and 902 KAR 55:080 for a Schedule II controlled substance for a resident of a long-term care facility may be transmitted by a practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(3) A prescription prepared in accordance with KRS 218A.180, 21 CFR 1306.05 and 902 KAR 55:080 for a schedule II controlled substance for a hospice patient may be transmitted by a practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or the practitioner's agent shall note on the prescription that the patient is a hospice patient.

(4)(a) The facsimile prescription shall serve as the written prescription, required by KRS 218A.180(1) for the dispensing of a Schedule II controlled substance.

(b) Within seven (7) calendar days after transmitting a facsimile

prescription for a Schedule II controlled substance, the prescribing practitioner shall deliver the original written prescription to the dispensing pharmacy.

(c) A practitioner who fails to deliver the original written prescription within the period specified in paragraph (b) of this subsection shall be deemed to have violated KRS 218A.1404(3).

Section 3. Partial Filling of a Prescription for a Schedule II Controlled Substance. (1) Except as provided in subsection (2) of this section a pharmacist may partially fill a prescription for a controlled substance listed in Schedule II if the pharmacist:

(a) Is unable to dispense the full quantity prescribed;

(b) Makes a notation of the quantity dispensed on the face of the written prescription; and

(c) Dispenses the remaining portion of the prescription within seventy-two (72) hours of the first partial filling. No further quantity shall be dispensed without a new written prescription.

(2) A written prescription for a Schedule II controlled substance written for a patient in a long-term care facility (LTCF) or for a patient with a documented terminal illness may be dispensed in partial quantities, including but not limited to individual dosage units if:

(a) The pharmacist records on the face of the prescription whether the patient is "terminally ill" or an "LTCF patient" [or words of similar meaning];

(b) The pharmacist records on the back of the written prescription or on another appropriate record, uniformly maintained and readily retrievable, the following data:

1. The date of the partial dispensing;

2. The quantity dispensed;

3. The remaining quantity authorized to be dispensed; and

4. The identification of the dispensing pharmacist;

(c) The pharmacist contacts the practitioner prior to dispensing the partial quantity if there is any question whether the patient is terminally ill, since both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient;

(d) [The pharmacist determines that each subsequent partial dispensing is necessary;

(e) The total quantity dispensed in all partial dispensings does not exceed the quantity prescribed; and

(f) No dispensing occurs beyond sixty (60) days from date of issuance of the prescription.

(3) A prescription that is partially filled and does not comply with the requirements of subsection (1) or (2) of this section shall be deemed to have been filled in violation of KRS 218A.200(3), (4) and 21 CFR 1306.13.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN WALKER, Attorney

APPROVED BY AGENCY: October 13, 1997

FILED WITH LRC: October 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held November 21, 1997 at 9 a.m. in the Cabinet for Health Services Auditorium, 1st Floor, Department for Public Health Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by November 14, 1997. 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. 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 Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, (502) 564-7900.

REGULATORY IMPACT ANALYSIS

Agency: Department for Public Health

(1) Type and number of entities affected: 14,000 pharmacies and physicians, as well as an indeterminate number of Hospice patients or patients who receive schedule II narcotics for parenteral administration.

(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 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 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 these amendments.

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 amendments merely expand the exemptions allowed for schedule II controlled substance prescriptions.

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 these amendments.

(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 received related to this issue.

(b) Kentucky: No comments received related to this issue.

(7) Assessment of alternative methods: reasons why alternatives were rejected: Alternatives were rejected because the delivery of schedule II medication to patients would be impeded.

(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 expedited delivery of schedule II controlled substances to patients who are in pain and the amendments conform with recent federal amendments.

(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, Hospice patients and others will have to wait longer to have prescriptions for schedule II controlled substances dispense.

(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 these amendments.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied because the provisions apply to all physicians who prescribe for and

pharmacist who dispense to the patient groups identified by the regulation.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The comparable federal laws and regulations are 21 CFR 1306.11 and 1306.13.

2. State compliance standards. The only state standards are those set forth in this administrative regulation.

3. Minimum or uniform standards contained in the federal mandate. The federal regulations have been amended to permit prescriptions for schedule II controlled substances to be faxed to a pharmacy if the patient is a Hospice patient.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. These amendments are identical to federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards are not imposed by the amendments.

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

904 KAR 2:017. 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. [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(1), 205.200(2), 42 USC 601 et seq., EO 96-862

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 K-TAP [AFDC] money grants be prescribed by administrative regulations in conformity with 42 USC 601 et seq. [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 2:370, 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. ["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.

(3) "Certified child care" means child care which is provided in a private home, day or night, for six (6) or fewer unrelated children and the provider is registered with the Cabinet for Human Resources, Department for Social Services. Standards for certification are contained in 905 KAR 2:100.

(4) "Combination programs" means any educational program

which includes as its basis literacy, ABE or GED. This program shall also include life skills, skills training or job readiness training.]

(3) [(5)] "Component" means services and activities pursuant to [such as education, job skills training, job readiness, job development and placement, job search, on-the-job training, alternative work experience program, other work experience program or community work experience program activities available under the Job Opportunities and Basic Skills (JOBS) Program. Each individual component is described in] 904 KAR 2:370.

(4) [(6)] "Component preparation" means the period in which assessment, testing, completion of the transitional assistance agreement Form KW-202 "K-TAP Transitional Assistance Agreement", incorporated by reference in 904 KAR 2:370, [development of the employability plan] and referrals for removal of concerns [barriers] takes place.

[(7)] "Family child care" means:

(a) Child care homes which are mandatorily certified to provide care for four (4) to six (6) unrelated children or voluntarily certified to care for three (3) or fewer unrelated children who are subject to health and safety requirements of 905 KAR 2:100; or

(b) ~~Unregulated care provided for no more than three (3) unrelated children.]~~

(5) [(8)] "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(6) "Kentucky Transitional Assistance Program (K-TAP), Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for children pursuant to 904 KAR 2:006, Section 1.

(7) "Kentucky Works" means a program which assists recipients of K-TAP in obtaining gainful employment and self-support.

[(9)] "Group home child care" means Type II residential licensed care, day or night, provided for seven (7) to twelve (12) unrelated children:

[(10)] "In-home child care" means care provided to a child in his or her own home:

[(11)] "Licensed child care providers" means day care facilities which provide care for seven (7) or more unrelated children, which are licensed by the Division of Licensing and Regulation, Office of the Inspector General, as provided in 905 KAR 2:090.]

(8) [(12)] "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(9) [(13)] "Precomponent" means a waiting period between the dates of component assignment and component commencement.

(10) [(14)] "Preemployment" means a waiting period between the dates of hiring and employment commencement.

[(15)] "Recoupment" means recovery of overpayments of child care:

[(16)] "Self-initiated" means approved participation in which education or training activities are initiated by the client and determined to meet agency criteria. Specific criteria is contained in 904 KAR 2:370.]

(11) [(17)] "Transitional extension" means a period of up to ninety (90) days subsequent to the discontinuance of the K-TAP [AFDC] case in which supportive service payments may continue if:

(a) The case is not discontinued due to fraudulent activity; and
(b) The case is not discontinued due to failure to comply with procedural requirements; and

(c) The Kentucky Works [JOBS] participant elects to continue the approved component activity in which he [she] is engaged at the time of discontinuance.

[(18)] "Unregulated child care providers" means private providers, such as friends or relatives, who are not required to be certified or licensed:]

Section 2. Payment Entitlement. (1) With the exception of payments described in Sections 7 and 10 [8 and 12] of this ad-

ministrative regulation those individuals participating in the Kentucky Works [JOBS] Program shall be entitled to payment of:

(a) Child care;

(b) Transportation; and

(c) Other supportive services costs necessary for participation in an approved Kentucky Works [JOBS] activity, as described in Section 10 [12] of this administrative regulation.

(2) Kentucky Works [JOBS] activities are described in 904 KAR 2:370.

Section 3. Child Care Eligibility in Kentucky Works [JOBS] Components. (1) Child care shall be paid for a child meeting the following criteria:

(a) The child is under thirteen (13); or

(b) A dependent child who is physically or mentally incapable of caring for himself, as verified by the written determination of:

1. A physician; or

2. A licensed or certified psychologist; or

(c) A needy dependent child under court supervision; or

(d) Would be a dependent child except for the receipt of benefits under supplemental security income (SSI) under 42 USC 1382 or foster care under 42 USC 672.

(2) Child care shall be provided in the following situations:

(a) Precomponent;

(b) Component preparation;

(c) Component participation;

(d) Preemployment; or

(e) On-the-job training (OJT) participants discontinued from K-TAP [AFDC], until the end of the component placement.

Section 4. ~~[Child Care Eligibility in Self-initiated Activities. (1) Child care shall be provided in the same situations as in JOBS components with the following exceptions:~~

~~(a) Discontinued OJT participants;~~

~~(b) Component preparation; and~~

~~(c) Precomponent, for persons waiting to enter self-initiated activities for the first time;~~

~~(2) Child care shall be provided only for approved self-initiated activities;~~

Section 5. Child Care Payments. [Limitations. (1) Child care payments shall be paid pursuant to 905 KAR 2:150.]:

(a) Be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates for components which do not provide earned income:

(b) Be allowed as a deduction as outlined in administrative regulation 904 KAR 2:016 for any component yielding earned income:

(2) Payments shall not be made to a provider if the provider is:

(a) The parent or stepparent;

(b) The legal guardian;

(c) A member of the AFDC assistance unit which includes the child needing care;

(d) Not meeting applicable standards of state and local law; or

(e) Not allowing parental access:

(3) Local market rates shall be determined by:

(a) The type of provider;

(b) The age of the child;

(c) The special needs of the child. Special needs shall be verified by:

1. Entitlement to disability benefits; or

2. Written statement from a physician or professional from a service agency such as Comprehensive Care, or the Department for Social Services;

(d) The amount of time care is needed; and

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

(4) Full-time (FT) and part-time (PT) attendance shall be deter-

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mined 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									Pre-			School-		
	Needs			Infants			Toddlers			School			Age		
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
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, GALLOWAY, CARLISLE, FULTON, GRAVES, HICKMAN, MARSHALL

PURCHASE AREA DEVELOPMENT DISTRICT #1

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

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Family/In-Home \$11 16 238 11 16 238 11 16 238 11 16 238 11 16 238

WESTERN REGION

RURAL COUNTIES

COUNTY NAMES: HANCOCK, MCLEAN, OHIO, UNION, WEBSTER

GREEN RIVER AREA DEVELOPMENT DISTRICT #3

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

WESTERN REGION

RURAL COUNTIES

COUNTY NAMES: ALLEN, BARREN, BUTLER, EDMONSON, HART, LOGAN, METCALFE, MONROE, SIMPSON, WARREN

BARREN RIVER AREA DEVELOPMENT DISTRICT #4

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

WESTERN REGION

RURAL COUNTIES

COUNTY NAMES: BRECKINRIDGE, GRAYSON, HARDIN, LARUE, MARION, MEADE, NELSON, WASHINGTON

LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special						Pre-			School-		
	Needs			Infants			Toddlers			Age		
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	\$12	16	260	13	16	282	13	16	282	13	14	282
Group Home	\$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

CENTRAL REGION

URBAN COUNTIES

COUNTY NAMES: BULLITT, JEFFERSON, OLDHAM, SHELBY

KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

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

CENTRAL REGION

URBAN COUNTIES

COUNTY NAMES: HENRY, SPENCER, TRIMBLE

KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

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

CENTRAL REGION

URBAN COUNTIES

COUNTY NAMES: BOONE, CAMPBELL, KENTON

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

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	Special									Pre			School		
	Needs			PT			Infants			PT			Toddlers		
	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									Pre			School		
	Needs			PT			Infants			PT			Toddlers		
	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									Pre			School		
	Needs			PT			Infants			PT			Toddlers		
	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									Pre			School		
	Needs			PT			Infants			PT			Toddlers		
	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

FIVGO AREA DEVELOPMENT DISTRICT #10

	Special									Pre			School		
	Needs			PT			Infants			PT			Toddlers		
	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

FIVGO AREA DEVELOPMENT DISTRICT #10

	Special									Pre			School		
	Needs			PT			Infants			PT			Toddlers		
	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

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EASTERN REGION

RURAL COUNTIES

COUNTY NAMES: FLOYD, JOHNSON, MAGOFFIN, MARTIN, PIKE

BIG SANDY AREA DEVELOPMENT DISTRICT #11

	Special Needs									Pre-School			School-Age		
	PT			Infants			PT			Toddlers			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	7	238	15	10	325	12	10	260

EASTERN REGION

RURAL COUNTIES

COUNTY NAMES: BREATHITT, KNOTT, LEE, LESLIE, LETCHER, OWSLEY, PERRY, WOLFE

KENTUCKY RIVER AREA DEVELOPMENT DISTRICT #12

	Special Needs									Pre-School			School-Age		
	PT			Infants			PT			Toddlers			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	12	260	12	12	260	12	10	260	12	10	260	12	10	260
Family/In-Home	\$11	11	238	11	9	238	11	8	238	15	10	325	12	10	260

EASTERN REGION

RURAL COUNTIES

COUNTY NAMES: BELL, CLAY, HARLAN, JACKSON, KNOX, LAUREL, ROCKCASTLE, WHITLEY

CUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs									Pre-School			School-Age		
	PT			Infants			PT			Toddlers			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

CENTRAL REGION

RURAL COUNTIES

COUNTY NAMES: ADAIR, CASEY, CLINTON, CUMBERLAND, GREEN, MCCREARY, PULASKI, RUSSELL, TAYLOR, WAYNE

LAKE CUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs									Pre-School			School-Age		
	PT			Infants			PT			Toddlers			PT		
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	\$14	11	303	16	8	347	16	14	347	15	13	325	14	16	303
Group Home	\$14	14	303	15	15	325	15	15	325	15	8	325	13	8	282
Family/In-Home	\$15	12	325	15	12	325	15	12	325	15	12	325	15	12	325

CENTRAL REGION

URBAN COUNTIES

COUNTY NAMES: BOURBON, CLARK, FAYETTE, FRANKLIN, JESSAMINE, MADISON, SCOTT, WOODFORD

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

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

CENTRAL REGION

RURAL COUNTIES

COUNTY NAMES: ANDERSON, BOYLE, ESTILL, GARRARD, HARRISON, LINCOLN, MERCER, NICHOLAS, POWELL

BLUEGRASS AREA DEVELOPMENT DISTRICT #15

	Special Needs									Pre-School			School-Age		
	PT			Infants			PT			Toddlers			PT		
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max

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	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Gender-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.

(10) 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.

(11) 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 2:370[-; 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 and unsubsidized employment, while the K-TAP [AFDC] case remains active. Transportation expenses for individuals in unsubsidized employment are covered by the work expense standard deduction as defined in 904 KAR 2:016;

(4) Transitional extension; or

(5) On-the-job training (OJT) participants discontinued from K-TAP [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. [10:] 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 K-TAP [AFDC] agency or contractor; and

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

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

2. If free or low-cost transportation that meets the needs of the individual is unavailable, a direct payment shall be made to the individual per month as follows:

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

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

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

(c) 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 \$100 per month may be paid.

(d) [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. [11:] 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 2:370[-; or

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

Section 10. [12:] Other Supportive Services in Kentucky Works

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[JOBS] Components. (1) Other supportive [Nonrecurring] services shall be provided if necessary for participation in the approved Kentucky Works [JOBS] activities of:

- (a) Component preparation;
- (b) Component participation~~[-except for expenses included in the work expense standard deduction for participants in OJT] while the K-TAP [AFDG] case remains active;~~
- (c) Transitional extension; ~~or~~
- (d) OJT participants discontinued from K-TAP [AFDG], until the end of the component placement; ~~or~~
- (e) Acceptance of a new job or retention of an existing one if the parent or other adult:

1. Has accepted employment and a start date of employment is provided, except when an item is required as a condition of being hired by the employer; or

2. Is employed;

(2) Other supportive [These] services shall be approved by the cabinet. [case manager as defined in 904-KAR-2:370;

(3)] Items and services that shall be approved are the purchase of:

(a) Drug screening test if:

1. Required by a potential employer; and

2. Paid directly to the potential employer with no reimbursements allowed to an individual who has paid his own test fee; [Remedial health care items or services not covered under the Medicaid Program;]

(b) Uniforms required by education or training provider;

(c) Suitable clothing for a job interview;

(d) Uniforms or specialized clothing particular to a service, profession or company excluding clothing used for every day wear at work or elsewhere;

(e) School supplies other than books;

(f) Licensing fees which include:

1. Exam costs required to obtain a professional license or certificate; or

2. Driver's license fee; [(e) Fees to obtain a license;]

(g) [(f)] Timepieces that are necessary for training or employment including watches and alarm clocks;

(h) GED test fee if the following criteria are met:

1. The individual does not have a high school diploma or GED and the individual is expected to pass the test;

2. The test is required as a condition of employment;

3. The fee is paid directly to the test agency with no reimbursement allowed to the individual; or

4. A fee is required at the completion of the GED preparation;

(i) [(g)] The cost to have a photo identification made in order to take a GED test;

(j) [(h)] The cost of a criminal records check fee if the provider or employer requires verification; or

(k) [(i)] Driver's education; or

(l) Tools required for employment.

(3) [Section 13. Other Supportive Services in Approved Self-initiated Activities. Nonrecurring services shall be provided in the same situations as in JOBS components, with the following exceptions:

(1) Transitional extension;

(2) Discontinued OJT participants; or

(3) Component preparation.

Section 14. Limitations on] Other supportive services shall be [(1)] a cumulative limit of \$400 [300] in a twelve (12) month period, beginning with the first day of the month in which the appropriate verification form is issued.

(4) A payment may be authorized for an eligible parent or other adult included as a specified relative pursuant to Section 10 of 904 KAR 2:006;

(5) Penalized and sanctioned K-TAP ineligible adults are not

eligible for other supportive services;

(6) A retroactive payment for other supportive services shall not be made for an item purchased by a penalized or sanctioned individual who later cures the penalty. After the parent or other adult cures the penalty or sanction, eligible expenses may be authorized.

(7) A medical service or item shall not be an allowable supportive service. [-shall be in effect for any participant in these approved JOBS activities:

(a) Component preparation;

(b) Component-related;

(c) Transitional extension; or

(d) Discontinued OJT participants.

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

Section 11. Car Repairs. (1) Car repairs shall be provided if necessary for participation in the approved Kentucky Works activities of:

(a) Component preparation;

(b) Component participation, including unsubsidized employment while the K-TAP case remains active;

(c) Transitional extension; or

(d) OJT participants discontinued from K-TAP, until the end of the component placement.

(2) Car repair expenses shall meet the following criteria to be considered for payment:

(a) Car repair which makes the car functional;

(b) Property taxes on vehicle;

(c) Vehicle registration;

(d) Licenses fees; and

(e) Three (3) months of liability insurance to drive a vehicle.

(3) All car repair expenditures listed in subsection (2) of this section shall require:

(a) An estimate of the cost; and

(b) Approval by the cabinet.

(4) All auto repair work shall be completed by garages;

(5) Prior to approval of car repair expenditures, the cabinet shall verify the participant owns the vehicle;

(6) The payment maximum for car repair expenditures shall be up to a maximum of \$300 per year per eligible family.

Section 12. Short-term Training. A fee for a short-term training program shall be eligible for payment for a K-TAP recipient if the training program:

(1) Is not eligible for federal financial aid; and

(2) Is likely to lead to paid employment and is in accordance with the participant's Transitional Assistance Agreement, form KW-202, "K-TAP Transitional Assistance Agreement", as determined by the cabinet.

Section 13. Other Fees. (1) The following fee payments may be made for an eligible recipient:

(a) Registration fees;

(b) Financial aid application fees;

(c) Testing fees;

(d) Application fees required by vocational schools for specified programs;

(e) Liability insurance fees;

(f) Copy of records;

(g) Activity fees if mandated by the institution; and

(h) Other required fees.

(2) Other fees shall not exceed \$200 per each payment.

Section 14. [15.] Restrictions on Authorization of Supportive Service Payments. Payments shall not be made for the period during which:

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- (1) Verification is not returned by the service provider; or
- (2) The participant is penalized [~~sanctioned~~] for noncompliance with Kentucky Works [JOBS] activities, as specified in 904 KAR 2:370, or is ineligible. [~~or~~
- (3) A fair hearing decision is pending on an issue of noncompliance with JOBS.]

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. [16. Child Care Recoupment. The following provisions apply to JOBS child care supportive service 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 K-TAP [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 16. [17:] 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, "Authorization for Supportive Services Payments, edition 8/97" [revised 1/93];

(b) PA-33, "Verification of Education/Training, Child Care, and Transportation, edition 4/97" [revised 3/94]; and

(c) PA-33N, "Verification of Education/Training, Child Care, and Transportation, edition 4/97" [revised 3/94];

(d) PA-33-1, revised 6/91;

(e) PA-114, revised 1/93; and

(f) PA-416, revised 1/93].

(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

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: October 1, 1997

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1997, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy H.

Trigg, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

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 June 1997, there were a total of 60,255 basic AFDC cases and 1,779 AFDC-UP cases (Unemployed Parent cases), for a total of 62,034 AFDC cases. In June 1997, there were approximately 48,997 adults in those cases. 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: No requests for a hearing were received as a result of the publication of the Notice of Intent 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 comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(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 limited to \$300 will be added. Limitations on Other Supportive Services will change from \$300 to \$400 in a twelve (12) month period.

1. First year: The breakdown of costs and savings to the agency for the first year (SFY 1998) are listed below:

a. Transportation for new cases (cost) - \$494,400.

b. Car repair (cost) - \$0.

c. Other support services including preemployment and employment (cost) - \$0.

d. Child care for new cases (cost) - \$1,080,200.

e. Child care system (cost) - \$627,800.

f. Form revisions, printing and system form revisions (cost) - \$5,000.

g. Short term training and fees - \$0.

h. Total for first year - \$2,207,400.

2. Continuing cost or savings: The breakdown of cost to the

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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. Other support services including preemployment and employment(cost) - \$860,000.
- d. Child care for new cases (cost) - \$2,306,000.
- e. Child care system (cost) - \$2,000,000.
- f. Form revisions, printing and system form revisions (cost) - \$0
- g. Short term training and fees - \$438,000.
- h. Total for second year - \$11,304,000.

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: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(b) Kentucky: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement the work requirements and supportive services provisions for the block program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the mandated work requirements found in 42 USC 601 et seq., and to implement the Kentucky Works program that replaces the JOBS program.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits (including supportive services) received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandates delineated in our Title IV-A state plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services such as transportation and child care which enables the parent to remain employed.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: Child care payments will be paid according to 905 KAR 2:150.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 205.200.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

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

904 KAR 2:370. Technical requirements for Kentucky Works (~~job opportunities and basic skills~~).

RELATES TO: 42 USC 601 et seq. [45-GFR 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(1), 205.200(2), 42 USC 601 et seq., EO 96-862

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 601 et seq. [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 [is] a process in which participation problems in the Kentucky Works [JOBS] Program can be resolved.

(5) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for children pursuant to 904 KAR 2:006, Section 1.

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

(7) "Vocational education" means a training program which prepares the individual for employment.

(8) "Wage supplementation" means a component in which employers hire participants and receive reimbursement from the

cabinet for a portion of wages paid to the participant.

[(6) "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 2:006; or

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

(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 education not to exceed twelve (12) 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) 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;

h. Wage supplementation, which shall be available in limited areas and shall expand into additional areas until statewide implementation is complete; and

i. 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 shall be 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

(b) Participates in education that is directly related to employment for at least twenty (20) hours a week;

(2)(a) An adult Kentucky Transitional Assistance Program recipient shall not be required to comply with program participation requirements for up to twelve (12) months if the adult is an individual caring for a child who has not attained twelve (12) months of age;

(b) The twelve (12) months of exemption from work participation requirements shall be limited to a total of twelve (12) months in a lifetime for the adult and may be:

1. Consecutive; or

2. Cumulative.

(3) For a Kentucky Transitional Assistance Program recipient where compliance with program participation would make it difficult to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence or who is at risk of further domestic violence, as determined by the cabinet, compliance shall not be mandated. [:

(1) Is a child who:

(a) Is under age sixteen (16); or

(b) Attends, full-time, an elementary, secondary, vocational or technical school (unless he was enrolled in school through the JOBS Program);

(2) Is ill and the illness or injury is serious enough to temporarily prevent entry into employment or training;

(3) Is incapacitated to the extent that the physical or mental impairment would prevent the recipient from participating in the JOBS Program. This may include a period of recuperation after childbirth if prescribed by a woman's physician;

(4) Is sixty (60) years old or older;

(5) Resides in a county which offers the JOBS Program but in a location in which travel time to the JOBS activity would exceed two (2) hours round trip by reasonably available public or private transportation, exclusive of time necessary to transport children to and from a child care facility;

(6) Is needed in the home because another member of the household requires the individual's presence due to illness or incapacity;

(7) Is working at least thirty (30) hours per week prior to determination of JOBS status;

(8) Is pregnant and the child is expected to be born within the following six (6) month period;

(9) Is the parent or other relative who is personally providing care for a child under age three (3), except as specified in Section 5(3) of this administrative regulation;

(10) Is a full-time Volunteers in Service to America (VISTA) volunteer;

(11) Is the parent age twenty (20) years or older or other relative

personally providing care for a child under six (6) years of age unless:

- (a) The agency assures that child care will be guaranteed; and
- (b) The state agency guarantees that required program participation will not exceed twenty (20) hours per week.

Section 3. Volunteers. All persons in active JOBS counties as specified in Section 2 of this administrative regulation may volunteer to participate in the JOBS Program:

(1) The DSI shall give first priority for JOBS services to volunteers within the target population to be served, as described in Section 1 of this administrative regulation:

(2) A volunteer who is exempt, as specified in Section 2 of this administrative regulation, and who stops participating without good cause shall lose priority status for JOBS services if he volunteers at a later time:

(3) A volunteer who is not exempt and who stops participating without good cause shall be subject to sanctions, as specified in Section 10 of this administrative regulation:

Section 4. Components. With the exception of the component described in subsection (8) of this section, all JOBS counties shall offer the following services and activities:

(1) Education below the postsecondary level shall include:

(a) High school education or education designed to prepare a person to qualify for a high school equivalency certificate;

(b) Basic and remedial education that shall provide an individual with a basic literacy level, equivalent to at least grade 8.9; and

(c) Education in English proficiency to allow employment commensurate with his employment goal for an individual who is not sufficiently competent to:

- 1. Understand;
- 2. Speak;
- 3. Read; or
- 4. Write the English language.

(2) Job skills training which includes vocational training for a participant in technical job skills and equivalent knowledge and abilities in a specific occupational area:

(3) Job readiness activities that help prepare a participant for work by familiarizing him with workplace expectations, attitudes and appropriate behavior:

(4) Job development and job placement activities for soliciting public and private employers' job openings, marketing participants, and securing job interviews for a participant:

(5) Job search which provides group and individual assistance and training with job-seeking activities:

(a) Job search shall be provided in a group setting where a participant is taught job-seeking skills, and may include a phone bank from which he contacts potential employers;

(b) Individual job search shall be offered as needed to provide on a one-to-one basis:

- 1. Counseling;
- 2. Information;
- 3. Dissemination; and
- 4. Support;

(c) Participation in the job search component shall not exceed eight (8) weeks in any period of twelve (12) consecutive months unless it is required as part of another educational, training, or employment component designed to improve the individual's employment prospects:

(6) On-the-job training (OJT) in which a JOBS participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job:

(a) A participant in OJT shall be compensated by the employer at the same rate as a similarly situated employee or trainee;

(b) The wage shall be subsidized through payments to the employer for OJT, not to exceed an average of fifty (50) percent of the wages paid to the participant during the training;

(c) At the conclusion of the OJT, the participant shall be retained as a regular employee:

(7) Community Work Experience Program (CWEP) which provides unpaid work experience and training in nonprofit organizations to assist a participant to move promptly into regular public or private employment:

(a) A CWEP 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) The maximum number of hours of participation shall be determined by dividing the family's monthly AFDC grant amount by the greater of the federal or state minimum wage;

(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:

(8) 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:

(9) 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 individuals 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) [(c)] Other agencies shall [will] assist in the assessment process as needed;

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

1. Consideration of basic skills;

2. [-work skills;] 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 8.9 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. Literacy; or

4. Other educational activities which could lead to employment.

Section 7. Good and Satisfactory Progress. (1) Each participant in an education or training component shall meet good and satisfactory progress requirements:

(2) Good and satisfactory progress criteria for all JOBS educational activities and approved self-initiated education is established by the educational institution:

(3) Good and satisfactory progress shall be measured and reported to the DSI at the following intervals:

(a) Literacy, adult basic education, or general educational development. Good and satisfactory progress is measured at intervals determined by the educational providers:

(b) High school. Good and satisfactory progress shall be measured at the end of each semester or quarter:

(c) Vocational school. Good and satisfactory progress shall be measured at regularly scheduled intervals, as defined by the institution:

(d) Proprietary school. Good and satisfactory progress shall be measured at the end of each regularly scheduled grading period as defined by the institution, not to exceed a twelve (12) month period:

(e) College. Good and satisfactory progress shall be measured at the end of a semester or quarter:

(f) JTPA-funded training. Good and satisfactory progress shall be measured at intervals determined by the providers;]

Section 5. [8.] Conciliation. (1) Conciliation shall be conducted:

(a) At the request of a Kentucky Works [JOBS] participant;

(b) At the request of a service [component] provider; or

(c) When a situation is identified which could result in a penalty [sanction] (as specified in Section 7 [10] of this administrative regulation).

(2) The conciliation shall be conducted by the cabinet or contractor:

(a) [The DSI;

(b) The DES; or

(c) Both agencies jointly:

1.] During conciliation, the agency shall determine if additional services are needed to assist with Kentucky Works [JOBS] participation.

(b) During conciliation, [2.] participation shall be monitored for up to fifteen (15) days following the issuance of form KW [JOBS]-204, "Conciliation Contract".

(c) [3.] The fifteen (15) day period may be extended for an additional fifteen (15) days, if necessary.

(3) At the conclusion of the conciliation period, the participant shall be notified in writing of the results of the conciliation.

Section 6. Excused from Penalties. (1) A (K-TAP) recipient shall be excused from penalties for failure to comply with the Kentucky Works Program, as specified in Section 7 of this administrative regulation, if one (1) of the following good cause criteria is met: [9- Good Cause. (1) Good cause for noncompliance in the JOBS Program or refusal to accept employment shall be found if:]

(a) The individual is a single custodial parent caring [participant is personally providing care] for a child under age six (6) and child care is unavailable, as determined by the cabinet; [employment or JOBS participation would require the individual to work more than twenty (20) hours per week];

(b) Dependent care is[:

1. Not available for a dependent child;

2. Not available for any incapacitated individual living in the same household as a dependent child;

[3. Not available or nonreimbursable for a nondependent child over age six (6).]

(c) [The agency determines that employment would result in a net loss of cash income.

1. The family's gross income less necessary actual work-related expenses is less than the cash assistance the individual was receiving at the time the offer of employment was made; and

2. Child care costs exceeding the child care disregard shall be considered in the determination;

(d) The individual is unable to engage in employment or training for mental or physical reasons as verified by the cabinet; [including participation in a drug and alcohol rehabilitation program;

(e) Unavailability of transportation (including unavailability due to costs which exceed the reimbursement) with no readily accessible alternative means of transportation available;

(f) Travel time to the work site or JOBS component site exceeds two (2) hours round trip daily;

(d) [(g)] Illness of another household member requiring the presence of the participant as documented by medical evidence or by reliable information from other sources as verified by the cabinet;

(e) [(h)] The participant is temporarily incarcerated or institutionalized for thirty (30) days or less;

(f) [(i)] The agency determines there is discrimination by an employer and a formal complaint has been filed based on:

1. Age;

2. Race;

3. Sex;

4. Color;

5. Disability;

6. Religious beliefs;

7. National origin; or

8. Political beliefs;

(g) [(j)] Work demands or conditions render continued employment unreasonable, such as:

1. Consistently not being paid on schedule; or

2. The presence of a risk to the individual's health or safety;

(h) [(k)] Wage rates are decreased subsequent to acceptance of employment;

(i) [(l)] The participant accepts a better job which, because of circumstances beyond the control of the recipient, does not materialize[;

(m) A household emergency occurs, such as:

1. Death of a member of the immediate family;

2. Entry into a spouse abuse center;

3. Natural disaster;

4. Court appearance;

5. Victim of crime; or

6. Flooded basement;

(n) The participant receives a temporary military assignment;

(o) The participant leaves employment in an attempt to improve skills, become self-sufficient and leave the AFDC rolls;

(p) The participant is enrolled in a component activity which is not scheduled for the entire month, such as:

1. Summer school break; or

2. July break for adult education providers;

(q) The participant is employed and receiving wages for thirty (30) or more hours per week].

(2) The duration of good cause criteria may vary according to individual circumstances.

Section 7. Penalties. [~~10- Sanctions.~~] (1) When a Kentucky Transitional Assistance Program [a nonexempt AFDC] recipient fails to comply with the requirements of the Kentucky Works [JOBS] Program, he shall be subject to Kentucky Works and Kentucky Transitional Assistance Program penalties, [JOBS and AFDC sanctions.] Failure to comply shall be found when the participant:

(a) Fails without good cause, pursuant to Section 6 of this administrative regulation, to participate in required activities, including [but not limited to]:

1. An interview;

2. An assessment; or

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) Except for requirements listed in paragraph (b) of this subsection, a K-TAP recipient [A person] who has failed to comply with Kentucky Works requirements without good cause, pursuant to Section 6 of this administrative regulation, shall be penalized by reducing the amount of the assistance otherwise payable to the benefit group on a pro rata basis; or

(b) Beginning on or after January 1, 1998, assistance to the benefit group shall be discontinued if the K-TAP recipient, fails, without good cause pursuant to Section 6 of this administrative regulation, to:

1. Keep appointment for an interview; or

2. Complete an assessment, pursuant to Section 4 of this administrative regulation.

(c) The penalty in paragraph (a) or (b) of this subsection shall continue to be applied until the participant complies with program requirements. [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.]

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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. [11-] 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 1/92;
- (b) PA-33D, "Child's Certification of School Enrollment/Attendance, edition 8/97" [revised 1/92];
- (b) [(e)] PA-218A, "New Chance Referral, edition 4/97" [revised 7/94];
- (c) [(d)] PA-219, "Kentucky Works Program Fact Sheet, edition 5/97" [revised 7/94];
- (d) KW [(e)] JOBS-105, "Kentucky Works Referral Form (Participant), edition 4/97" [revised 6/94];
- (e) KW-200, "Kentucky Works Assessment Form, edition 4/97";
- (f) KW [JOBS-201, revised 1/94;
- (g) JOBS-202, "K-TAP Transitional Assistance Agreement, edition 4/97" [revised 10/94];
- (g) KW [(h)] JOBS-204, "Conciliation Contact, edition 5/97" [revised 1/94];
- (h) KW [(i)] JOBS-205, "Conciliation Results, edition 5/97" [revised 8/94];
- (i) KW-211, "Noncompliance Contact, edition 5/97";
- (j) KW-240, "Work Experience Program-Participant Agreement, edition 1/98";
- (k) KW-244, "WEP Work Site Agreement Amendment, edition 1/98";
- (l) KW-241 "WEP Work Site Agreement, edition 1/98";
- (m) KW-245 "Notice of WEP Discontinuance, edition 1/98";
- (n) KW-246 "WEP Referral Form, edition 1/98".
- [(j)] JOBS-241A, revised 5/94;
- [(k)] JOBS-245A, revised 2/94; and
- [(l)] JOBS-246A, revised 2/94.]

(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
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: October 1, 1997

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

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1997, at 9 a.m. at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be 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, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Judy H. Trigg, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, Telephone: (502) 564-7900, (502) 564-7573 (fax).

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. 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 June 1997, there were a total of 60,255 basic AFDC cases and 1,779 AFDC-UP cases (Unemployed Parent cases), for a total of 62,034 AFDC cases. In June 1997, there were approximately 48,997 adults in those cases. Adults receiving Kentucky Transitional Assistance Program (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 with work requirements, without good cause, will be penalized by the reduction of the amount of the assistance otherwise payable to the family on a pro rata basis. If the person fails to keep an appointment for an interview or assessment, the case will be discontinued.

(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: No requests for a hearing were received as a result of the publication of the Notice of Intent 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 comment received: No requests for a hearing were received as a result of the publication of the Notice of Intent 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: 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 eighteen (18) and nineteen (19). This plan assists the parent in outlining future goals to be achieved by the parent in obtaining employment and achieving self sufficiency. 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 who are work ready UP's (unemployed parents) or sanctioned individuals in the previous JOBS program will be given an opportunity to participate in the Kentucky Works program prior to their next reinvestigation month since all adults are now required to participate unless an exemption under Kentucky Works is met. These individuals will be notified by mail and will be asked to attend a scheduled meeting to discuss work requirements. This special trip to the location of the meeting will take place in the county of residence and will have a fiscal impact to the individual in the amount of the transportation cost to go to the meeting. This amount will vary from individual to individual; however, if the individual is unable to attend the scheduled meeting, the person may be notified by a caseworker for a home visit. Adults with a child under twelve (12) months of age,

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since they meet an exemption criteria for a limited period, will be notified by mail if they desire to be exempted or to participate in Kentucky Works and not use up their limited exemption. This will cause no fiscal impact on these individuals since this can be done by mail and will not require a special trip to the office.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to the agency:

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

a. Grant reduction due to reducing the amount of the assistance otherwise payable to the family on a pro rata basis or discontinuance of the case for not complying with Kentucky Works for the first year - 0.

b. System changes/technology support (cost) - \$200,000.

c. Training (cost) - \$1,200,000.

d. Printing new forms (cost) - \$30,000.

e. Marketing (cost) - \$75,000.

f. Upgrade field workers (cost) - \$48,300.

g. Contract case management in Jefferson County (cost) - \$227,500.

h. New equipment needs (cost) - \$810,600.

i. Relocation (cost) - \$20,000.

j. Total for first year - \$2,611,400.

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year and continuing are listed are projected below:

a. Grant reduction due to reducing the amount of the assistance otherwise payable to the family on a pro rata basis or discontinuance of the case for not complying with Kentucky Works without good cause is a savings to the agency of - \$+200,000

b. System changes/technology support (cost) - \$500,000

c. Training (cost)- \$1,200,000.

d. Printing new forms (cost) - \$0.

e. Marketing (cost) - \$100,000.

f. Upgrade field workers (cost) - \$588,600.

g. Contract case management in Jefferson County (cost) - \$1,300,000.

h. New equipment needs (cost) - \$0.

i. Relocation (cost) - \$20,000.

j. Total for second year (net) - \$3,508,600.

3. Additional factors increasing or decreasing costs: 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.

(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 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: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(b) Kentucky: No requests for a hearing were received as a result of the publication of the Notice of Intent and no written comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement the work requirements for the block grant program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits:

(a) Identify effects on public welfare and environmental welfare of

the geographical area in which implemented and on Kentucky: This administrative regulation is needed to comply with the mandated work requirements found in 42 USC 601 et seq., and to implement the Kentucky Works program that replaces the JOBS program.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Public assistance benefits (including supportive services) received by needy Kentuckians may be jeopardized if Kentucky does not meet the mandates delineated in our Title IV-A state plan as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. If public assistance benefits received by needy Kentuckians are jeopardized, these individuals would lose a source of support for their family including assistance for supportive services such as transportation and child care which enables the parent to remain employed.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all individuals as set forth through federal requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.

2. State compliance standards. KRS 205.200.

3. Minimum or uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No

5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

NEW ADMINISTRATIVE REGULATIONS RECEIVED AS OF NOON, OCTOBER 15, 1997

**GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(New Administrative Regulation)**

201 KAR 26:250. Employment of a psychological associate.

RELATES TO: KRS 319.064(4)

STATUTORY AUTHORITY: KRS 319.032

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032 requires administrative regulations governing the supervision of certified psychologists, psychological associates, and candidates for licensure, and the employment of psychological associates. This administrative regulation defines the requirements for employment of psychological associates. The purpose of this administrative regulation is to provide a definition of employment to allow the board to regulate this aspect of psychological practice. KRS 319.064 prohibits psychological associates from practicing independently, except under the employment and supervision of the board approved licensed psychologist. Since psychological associates are hired under a variety of employment situations, the board shall specify which of these are allowed under the statute.

Section 1. Employment of a psychological associate by a regional mental health/mental retardation board, college or university, or government agency shall be deemed not to be independent practice.

Section 2. The psychological associate may be employed in the supervisor's independent practice, with the supervisor being responsible for the direction and control of the practice of the psychological associate.

Section 3. When the psychological associate is employed in an independent practice and the supervisor of record is not the employer, or when the employer is not an organization listed in Section 1 of this administrative regulation, then the supervisor and psychological associate shall submit a special application to the board and obtain approval before beginning the practice. The application shall specifically contain the following statements:

(1) The supervising licensed psychologist is not hired, employed or engaged under contract by the psychological associate and cannot be terminated by the psychological associate;

(2) The psychological associate is not one of the owners of the independent practice or organization, but rather serves as an employee; and

(3) The psychological associate has both administrative and clinical supervision which are provided by the independent practice or organization.

Section 4. A psychological associate who works as an employee for more than one (1) independent practice or organization shall obtain approval from the board of a supervisor of record for each independent practice or organization and shall comply with 201 KAR 26:171 for approval to have more than two (2) supervisors of record.

Section 5. In all communications and advertising with the public, the psychological associate's relationship with the employer and the supervisor shall be clearly indicated.

Section 6. The psychological associate and the supervisor shall comply with the requirements for supervision as defined in 201 KAR 26:171.

DONALD E. RALPH, PH.D., Chairman
MARK BRENDELMAN, Legal Counsel

APPROVED BY AGENCY: October 3, 1997

FILED WITH LRC: October 15, 1997 at 9 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 26, 1997 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by November 19, 1997, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: Persons credentialed as certified psychological associates and the licensed psychologists acting as the supervisor.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no change in costs.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There will be no change in costs.

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

1. First year following implementation: An application for establishment of the supervisory relationship must be submitted to the board for review and approval.

2. Second and subsequent years: An application for establishment of the supervisory relationship must be submitted to the board for review and approval.

(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: Requests for establishment of supervisory relationships will be received, reviewed and processed.

(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: Trust and agency funds ordinarily used by the board.

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

(a) 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 will assure compliance with the statutory requirements for practice by psychological associates.

(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 credentialing of psychologists provides protection to the public.

(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: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

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

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Department of Fiscal Management
Division of Audit Review
(New Administrative Regulation)

601 KAR 1:146. Fair market rental or lease value of vehicles operated pursuant to a U-drive-it permit.

RELATES TO: KRS 138.462, 138.463, 138.4631, 281.615 through 281.670

STATUTORY AUTHORITY: KRS 138.463(9)

NECESSITY, FUNCTION, and CONFORMITY: KRS 138.463(9) requires the fair market rental or lease value of a motor vehicle to be based on standards established by administrative regulation promulgated by the Transportation Cabinet. The standards set forth in this administrative regulation are to be used in establishing the minimum amount of usage tax to be reported and paid on a rental or lease vehicle.

Section 1. Definitions. (1) "Lease" means as defined in KRS 138.462(3).

(2) "Regularly engaged in the business of renting or leasing to retail customers" means a U-drive-it permit holder who:

(a) Rents or leases vehicles as part of an established business to anyone who wishes to rent or lease a vehicle;

(b) Executes, at a minimum, ninety (90) percent of its rental and lease transactions at fair market value established by arm's length transactions; and

(c) Maintains the records required pursuant to 601 KAR 1:147.

(3) "Rental" means as defined in KRS 138.462(2).

(4) "Vehicle type classification" means the motor vehicle classification system established by the National Automobile Dealers Association and set forth in their "Official Used Car Guide".

Section 2. Fair Market Value (FMV) Rental Amount of a Permit Holder. (1) If a U-drive-it permit holder is regularly engaged in the

business of renting vehicles to retail customers, the Transportation Cabinet Division of Audit Review shall audit the records of the permit holder to determine an average rental amount per day and per agreement to establish the FMV rental amount per day and per agreement for this permit holder.

(2) The FMV rental amount shall be used to assess the usage tax imposed pursuant to KRS 138.463 on an individual transaction of a U-drive-it permit holder who is regularly engaged in the business of renting or leasing vehicles to retail customers under the following conditions:

(a) The transaction is less than arms-length; or

(b) The information required to be maintained by 601 KAR 1:147 for the transaction is missing or incomplete.

Section 3. Fair Market Value (FMV) Transportation Cabinet Established Rental Amount. (1) The Transportation Cabinet Division of Audit Review shall establish based on monthly remittance of usage tax pursuant to KRS 138.463 to the Transportation Cabinet which of the U-drive-it permit holders are the six (6) largest volume permit holders who are regularly engaged in the business of renting motor vehicles to retail customers.

(2)(a) The Transportation Cabinet Division of Audit Review shall survey the six (6) permit holders to determine the average FMV rental amount for each specific vehicle type classification.

(b) The value for each specific vehicle classification established by paragraph (a) of this subsection shall be the FMV Transportation Cabinet established rental amount for the specific vehicle classification.

(3) The FMV Transportation Cabinet established rental amount for a specific vehicle type classification shall be used to assess the tax imposed under KRS 138.463 for the following:

(a) Every transaction of a permit holder who is not regularly engaged in the business of renting vehicles to retail customers; or

(b) A vehicle being used for which the permit holder regularly engaged in the business of renting or leasing vehicles to retail customers is not reporting any U-drive-it usage tax on his monthly tax return;

(4) The current FMV Transportation Cabinet established rental amount for each specific vehicle classification is listed in the August 1997 edition of the Kentucky Transportation Cabinet's "Fair Market Value Transportation Cabinet Established Rental and Lease Amount Calculations".

Section 3. Fair Market Value (FMV) Lease Amount. (1) If a U-drive-it permit holder is regularly engaged in the business of leasing vehicles to retail customers, the Transportation Cabinet Division of Audit Review shall audit the records of the permit holder to determine an average lease amount per \$1000 value of the manufacturer's suggested retail price (MSRP) of the permit holder's lease vehicles.

(2) The FMV lease amount shall be used to assess the KRS 138.463 U-drive-it usage tax on an individual transaction of a U-drive-it permit holder who is regularly engaged in the business of leasing vehicles to retail customers under the following conditions:

(a) The transaction is less than arms-length; or

(b) The information required to be maintained by 601 KAR 1:147 for the transaction is missing or incomplete.

Section 4. Fair Market Value (FMV) Transportation Cabinet Established Lease Amount. (1)(a) The Transportation Cabinet Division of Audit Review shall survey the executed lease agreements of five (5) randomly selected U-drive-it permit holders who are regularly engaged in the business of leasing vehicles to retail customers to determine the average dollar lease amount per \$1000 value of the manufacturer's suggested retail price (MSRP) of a vehicle.

(b) The value established as the average dollar lease per \$1000 of the MSRP by paragraph (a) of this subsection shall be the FMV Transportation Cabinet lease amount per \$1000 of the MSRP.

(2) The usage tax assessed under KRS 138.463 for a lease vehicle of a permit holder who is not regularly engaged in the business of leasing vehicles to retail customers shall be the greater of the following:

- (a) The FMV lease amount per \$1000 value of the MSRP of the vehicle established in subsection (1) of this section; or
- (b) The monthly lease amount assessed by the permit holder.
- (3) The average dollar lease amount per \$1000 value of the MSRP is listed in the August 1997 edition of the Kentucky Transportation Cabinet's "Fair Market Value Transportation Cabinet Established Rental and Lease Amount Calculations".

Section 5. Material Incorporated by Reference. (1) The following material is incorporated by reference in this administrative regulation:

- (a) The August 1997 edition of the Transportation Cabinet's "Fair Market Value Transportation Cabinet Established Rental and Lease Amount Calculations"; and
- (b) The October 1997 edition of the National Automobile Dealers Association "Official Used Car Guide".

(2) The material incorporated by reference in this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Division of Audit Review, 641 Teton Trail, Frankfort, Kentucky 40622. The office hours are 8 a.m. through 4:30 p.m. eastern time on week days. The telephone number is (502)564-6760.

ED LOGSDON, Commissioner
GLENN MITCHELL, Commissioner
JAMES C. CODELL, III, Secretary
HELEN HELTON, Office of General Counsel

APPROVED BY AGENCY: October 15, 1997

FILED WITH LRC: October 15, 1997 at noon

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 21, 1997 at 9 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing/Conference Room 1003, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 14, 1997 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by November 14, 1997. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on November 21, 1997. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, State Office Building 10-13, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis, Staff Assistant

(1) Type and number of entities affected: There are currently 596 active U-drive-it permit holders in Kentucky. All of these entities will be affected by this administrative regulation. There are an additional 478 permit holders which are not active at this time. This administrative regulation will affect them if they activate the permit.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no impact

on the cost of living or employment as a result of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no impact on the cost of living or employment as a result of this administrative regulation.

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

1. First year following implementation: All U-drive-it permit holders are being informed of the basic format their record keeping must follow in order that their records be the ones used in establishing the fair market value for the permit holders. Further, the permit holders are now informed what the fair market value will be for a rental or lease for a permit holder who does not maintain records in a manner consistent with this administrative regulation.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body: None. The administrative regulation is being promulgated to provide advance public notice to the U-drive-it permit holders of how the Transportation Cabinet will respond to the records being maintained by the permit holder.

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet will have to publish any changes in its fair market value determinations.

(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: Road Fund appropriation to the Department of Fiscal Management, Division of Audit Review.

(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 Transportation Cabinet was requested by the Kentucky Auto Dealers Association to not base the fair market value of a leased or rented motor vehicle on the rental or lease value from the permit holders located close to the airports. They felt that these permit holders charge more than would be the true fair market value elsewhere in the state. The Transportation Cabinet added to the composite fair market value the records from several additional permit holders. However, when the composite fair market value was higher with these additional records than just using the records of the largest permit holders, the Transportation Cabinet decided not to include the records from the additional permit holders.

(8) Assessment of expected benefits: The expected benefits are allowing all permit holders to know in advance how much usage tax will be assessed by the Transportation Cabinet for those rental or lease transactions for which the permit holder does not have adequate records. In this way, the permit holders should transmit the expected amount to the Transportation Cabinet each month rather than being hit with a large assessment at the time of audit.

(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 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 is applied in that a permit holder with adequate records will be not be forced to use the Transportation Cabinet computed fair market value to determine the amount of usage tax owed on a motor vehicle rental or lease transaction.

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
Department of Fiscal Management
Division of Audit Review
(New Administrative Regulation)**

601 KAR 1:147. Auditing of U-drive-it permit holders.

RELATES TO: KRS 138.462, 138.463, 138.4631, 186.005, 186.281, 281.615 through 281.670

STATUTORY AUTHORITY: KRS 138.463, 138.4631

NECESSITY, FUNCTION, and CONFORMITY: KRS 138.463 and 138.4631 require the Transportation Cabinet to assess, collect, and audit the monthly U-drive-it usage tax. This administrative regulation sets forth the recordkeeping requirements to which the permit holders will be held and the audit procedures of the Transportation Cabinet.

Section 1. Definitions. (1) "Rental" means as defined in KRS 138.462(2).

(2) "Lease" means as defined in KRS 138.462(3).

Section 2. Recordkeeping. (1) Rental records.

(a) A holder of a U-drive-it permit who rents vehicles shall:

1. Develop a consecutive, preprinted numbering system for its rental agreements; and

2. Retain a copy of each rental agreement in consecutive order, including a voided or damaged agreement.

(b) The following information shall be included on a rental agreement:

1. Rental agreement number;

2. Beginning date of the rental;

3. Ending date of the rental;

4. Identification of the specific rental vehicle which includes the following:

a. Vehicle identification number;

b. Make;

c. Model; and

d. Year.

5. Odometer reading of the rental vehicle at the beginning of the rental agreement;

6. Odometer reading of the rental vehicle at the end of the rental agreement;

7. Amount charged for the rental agreement;

8. Method of calculation of the rental amount charged which includes mileage charges and number of days used; and

9. Identification of the person renting the vehicle.

(c) The record of a rental transaction shall be maintained for a period not less than six (6) years after the due date of the U-drive-it tax return.

(3) Lease records.

(a) A lease agreement shall include the following information:

1. Complete name and address of the lessee;

2. Beginning date of the lease;

3. Ending date or term of the lease;

4. Identification of the lease vehicle which includes the following:

a. Vehicle identification number;

b. Make;

c. Model;

d. Year; and

e. Manufacturer's suggested retail price.

5. Final lease termination calculation and date;

6. Monthly payment amount subject to the tax imposed by KRS 138.463;

7. Down payment or trade-in information;

8. Dated signature of the lessee and the lessor.

(b) The following, where applicable, shall be attached to the lease agreement:

1. Certificate of title of the leased vehicle;

2. A lease amount calculation worksheet;

3. A lease extension agreement;

4. Documentation of a lease early termination;

5. Other information which would alter the original lease agreement.

(c) The record of a lease transaction shall be maintained for a period not less than six (6) years after the due date of the U-drive-it tax return.

Section 3. Audits of Permit Holders. (1) The Division of Audit Review shall notify the permit holder of the date, time, and location of the audit. At least fifteen (15) days' advance notice shall be given to the permit holder.

(2) Pursuant to the guidelines set forth in KRS 138.463(6), the audit period shall be either four (4) years or six (6) years.

(3) Failure of the permit holder to make available the requested records required to be kept by the permit holder pursuant to Section 2 of this administrative regulation may result in an assessment of tax based on KRS 138.460 or cancellation of the permit.

(4)(a) Missing or incomplete records shall result in an assessment based on 601 KAR 1:146 or KRS 138.460 whichever is appropriate as determined by the audit.

(b) In computing the assessment for a specific transaction, the permit holder shall be given credit for any tax previously remitted to the Transportation Cabinet for that transaction.

(5) If an audit is being conducted on site, the auditor shall conduct and document a preaudit conference with the permit holder outlining the operation, audit procedures, records to be examined, sample period (if any), and sampling procedures. The permit holder and auditor shall determine at the preaudit conference who has the responsibility for the final acceptance of audit findings and who should be involved in the close-out conference.

(6) If the audit is being conducted on site, the auditor shall conduct and document a close-out conference with the permit holder outlining preliminary findings to include applicable penalty and interest, recommendations, rights of appeal, and to whom the audit report should be addressed.

(7) The Transportation Cabinet shall furnish the permit holder a letter of audit findings and recap schedules. If requested, the cabinet shall supply any other work papers to the permit holder.

(8) If an audit indicates that additional tax is owed, the Transportation Cabinet shall issue a Notice of Tax Due statement.

(9) The permit holder shall within forty-five (45) days of the date of the notice of tax due statement pay the tax due or protest in writing pursuant to Section 4 of this administrative regulation.

Section 4. Protest or Appeal of Audit Results. (1) The permit holder may within forty-five (45) days of the date of the letter of transmittal of the audit findings, protest in writing to the Transportation Cabinet, Division of Audit Review any portion of the audit.

(2) If the permit holder does not protest, the audit and the notice of tax due statement shall be final on the beginning of the 46th day.

(3)(a) If a permit holder protests pursuant to this section, the

protest shall include a supporting statement and documents which identify:

1. The specific adjustments requested;
2. The portions of the audit being protested; and
3. The reasons the protest is being made.

(b) If the supporting statement and documents are not sufficient to cause the Transportation Cabinet to change the audit or notice of tax due statement as requested by the permit holder in its protest, the permit holder shall be notified to attend an information gathering/protest conference with the Division of Audit Review. The information gathering/protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled only one (1) time by either party.

(4) The permit holder may within thirty (30) days of the date of the final audit or final notice of tax due statement appeal to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.

ED LOGSDON, Commissioner
GLENN MITCHELL, Commissioner
JAMES C. CODELL, III, Secretary
HELEN HELTON, Office of General Counsel

APPROVED BY AGENCY: October 15, 1997

FILED WITH LRC: October 15, 1997 at noon

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on November 21, 1997 at 9 a.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing/Conference Room 1003, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by November 14, 1997 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by November 14, 1997. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on November 21, 1997. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, State Office Building 10-13, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis, Staff Assistant

(1) Type and number of entities affected: There are currently 596 U-drive-it permit holders in Kentucky. All of these entities will be affected by this administrative regulation, but the Transportation Cabinet will only audit the records of about 40 of the permit holders each year. There are an additional 478 permit holders which are not active at this time. This administrative regulation will affect them if they activate the permit.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no impact on the cost of living or employment as a result of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There will be no impact on the cost of living or employment as a result of this administrative

regulation.

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

1. First year following implementation: All U-drive-it permit holders are being informed of the basic format their record keeping must follow in order that their records be the ones used in establishing the fair market value for the permit holders. Further, the permit holders are now informed what the fair market value will be for a rental or lease for a permit holder who does not maintain records in a manner consistent with this administrative regulation.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body: None. The administrative regulation is being promulgated to provide advance public notice to the U-drive-it permit holders of how the Transportation Cabinet will respond to the records being maintained by the permit holder.

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet will have to publish any changes in its fair market value determinations.

(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: Road Fund appropriation to the Department of Fiscal Management, Division of Audit Review.

(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 Transportation Cabinet was requested by the Kentucky Auto Dealers Association to not base the fair market value of a leased or rented motor vehicle on the rental or lease value from the permit holders located close to the airports. They felt that these permit holders charge more than would be the true fair market value elsewhere in the state. The Transportation Cabinet added to the composite fair market value the records from several additional permit holders. However, when the composite fair market value was higher with these additional records than just using the records of the largest permit holders, the Transportation Cabinet decided not to include the records from the additional permit holders.

(8) Assessment of expected benefits: The expected benefits are allowing all permit holders to know in advance how much usage tax will be assessed by the Transportation Cabinet for those rental or lease transactions for which the permit holder does not have adequate records. In this way, the permit holders should transmit the expected amount to the Transportation Cabinet each month rather than being hit with a large assessment at the time of audit.

(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 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 is applied in that a

permit holder with adequate records will be not be forced to use the Transportation Cabinet computed fair market value to determine the amount of usage tax owed on a motor vehicle rental or lease transaction.

LABOR CABINET
Department of Workers' Claims
(New Administrative Regulation)

803 KAR 25:130. Notice of Rejection of Workers' Compensation Act.

RELATES TO: KRS 342.395

STATUTORY AUTHORITY: KRS 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the commissioner to promulgate administrative regulations necessary to carry out the work of the department. Employers whose employees reject the Workers' Compensation Act shall file written notice with the commissioner pursuant to KRS 342.395. This administrative regulation sets forth the procedures concerning the filing of the rejection notice, the form of the rejection notice, and the withdrawal of the rejection notice.

Section 1. (1) If an employee chooses to reject the provisions of KRS Chapter 342, then the employee shall file a Form No. 4, Employee's Notice of Rejection of Workers' Compensation Act (July, 1997 Edition) with his employer.

(2) The notice shall:

(a) Be on an original form obtained from the Department of Workers' Claims;

(b) Contain the following information:

1. Employer data;
2. Employee data;
3. Employers' Workers' Compensation Insurance data;
4. Employee's notarized signature; and
5. Employer's acknowledgment of receipt and filing with the Department of Workers' Claims.

(c) Be effective when the department has received the fully completed Form No. 4.

(3) The employer shall file each Form No. 4 with the department immediately upon receipt from the employee.

(4) Each employer shall:

(a) Keep on file copies of each Form No. 4 signed by current employees; and

(b) Make those records available for inspection upon request by representatives of the department.

(5) The department shall reject filings which are:

- (a) Photocopies;
- (b) Facsimiles;
- (c) Not on an original Form No. 4 obtained from the department.

Section 2. (1) If an employee chooses to withdraw his rejection of the Workers' Compensation Act, then the employee shall file that withdrawal on Form No. 5, Written Notice of Withdrawal of Form No. 4 Rejection Notice (July, 1997 Edition) with his employer.

(2) The withdrawal notice shall:

(a) Be on an original form obtained from the department;

(b) Contain the following information:

1. Employer data;
2. Employee data;
3. Employee's notarized signature; and
4. Employer's acknowledgment of receipt and filing with the department.

(c) Be effective upon filing with the employer.

(3) The employer shall file each Form No. 5 with the department immediately upon receipt from the employee.

Section 3. If an employer or employee wants an acknowledgment from the department of a Form No. 4 filing or Form No. 5 filing, then the employer or employee shall provide the following with the original Form No. 4 or Form No. 5:

- (1) Photostatic copy of the filing; and
- (2) Self-addressed stamped envelope.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) Form No. 4, Employee's Notice of Rejection of Workers' Compensation Act (July 1997 Edition); and

(b) Form No. 5, Written Notice of Withdrawal of Form 4 Rejection (July 1997 Edition).

(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 - 220 B North 8th Street, Paducah, Kentucky 42001; and

(c) Pikeville - 412 Second Street, Pikeville, Kentucky 41501.

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: October 13, 1997

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

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on November 21, 1997, at 10 a.m. (ET) in the offices of the Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by November 14, 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 cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on November 21, 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: Carla H. Montgomery, Counsel, Kentucky Department of Workers' Claims, Perimeter Park West, Building C, 1270 Louisville Road, Frankfort, Kentucky 40601, Telephone Number: (502) 564-5550, Ext. 465, Fax Number: (502) 564-5934.

REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: Kentucky employers and employees who choose to reject the Workers' Compensation Act.

(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, but the department does not anticipate an effect 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 were received, but the department does not anticipate an effect on the cost of doing business.

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

competition) for the:

1. First year following implementation: The requirements are the same for rejecting workers' compensation coverage with the exception that it must be done on the Form No. 4, Revised July 1997. There should be no increase or decrease in costs.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The initial cost of printing the revised Form 4 would be the only costs.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will be responsible to make sure the revised Form No. 4 is used.

(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 usual budget for the Department of Workers' Claims.

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

(a) Geographical area in which administrative regulation will be implemented: No economic impact.

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Form No. 4 and Form No. 5 needed to be updated in an attempt to advise employees of their rights whether rejecting workers' compensation or accepting it. Also, the requirements needed to be in a regulation pursuant to KRS Chapter 13A.

(8) Assessment of expected benefits: The requirements for rejection will be in an administrative regulation pursuant to KRS Chapter 13A. The forms will be incorporated into the regulation and available from the department. Anyone can examine the regulation for the specific requirements.

(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: N/A

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

(10) Any additional information or comments: None

(11) Tiering: Tiering is not applied. This administrative regulation applies to all employees who reject the Workers' Compensation Act.

**CABINET FOR HEALTH SERVICES
Office of Certificate of Need
(New Administrative Regulation)**

900 KAR 6:050. Certificate of need administrative regulation.

RELATES TO: KRS 216B.010 to 216B.130, 216B.455, 216B.990
STATUTORY AUTHORITY: KRS 13A.350, 216B.040

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services is required by statute to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary. This administrative regulation sets forth those administrative regulations necessary to the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure

authorized on a previously issued certificate of need.

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

(3) "Certificate of Need Newsletter" means the monthly newsletter published by the cabinet regarding certificate of need matters.

(4) "Days" means calendar days.

(5) "Division of Licensing and Regulation" means the Cabinet for Health Services, Office of the Inspector General, Division of Licensing and Regulation.

(6) "Emergency circumstances" means situations that pose an imminent threat to the life, health, or safety of any citizen of the Commonwealth.

(7) "Formal review" means the review of those applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and Section 6 of this administrative regulation.

(8) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.

(9) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, and Alzheimer disease facility beds.

(10) "Nonsubstantive review" means expedited review of an application for certificate of need which has been granted nonsubstantive review status pursuant to the provisions of KRS 216B.095 and Section 8 of this administrative regulation.

(11) "Proposed service area" means the geographic area and population the applicant proposes to serve.

(12) "Public information channels" means the Office of Communications in the Cabinet for Health Services.

(13) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(14) "Show cause hearing" means a hearing before the cabinet at which a person is required to explain or demonstrate why the person should not be required to obtain a certificate of need or not be subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

Section 2. Letter of Intent. (1) The Certificate of Need Letter of Intent (Form #1) shall be filed with the cabinet by all applicants for a certificate of need. This shall:

(a) Include those applicants requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation.

(b) Not include those applicants requesting nonsubstantive review under the provisions of KRS 216B.095(a) through (e).

(2) Upon receipt of a letter of intent, the cabinet shall provide the sender with written acknowledgment of receipt of the letter and shall publish notice of such receipt in the next published certificate of need newsletter.

(3) An application for a certificate of need shall not be processed until such time as the letter of intent has been on file with the cabinet for thirty (30) days.

Section 3. Certificate of Need Application. (1) All applicants for a certificate of need shall file an application with the cabinet on the appropriate Certificate of Need Application (forms 2A, 2B, or 2C).

(2) When filing an application for certificate of need, the applicant shall file an original and two (2) copies of the appropriate certificate of need application, together with the prescribed fee set forth in 900 KAR 6:020 with the cabinet on or before the deadlines established by Section 4 of this administrative regulation.

(3) Neither formal nor nonsubstantive review of an application for a certificate of need shall begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall not deem an application complete unless:

(a) The applicant has provided the cabinet with all of the information necessary to complete the application; or

(b) The applicant has declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been declared complete, the applicant may not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been declared complete, it shall not be amended to:

- (a) Increase the scope of the project;
- (b) Increase the amount of the capital expenditure;
- (c) Expand the size of the proposed service area;
- (d) Change the location of the health facility or health service; or
- (e) Change the legal applicant.

(7) An application that has been declared complete, may only be amended at a public hearing, and may then only be amended to:

- (a) Decrease the scope of the project;
- (b) Decrease the amount of the capital expenditure; or
- (c) Decrease the proposed service area.

(8) If an application is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.

(9) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.

(10) An application that is not declared complete within a year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 4. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for both formal and nonsubstantive review shall be as follows:

(a) Public notice for hospital, psychiatric, comprehensive physical rehabilitation, chemical dependency and psychiatric residential treatment facilities, ambulatory care centers, freestanding ambulatory surgical centers, and birthing centers shall be given on the third Thursday of the following months:

- 1. February; and
- 2. August.

(b) Public notice for hospice and home health shall be given on the third Thursday of the following months:

- 1. March; and
- 2. September.

(c) Public notice for mobile services and private pay/third party payor home health agencies shall be given on the third Thursday of the following months:

- 1. April; and
- 2. October.

(d) Public notice for ambulance, air ambulance providers, day health care programs, and rehabilitation agencies shall be given on the third Thursday of the following months:

- 1. May; and
- 2. November.

(e) Public notice for personal care beds shall be given on the third Thursday of the following months:

- 1. June; and
- 2. December.

(f) Public notice for long-term care beds and intermediate care beds for Mental Retardation and Developmentally Disabled facilities shall be given on the third Thursday of June.

(g) Public notice for organ transplantation, magnetic resonance imaging, lithotripter, megavoltage radiation equipment, cardiac catheterization, open heart surgery, and new technological developments shall be given on the third Thursday of the following months:

- 1. January; and

2. July.

(h) Any proposals not listed above shall be placed in the cycle that the cabinet determines to be most appropriate.

(2) In order to have an application deemed complete and placed on public notice, an application must be filed with the cabinet at least fifty (50) days prior to the date of the desired public notice.

Section 5. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, all applications for certificate of need shall be reviewed for completeness pursuant to Section 6 of this administrative regulation.

(2) Unless granted nonsubstantive review status, an application for certificate of need shall be reviewed for approval or denial of the certificate of need according to the formal review criteria set forth at Section 7 of this administrative regulation.

(3) If granted nonsubstantive review status under Section 8 of this administrative regulation, an application for certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth at Section 8 of this administrative regulation.

Section 6. Completeness Review. (1) Within fifteen (15) days of the deadline for deeming an application complete for the next appropriate batching cycle, the cabinet shall determine whether the application is complete, for applications for both formal review and nonsubstantive review.

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that the application has been deemed complete.

(4) A decision to grant or deny nonsubstantive review status will be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) Deeming an application complete means only that the applicant has minimally responded to the necessary items on the application. It is not determinative of the accuracy of, or weight to be given to, the information contained in the application and shall not imply that the application has met the review criteria for approval of a certificate of need.

(6) If the cabinet finds that the application is incomplete, the cabinet shall provide the applicant with written notice of the information necessary to complete the application and shall notify the applicant that the cabinet will not deem the application complete unless within ten (10) days of the date of the cabinet's request for additional information:

(a) The applicant submits the information necessary to complete the application; or

(b) The applicant requests in writing that the cabinet review its application as submitted.

(7) If, upon the receipt of the additional information, the cabinet finds that the application is complete, the cabinet shall, for applicants proceeding under formal review:

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and

2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a

certificate of need has begun.

(8) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that:

(a) The application has been deemed complete; and

(b) A decision to grant or deny nonsubstantive review status will be made within ten (10) days of the date that the application was deemed complete.

(9) If the applicant fails to provide the information necessary to complete the application, or if the information submitted is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the application; and

(b) Inform the applicant that its application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(10) Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a hearing; or

(b) In the case of a deferred application, the additional information is submitted prior to the date that the application must be declared complete as provided for in Section 5 of this administrative regulation.

Section 7. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of applications under formal review shall be limited to the following considerations:

(1) Consistency with plans.

(a) Whether the proposal is consistent with the current state health plan.

(b) Whether the proposal is consistent with applicable biennial budget authorizations and limitations.

(c) Whether the proposal would adversely impact health care costs in the Commonwealth.

(d) In determining whether an application is consistent with the State Health Plan, the cabinet shall apply the latest inventories and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the cabinet's decision.

(2) Need.

(a) Whether the applicant has identified a need for the proposal in the geographic area defined in the application.

(b) Whether the applicant has demonstrated that it is able to meet the need identified in the geographic area defined in the application.

(3) Accessibility. Whether the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed.

(4) Interrelationships and linkages.

(a) Whether it is necessary for the applicant to establish linkages with other health services, health facilities, and elements of the health care system within the region and the state in order to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system within the Commonwealth.

(b) If it is necessary for the applicant to establish linkages with other health services, health facilities, and elements of the health care system in the region and the state in order to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system within the Commonwealth, whether such linkages have been or will be established.

(5) Costs, economic feasibility, and resource availability.

(a) Whether it is economically feasible for the applicant to implement and operate the proposal.

(b) If applicable, whether the cost of alternative ways of meeting

the need identified in the geographic area defined in the application would be a more effective and economical use of resources.

(6) Quality of services.

(a) Whether the applicant is prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet.

(b) Whether the applicant has the ability to comply with applicable licensure requirements. The fact that there is not an applicable licensure category shall not constitute grounds for disapproving an application.

Section 8. Nonsubstantive Review. (1) In addition to the projects specified in KRS 216B.095(3)(a) through (e), the cabinet may grant nonsubstantive review status to an application for which a certificate of need is required in circumstances wherein:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there are no standards or review criteria in the state health plan.

(b) The proposal involves the establishment or expansion of an ambulatory surgery center by an ambulatory surgery center that is existing and operating by July 15, 1997, if such ambulatory surgery center was initially established as a private office or clinics of physicians.

(2) If an application is denied nonsubstantive review status, the application shall automatically be placed in the formal review process.

(3) If an application is granted nonsubstantive review status, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(4) If an application is granted nonsubstantive review status, any affected person other than the applicant may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review. The provisions of Section 16 of this administrative regulation shall govern the conduct of all nonsubstantive review hearings.

(5) If an application for certificate of need is granted nonsubstantive review status there shall be a presumption that the facility or service is needed, and the cabinet shall approve applications for certificate of need that have been granted nonsubstantive review status, unless the presumption of need is rebutted by clear and convincing evidence that there is not a need for the proposed facility or service in the geographic area defined in the application.

(6) The cabinet shall approve or disapprove an application which has been granted nonsubstantive review status within thirty-five (35) days of the date that notice is given that nonsubstantive review status has been granted.

(7) If a certificate of need is denied following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and Section 16 of this administrative regulation;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

Section 9. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application.

(2) Written notification of approval shall include:

(a) Verification that the review criteria for approval have been met;

(b) If the application is inconsistent with any review criteria, the reasons for approval despite the inconsistency;

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, where applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

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(4) An application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months, absent a showing of a significant change in circumstances.

Section 10. Deferral of an Application. (1) An applicant may defer review of an application by notifying the cabinet of its wish to defer review of its application at any time prior to the entry of a decision to approve or deny the application. If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to defer the application.

(2) If deferral is requested, the application shall be deferred to the next regular batching cycle and shall be placed on public notice.

(3) If an application is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty-five (25) days prior to the date that the deferred application is placed on public notice.

(4) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

Section 11. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need at any time prior to the entry of a decision to deny or approve the application by notifying the cabinet in writing of the decision to withdraw the application. If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

(2) If an application is withdrawn, the applicant shall file a new letter of intent before resubmitting the application.

Section 12. Emergency Circumstances. (1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need provided:

(a) The health facility or health service is licensed by the cabinet to provide the service necessary to alleviate the emergency; and

(b) The cabinet is notified in writing within five (5) days after the commencement of the service required to alleviate the emergency.

(2) The notice to the cabinet shall contain the following information:

(a) A detailed description of the emergency;

(b) The steps taken to alleviate the emergency;

(c) The location or geographic area where the emergency service is being provided; and

(d) If applicable, the name and addresses of the person to whom emergency services are being provided.

(3) If the provision of service to meet the emergency circumstance is required to continue beyond thirty (30) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file an application for a certificate of need pursuant to Section 3 of this administrative regulation.

(4) The person providing the emergency service may continue to alleviate the emergency circumstances until such time as the emergency ceases to exist or the cabinet issues a final decision to approve or disapprove the application for certificate of need.

Section 13. Transfer of a Certificate of Need. Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

Section 14. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility is valid only for the location stated on the certificate.

Section 15. Filings. (1) The filing of all documents required by this administrative regulation shall be made by filing such documents with the Office of Certificate of Need, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p.m. eastern time on the due date.

(2) Filings of documents, other than certificate of need applications and proposed hearing reports, may be made by facsimile transmission provided that:

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p.m. eastern time on the date due; and

(b) An original document is filed with the cabinet on or before 4:30 p.m. eastern time on the next working day after the due date.

(4) The Office of Certificate of Need shall endorse by file stamp the date that each filing is received and such endorsement shall constitute the filing of the document.

(5) In computing any period of time prescribed by these administrative regulations, the date of notice, decision or order shall not be included.

(6) The last day of the period so computed is to be included, unless it is a Saturday, a Sunday or legal state holiday, in which event the period runs until 4:30 p.m. eastern time of the first working day following a Saturday, Sunday, or legal state holiday.

Section 16. Hearings. (1) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health Service's Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing.

(3) Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area, not less than ten (10) days prior to the date of the hearing; and

(b) Provided to members of the general public through public information channels.

(4) A public hearing shall be canceled if all persons who requested the hearing agree in writing to its cancellation; agreement of other affected persons shall not be required.

(5) Any dispositive motion made by a party to the proceedings shall be filed with the hearing officer three (3) working days prior to the scheduled date of the hearing.

(6) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference are to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer may tape record the conference or if requested by a party to the proceedings arrange for a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters.

2. Prescribe the manner and extent of the participation of the parties or persons who shall participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(7) At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file two (2) copies of the following for each affected application with the cabinet and serve copies on all other known parties to the proceedings:

(a) Witness List, Form #3;

(b) Exhibit List, Form #4 and attached exhibits; and

(c) Notice of Appearance, Form #5.

(8) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

(9) Each party shall have the opportunity to:

(a) Present its case;

(b) Make opening statements;

(c) Call and examine witnesses;

(d) Offer documentary evidence into the record;

(e) Make closing statements; and

(f) Cross-examine opposing witnesses on:

1. Matters covered in direct examination; and

2. At the discretion of the hearing officer, upon other matters relevant to the issues.

(10) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(11) The hearing officer may:

(a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed;

(b) Act to exclude irrelevant, immaterial or unduly repetitious evidence; and

(c) Question any party or witness.

(12) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed, at the discretion of the hearing officer.

(13) The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

(14) Witnesses shall be examined under oath or affirmation.

(15) Witnesses may, at the discretion of the hearing officer:

(a) Appear through deposition or in person; and

(b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement;

2. The witness shall authenticate the document under oath; and

3. The witness shall be subject to cross-examination.

(16) The hearing officer may accept documentary evidence in the form of copies of excerpts if the original is not readily available, provided that upon request parties shall be given an opportunity to compare the copy with the original and provided that the documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #4) and filed with the hearing officer and other parties at least seven (7) working days before the hearing for formal review applications and five (5) working days for nonsubstantive review applications.

(17) A document may not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

(18) The hearing officer may take official notice of facts which are

not in dispute, or of generally-recognized technical or scientific facts within the agency's special knowledge.

(19) The hearing officer may permit a party to offer or request a party to produce additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.

(20) In the case of a hearing on an application for a certificate of need, the hearing officer may, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(21) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

Section 17. Requests for Reconsideration. (1) In order to be considered, requests for reconsideration shall be filed within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

(b) An advisory opinion entered after a public hearing; or

(c) Revocation of a certificate of need.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) The cabinet shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If reconsideration is granted:

(a) A hearing shall be held by the cabinet in accordance with the provisions of Section 16 of this administrative regulation within thirty (30) days of the date of the decision to grant reconsideration; and

(b) A final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

(6) If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation to be made a part of the record without a hearing.

Section 18. Show Cause Hearings. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of any person, to include hearings requested pursuant to *Humana of Kentucky v. NKC Hospitals, Ky.*, 751 S.W.2d 369 (1988), in order to determine whether a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or these administrative regulations.

(2) Show cause hearings shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(3) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(4) The notice shall advise the person of:

(a) The allegations against him;

(b) Any facts determined to exist which support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(5) A hearing officer shall convene the hearing and shall allow the person to establish through testimony or other evidence any grounds in support of its position that no action should be taken by the cabinet.

(6) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall issue a final decision on the matter.

(7) A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(8) If a violation is found to have occurred, the cabinet shall take action as provided by KRS Chapter 216B.

Section 19. Administrative Escalations. (1) No person may obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless the person has received an administrative escalation or an additional certificate of need from the cabinet.

(2) Requests for administrative escalations shall be submitted to the cabinet on the Cost Escalation Form, Form #6.

(3) The cabinet shall authorize administrative escalations for funds which have not been obligated and which do not exceed the following limits provided there is not a substantial change in the project:

(a) Twenty (20) percent of the capital expenditure authorized on the original certificate of need or \$100,000, whichever is greater, if the capital expenditure authorized on the certificate of need is less than \$500,000;

(b) Twenty (20) percent of the capital expenditure if the capital expenditure authorized on the certificate of need is \$500,000 to \$4,999,999;

(c) Ten (10) percent of the amount in excess of \$5,000,000, plus \$1,000,000, for projects where the capital expenditure authorized on the certificate of need is \$5,000,000 to \$24,999,999;

(d) Five (5) percent of the amount in excess of \$25,000,000, plus \$3,000,000, where the capital expenditure authorized on the certificate of need is \$25,000,000 to \$49,999,999; and

(e) Two (2) percent of the amount in excess of \$50,000,000, plus \$4,250,000, where the capital expenditure authorized on the certificate of need is \$50,000,000 or more.

(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure.

(5) The escalation of a capital expenditure in excess of the limits set forth in subsection (3) of this section, shall constitute a substantial change in a project and shall require a certificate of need pursuant to KRS 216B.061(1)(e).

(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized on a certificate of need shall be presumed to be a willful violation of KRS Chapter 216B and shall be subject to the penalties set forth at KRS 216B.990(2).

Section 20. Timetables and Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on the Certificate of Need Six (6) Month Progress Report, Form #7, at the six (6) month intervals specified in this section.

(2) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(3) The cabinet or its designee shall review a progress report and shall:

(a) Determine whether the required elements have been completed; and

(b) If the required elements have not been completed, whether sufficient reasons for failure to complete have been provided.

(4) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure or occupancy by the Division of Licensing and Regulation;

(b) A final cost breakdown has been submitted; and

(c) Documentation that services are being provided to all of the licensed service area has been submitted.

(5) Until a project is deemed complete by the cabinet, the cabinet

may require:

(a) The submission of additional reports as specified in subsections (16) through (18) of this section; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(6) Except for long-term care bed proposals, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that the failure was due to emergency circumstances or other causes that could not reasonably be anticipated and avoided by the holder, or were not the result of action or inaction of the holder.

(7) If the cabinet determines that required elements have not been completed for reasons other than those set forth in subsection (5)(a) of this section, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

(8) The revocation shall become final thirty (30) days from the date of notice of revocation, unless the holder requests a hearing pursuant to KRS 216B.086.

(9) The first progress report for all projects other than long-term care beds shall include:

(a) Projects for the addition of new services or expansion of existing services that do not involve construction, renovation or the installation of equipment shall provide plans for implementation of the project;

(b) Projects for the purchase of equipment only: a copy of the purchase order;

(c) Projects involving the acquisition of real property: evidence of an option to acquire the site; and

(d) Construction or renovation projects: evidence that schematic plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(10) For projects other than long-term care beds not deemed complete, a second progress report shall include:

(a) Projects converting beds: documentation that all beds are licensed;

(b) Projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Division of Licensing and Regulation or the Emergency Medical Services Branch; and

(c) Construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(11) For projects other than long-term care beds not deemed complete, a third progress report shall include:

(a) Construction or renovation projects:

1. Copy of deed or lease of land;

2. Documentation of final enforceable financing agreement, where applicable;

3. Documentation that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

4. Enforceable contract with a construction contractor.

(b) Projects for purchase of equipment only: evidence of approval for licensure and occupancy by the Division of Licensing and Regulation.

(12) For projects other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation and evidence that construction has begun.

(13) For projects other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(14) For projects other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Division of Licensing and Regulation and, if required, that the appropriate license has been approved for the health care service or facility.

(15) For projects other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project will be completed on a revised schedule. The cabinet or its designee may require additional progress reports.

(16) For projects involving long-term care beds:

(a) The first progress report shall include:

1. A copy of the deed or lease of land for projects requiring acquisition of real property; and

2. Evidence that final plans have been submitted to the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation.

(b) For projects involving long-term care beds not deemed complete, a second progress report shall include:

1. For conversion of bed projects, documentation that the beds in the project are licensed; and

2. For construction projects:

a. Schedule for project completion with projected dates;

b. Documentation of final financing;

c. Documentation of final plan approval by the Public Protection and Regulation Cabinet, Department of Housing, Buildings and Construction and the Division of Licensing and Regulation; and

d. Enforceable construction contract.

(17) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion.

(18) For projects not involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Division of Licensing and Regulation.

(19) The cabinet or its designee may grant no more than two (2) extensions of six (6) months for good cause shown when the certificate holder of long-term care beds has failed to comply with the above relevant progress report requirements.

(20) Within six (6) months following licensure of a project for which a certificate of need has been issued, the certificate holder shall submit documentation that services are being provided to all of the licensed service area. Failure to provide such documentation shall constitute grounds for revocation of the certificate of need and the license for those areas where service is not being provided.

(22) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

Section 21. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine whether they are in compliance with the terms as listed on their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

(a) When the biennial review will be initiated;

(b) Request for information necessary for the review to which the cabinet does not have ready access; and

(c) A deadline for response to the request for information.

(4) The cabinet shall notify the certificate of need holder of any finding that it is not in compliance with the terms of its certificate of

need, and shall provide the certificate of need holder with a reasonable period of time in which to demonstrate a good faith effort to remedy the specified deficiencies.

(5) The cabinet may institute disciplinary proceedings, including but not limited to revocation of the certificate of need for willful failure to comply with the terms of the certificate of need as determined by a biennial review.

(6) The cabinet shall notify the Division of Licensing and Regulation of any adverse findings under this subsection.

Section 22. Advisory Opinions. (1) The cabinet shall issue advisory opinions regarding matters related to certificate of need on its own initiative or upon request from any person.

(2) Requests for advisory opinions shall be filed with the cabinet and shall be accompanied by the Request for Advisory Opinion Form, Form Number #8.

(3) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a nonclinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(4) The cabinet may require verification of information and request additional documentation at its discretion prior to issuing an advisory opinion.

(5) The cabinet shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an advisory opinion or of receipt of additional information.

(6) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter.

(7) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion.

(8) The public hearing shall be held within forty-five (45) days of the date of the filing of the request and shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(9) The cabinet shall enter a final decision regarding the advisory opinion, within forty-five (45) days of the completion of the public hearing.

(10) If a public hearing is not requested, the advisory opinion shall be the final action of the cabinet.

Section 23. Notification of the Addition of a Health Service. (1) Health facilities that make additions to an existing health service for which there are review criteria in the state health plan but for which a certificate of need is not required, or add equipment for which there are review criteria in the state health plan but for which a certificate of need is not required, shall notify the cabinet that such a service or equipment has been added within ten (10) of such addition.

(2) Notification of the Addition of a Health Service or Equipment (Form #10) shall be used in making such notification.

Section 24. Acquisition and Relocation of Nonconforming Nursing Facility. (1) Any person proposing to acquire a nursing facility in excess of 300 beds that is not in substantial compliance with 902 KAR 20:310 shall provide a notification of intent to acquire pursuant to KRS 216B.065.

(2) The nursing facility acquired pursuant to subsection (1) of this section may be relocated to more than one (1) location, provided that all the beds remain within the county of location of the original facility.

(3) Applications to relocate the nursing facility acquired pursuant to subsection (1) of this section, shall be filed pursuant to KRS 216B.095.

(4) Once relocated and licensed, any person proposing to acquire the relocated nursing facilities shall provide notifications of intent to acquire pursuant to KRS 216B.065.

Section 25. Material Incorporated by Reference. (1) The following forms necessary for the administration of the certificate of need program are hereby incorporated by reference:

- (a) Letter of Intent (Form #1);
- (b) Certificate of Need Application - Formal Review (Form #2A);
- (c) Certificate of Need Application for Ground Ambulance and Air Ambulance Service Providers (Form #2B);
- (d) Certificate of Need Application for Change of Location, Replacement, or Cost Escalation (Form #2C);
- (e) Witness List (Form #3);
- (f) Exhibit List (Form #4);
- (g) Notice of Appearance (Form #5);
- (h) Administrative Escalation (Form #6);
- (i) Six (6) Month Progress Report (Form #7);
- (j) Advisory Opinion Request (Form #8);
- (k) Acquisition of a Health Facility, Notice of Intent (Form #9);
- (l) Notification of the Addition of a Health Service or Equipment (Form #10).

(2) These forms may be inspected and copied at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

JOHN GRAY, Executive Director

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: October 15, 1997

FILED WITH LRC: October 15, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1997 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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, Cabinet Regulation Coordinator, Cabinet for Health Services, 275 East Main Street - 4 West, Frankfort, Kentucky 40621, Phone: (502) 564-7900, Fax Number: (502) 564-7573.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: John Gray, Executive Director

(1) Type and number of entities affected: All applicants for and holders of certificates of need.

(2) Direct and indirect cost or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments were received on this issue.

(b) Cost of doing business in the geographical areas in which the administrative regulation will be implemented, to the extent available from the public comment 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: This administrative regulation maintains the compliance, reporting and paperwork requirements contained in 900 KAR 6:015.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect cost or savings:

1. First year: None

2. Continuing cost or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

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

No anticipated effect on state or local revenues. The certificate of need program is an established program that has been in existence for 25 years. This administrative regulation does not alter the fees already associated with the certificate of need process.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds have already been budgeted for the operation of the certificate of need process.

(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 on this issue.

(b) Kentucky: No public comments were received on this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. The Cabinet for Health Services is mandated by statute (KRS Chapter 216B) to promulgate administrative regulations setting forth certificate of need procedures.

(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 certificate of need process was established by the Kentucky General Assembly to help contain health care costs in order that the citizens of the Commonwealth might enjoy cost-effective health care.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on environment and public health would result if this administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation is not implemented there will be no control over the proliferation of health facilities and health services in the Commonwealth.

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: 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:

(11) TIERING: Is tiering applied? No. This administrative regulation applies equally to all health services and health facilities in the Commonwealth.

FISCAL NOTE ON LOCAL GOVERNMENT

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

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. This administrative regulation will affect only those local governments that hold or apply for certificates of need.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to health services and health facilities provided by local governments.

4. How does this administrative regulation affect the local government or any service it provides? This administrative regulation affects health services provided by local government by setting forth the requirements for obtaining and maintaining certificates of need.

CABINET FOR HEALTH SERVICES
Office of Inspector General
Division of Licensing and Regulation
(New Administrative Regulation)

906 KAR 1:120. Informal dispute resolution.

RELATES TO: KRS 13A.100(1), 42 CFR 488.301

STATUTORY AUTHORITY: KRS 194.030(11)(b), 42 CFR 488.331, EO 96-862

NECESSITY, FUNCTION AND CONFORMITY: As part of its agreement with the Health Care Financing Administration, the Cabinet for Health Services is required to establish an informal dispute resolution process in accordance with 42 CFR 488.331. This administrative regulation sets out the process by which a provider may informally dispute deficiencies. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Deficiency" means a failure to meet a federal requirement for participation in the Medicare or Medicaid Program.

(2) "Director" means the Director of the Division of Licensing and Regulation, or his designee.

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

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

(5) "Plan of correction" means a description of actions by a provider to correct deficiencies.

(6) "Provider" means a facility subject to the requirements of 42 CFR 488.331.

(7) "Regional program manager" means the regional program manager responsible for the survey and survey team, or his designee.

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

(9) "Substandard quality of care" means as defined in 42 CFR 488.301.

Section 2. Request for Informal Dispute Resolution. (1) A provider shall have one (1) informal opportunity to dispute cited deficiencies and scope and severity assessments that constitute substandard quality of care or immediate jeopardy.

(2) A provider may request informal dispute resolution upon receipt of the statement of deficiencies.

(3) A request shall be in writing and shall:

(a) Specify the deficiencies in dispute.

(b) Explain the dispute and provide a detailed basis for the dispute.

(4) Documents, if any, shall be attached to the request.

(5) The request and attachments shall be delivered to the regional program manager on or before the mandated return date for the plan of correction.

(6) A request for informal dispute resolution shall not delay any enforcement action.

Section 3. Review Process. (1) The regional program manager and appropriate survey staff shall make the determination regarding the resolution of the dispute.

(2) The provider shall be advised verbally of the determination, with written confirmation to follow.

TIMOTHY L. VENNO, Inspector General
 JOHN MORSE, Secretary
 ELLEN M. HESEN, Attorney

APPROVED BY AGENCY: October 9, 1997

FILED WITH LRC: October 10, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on November 21, 1997, at 9 a.m., at the Health Services Auditorium, 1st Floor, CHR Building. Individuals interested in attending this hearing shall notify this agency in writing by November 14, 1997, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made, in which case the person requesting the transcript shall be responsible for payment. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, 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.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: There are presently 314 long-term care facilities certified to participate in the Medicare or Medicaid Programs.

(2) Direct and indirect costs or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No public comments addressing this issue 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: Paperwork related to requests for informal dispute resolution. No additional reporting requirements imposed.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: Administrative costs associated with the informal dispute resolution process are allocated to a federal billing code.

1. First year: Unable to anticipate.

2. Continuing costs or savings: Unable to anticipate.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: Paperwork related to informal dispute resolution determinations.

(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: Title XVIII and XIX federal funds.

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

(a) Geographical area in which administrative regulation will be implemented: To be determined after the Notice of Intent public hearing.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: 42 CFR 488.331 mandates an informal dispute

resolution process.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation sets forth the process by which long-term care facilities may informally dispute deficiencies.

(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 governmental policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: No 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? No. This informal dispute resolution process applies to all long-term care facilities participating in the Medicare or Medicaid Programs.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 CFR 488.331.

2. State compliance standards.

3. Minimum or uniform standards contained in the federal mandate. 42 CFR 488.331 requires that the state have in place an informal dispute resolution process for providers who are dissatisfied with deficiencies issued for failure to meet federal requirements for participation in the Medicare or Medicaid Programs.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by federal mandate? No. Specific provisions for the informal dispute resolution process are set forth in this administrative regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of October 14, 1997

The October meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, October 14, 1997, at 1:40 p.m. in Room 149 of the Capitol Annex. Representative John Arnold, Chairman, called the meeting to order, and the roll call was taken. The minutes of the September 9, 1997 meeting were approved.

Present were:

Members: Representative John Arnold, Chairman; Senators Joey Pendleton, Nick Kafoglis; Representatives Jimmy Lee and James Bruce.

LRC Staff: Greg Karambellas, Donna Little, Susan Wunderlich, Angela Phillips, Donna Valencia, Kim Burch.

Guests: Gail Prewitt, Tom Howard, Mary Lassiter, Angela Robinson, Finance and Administration Cabinet; Dave Nicholas, Division of Occupations and Professions; Nathan Goldman, Sharon Weisenbeck, Board of Nursing; Tom Bennett, John Wilson, Roy A. Grimes, Department of Fish and Wildlife Resources; Mark Farrow, Chris Kring, Department of Agriculture; Diana Andrews, Larry J. Leach, Jona Brewer, Natural Resources and Environmental Protection; Jack Damron, Brenda Priestley, Department of Corrections; Gary W. Rose, John B. Lile, Jean Ann Gabbard, Kentucky State Police; Sandra Pullen Davis, Transportation Cabinet; Robert Sherman, Carol Tuning, Francis Jay Roberts, Department of Education; Sharron S. Burton, Department of Insurance; Mark Cornett, James Henson, Michael Littlefield, D. W. Swain, Trish Howard, Jeanne Southworth, Eric Friedlander, Cabinets for Health Services and Families and Children; Robert Hadad, Organic Farmers; Carole Christian, Owensboro Mercy Health System; Carl Sumner, Insurance Institution of Kentucky; Lowell Reese, Kentucky Roll Call; Ted Bradshaw, IIAK.

The Subcommittee determined that the following administrative regulation, as amended by the promulgating agency and the Subcommittee, complied with statutory authority and was no longer deficient:

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:130. Western Kentucky Correctional Complex. Jack Damron, Attorney, represented the Department. This administrative regulation was amended as follows: WKCC 13-02-01 was amended to delete the inmate co-payment for medical services to comply with the Subcommittee's objections to this administrative regulation when it was found deficient on by the Subcommittee at its October 7, 1996 meeting.

The Subcommittee approved a motion by Representative Bruce, seconded by Representative Lee, to remove the Subcommittee's October 7, 1996 finding of deficiency on this administrative regulation.

The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:

Kentucky Asset/Liability Commission: Commission

200 KAR 23:010 & E. Guidelines for use of financial agreements. Gail Prewitt, Principal Assistant, represented the Cabinet. This administrative regulation was amended as follows: (1) Section 2 was amended to delete provisions that repeated or summarized statutes, as required by KRS 13A.120(2)(e) and (f); and (2) Section 3(2) was amended to specify the rating agencies.

Board of Veterinary Examiners

201 KAR 16:060. Complaint processing procedures. Dave Nicholas, Director, Division of Occupations and Professions, represented the Board. This administrative regulation was amended as follows:

(1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph, and Sections 1 and 2 were amended to comply with the drafting requirements of KRS 13A.222(4); and (3) Section 3 was amended to clarify that if the Board did not dismiss a complaint, it was required to proceed in accordance with KRS 321.360.

Board of Nursing

201 KAR 20:240. Fees for applications and for services. Sharon Weisenbeck, Executive Director, and Nathan Goldman, General Counsel, represented the Board. Subcommittee staff stated that: (1) this administrative regulation was deferred from the September 9, 1997, meeting of the Subcommittee because Subcommittee members wanted to know: (a) the reasons for the fee increases; and (b) whether the Kentucky Nurses Association supported this administrative regulation; and (2) the Kentucky Board of Nursing had submitted: (a) documentation explaining the reasons for the fee increases; and (b) a letter from the Kentucky Nurses Association in support of the administrative regulation.

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 accurately state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1, 2, 3, 6, and 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Board of Certification of Marriage and Family Therapists

201 KAR 32:030. Fees. Dave Nicholas, Director, Division of Occupations and Professions, represented the Board. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct a statutory citation; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to accurately state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f).

Department of Fish and Wildlife Resources: Game

301 KAR 2:140. Requirements for wild turkey hunting. Tom Bennett, Commissioner, represented the Cabinet. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a statutory citation; and (2) Sections 3 through 7 were amended to comply with the drafting requirements of KRS 13A.222(4).

301 KAR 2:142. Spring wild turkey hunting. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a statutory citation; (2) Sections 2(3) and 4 were amended to permit all-day hunting, rather than prohibiting hunting after 1:00 p.m.; (3) Section 3 was amended to specify that the limits applied to the taking of a male turkey or a turkey with a visible beard; and (4) Section 4 was amended to: (a) establish that a turkey taken on Fort Knox was a bonus bird; and (b) comply with the drafting requirements of KRS 13A.222(4).

301 KAR 2:144. Fall wild turkey hunting. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct a statutory citation; (2) Sections 1, 3, and 5 were amended to comply with the drafting requirements of KRS 13A.222(4); and (3) Section 5 was amended to clarify the requirements for hunting wild turkey on a wildlife management area.

Hunting and Fishing

301 KAR 3:022. License, tag and permit fees. Sections 1 through 5 of this administrative regulation were amended to correct the punctuation at the end of each line.

Department of Agriculture: Division of Markets: Organic Agricultural Product Certification

302 KAR 40:010. Standard organic agricultural product requirements. Mark Farrow, General Counsel, represented the Cabinet. This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (2) Section 1 was amended to delete provisions that repeated or summarized statutory provisions, as required by KRS 13A.120(2)(e) and (f); (3) Sections 1 through 12 were amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) a new section was created to incorporate by reference the required materials list and the application form.

Justice Cabinet: Department of State Police: Candidate Selection

502 KAR 45:145 & E. Merit Pay Program. Gary Rose, Commissioner, represented the Department. This administrative regulation was amended as follows: (1) the TITLE was amended to clarify that the administrative regulation governed merit awards, rather than merit pay; (2) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to accurately state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (4) Sections 1 and 2 were amended to clarify the requirements for a merit award; and (5) Sections 3 and 4 were amended to delete superfluous language, as required by KRS 13A.222(4).

Board of Education: Department of Education: Bureau for Learning Support Services: Office of Instruction

704 KAR 3:455. Instructional material and textbook adoption process. Bobby Sherman, Legislative Liaison, represented the Department. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to accurately state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 2, 3, 5 through 10, 12, 14, 15, 17, 19, 20, 21, and 23 were amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Department for Housing, Buildings and Construction: Office of State Fire Marshal: Electrical Inspectors

815 KAR 35:015. Certification of electrical inspectors. Judith Walden, General Counsel, represented the Department. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs and Sections 1 and 6 were amended to correct citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to accurately state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 3 and 5 were amended to delete provisions that repeated or summarized statute, as required by KRS 13A.120(2)(e) and (f); and (4) Sections 1, 2, 4 through 11, and 13 were amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

Cabinet for Health Services: Medicaid Services

907 KAR 1:160 & E. Home and community based waiver services. Eric Friedlander, Office Of Program Support, represented the Department. This administrative regulation was amended as follows: the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 4 and 6 were amended to comply with the: (1) formatting requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

907 KAR 1:170 & E. Payments for home and community based waiver services. Sections 1 and 3 of this administrative regulation

were amended to comply with the: (1) formatting requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

907 KAR 1:560. Medicaid hearings and appeals for recipients. This administrative regulation was amended as follows: (1) Sections 3 and 13 were amended to clarify that a request for a hearing or appeal may be submitted on the specified form; (2) Sections 11, 12, 18, and 22 were amended to delete provisions that repeated or summarized statutes, as required by KRS 13A.120(2)(e) and (f); and (3) Sections 1 through 10, 12, 13, 15, 17 through 21, and 23 were amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

907 KAR 1:720 & E. Coverage and payments for the Kentucky Early Intervention Program services provided through an agreement with the state Title V agency. This administrative regulation was amended as follows: Sections 2, 3, and 4 were amended to comply with the: (1) formatting requirements of KRS 13A.220(4); and (2) drafting requirements of KRS 13A.222(4).

Department for Mental Health and Mental Retardation Services: Division of Mental Retardation: Mental Health

908 KAR 2:200 & E. Coverage and payment for Kentucky Early Intervention Program services. Mike Littlefield, Administrative Regulations Coordinator, and Jim Henson, First Steps Coordinator, represented the Department. Subcommittee staff stated that: (1) the first amendment to this administrative regulation was proposed by Subcommittee staff to comply with the requirements of KRS Chapter 13A; and (2) the second amendment to this administrative regulation was proposed by the Department to: (a) correct the amount of the rates that were established in the administrative regulation; and (b) establish rate amounts for: 1. assistive technology specialist; and 2. group intervention services.

The Subcommittee approved a motion by Representative Bruce, seconded by Representative Lee, to amend this administrative regulation as requested by the Department.

This administrative regulation was amended as follows: (1) Section 1 was amended to correct statutory citations; (2) Section 3 was amended to correct a typographical error in the amount of the fee; (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 4 were amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Section 3(3)(e) and (f) were amended to: (a) correct the amount of certain fees that were incorrectly listed in the administrative regulation; and (b) establish fees for an assistive technology specialist; (5) Section 3(7) was amended to establish a fee and limitations for group intervention services; and (6) Section 4(4) was amended to establish the time limitations relating to payment for therapeutic intervention services provided in a group setting.

The Subcommittee determined that the following administrative regulations complied with statutory requirements:

Office of the Secretary: Personnel Pilot Programs

200 KAR 22:041. Repeal of 200 KAR 22:040. Gail Prewitt, Principal Assistant, represented the Cabinet.

Board of Veterinary Examiners

201 KAR 16:071. Repeal of 201 KAR 16:070. Dave Nicholas, Director, Division of Occupations and Professions, represented the Board.

Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division for Air Quality: General Administrative Procedures

401 KAR 50:012. General application. Lora Brewer and Diane Andrew represented the Cabinet.

401 KAR 50:066. Conformity of transportation plans, programs, and projects.

ADMINISTRATIVE REGISTER - 1200

New Source Requirements; Nonattainment Areas

401 KAR 51:010. Attainment status designations.

Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Vehicle Licensing: Department of Fiscal Management: Division of Audit Review: Motor Vehicle Tax

601 KAR 9:135. Apportioned registration. Sandra Pullen Davis, Assistant to the Secretary, represented the Cabinet.

Cabinet for Health Services: Department for Public Health: Division for Environmental Health and Community Safety: Radiology

902 KAR 100:165. Notices, reports and instructions to employees. Dee Swain represented the Department.

Cabinet for Families and Children: Department for Social Insurance: Food Stamp Program

904 KAR 3:060. Administrative disqualification hearings and penalties. Mark Cornett, Internal Policy Analyst, represented the Department.

Department for Social Services: Division of Family Services: Child Welfare

905 KAR 1:180 & E. DSS policy and procedures manual. Michael Cheek represented the Department.

Cabinet for Health Services: Medicaid Services

907 KAR 1:429. Repeal of 907 KAR 1:428 and 907 KAR 1:432. Eric Friedlander, Office Of Program Support, represented the Department.

The following administrative regulations were deferred to the next Subcommittee meeting upon agreement by the Subcommittee and the promulgating agency:

Finance and Administration Cabinet: State Investment Commission

200 KAR 14:011E. General rules.

200 KAR 14:081E. Repurchase agreement.

200 KAR 14:200E. Linked Deposit Investment Program.

Department of Agriculture: Division of Pesticides: Pesticides

302 KAR 31:040. Storage and handling of bulk pesticides and bulk fertilizers for agrichemical facilities.

Justice Cabinet: Department of Corrections: Office of the Secretary

501 KAR 6:020. Corrections policies and procedures.

501 KAR 6:090. Frankfort Career Development Center.

Transportation Cabinet: Department of Highways: Traffic

603 KAR 5:070E. Motor vehicle dimension limits.

Education Professional Standards Board

704 KAR 20:305E. Written examination prerequisites for teacher certification.

Workforce Development Cabinet: State Board for Adult and Technical Education: Management of the Kentucky TECH System

780 KAR 2:130E. Minimum standards of admission for postsecondary students.

Personnel System for Certified and Equivalent Employees

780 KAR 3:070. Attendance, compensatory time, and leave.

780 KAR 3:080. Extent and duration of school term, use of school days and extended employment.

Unclassified Personnel Administrative Regulations

780 KAR 6:060. Attendance, compensatory time, and leave.

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

803 KAR 2:301E. Adoption and extension of established federal standards.

803 KAR 2:320E. Air contaminants.

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

803 KAR 2:411E. Scaffolds.

803 KAR 2:425E. Toxic and hazardous substances.

803 KAR 2:500E. Maritime employment.

Department of Insurance: Motor Vehicle Reparations (No-fault)

806 KAR 39:070. Proof of motor vehicle insurance.

Cabinet for Health Services: Office of Certificate of Need: Certificate of Need

900 KAR 6:050E. Certificate of Need administrative regulations.

Department for Health Services: State Health Plan

902 KAR 17:041E. State health plan for facilities and services.

Controlled Substances

902 KAR 55:095E. Prescription for Schedule II controlled substance - facsimile transmission or partial filling.

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 2:016E. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).

904 KAR 2:017E. Kentucky Works supportive services.

904 KAR 2:035E. Right to apply and reapply.

904 KAR 2:040E. Procedures for determining initial and continuing eligibility.

904 KAR 2:046E. Adverse action; conditions.

904 KAR 2:050E. Time and manner of payments.

904 KAR 2:055E. Hearings and appeals.

904 KAR 2:060E. Delegation of power for oaths and affirmations.

904 KAR 2:370E. Technical requirements for Kentucky Works.

Cabinet for Health Services: Division of Licensing and Regulation: Office of Inspector General

906 KAR 1:120E. Informal dispute resolution.

Department for Medicaid Services: Division of Administration and Development: Medicaid 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 1:710. Managed behavioral health care initiative (1915b Waiver).

907 KAR 1:755E. Preadmission Screening and Annual Resident Review Program.

907 KAR 1:765E. Repeal of 907 KAR 1:460.

The Subcommittee adjourned at 2 p.m. until November 11, 1997 at 10 a.m. in Room 149 of the State Capitol Annex.

ADMINISTRATIVE REGISTER - 1201

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON HEALTH AND WELFARE Meeting of September 17, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Health and Welfare during its meeting of September 17, 1997, having been referred to the Committee on September 11, 1997, pursuant to KRS 13A.290(6):

201 KAR 13:080
201 KAR 20:411
201 KAR 23:011
201 KAR 23:020
201 KAR 23:060
201 KAR 23:070
201 KAR 23:080
201 KAR 23:140
902 KAR 14:084
902 KAR 14:100
902 KAR 20:016E

The Committee did not have a quorum and took no action on the regulations and is reflected in the minutes of the September 17, 1997 meeting, which are hereby incorporated by reference.

COMPILER'S NOTE: Pursuant to KRS 13A.330(1)(a)2, the administrative regulations listed above will become effective on October 13, 1997 (30 calendar days following referral by LRC to the appropriate jurisdictional Subcommittee).

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Meeting of September 25, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Appropriations and Revenue during its meeting of September 25, 1997, having been referred to the Committee on September 9, 1997, pursuant to KRS 13A.290(6):

103 KAR 15:050
200 KAR 17:070

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-refer-

enced administrative regulations is reflected in the minutes of the September 25, 1997 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

INTERIM JOINT COMMITTEE ON EDUCATION Meeting of October 2, 1997

The following administrative regulations were available for consideration by the Interim Joint Committee on Education during its meeting of October 2, 1997, having been referred to the Committee on September 11, 1997, pursuant to KRS 13A.290(6):

704 KAR 20:670
785 KAR 1:010
785 KAR 1:020

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): none

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: none

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300: none

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the October 2, 1997 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

ADMINISTRATIVE REGISTER - E1

CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates E2

The Locator Index lists all administrative regulations published in VOLUME 24 of the Administrative Register from July, 1997 through June, 1998. 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 23 are those administrative regulations that were originally published in Volume 23 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1997 bound Volumes were published.

KRS Index E7

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 24 of the Administrative Register.

Subject Index E12

The Subject Index is a general index of administrative regulations published in VOLUME 24 of the Administrative Register, and is mainly broken down by agency.

ADMINISTRATIVE REGISTER - E2

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	23 Ky.R Page No.	Effective Date	Regulation Number	23 Ky.R Page No.	Effective Date
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VOLUME 23

The administrative regulations listed under VOLUME 23 are those administrative regulations that were originally published in Volume 23 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1997 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

101 KAR 3:045E	3533	2-28-97
Expired		9-18-97
106 KAR 1:091E	3709	3-31-97
Expires		10-17-97
505 KAR 1:020E	3208	2-14-97
Expired		8-18-97
505 KAR 1:030E	3713	3-25-97
Withdrawn		9-15-97
806 KAR 13:130E	3714	3-24-97
Replaced		10-13-97
806 KAR 13:140E	3715	3-24-97
Replaced	896	10-13-97
806 KAR 38:090E	3541	3-11-97
Replaced		9-15-97
811 KAR 1:090E	3717	4-15-97
Replaced		9-12-97
900 KAR 6:015E	2954	12-18-96
Withdrawn		7-21-97
904 KAR 2:006E	4079	4-30-97
Withdrawn		8-14-97
904 KAR 2:016E	4088	4-30-97
Withdrawn		8-14-97
904 KAR 2:370E	3728	3-27-97
Withdrawn		7-11-97
904 KAR 3:020E	3542	2-27-97
Replaced		8-20-94
904 KAR 3:042E	3548	2-27-97
Replaced		8-20-97
905 KAR 1:180E	3735	3-19-97
907 KAR 1:022E	3294	1-17-97
Withdrawn		8-14-97
907 KAR 1:025E	3299	1-17-97
Withdrawn		8-14-97
907 KAR 1:160E	3736	4-15-97
907 KAR 1:170E	3739	4-15-97
907 KAR 1:720E	3741	3-18-97
908 KAR 2:200E	3742	3-18-97

ORDINARY ADMINISTRATIVE REGULATIONS:

200 KAR 17:070	4246	(See Volume 24)
201 KAR 13:080	4250	(See Volume 24)
201 KAR 23:011	4251	10-13-97
201 KAR 23:020		
Amended	4201	10-13-97
201 KAR 23:060		
Amended	4202	(See Volume 24)
201 KAR 23:070		
Amended	4203	(See Volume 24)
201 KAR 23:080		
Amended	4206	(See Volume 24)
201 KAR 23:140	4252	(See Volume 24)
302 KAR 40:010		
Amended	3885	(See Volume 24)
401 KAR 8:030		
Amended	3079	
Amended	3808	(See Volume 24)
501 KAR 6:020		
Amended	3892	(See Volume 24)
501 KAR 6:060		
Amended	4210	9-15-97
501 KAR 6:130		
Amended	1007	
As Amended	1941	10-14-97
Amended	1678	
780 KAR 3:070		
Amended	3096	
Amended	3588	
780 KAR 3:080		
Amended	3102	
Amended	3594	
780 KAR 6:060		
Amended	3104	
805 KAR 1:180	3658	(See Volume 24)
807 KAR 5:063	3659	
Amended	4185	(See Volume 24)
902 KAR 100:040		
Amended	3988	8-20-97
907 KAR 1:645	4033	(See Volume 24)
907 KAR 1:655	4035	(See Volume 24)
907 KAR 1:665	4039	(See Volume 24)
907 KAR 1:710	4285	(See Volume 24)

*Statement of Consideration Not Filed by Deadline

ADMINISTRATIVE REGISTER - E3

LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
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VOLUME 24

EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

200 KAR 14:011E	485	8-15-97
200 KAR 14:081E	487	8-15-97
200 KAR 14:200E	489	8-15-97
200 KAR 23:010E	307	6-25-97
301 KAR 2:225E	842	8-21-97
401 KAR 5:008E	1029	9-18-97
502 KAR 45:145E	26	6-3-97
505 KAR 1:040E	844	9-15-97
603 KAR 5:070E	27	5-19-97
704 KAR 20:305E	491	8-11-97
780 KAR 2:130E	308	7-14-97
787 KAR 1:200E	310	6-27-97
803 KAR 2:301E	493	8-14-97
803 KAR 2:320E	495	8-14-97
803 KAR 2:403E	501	8-14-97
803 KAR 2:411E	503	8-14-97
803 KAR 2:425E	504	8-14-97
803 KAR 2:500E	506	8-14-97
900 KAR 6:050E	510	7-21-97
902 KAR 17:041E	517	7-23-97
902 KAR 20:016E	32	6-12-97
Reprint	269	6-12-97
902 KAR 55:095E	41	6-12-97
904 KAR 2:006E	518	8-14-97
904 KAR 2:016E	528	8-14-97
904 KAR 2:017E	311	7-14-97
904 KAR 2:035E	42	5-30-97
904 KAR 2:040E	45	5-30-97
904 KAR 2:046E	47	5-30-97
904 KAR 2:050E	49	5-30-97
Withdrawn		8-14-97
Resubmitted	538	8-14-97
904 KAR 2:055E	52	5-30-97
904 KAR 2:060E	55	5-30-97
904 KAR 2:370E	320	7-11-97
904 KAR 3:025E	1041	10-1-97
905 KAR 1:360E	1044	10-1-97
905 KAR 2:150E	1947	10-1-97
906 KAR 1:120E	540	7-25-97
907 KAR 1:022E	542	8-14-97
907 KAR 1:025E	547	8-14-97
907 KAR 1:145E	845	9-11-97
907 KAR 1:151E	848	9-11-97
907 KAR 1:155E	849	9-11-97
907 KAR 1:755E	554	8-14-97
907 KAR 1:765E	557	8-14-97

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 6:010	
Amended	914
13 KAR 2:060	
Amended	916

31 KAR 4:020	
Amended	128
As Amended	559
9-15-97	
101 KAR 1:365	
Amended	387
As Amended	852
10-13-97	
102 KAR 1:175	
Amended	129
As Amended	559
9-4-97	
103 KAR 15:050	
Amended	388
As Amended	853
9-25-97	
103 KAR 31:030	
Amended	920
106 KAR 2:010	
Recodified as 201-37:010	
10-20-97	
200 KAR 2:006	
Amended	922
200 KAR 5:021	
Amended	926
200 KAR 5:302	
Amended	927
200 KAR 5:306	
Amended	929
200 KAR 17:070	
As Amended	855
9-25-97	
200 KAR 22:041	789
200 KAR 23:010	790
As Amended	1055
201 KAR 2:030	
Amended	1115
201 KAR 8:390	
Amended	931
201 KAR 8:400	
Amended	934
201 KAR 8:411	991
201 KAR 10:010	
Amended	131
As Amended	561
201 KAR 10:040	
Amended	132
As Amended	561
201 KAR 10:070	
Amended	133
As Amended	563
201 KAR 10:080	
Amended	134
As Amended	563
201 KAR 13:080	
As Amended	858
10-13-97	
201 KAR 16:060	
Amended	641
As Amended	1055
201 KAR 16:071	791
201 KAR 20:240	
Amended	391
As Amended	1057
201 KAR 20:411	425
As Amended	859
201 KAR 20:390	
Amended	1116

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
201 KAR 23:010 Repealed		10-13-97	302 KAR 40:010 As Amended	1062	
201 KAR 23:030 Repealed		10-13-97	401 KAR 8:030 As Amended	70	
201 KAR 23:040 Repealed		10-13-97	As Amended	332	
201 KAR 23:060 As Amended	860	10-13-97	401 KAR 46:005 Died*	221	9-12-97
201 KAR 23:070 As Amended	861	10-13-97	401 KAR 46:010 Died*	223	9-12-97
201 KAR 23:080 As Amended	864	10-13-97	401 KAR 46:020 Died*	225	9-12-97
201 KAR 23:100 Repealed	10-13-97		401 KAR 46:030 Died*	228	9-12-97
201 KAR 23:110 Repealed		10-13-97	401 KAR 46:040 Died*	230	9-12-97
201 KAR 23:140 As Amended	866	10-13-97	401 KAR 46:050 Died*	234	9-12-97
201 KAR 26:145 Amended	1117		401 KAR 46:060 Amended	142	9-12-97
201 KAR 26:155 Amended	1121		Died*		9-12-97
201 KAR 26:160 Amended	1123		401 KAR 46:070 Amended	145	9-12-97
201 KAR 26:171 Amended	1124		Died*		9-12-97
201 KAR 26:175 Amended	1127		401 KAR 47:150 Amended	149	9-12-97
201 KAR 26:180 Amended	1129		Died*		9-12-97
201 KAR 26:185 Amended	1130		401 KAR 50:012 Amended	648	
201 KAR 26:215 Amended	1131		401 KAR 50:066	800	
201 KAR 26:230 Amended	1132		401 KAR 51:010 Amended	650	
201 KAR 26:250	1182		401 KAR 59:174	802	
201 KAR 32:030 Amended	642		401 KAR 63:005 Amended	654	
As Amended	1132		401 KAR 65:010 Amended	656	
201 KAR 37:010 Recodified from 106-2:010		10-20-97	405 KAR 8:001 Amended	667	
301 KAR 1:201 Amended	392		405 KAR 8:030 Amended	675	
As Amended	866	10-8-97	405 KAR 8:040 Amended	687	
301 KAR 2:082	427		405 KAR 16:001 Amended	704	
As Amended	869	10-8-97	405 KAR 16:060 Amended	710	
301 KAR 2:111 Amended	138		405 KAR 16:090 Amended	716	
As Amended	567	9-10-97	405 KAR 16:100 Amended	719	
301 KAR 2:125 Amended	140		405 KAR 16:160 Amended	723	
As Amended	568	9-10-97	405 KAR 18:001 Amended	725	
301 KAR 2:140 Amended	643		405 KAR 18:060 Amended	732	
As Amended	1058		405 KAR 18:090 Amended	738	
301 KAR 2:142	792		405 KAR 18:100 Amended	741	
As Amended	1060		405 KAR 18:160 Amended	745	
301 KAR 2:144 As Amended	794		405 KAR 18:210 Amended	747	
301 KAR 3:022 Amended	646				
302 KAR 31:040	795				

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
500 KAR 11:001			704 KAR 20:670		
Amended	151		Amended	404	
As Amended	871	9-12-97	As Amended	892	10-2-97
500 KAR 11:025			704 KAR 20:710		
Amended	152		Amended	177	
As Amended	873	9-12-97	As Amended	575	9-4-97
500 KAR 11:080			750 KAR 2:010		
Amended	154		Amended	179	
As Amended	874	9-12-97	As Amended	576	9-4-97
500 KAR 11:090			785 KAR 1:010		
Amended	155		Amended	407	
As Amended	874		As Amended	894	10-2-97
501 KAR 6:020			785 KAR 1:020		
As Amended	569	9-15-97	Amended	409	
Amended	755		As Amended	895	10-2-97
501 KAR 6:040			787 KAR 1:200		
Amended	935		Amended	1144	
501 KAR 6:050			803 KAR 2:060		
Amended	156	9-15-97	Amended	1145	
501 KAR 6:060			803 KAR 2:301		
Amended	1134		Amended	1148	
501 KAR 6:090			803 KAR 2:320		
Amended	757		Amended	1150	
501 KAR 6:110			803 KAR 2:403		
Amended	396	9-16-97	Amended	1156	
501 KAR 6:170			803 KAR 2:411		
Amended	1136		Amended	1158	
502 KAR 31:010	429		803 KAR 2:425		
Withdrawn		10-13-97	Amended	1159	
502 KAR 45:145			803 KAR 2:500		
Amended	759		Amended	1161	
As Amended	1076		803 KAR 25:012		
505 KAR 1:020	236		Amended	939	
As Amended	572	9-15-97	803 KAR 25:096		
601 KAR 1:146	1183		Amended	942	
601 KAR 1:147	1185		803 KAR 25:130	1187	
601 KAR 9:135			803 KAR 25:175	807	
Amended	398		Amended	1113	
Amended	909		805 KAR 1:180		
603 KAR 3:080			As Amended	92	
Amended	157		806 KAR 13:130	431	
Amended	612		As Amended	895	10-13-97
As Amended	875		806 KAR 13:140	432	
As Amended	1076	10-7-97	As Amended	896	10-13-97
603 KAR 5:050			806 KAR 38:090	239	9-15-97
Amended	403	10-2-97	806 KAR 39:070		
603 KAR 5:230			Amended	764	
Amended	1137		806 KAR 40:020	433	10-13-97
702 KAR 7:065			807 KAR 5:063		
Amended	174		As Amended	367	
As Amended	573	9-4-97	As Amended	896	8-27-97
704 KAR 3:455			811 KAR 1:090		
Amended	760		Amended	180	
As Amended	1093		As Amended	577	9-12-97
704 KAR 7:130	238	9-4-97	815 KAR 7:070		
704 KAR 20:084			Amended	945	
Amended	937		815 KAR 7:105		
704 KAR 20:165			Amended	949	
Amended	176		815 KAR 8:010		
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704 KAR 20:210			815 KAR 8:020		
Amended	1140		Amended	952	
704 KAR 20:305			815 KAR 15:027		
Amended	1141		Amended	954	

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815 KAR 15:080			907 KAR 1:140		
Amended	956		Repealed	848	9-11-97
815 KAR 20:020			907 KAR 1:150		
Amended	957		Repealed	848	9-11-97
815 KAR 20:030			907 KAR 1:160		
Amended	960		Amended	779	
815 KAR 20:130			As Amended	1101	
Amended	962		907 KAR 1:170		
815 KAR 35:015			Amended	782	
Amended	767		As Amended	1103	
As Amended	1097		907 KAR 1:429	808	
900 KAR 6:050	1188		907 KAR 1:560		
902 KAR 13:120			Amended	784	
Amended	965		As Amended	1104	
902 KAR 14:084	435		907 KAR 1:645		
As Amended	898	10-13-97	As Amended	605	8-20-97
902 KAR 14:100	241		907 KAR 1:655		
As Amended	903	10-13-97	As Amended	607	8-20-97
902 KAR 20:016			907 KAR 1:665		
Amended	969		As Amended	610	8-20-97
902 KAR 20:036			907 KAR 1:710		
Amended	190	8-20-97	Amended	629	
902 KAR 20:048			907 KAR 1:720	809	
Amended	410		As Amended	1108	
Died*		9-5-97	908 KAR 2:200	811	
902 KAR 20:051			As Amended	1109	
Amended	418				
Died*		9-5-97			
902 KAR 55:095					
Amended	1165				
902 KAR 100:073					
Amended	195				
As Amended	580	8-20-97			
902 KAR 100:165					
Amended	771				
904 KAR 2:017					
Amended	1166				
904 KAR 2:035					
Amended	978				
904 KAR 2:040					
Amended	981				
904 KAR 2:046					
Amended	983				
904 KAR 2:055					
Amended	985				
904 KAR 2:060					
Amended	988				
904 KAR 2:370					
Amended	1175				
904 KAR 3:020					
Amended	209				
As Amended	594	8-20-97			
904 KAR 3:042					
Amended	215				
As Amended	600	8-20-97			
904 KAR 3:060					
Amended	774				
905 KAR 1:180					
Amended	777				
906 KAR 1:120	1196				
907 KAR 1:003	247	8-20-97			
907 KAR 1:004					
Repealed	247	8-20-97			

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KRS SECTION	REGULATION	KRS SECTION	REGULATION
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Chapter 13A	803 KAR 2:060	150.320	301 KAR 2:225E
13A.100	906 KAR 1:120	150.330	301 KAR 2:225E
Chapter 13B	101 KAR 1:365	150.340	301 KAR 2:225E
16.040	502 KAR 45:145	150.360	301 KAR 2:140
16.080	502 KAR 45:145		301 KAR 2:142
18A.075	101 KAR 1:365		301 KAR 2:144
18A.0751	101 KAR 1:365		301 KAR 2:225E
18A.095	101 KAR 1:365	150.370	301 KAR 2:111
18A.430	200 KAR 22:041		301 KAR 2:125
Chapter 41	200 KAR 14:081E	150.390	301 KAR 2:111
41.600-41.620	200 KAR 14:200E		301 KAR 2:140
Chapter 42	200 KAR 14:011E		301 KAR 2:142
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