

# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
FRANKFORT, KENTUCKY

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SUNDAY, FEBRUARY 1, 1998

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<b>MEETING NOTICE:</b> The Administrative Regulation Review Subcommittee is scheduled to meet on Wednesday, February 11, 1998. See <u>tentative agenda</u> beginning on page 1609 of this Register.	

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

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ADMINISTRATIVE REGISTER - 1609

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA - February 11, 1998 at 8:30 a.m. in Room 125, Capitol Annex

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

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

KHEAA Grant Programs

11 KAR 5:130. Student application.

GENERAL GOVERNMENT CABINET

Board of Pharmacy

201 KAR 2:030. License transfer. (Deferred from December)

Kentucky Real Estate Commission

201 KAR 11:011. Definitions.

Board of Registration for Professional Engineers and Land Surveyors

201 KAR 18:132. Repeal of 201 KAR 18:130.

201 KAR 18:150. Standards of practice.

201 KAR 18:162. Repeal of 201 KAR 18:160.

Board of Nursing

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

Board of Examiners of Psychologists

201 KAR 26:260. Status of persons credentialed by the board.

Department of Veterans Affairs

201 KAR 37:010. Kentucky Veterans' Program Trust Fund, implementation of program.

TOURISM DEVELOPMENT CABINET

Department of Fish and Wildlife Resources

Fish

301 KAR 1:300. Reciprocal waters on Dale Hollow Lake.

301 KAR 1:310. Reciprocal waters on the Big South Fork.

Game

301 KAR 2:221E. Waterfowl seasons and limits. (Deferred from January)

301 KAR 2:222E. Waterfowl hunting requirements. (Deferred from January)

301 KAR 2:290E. Quota deer hunt at Dale Hollow State Park.

DEPARTMENT OF AGRICULTURE

Division of Regulation and Inspections

Egg Marketing

302 KAR 10:060. Consumer grades.

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET

Department for Environmental Protection

Division of Water

Water Quality

401 KAR 5:001. Definitions of terms used in 401 KAR Chapter 5.

401 KAR 5:008 & E. Swine feeding operations.

Division for Air Quality

General Administrative Procedures

401 KAR 50:032. Prohibitory rule for hot mix asphalt plants. (Hearing in December)

New Source Performance Standards

401 KAR 60:750. Standards of performance for municipal solid waste landfills. (Hearing in December)

Existing Source Standards

401 KAR 61:036. Emission guidelines and compliance times for municipal solid waste landfills. (Hearing in December)

Department for Surface Mining Reclamation and Enforcement

Permits (Deferred from December)

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

405 KAR 8:030. Surface coal mining permits. (Amended After Hearing)

405 KAR 8:040. Underground coal mining permits. (Amended After Hearing)

Performance Standards for Surface Mining Activities (Deferred from December)

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

405 KAR 16:060. General hydrologic requirements. (Amended After Hearing)

405 KAR 16:090. Sedimentation ponds.

405 KAR 16:100. Permanent and temporary impoundments.

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

## ADMINISTRATIVE REGISTER - 1610

- Performance Standards for Underground Mining Activities** (Deferred from December)
- 405 KAR 18:001. Definitions for 405 KAR Chapter 18.
  - 405 KAR 18:060. General hydrologic requirements. (Amended After Hearing)
  - 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 January)
- 501 KAR 6:030. Kentucky State Reformatory. (Deferred from January)
- 501 KAR 6:040. Kentucky State Penitentiary. (Deferred from January)
- 501 KAR 6:090. Frankfort Career Development Center. (Deferred from January)
- 501 KAR 6:110. Roederer Correctional Complex. (Deferred from January)
- 501 KAR 6:120. Blackburn Correctional Complex. (Deferred from January)
- 501 KAR 6:170. Green River Correctional Complex. (Deferred from January)
- 501 KAR 6:180 & E. Infectious diseases.
- 501 KAR 6:999. Correction's secured policies and procedures. (Deferred from January)

### Department of Juvenile Justice

#### Child Welfare

- 505 KAR 1:040 & E. DJJ policies and procedures manual.

### TRANSPORTATION CABINET

#### Office of Minority Affairs

- 600 KAR 4:010. Certification of disadvantaged, minority and women business enterprises.

#### Professional Engineering and Related Services

- 600 KAR 6:010. Definitions. (Amended After Hearing)
- 600 KAR 6:040. Prequalification of firms for professional engineering or related services. (Amended After Hearing)
- 600 KAR 6:070. Contracting for professional engineering or related services. (Amended After Hearing)

### Department of Vehicle Regulation Division of Motor Vehicle Enforcement

#### Division of Motor Carriers

- 601 KAR 1:025. Transporting hazardous materials by air or highway. (Amended After Hearing)
- 601 KAR 1:146. Fair market rental or lease value of vehicles operated pursuant to a U-drive-it permit. (Amended After Hearing)
- (Deferred from January)
- 601 KAR 1:147. Auditing of U-drive-it permit holders. (Amended After Hearing) (Deferred from January)

#### Commercial Driver's License

- 601 KAR 11:040. Medical waivers for intrastate operators of commercial motor vehicles. (Amended After Hearing)

### EDUCATION, ARTS, AND HUMANITIES CABINET

#### Board of Education Department of Education Bureau for District Support Services

#### School Administration and Finance

- 702 KAR 3:110. Document filing dates.

#### Bureau of Learning Results Services

#### Assistance and Intervention Services

- 703 KAR 3:060. Procedures for determining rewards and sanctions.

#### Learning Results Services

- 703 KAR 4:110. Code of ethics for state required testing.

#### Education Professional Standards Board

#### Board

- 704 KAR 20:015E. Rank I classification.
- 704 KAR 20:021E. Planned Fifth-year Program.
- 704 KAR 20:022E. Continuing education alternative to Planned Fifth-year Program.
- 704 KAR 20:045E. Recency and certification fees.
- 704 KAR 20:060E. Renewals.

### LABOR CABINET

#### Department of Workers' Claims

- 803 KAR 25:015. Issuance of citations and procedure in workers' compensation enforcement hearings.
- 803 KAR 25:120. Training or education programs eligible for retraining incentive benefits. (Amended After Hearing)

# ADMINISTRATIVE REGISTER - 1611

## PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

### Assets and Liabilities

806 KAR 6:100E. Actuarial opinion and memorandum. (Deferred from January)

### Health Insurance Contracts

806 KAR 17:110E. Establishment of the Kentucky Risk Assessment and Risk Adjustment System.

## CABINET FOR HEALTH SERVICES Office of Certificate of Need

### Certificate of Need

900 KAR 6:050 & E. Certificate of need administrative regulations. (Amended After Hearing)  
Department for Public Health

### State Health Plan

902 KAR 17:041 & E. State health plan for facilities and services. (Amended After Hearing)  
Division for Public Health Protection and Safety

### Milk and Milk Products

902 KAR 50:031. Standards for producer eligibility for manufacturing grade milk.  
902 KAR 50:032. Standards for farm requirements for manufacturing grade milk.  
902 KAR 50:033. Standards for enforcement procedures for manufacturing grade milk.

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

### Public Assistance

904 KAR 2:006 & E. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP). (Amended After Hearing)  
904 KAR 2:016 & E. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP). (Amended After

### Hearing)

904 KAR 2:017 & E. Kentucky Works child care and supportive services. (Amended After Hearing)  
904 KAR 2:050 & E. Time and manner of payments. (Deferred from January)  
904 KAR 2:370 & E. Technical requirements for Kentucky Works. (Amended After Hearing)  
904 KAR 2:410E. Child support collection and distribution. (Deferred from January)

### Food Stamp Program

904 KAR 3:025E. Technical requirements. (Deferred from December)  
Department for Social Services

### Child Welfare

905 KAR 1:360E. Private child care levels of care. (Deferred from December)

### Day Care

905 KAR 2:150E. Child Day Care Assistance Program. (Deferred from December)

## CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development

### Medicaid Services (Deferred from January)

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. (Deferred from November)  
907 KAR 1:151E. Repeal of 907 KAR 1:140 and 907 KAR 1:150. (Deferred from November)  
907 KAR 1:155E. Payments for supports for community living services for individuals with mental retardation or developmental disabilities. (Deferred from November)  
907 KAR 1:725E. Medicaid appropriations for a long-term nursing facility.  
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 - 1612

### 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.

ADMINISTRATIVE REGISTER - 1613

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS

KENTUCKY DEPARTMENT OF AGRICULTURE

January 12, 1998

Kentucky Department of Agriculture

(1) Regulation number and title: **302 KAR 10:100**. Refrigeration of eggs and temperature requirements.

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

(3) A public hearing to receive oral and written comments has been scheduled for Tuesday, February 24, 1998 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 February 24, 1998, 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 260.620.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate is a new regulation 302 KAR 10:100. It sets forth the requirements for refrigeration of eggs and temperature requirements.

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

(d) The benefits expected from the proposed administrative regulation are: To preserve the quality of shell eggs and prevent undue deterioration.

(e) The administrative regulation will be implemented as follows: Eggs that do not meet the refrigeration requirements either in transit, storage or display can be seized or destroyed by the Department of Agriculture inspectors.

January 12, 1998

Kentucky Department of Agriculture

(1) Regulation number and title: **302 KAR 20:051**. Domestic livestock, poultry and fish composting.

(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 Monday, February 23, 1998 at 9 a.m. in 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 February 23, 1998, 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 domestic livestock, poultry and fish composting is KRS Chapter 257.

(b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate is a new regulation 302 KAR 20:051. It will set forth the definitions related to animal carcass composting, the process for acquiring a facility permit, the requirements for a permitted facility, and the process by which animal carcasses are to be composted.

(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: A less expensive more environmentally safe method of converting organic wastes into acceptable materials which can be used as fertilizers or soil amendments.

(e) The administrative regulation will be implemented as follows: The State Veterinarian and the Division of Animal Health will closely monitor implementation of the regulation.

## ADMINISTRATIVE REGISTER - 1614

January 12, 1998

Kentucky Department of Agriculture

- (1) Regulation number and title: **302 KAR 31:040**. Storage and handling of pesticides and bulk fertilizer.
- (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 Monday, February 23, 1998, at 1 p.m. at the Department of Agriculture's Conference Room, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
  2. A minimum of five persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least ten days prior to February 23, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mark Farrow, General Counsel, Kentucky Department of Agriculture, 7th Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (b) On a request for a public hearing, a person shall state:
  1. "I agree to attend the public hearing." or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that a person who desires to be informed of the intent of an administrative body to promulgate an administrative regulation governing a subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Department of Agriculture at the address listed above.
- (7) Information relating to the proposed administrative regulation.
  - (a) The authority for the promulgation of an administrative regulation relating to storage and handling of pesticides and fertilizer for commercial and noncommercial facilities is KRS 217B.050.
  - (b) The administrative regulation that the Kentucky Department of Agriculture intends to promulgate is new administrative regulation. It sets forth conditions and standards for the storage and handling of pesticides and fertilizer for commercial and noncommercial facilities.
  - (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: Storage and handling of pesticides and fertilizer of identified quantities will now be regulated.
  - (e) The administrative regulation will be implemented as follows: This regulation sets forth the definitions and procedures for protecting human health and the environment.

### JUSTICE CABINET Kentucky Parole Board

January 8, 1998

Justice Cabinet

Kentucky Parole Board

- (1) Regulation number and title: **501 KAR 1:030**, Parole Board.
- (2) The Justice Cabinet, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 23, 1998, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to February 23, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Barbara Jones, General Counsel, Justice Cabinet, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 439.340(3).
  - (b) The administrative regulation that the Justice Cabinet intends to promulgate affects the parole of violent offenders in the interest of the public's safety. Inmates convicted of felonies which resulted in death or serious physical injury shall not be eligible for early parole.
  - (c) The necessity and function of the proposed administrative regulation is as follows:
    1. KRS 439.340(3) authorizes the secretary to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein.
    2. This administrative regulation codifies operating procedures at the Justice Cabinet to comply with KRS Chapter 13A and to reflect current operating procedures.
  - (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A, to codify current operating procedures, and safeguard public health and safety.



## ADMINISTRATIVE REGISTER - 1615

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

### Department of Corrections

January 8, 1998

Justice Cabinet

Department of Corrections

(1) Regulation number and title: **501 KAR 6:020**, Department of Corrections.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 23, 1998, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to February 23, 1998, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

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

1. News media (CPP 1.2) has been totally revised to reflect actual practice of the department and the institutions in dealing with members of the news media during the course of normal business and in an emergency situation and to conform to KRS Chapter 13A.

2. Inmate grievance procedure (CPP 14.6) shall be amended to reflect that: (1) grievances resulting from staff conflicts shall be heard by the grievance committee; (2) the grievance committee shall act as a fact finding body only; (3) the grievance committee shall not recommend specific disciplinary action; (4) consolidated inmate grievances shall be presented at the Grievance Committee hearing; (5) the grievance coordinator is responsible for scheduling hearings and conducting the elections for inmate members; and (6) the grievance aide is responsible for informing a grievant of the hearing and that failure to attend shall result in dismissal of the grievance.

3. Offenses and penalties (CPP 15.2) shall be amended to establish additional penalties for: (1) the refusal to submit to medical testing; (2) creating or causing a health hazard; (3) enforcing or threatening gang activity; (4) displaying gang paraphernalia; and (5) using mail to obtain money, goods or services by fraud.

4. Adjustment procedures and programs (CPP 15.6) shall be amended to designate if segregation time shall be served consecutively or concurrently, require the inclusion of the supervisor's review in the disciplinary report, preclude a supervisor involved in an incident from conducting a review of that incident, inform the inmate of the need to choose a legal aide within twenty-four (24) hours of receipt of a disciplinary report or waive that right, provide that an inmate due for release by minimum expiration of sentence shall have his appeal reviewed by the warden prior to his release and to conform to KRS Chapter 13A.

5. Inmate access to telephones (CPP 16.3) shall be amended to provide guidelines for posting of monitoring signs by institutional phones, provide for privacy of calls from an inmate to his attorney, refer to the appropriate offenses and penalties for violation of the policy and to conform to KRS Chapter 13A.

6. Inmate personal property (CPP 17.1) shall be amended to increase the permissible height of heels on shoes and to comply with KRS Chapter 13A.

7. Phase I: Program selection assessment criteria (CPP 21.2) shall be amended to preclude an inmate from the first Incarceration Shock Treatment Program if convicted of a crime resulting in serious physical injury, to revise the eligibility criteria and to conform to KRS Chapter 13A.

8. Community Center Program (CPP 25.6) shall be amended to comply with KRS Chapter 13A, to exclude inmates with a history of domestic violence from consideration for placement in the program, to provide for transfer of the inmate's medical record to the community center, to require that a notice of discharge by expiration of sentence be sent to probation and parole officer ten (10) days before discharge and amend the requirements for travel home and completion of the furlough application.

9. Advanced supervision (CPP 27-10-01) shall be deleted due to this type of supervision having been abolished in order to permit probation and parole officers to handle a larger number of offenders at all other levels of supervision.

10. Intensive supervision (CPP 27-11-01) shall be amended to delineate the ways by which an offender shall be placed under intensive supervision, to delete the criteria for consideration, to set forth the criteria for an administrative transfer, to accept a case in a site location if the Circuit Court specifies that the offender would be incarcerated but for the availability of the program in that circuit and to conform to KRS Chapter 13A.

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

1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

## ADMINISTRATIVE REGISTER - 1616

2. This administrative regulation updates operating procedures at the Department of Corrections to comply with KRS Chapter 13A and to reflect current operating procedures.

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

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

January 8, 1998

Justice Cabinet

Department of Corrections

(1) Regulation number and title: **501 KAR 6:080**, Classification manual.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 23, 1998, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to February 23, 1998, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

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

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

1. The classification manual shall be amended to preclude from eligibility for community custody an inmate who has been convicted of a crime resulting in the death or serious physical injury of the victim, and to conform with the requirements of KRS Chapter 13A.

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

1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

2. This administrative regulation updates operating procedures at the Department of Corrections to comply with KRS Chapter 13A and to reflect current operating procedures.

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

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

## KENTUCKY DEPARTMENT FOR LIBRARIES AND ARCHIVES

January 13, 1998

Kentucky Department for Libraries and Archives

(1) **725 KAR 2:080**, Interstate library compact.

(2) The Kentucky Department for Libraries and Archives intends to promulgate an administrative regulation ratifying the interstate library compact to facilitate entering into agreements with other states for the purpose of providing cooperative library services.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 24, 1998, at 1:30 p.m., in the Conference Room at the Kentucky Department for Libraries and Archives' Office, 300 Coffee Tree 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 February 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: James A. Nelson, State Librarian and Commissioner, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, P. O. Box 537, Frankfort, Kentucky 40602-0537.

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

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

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

## ADMINISTRATIVE REGISTER - 1617

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

(b) Persons who wish to file this request may obtain a request form by writing to James Nelson at the above address, or by calling (502) 564-8300 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the administrative regulation relating to the subject matter listed above is KRS 171.230.

(b) The administrative regulation that the Kentucky Department for Libraries and Archives intends to promulgate will not amend an existing regulation. It will ratify the interstate library compact to facilitate Kentucky libraries entering into agreements with other states for the purpose of providing cooperative library services.

(c) The necessity and function of the proposed administrative regulations is as follows: To facilitate Kentucky libraries entering into agreements with other states for the purpose of providing cooperative library services.

(d) The benefit expected from administrative regulation is: The availability of services and resources from other states to serve the people of Kentucky.

(e) The administrative regulation will be implemented as follows: Kentucky libraries will be permitted to enter into agreements with other states, upon approval by the attorneys general of the participating states, which will allow for the provision of cooperative library services between libraries of the participating states.

### LABOR CABINET Department of Workplace Standards Kentucky Occupational Safety and Health

January 12, 1998

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation number and title: **803 KAR 2:301**. Adoption and extension of established federal standards.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 27, 1998, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 27, 1998, the public hearing will be canceled.

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:301, as follows: The revision to 29 CFR 1910.16, "Longshoring and Marine Terminals", as published in the Federal Register, Volume 62, Number 143, July 25, 1997, is incorporated by reference. This revision describes the coverage of 29 CFR Part 1910 as it relates to longshoring and marine terminals.

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

(d) The benefits expected from the proposed administrative regulation are: This revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

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

January 12, 1998

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation number and title: **803 KAR 2:320**. Air contaminants.

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

## ADMINISTRATIVE REGISTER - 1618

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 27, 1998, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 27, 1998, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:320, as follows: The revision to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 62, Number 149, August 4, 1997, is incorporated by reference. This revision makes minor corrections to inadvertent errors and omissions found in the tables for air contaminants and mineral dusts.

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

(d) The benefits expected from the proposed administrative regulation are: This revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

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

January 12, 1998

Labor Cabinet

Department of Workplace Standards

Kentucky Occupational Safety and Health

(1) Regulation number and title: **803 KAR 2:500**. Maritime employment.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 27, 1998, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

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

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

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to February 27, 1998, the public hearing will be canceled.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

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

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend 803 KAR 2:500, as follows: This amended administrative regulation incorporates, by reference, a publication in the Federal Register, dated July 25, 1997, which updates the standards regulating marine terminals and longshoring to reflect the technological changes in the industry since the promulgation of the original standards in 1971.

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

(d) The benefits expected from the proposed administrative regulation are: This revision assures conformity with the Code of Federal Regulations. It updates the standard to reflect technological changes in the industry since the promulgation of the original standard in 1971.

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

## ADMINISTRATIVE REGISTER - 1619

through its enforcement investigations.

### Office of the Secretary Office of Labor-Management Relations and Mediation

January 14, 1998  
Kentucky Labor Cabinet  
Office of the Secretary  
Office of Labor-Management Relations and Mediation

- (1) Regulation and Title: **803 KAR 3:050**. Arbitration.
- (2) The Kentucky Labor Cabinet intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Friday, February 27, 1998, at 10 a.m. (ET), in the Kentucky Labor Cabinet Annex Conference Room, 1047 U.S. 127 South, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to February 27, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written requests to the following address: Gary Moberly, Executive Director, Office of Labor-Management Relations and Mediation, Kentucky Labor Cabinet, 1047 U.S. 127 South, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Labor Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of an administrative regulation regarding the subject matter of arbitration is KRS Chapter 13A and KRS 336.1664.
  - (b) The administrative regulation that the Kentucky Labor Cabinet intends to promulgate will amend 803 KAR 3:050, entitled "Arbitration". The amendment will increase the fees arbitrators are permitted to charge from \$200 to \$400 per day, and from a maximum of \$1,000 to \$2,000 per arbitration case.
  - (c) The necessity and function of the proposed administrative regulation are: The Labor Cabinet's Office of Labor-Management Relations and Mediation has determined that in order to retain qualified arbitrators, the fees which these individuals may charge should be increased.
  - (d) The benefits expected from the administrative regulation are: The Labor Cabinet will be able to retain the services of highly qualified arbitrators, who will resolve cases quicker and with better results.
  - (e) The administrative regulation will be implemented as follows: The Labor Cabinet's Office of Labor-Management Relations and Mediation will implement the changes through its arbitration procedures.

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

January 6, 1998  
Public Protection and Regulation Cabinet  
Department of Housing, Buildings and Construction

- (1) Regulation Number and Title: **815 KAR 7:105**, Kentucky Building Code/1997.
- (2) The Board of Housing, Buildings and Construction intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, February 23, 1998, at 1 p.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 February 23, 1998, 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.

## ADMINISTRATIVE REGISTER - 1620

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 198B.040(7) and 198B.050.

(b) The department intends to amend 815 KAR 7:105, Kentucky Building Code/1997 as follows:

1. Amend Table 422.2 by deleting reference to Type 2C construction and replacing it with Type 3B in day care centers to cure a typographical printing error.

2. Create a new Section 2810.0, Range hoods, that was in the 1994 Edition but was inadvertently omitted from the 1997 Edition.

(c) The necessity and function of the proposed administrative regulation is as follows: It is necessary to promulgate the intended administrative regulation in order to put into place an updated edition of the Kentucky Building Code. The intended amendments are necessary to correct some printing and editing errors in the latest printing.

(d) The benefits expected from this administrative regulation are: State and local building code officials and other users of the KBC will have a clear understanding of the minimum requirements and inconsistencies will be eliminated.

(e) This administrative regulation will be implemented by the Department of Housing, Buildings and Construction.

January 8, 1998

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation number and title: **815 KAR 20:020**, Parts or materials list.

(2) The Department of Housing, Buildings and Construction intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 1 p.m., local time, on Monday, February 23, 1998, 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 February 23, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 318.130.

(b) The department intends to amend Section 5 of this administrative regulation by including a new product approved by the State Plumbing Code Committee, i.e., Stiebel Eltron Tankless Water Heater Models DHC 3, DHC 6 and DHC 8 approved for use with lavatories or sinks only.

(c) The necessity and function of the proposed administrative regulation is as follows: The function of this administrative regulation is to allow the department to promptly permit the use of new parts or materials.

(d) The benefits expected from this administrative regulation are: To allow the use of newly approved products.

(e) This administrative regulation will be implemented by state plumbing inspectors.

January 8, 1998

Public Protection and Regulation Cabinet

Department of Housing, Buildings and Construction

(1) Regulation number and title: **815 KAR 20:120**, Water supply and distribution.

(2) The Department of Housing, Buildings and Construction intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 1 p.m., local time, on Monday, February 23, 1998, in the Department of Housing's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

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

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) days prior to February 23, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U.S. 127 South, Suite #1, Frankfort, Kentucky 40601.

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

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

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

## ADMINISTRATIVE REGISTER - 1621

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

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

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 318.130.

(b) The department intends to amend 815 KAR 20:120, Water supply and distribution by amending Section 19 to allow the use of plastic water lines instead of copper when a domestic water heater is used for heating purposes through a fan coil medium.

(c) The necessity and function of the proposed administrative regulation is as follows: This administrative regulation relates to the types of piping, pipe sizes for a potable water supply system and the methods to be used to protect and control it as well as identify and publish the manufacturer's specification number of the material accepted in those installations.

(d) The benefits expected from this administrative regulation are: To make regulation less restrictive and a slight savings to those who install this type system.

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

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

January 15, 1998

Cabinet for Families and Children

Department for Social Insurance

Division of Management and Development

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

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 27, 1998 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 February 27, 1998, the public hearing will be canceled.

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

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

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the State Supplementation Program is KRS 205.245. Since 1977, the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass along the cost of living supplemental security income benefit increases to state supplementation recipients.

(b) The administrative regulation the Department for Social Insurance intends to promulgate will amend 904 KAR 2:015. The amendment will revise the standard of need for all levels of care for the State Supplementation Program due to the pass along of the 1998 supplemental security income cost of living adjustment.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to implement the mandated increases in the standard of need of the State Supplementation program due to the pass along of the supplemental security income 1998 cost of living adjustment.

(d) The benefits expected from administrative regulation are: This administrative regulation will increase the standard of need for all levels of care for the recipients of the State Supplementation Program due to the pass along of the supplemental security income cost of living increase.

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

## ADMINISTRATIVE REGISTER - 1622

### CABINET FOR HEALTH SERVICES Department for Medicaid Services

January 15, 1998  
Cabinet for Health Services  
Department for Medicaid Services

(1) **907 KAR 1:102**, Advanced registered nurse practitioner services; **907 KAR 1:104**, Payments for advanced registered nurse practitioner services; **907 KAR 1:407**, Repeal of 907 KAR 1:200, 907 KAR 1:210, 907 KAR 1:406, 907 KAR 1:408, and 907 KAR 1:476.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 27, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to February 27, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to advanced registered nurse practitioners are KRS 194.050, 205.520 and EO 96-862.

(b) The administrative regulations that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:102, and 907 KAR 1:104 to combine 907 KAR 1:200, 1:210, 1:406, 1:408, and 1:476 into 907 KAR 1:102 and 1:104 for ease of administration; make changes due to advanced registered nurse practitioners having prescriptive authority pursuant to KRS 314.011; incorporate new policy related to pharmacy services; make changes as a result of EO 96-862 and KRS Chapter 13A; update current procedural terminology (CPT) codes; incorporate codes, forms and policy presently used by the Early Periodic Screening and Diagnostic Testing (EPSDT) Program for screening services; incorporate new policy related to new coverage of certain injectable prescriptions and implant procedures; establish determinants for limiting the frequency of standard treadmill stress testing; and make minor clarifications to current policy. 907 KAR 1:407 is a regulation to repeal 907 KAR 1:200, 907 KAR 1:210, 907 KAR 1:406, 907 KAR 1:408, and 907 KAR 1:476, which are no longer needed because the information contained in these manuals will be included in the new ARNP services manual.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: 907 KAR 1:102 administrative regulation sets forth the provisions relating to advanced registered nurse practitioner services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy. 907 KAR 1:104 administrative regulation sets forth the method for determining amounts payable by the cabinet for advanced registered nurse practitioners (ARNP). 907 KAR 1:407 administrative regulation repeals 907 KAR 1:200, 907 KAR 1:210, 907 KAR 1:406, 907 KAR 1:408, and 907 KAR 1:476.

(d) The benefits expected from administrative regulation are: Combining the Advanced Registered Nurse Practitioner, Nurse Mid-wife Services, and Nurse Anesthetist Services Manuals into the Advanced Practice Nurse Services Manual to eliminate duplication of policy and ease of administration. The advanced registered nurse practitioners are able to prescribe medications pursuant to KRS 314.011; therefore, the promulgation of these regulations will permit the reimbursement for these services.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

January 15, 1998  
Cabinet for Health Services  
Department for Medicaid Services

(1) **907 KAR 3:005**, Physicians' services; **907 KAR 3:010**, Reimbursement for physicians' services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 27, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

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

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



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(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 February 27, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to physician services are KRS 194.050, 42 CFR 440.50, 447 Subpart B, 42 USC 1396a-d, s, and EO 96-862.

(b) The administrative regulations that the Department for Medicaid Services intends to promulgate will amend 907 KAR 3:005 and 907 KAR 3:010 to comply with provisions of EO 96-862 and KRS Chapter 13A; update current procedural terminology (CPT) codes; make minor policy clarifications and updates; incorporate new policy related to coverage of certain injectable prescriptions and implant procedures; incorporate codes, forms and policy presently used by the Early Periodic Screening Diagnosis and Treatment (EPSDT) Program for screening services; incorporate new policy related to pharmacy services; clarify policy related to Kentucky Patient Access and Care System (KenPAC) providers' reimbursement regarding co-insurance; incorporate new policy regarding incentives to KenPAC providers; amend policy related to physician provider enrollment regarding Maps 343, 343A, 343B, 344, and 347; amend policy related to services and reimbursement to attending physicians in a teaching hospital; make minor clarifications to current policy such as physician-patient contact; clarify policy relating to pain management; incorporate new policy to reimburse physicians for physician assistant services; and establish determinants for limiting the frequency of standard treadmill stress testing.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: 907 KAR 3:010 administrative regulation sets forth the method for establishing reimbursements for physician services. 907 KAR 3:005 administrative regulation sets forth the provisions relating to physicians' services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy.

(d) The benefits expected from administrative regulation are: Incorporation of new policy; clarification and update of existing policy; improve physicians' services provided to Medicaid recipients and primary care physicians through the use of a current and complete physician's manual.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

January 15, 1998

Cabinet for Health Services

Department for Medicaid Services

(1) **907 KAR 3:030**, Coverage and payments for Impact Plus services.

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

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for February 27, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky 40621.

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

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

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to February 27, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

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

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

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

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

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

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to coverage and payments for Impact Plus

## ADMINISTRATIVE REGISTER - 1624

services are KRS 194.050, 205.560 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will provide for coverage and payments for targeted case-management and rehabilitative services provided through an agreement with the state Title V agency, the Department for Public Health, for Medicaid eligible children who are at-risk of being institutionalized in a psychiatric facility or are institutionalized.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation provides for coverage and payments for Impact Plus services through an agreement with the state Title V agency, the Department for Public Health.

(d) The benefits expected from administrative regulation are: This administrative regulation will provide for coverage and payments for targeted case-management and rehabilitative services for Medicaid eligible children who are at risk of being in the custody or under supervision of the state or are in the custody or under the supervision of the state or are at-risk of being institutionalized or are institutionalized.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

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

STATEMENT OF EMERGENCY  
501 KAR 1:030E

In order to continue to operate the Justice Cabinet in accordance with KRS Chapter 439, the cabinet needs to implement this emergency administrative regulation. An ordinary administrative regulation will not suffice as this administrative regulation shall be effective immediately. The Kentucky Parole Board finds that it is necessary to amend its administrative regulation which affects the parole of violent offenders in the interest of the public's safety. Inmates convicted of felonies which resulted in death or serious physical injury will not be eligible for early parole. This emergency administrative regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler at the same time the emergency administrative regulation is being filed.

PAUL E. PATTON, Governor  
E. DANIEL CHERRY, Secretary

JUSTICE CABINET  
Kentucky Parole Board

501 KAR 1:030E. Determining parole eligibility.

RELATES TO: KRS 439.340(3)

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340 requires the Kentucky Parole Board to adopt administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. As used in this administrative regulation, unless the content otherwise requires:

(1) "Board" means the Kentucky Parole Board or a quorum thereof.

(2) "Chair" means the chairman of the board.

(3) "Deferment" means a decision by the board that an inmate shall serve a specific number of months before further parole consideration.

(4) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison or jail to keep the person named in the document in custody.

(5) "Panel" means anything less than a quorum.

(6) "Parole" means the release of an inmate with a signed parole certificate to the community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision. If a court or other authority has issued a detainer against the inmate, the board, in its discretion, may release him to answer the detainer.

(7) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence if the inmate has an approved parole plan and has signed his parole certificate.

(8) "Parole rescission" means a decision of the board to terminate or rescind an inmate's parole recommendation, before the inmate is actually released on parole.

(9) "Parole revocation" means the formal procedure by which the board may terminate or revoke a parolee's release on parole.

(10) "Preliminary hearing" means the initial hearing conducted by an administrative law judge to determine whether probable cause exists to believe a parolee has violated the conditions of his parole.

(11) "Quorum" means the number of members of any body who shall be present in order for the body to transact business.

(12) "Reconsideration" means a decision to review a previous board action.

(13) "Serve-out" means a decision of the board that an inmate shall serve until the completion of his sentence (SOT - serve-out time).

(14) "Youthful offender" is defined in KRS 635.020 and proceeded against in accordance with KRS 640.010.

Section 2. Statement of Content. (1) It is the intent of the Kentucky General Assembly in creating the board that it be autonomous and in all respects functionally and administratively separate from any other state agency, except as provided in KRS 439.320(1). Consequently, the board shall protect its necessary freedom from real or apparent political control, manipulation or undue or improper influence by any person, group or other entity.

(2) A decision of the board regarding policy, procedures and its actions in parole matters shall be determined by simple majority vote of the members of the board, except as provided in KRS 439.320(2). Panels of the board may make recommendations to the full board if authorized.

Section 3. Administration. (1) Board structure. The composition of the board shall be as provided by law. The appointment of members of the board, the selection of its chair, and the quorum requirements shall be those specified by law.

(2) Information concerning the board.

(a) The board shall provide and disseminate written information concerning its functions.

(b) The board shall maintain close communication and cooperation with the Justice Cabinet and the Department of Corrections, the Governor and his staff, members and committees of the General Assembly, and other public officials, including judges, State Attorney General, Commonwealth Attorney, law enforcement officials and public defenders. The board shall communicate and cooperate with public and private service agencies, including, an agency which deals with mental health, vocational rehabilitation, legal aid, human services and victims of crime.

(c) Since the board has the authority to grant parole, it welcomes the opinion of the sentencing judge, prosecuting attorney, other public officials, and private citizens, including victims of crime, concerning parole consideration.

Section 4. Parole Eligibility. (1) Initial parole review date.

(a) A person confined to a state penal institution or county jail who has been convicted of a felony offense committed after the effective date of this administrative regulation shall have his case reviewed by the board, unless otherwise prohibited by statute, in accordance with the following schedule:

Sentence Being Served

Time Service Required  
Before First Review  
(Minus Jail Credit)

1 year, up to but not including  
2 years

4 months

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<u>2 years, up to and including 39 years</u>	<u>20% of sentence received</u>
<u>More than 39 years, up to and including life</u>	<u>8 years</u>
<u>Persistent felony offender I in conjunction with a Class A, B or C felony</u>	<u>10 years</u>

For the crimes, committed on or after July 15, 1986, of murder, manslaughter I, rape I, sodomy I, assault I, kidnapping - where there is serious physical injury or death, arson I - where there is serious physical injury or death, criminal attempt, criminal solicitation, or criminal conspiracy to commit any of the previously listed capital offenses or a Class A felony which involves serious physical injury or death of the victim:

<u>Sentences of a number of years</u>	<u>As prescribed by statute</u>
<u>Sentences of life</u>	<u>As prescribed by statute</u>

(b) A person confined to a state penal institution or county jail who has been convicted of a felony offense committed on or after December 3, 1980, but prior to the effective date of this administrative regulation, shall have his case reviewed by the board in accordance with the following schedule:

<u>Sentence Being Served</u>	<u>Time Service Required Before First Review (Minus Jail Credit)</u>
<u>1 year, up to but not including 2 years</u>	<u>4 months</u>
<u>2 years, up to and including 39 years</u>	<u>20% of sentence received</u>
<u>More than 39 years, up to and including life</u>	<u>8 years</u>

(c) A person confined to a state penal institution or county jail who has been convicted of a felony offense committed prior to December 3, 1980 shall have his case reviewed by the board in accordance with the following schedule:

<u>Sentence Being Served</u>	<u>Time Service Required Before First Review (Minus Jail Credit)</u>
<u>1 year</u>	<u>4 months</u>
<u>More than 1 year and less than 18 months</u>	<u>5 months</u>
<u>18 months up to and including 2 years</u>	<u>6 months</u>
<u>More than 2 years and less than 2 ½ years</u>	<u>7 months</u>
<u>2 ½ years up to 3 years</u>	<u>8 months</u>
<u>3 years</u>	<u>10 months</u>
<u>More than 3 years, up to and including 9 years</u>	<u>1 year</u>
<u>More than 9 years, up to and including 15 years</u>	<u>2 years</u>
<u>More than 15 years, up to and including 21 years</u>	<u>4 years</u>
<u>More than 21 years, up to and including life</u>	<u>6 years</u>

Parole eligibility on an individual serving multiple sentences, where one (1) or more of the crimes resulted in a conviction committed under subsection (b) of this section or this subsection and one (1) or more committed under subsection (a) of this section, shall be

calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(d) After the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board; however, the maximum deferment given at one (1) time shall not exceed the statutory minimum parole eligibility for a life sentence. The board shall reserve the right to order a serve-out on a sentence.

(e) If a confined prisoner is sentenced for a felony committed prior to the date of his instant commitment and this conviction shall be served consecutively, it shall be added to the sentence being served to determine eligibility for parole consideration if the inmate has not been discharged from the institution since his original admission on that institutional number. If the confined prisoner is a returned parole violator with an additional consecutive sentence, parole eligibility shall be determined on the length of the new sentence only, calculated from the date of final sentencing. If the confined prisoner is recommended for parole or given a serve-out or deferment and receives an additional concurrent or consecutive sentence, parole eligibility on the new sentence shall be calculated from the date of original admission on the aggregate sentences, total time to serve, and allowing jail credit on all sentences as if he has never been seen by the board. If the additional sentence shall be served concurrently, he shall start to accrue parole eligibility on the day he is committed on the first sentence.

(f) If a person receives a concurrent or consecutive sentence for a crime committed while confined in the institution or while on escape from the institution, he shall not begin to accrue eligibility time towards parole consideration on the latter sentence until he becomes eligible for parole on the sentence for which he is originally confined. This shall include a life sentence.

(g) In determining parole eligibility for an inmate who receives a sentence for an escape, the board shall require, in addition to the amount of time to be served for parole eligibility on the original sentence, and for a crime committed while in the institution or on an escape, the service of additional time equal to the time to be served for an additional sentence received for the escape.

(h) If a confined prisoner receives a deferment, escapes before he meets the board again, returns to the institution from the escape but does not receive a new sentence for the escape, the time out on escape shall be added to the deferred date to arrive at his new adjusted deferment date. However, if he later receives a sentence for that escape, his time shall be calculated on the new sentence from the date of sentencing. A new escape sentence shall void the deferment.

(i) If an inmate receives a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence for a crime committed while on escape or confined in an institution, he shall automatically be brought before the board again when he becomes eligible for parole consideration on the additional sentence. His parole eligibility shall be calculated from the date of sentencing on the new sentence.

(j) If an inmate receives a parole recommendation but escapes prior to being released, the parole recommendation shall be rescinded by the board upon receipt of a signed affidavit attesting to the fact that the escape has occurred from the institutional parole officer of the institution where the inmate escaped. Upon return to a state institution, the inmate shall be placed before the board at its next regularly scheduled hearing at the institution where he is confined.

(k) A person who is shock probated and later returned as a shock probation violator shall be considered for parole after he serves the required time. This sentence shall be calculated by adding the period of time the inmate is out of the institution to his original parole eligibility date.

(l) A person returned to the institution as a shock probation violator with a new concurrent sentence shall have a separate date of parole eligibility on each sentence computed. The inmate shall have a separate hearing on each eligibility date. The adjusted parole

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eligibility date on the sentence for which he received shock probation shall be determined by adding the period of time he is out of the institution to his original parole eligibility date, calculated prior to being shock probated.

(m) A person who is shock probated and returned to the institution with a new sentence acquired while on shock probation to be served consecutively, shall be eligible for a parole hearing if he has served the amount of time to be eligible for a parole hearing on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences.

(2) An inmate who has committed an offense on or after the effective date of this administrative regulation shall not be eligible for parole consideration prior to his minimum eligibility date, as determined pursuant to subsection (1) of this section, unless he has:

(a) Successfully completed the First Incarceration Shock Treatment (FIST) Program implemented by CPP 21.2, V. Policy, B. Eligibility Criteria, incorporated by reference, in 501 KAR 6:020; and

(b) Not been convicted of an offense that resulted in serious physical injury.

(3) The parole hearing shall consist of an interview with the inmate by the board, or a panel. If the inmate is too ill to appear, the board may, at its discretion, appoint one (1) member to interview the inmate in the health care facility where he is confined and report back to the remaining members. A majority vote by a quorum shall be required before action is taken.

(4) If an inmate refuses to meet the board on his scheduled hearing date, a notarized statement to that effect shall be presented. A person refusing to meet the board may petition the board for reconsideration.

(5) An inmate who is psychologically unstable may be deferred in absentia until he is able to meet the board if the board receives documentation from a certified psychologist or psychiatrist.

(6) The board shall schedule the initial parole hearing as follows, unless otherwise prescribed by statute:

(a) For an institution that has hearings scheduled once per month, the inmate shall, if administratively possible, be seen during the month he is eligible for parole consideration.

(b) For an institution that has hearings scheduled bimonthly, the inmate shall, if administratively possible, be seen during the month eligible or one (1) month prior to the month he is eligible for parole consideration.

(c) If it is not administratively possible to conduct the initial parole hearing during the month the inmate is eligible, the inmate shall be seen at the next available board hearing conducted at the institution where the inmate is housed.

Section 5. Board Criteria for Granting or Denying Parole. (1) Before granting or denying parole, the board shall apply any of the following factors to an inmate:

- (a) Current offense - seriousness, violence involved, firearm used;
- (b) Prior record;
- (c) Institutional adjustment and conduct - disciplinary reports, loss of good time, work and program involvement;
- (d) Attitude toward authority - before and during incarceration;
- (e) History of alcohol or drug involvement;
- (f) History of prior probation, shock probation or parole violations;
- (g) Education and job skills;
- (h) Employment history;
- (i) Emotional stability;
- (j) Mental capacities;
- (k) Terminal illness;
- (l) History of deviant behavior;
- (m) Official and community attitudes toward accepting inmate back in the county of conviction;
- (n) Victim impact statement and victim impact hearing;

(o) Review of parole plan - housing, employment, need for community treatment and follow-up resources;

(p) Other factors involved that relate to the inmate's needs and public safety.

(2) The board may rescind a parole recommendation anytime prior to the release of an inmate on parole.

(3) The board may reconsider a decision to deny parole if the chair requests the full board to reconsider a decision and the full board votes in writing, and the majority votes in favor of the reconsideration hearing.

(4) An inmate whose parole is revoked, rescinded or denied by deferment or serve-out may request an appellate review by the board. A request for the review shall be received by the board within twenty-one (21) days from the date the final disposition is made available to the inmate. If the request is not received within twenty-one (21) days, it shall be denied. The request shall be screened by a board member or his designee to decide if a review shall be conducted. A review shall be conducted for the following reasons:

(a) If there is significant new evidence that was not available at the time of the hearing. A request based on the availability of new evidence or information shall be accompanied by adequate documentation.

(b) If there is an allegation of misconduct by a board member that is substantiated by the record.

(c) If there is a significant procedural error by a board member. A request which requires further consideration shall be based on one (1) or more of the above reasons. A request based on an allegation of misconduct or significant procedural error shall clearly indicate the specific misconduct or procedural error. If the case is set for review, it shall be conducted from the record of the first hearing. The appearance of the inmate shall not be necessary. If a board member wishes to have additional testimony, an appearance hearing may be conducted. The board shall vote after reviewing the initial taped interview and the record. A decision to change the result of the hearing that is the subject of the appeal shall require the concurrence of four (4) board members. This decision shall be final.

Section 6. Youthful Offender. (1) A youthful offender shall be subject to the jurisdiction of the board as described in KRS 640.080.

(2) The Cabinet for Human Resources and the Department of Corrections shall provide the board with necessary records to conduct a hearing as described in KRS 640.100.

(3) A youthful offender shall be subject to the board's applicable administrative regulations.

(4) A youthful offender housed by the Cabinet for Human Resources shall have a hearing at a site agreed upon by that cabinet and the board.

(5) A youthful offender housed by the Department of Corrections shall have a hearing at a site determined by the board.

(6) An administrative law judge shall hold a preliminary revocation hearing at a facility out of sight and sound of adult inmates.

(7) A final revocation hearing for a youthful offender shall be held at a site agreed upon by the Cabinet for Human Resources and the board or the central office of the board.

(8) Special hearings for a youthful offender shall be held in central office.

Section 7. Conditions of Parole. (1) The general conditions are as follows. The parolee shall:

(a) Report to his parole officer immediately upon arrival at his destination and submit in writing once a month, or more if directed by the officer, a report on forms prescribed by the Division of Probation and Parole.

(b) Permit his parole officer to visit his home and place of employment at any time.

(c) Not indulge in the use of a nonprescribed controlled substance.

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(d) Work regularly and support his legal dependents. If un-employed, he shall report this fact to his officer and make every attempt to obtain other employment.

(e) Not associate with a convicted felon except for a legitimate purpose, including family, residential, occupational or treatment.

(f) Not visit with an inmate of a penal institution without permission of his parole officer.

(g) Not leave the state, district, residence or place of employment without written permission of his parole officer.

(h) Not be permitted to purchase, own or have in his possession a firearm or other weapon.

(i) Not violate any law or city ordinance of this state, any other state or the United States.

(j) Not falsify any report to his parole officer.

(k) Not have the right to register for voting purposes and may not hold office; if he registers or reregisters prior to restoration of his civil rights, he shall be in violation of the law which carries a maximum penalty of five (5) years in prison.

(l) Comply with the rules and administrative regulations prescribed by the Division of Probation and Parole and special instructions of his parole officer.

(m) Pay a supervision fee unless expressly waived by the board.

(2) If additional supervision or conditions are deemed necessary in a case, the board may order a parolee to:

(a) Be placed in the Intensive Supervision Program, administered by the Department of Corrections, pursuant to 501 KAR 6:020 and CPP 27-11-01;

(b) Observe a curfew;

(c) Not associate with, or contact a specific individual;

(d) Not frequent a certain place or business;

(e) Be tested periodically for drugs; or

(f) Observe any condition the board has determined is necessary for the rehabilitation of the parolee. [KRS 439.340 requires the Kentucky Parole Board to adopt administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.]

**Section 1. Definitions.** As used in these administrative regulations, unless the content otherwise requires:

(1) "Board" means the Kentucky Parole Board or a quorum thereof.

(2) "Quorum" means the number of members of any body who must necessarily be present in order for the body to transact business.

(3) "Panel" means anything less than a quorum.

(4) "Chair" means the Chairman of the Kentucky Parole Board.

(5) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison/jail to keep in his custody the person named in the document.

(6) "Serve-out" means a decision of the board that an inmate shall serve until the completion of his sentence (SOT - serve-out time);

(7) "Deferment" means a decision of the board that an inmate shall serve a specific number of months before further parole consideration.

(8) "Reconsideration" means a decision to review a previous board action.

(9) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence if the inmate has an approved parole plan and if the inmate has signed his parole certificate.

(10) "Parole" means the release of an inmate with a signed parole certificate to the community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision. Where a court or other authority has issued a detainer against the inmate, the board, in its discretion, may release him to answer the detainer of such court or authority.

(11) "Parole rescission" means a decision of the board to

terminate or rescind an inmate's parole recommendation, before such inmate means actually released on parole.

(12) "Parole revocation" means the formal procedure by which the board may terminate or revoke a parolee's release on parole.

(13) "Preliminary hearing" means the initial hearing conducted by an administrative law judge to determine whether probable cause exists to believe a parolee has violated the conditions of his parole.

(14) "Youthful offender" means a juvenile declared as such as described in KRS 640.010.

**Section 2. Statement of Content.** (1) It is the intent of the Kentucky General Assembly in creating the Kentucky Parole Board that it be autonomous and in all respects functionally and administratively separate from any other state agency, except as provided in KRS 439.320(1). Consequently, the board shall protect such necessary freedom from real or apparent political control, manipulation, or undue or improper influence by any person, group, or other entity of any kind.

(2) All decisions of the board regarding policy, procedures and its actions in parole matters shall be determined by simple majority vote of the members of the board, except as provided in KRS 439.320(2). Panels of the board may make recommendations to the full board where authorized.

**Section 3. Administration.** (1) Board structure. The composition of the board shall be as provided by law. The appointment of members of the board, the selection of its chair, and the quorum requirements shall be those as specified by law.

(2) Information concerning the board.

(a) The board shall provide and disseminate written information concerning the functions of the Kentucky Parole Board.

(b) The board shall maintain close communication and cooperation with the Justice Cabinet and the Department of Corrections, the Governor and his staff, members and committees of the General Assembly, and other public officials, including judges, state attorney general, Commonwealth Attorney, law enforcement officials and public defenders. The board shall communicate and cooperate with all public and private service agencies, including, but not limited to, agencies dealing with mental health, vocational rehabilitation, legal aid, human services and victims of crime.

(c) Since the board has the authority to grant parole, it welcomes the opinion of the sentencing judge, prosecuting attorney, other public officials, and private citizens, including victims of crime, concerning parole consideration.

**Section 4. Parole Eligibility.** (1) Initial parole review date.

(a) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed after the effective date of this administrative regulation shall have their cases reviewed by the board (unless otherwise prohibited by statute) in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to & including life	8 years
Persistent felony offender in conjunction with a Class A, B, or C felony	10 years

For the crimes, committed on or after July 15, 1986, of murder, manslaughter I, rape I, sodomy I, assault I, kidnapping (where there is serious physical injury or death), arson I (where there is serious physical injury or death), criminal attempt, criminal solicitation, or

**ADMINISTRATIVE REGISTER - 1629**

criminal conspiracy to commit any of the previously listed capital offenses or Class A felonies which involve serious physical injury or death of the victim:

Sentences of a number of years — As prescribed by statute  
 Sentences of life — As prescribed by statute

(b) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed on or after December 3, 1980 but prior to the effective date of this administrative regulation shall have their cases reviewed by the board in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years

(c) All persons confined to a state penal institution or county jail who have been convicted of a felony offense committed prior to December 3, 1980 shall have their cases reviewed by the board in accordance with the schedule set out as follows:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to & including 9 years	1 year
More than 9 years, up to & including 15 years	2 years
More than 15 years, up to & including 21 years	4 years
More than 21 years, up to & including life	6 years

Parole eligibility on those individuals serving multiple sentences, one (1) or more of the crimes which resulted in the convictions committed under Section 4(b) or (c) of this administrative regulation and one (1) or more committed under Section 4(a) of this administrative regulation, shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(d) After the initial review for parole, subsequent review, so long as confinement continues, shall be at the discretion of the board; except maximum deferment given at any one (1) time shall not exceed the minimum parole eligibility for a life sentence as established by statute. The board reserves the right to order a serve-out on any sentence.

(e) A sentence on conviction of a felony imposed upon a confined prisoner for a crime committed prior to the date of his instant commitment, if designated to be served consecutively, shall be added to the sentence being served to determine eligibility for parole consideration if the inmate has not been discharged from the institution since his original admission on that institutional number. If the confined prisoner is a returned parole violator with an additional consecutive sentence then parole eligibility shall be determined on the length of the new sentence only, calculated from the date of final

sentencing. If the confined prisoner has been recommended for parole or given a serve-out or deferment and receives an additional sentence, running either concurrently or consecutively, parole eligibility on the new sentence shall be calculated from the date of original admission on the aggregate sentences (total time to serve) and allowing jail credit on all sentences, as if he had never been seen by the board. If the additional sentence is designated to be served concurrently, he shall be considered as having started to accrue parole eligibility on the day he was committed on the first sentence.

(f) A person receiving a concurrent or consecutive sentence for crime committed while confined in the institution or while on escape from the institution shall not begin accruing eligibility time towards parole consideration on the latter sentence until he has become eligible for parole on the sentence, including a life sentence, for which he was originally confined.

(g) In determining parole eligibility for an inmate who has received a sentence for an escape, the board shall require, in addition to the amount of time to be served for parole eligibility on the original sentence, and the time required to be served for any crime committed while in the institution or while on escape, the service of additional time equal to the time to be served for any additional sentence received for such escape.

(h) If a confined prisoner receives a deferment, escapes before he meets the board next time, returns to the institution from escape but does not have a new sentence for escape, the time out on escape shall be added to the deferred date to arrive at his new adjusted deferment date. However, if he later receives an escape sentence for that escape, his time shall be calculated on the new sentence from the date of sentencing. A new escape sentence shall void the deferment.

(i) Even though an inmate has received a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence or sentences for crimes committed while on escape or while confined in the institution, he shall automatically be brought before the board again when, and not until, he becomes eligible for parole consideration on the additional sentence(s) and the parole eligibility shall be calculated from the date of sentencing on the new sentence or sentences.

(j) If an inmate has received a parole recommendation but escapes prior to being released on parole, the parole recommendation shall be rescinded by the board upon receipt of an affidavit signed and submitted by the institutional parole officer of the institution from where the inmate escaped attesting to the fact that the escape has occurred. Upon return to a state institution, the inmate shall be placed back before the board at its next regularly scheduled hearing at the institution where he is confined.

(k) A person who is shock probated and later returned as a shock probation violator shall be considered for parole after he has served the required time on the sentence calculated by adding the period of time the inmate was out of the institution to his original parole eligibility date.

(l) Persons returned to the institution as a shock probation violator with a new concurrent sentence shall have separate dates of parole eligibility on each sentence computed and the inmate shall be heard separately on each eligibility date. The adjusted parole eligibility date on the sentence on which he was shock probated shall be determined by adding the period of time he was out of the institution to his original parole eligibility date calculated prior to being shock probated.

(m) A person who is shock probated and later returned to the institution with a new sentence acquired while on shock probation and ordered to be served consecutively shall be eligible for a parole hearing when he has served the amount of time required to be eligible for a parole hearing required on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences.

(2) In keeping with the intent of the Act, the Parole Board may

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with the consent of the majority of the board review the case of any inmate for parole consideration prior to his eligibility date. This shall not be done until the reason for such action is submitted to all members in writing, along with all supporting documents, and all members shall note in writing as to their desire to grant a hearing. This shall then be filed in the record of the inmate in question and made a permanent part of his file in the central office of the Department of Corrections.

(3) The parole hearing shall consist of an interview with the inmate by the board, or a panel. In instances when the inmate is too ill to appear before the board, the board may, at its discretion, appoint one (1) member to interview the inmate in the health care facility where he is confined and report back to the remaining members. In this instance, as in all cases, a majority vote by a quorum is required before action is taken.

(4) If an inmate refuses to meet the board on his scheduled hearing date, a notarized statement shall be presented to this effect. A person refusing to meet the board may petition the board for reconsideration.

(5) Inmates who are psychologically unstable may be deferred in absentia until they are able to meet the board if the board receives documentation from a certified psychologist or psychiatrist.

(6) The board shall schedule the initial parole hearing as follows (unless otherwise prescribed by statute):

(a) For those institutions that have hearings scheduled once per month, the inmates shall be seen during the month they are eligible for parole consideration, if administratively possible.

(b) For those institutions that have hearings scheduled bimonthly, the inmates shall be seen during the month eligible or one (1) month prior to the month they are eligible for parole consideration, if administratively possible.

(c) In those instances where it is not administratively possible to conduct the initial parole hearing during the month the inmate is eligible for a parole hearing, the inmate shall be seen at the next available board hearing conducted at the institution where the inmate is housed.

Section 5. Board Criteria for Granting or Denying Parole. (1) Before granting or denying parole, the board shall apply any or all of the following factors to each inmate:

(a) Current offense - seriousness, violence involved, firearm used;  
(b) Prior record;  
(c) Institutional adjustment and conduct - disciplinary reports, loss of good time, work and program involvement;

(d) Attitude toward authority - before incarceration, during incarceration;

(e) History of alcohol or drug involvement;

(f) History of prior probation, shock probation or parole violations;

(g) Education and job skills;

(h) Employment history;

(i) Emotional stability;

(j) Mental capacities;

(k) Terminal illness;

(l) History of deviant behavior;

(m) Official and community attitudes toward accepting inmate back in the county of conviction;

(n) Victim impact statements and victim impact hearings;

(o) Review of parole plan - housing, employment, need for community treatment and follow-up resources;

(p) Any other factors involved that would relate to the inmate's needs and the safety of the public.

(2) The board may rescind a parole recommendation anytime prior to the release of an inmate on parole.

(3) The board may reconsider a decision to deny parole if the chairman requests the full board to reconsider a decision and the full board votes in writing, and the majority votes in favor of the reconsideration hearing.

(4) An inmate whose parole has been revoked, rescinded or denied by deferment or serve out may request an appellate review by the board. Requests for an appellate review shall be received by the board within twenty-one (21) days from the date the final disposition is made available to the inmate. If the request is not received within twenty-one (21) days, it shall be denied. The request shall be screened by a board member or designee to decide if a review shall be conducted. Reviews shall be conducted for the following reasons:

(a) If there is significant new evidence that was not available at the time of the hearing;

(b) If there are allegations of misconduct by a board member that are substantiated by the record;

(c) If there were significant procedural errors by a board member.

All requests which will receive further consideration shall be based on one (1) or more of the above reasons. Requests based on the availability of new evidence or information shall be accompanied by adequate documentation. Requests based on allegations of misconduct or significant procedural errors shall clearly indicate the specific misconduct or procedural errors(s).

If the case is set for review, it shall be conducted from the record of the first hearing and the appearance of the inmate shall not be necessary. If a board member wishes to have additional testimony, an appearance hearing may be conducted. The board shall vote after reviewing the initial taped interview and the record. A decision to change the result of the hearing that is the subject of the appeal shall require the concurrence of four (4) board members. The decision rendered after an appellate review is final.

Section 6. Youthful Offender. (1) Youthful offenders are subject to the jurisdiction of the Kentucky Parole Board as described in KRS 640.080.

(2) The Cabinet for Human Resources and the Department of Corrections shall provide the Parole Board with all necessary records to conduct a hearing as described in KRS 640.100.

(3) Youthful offenders shall be subject to all sections of the Kentucky Parole Board administrative regulations as applicable.

(4) Youthful offenders housed by the Cabinet for Human Resources shall have a hearing at a site agreed upon by that cabinet and the Parole Board.

(5) All youthful offenders housed by the Department of Corrections shall have a hearing at a site determined by the Parole Board.

(6) Administrative law judges shall hold preliminary revocation hearings at facilities out of sight and sound of adult inmates.

(7) Final revocation hearings for youthful offenders shall be held at a site agreed upon by the Cabinet for Human Resources and the Kentucky Parole Board or the Central Office of the Parole Board.

(8) Special hearings for youthful offenders shall be held in central office.

Section 7. Conditions of Parole. (1) The general conditions are as follows:

(a) The parolee shall report to his parole officer immediately upon arrival at his destination and submit in writing once a month, or more often if directed by the officer, a report on forms prescribed by the Division of Probation and Parole.

(b) The parolee shall permit his parole officer to visit his home and place of employment at any time.

(c) The parolee shall not indulge in the use of nonprescribed controlled substances.

(d) The parolee shall work regularly and support his legal dependents. When unemployed, he shall report this fact to his officer and make every attempt to obtain other employment.

(e) The parolee shall not associate with a convicted felon except for legitimate purposes, including but not limited to family, residential, occupational or treatment purposes.

(f) The parolee shall not visit with inmates of penal institutions without permission of his parole officer.



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(g) The parolee shall not leave the state, district, residence or place of employment without written permission of his parole officer.

(h) The parolee shall not be permitted to purchase, own or have in his possession a firearm or other weapon.

(i) The parolee shall not violate any law or city ordinance of this state or any other state or of the United States.

(j) The parolee shall not falsify any report to his parole officer including his monthly report.

(k) The parolee does not have the right to register for voting purposes and cannot hold office; should he register or reregister prior to restoration of civil rights, he shall be in violation of the law which carries a maximum penalty of five (5) years in prison.

(l) The parolee shall comply with all rules and administrative regulations prescribed by the Division of Probation and Parole and special instructions of his parole officer.

(m) The parolee shall pay a supervision fee unless expressly waived by the Parole Board.

(2) Special conditions of parole may be added in individual cases at the discretion of the Parole Board.]

LINDA F. FRANK, Chair

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: January 8, 1998

FILED WITH LRC: January 8, 1998 at 4 p.m.

### REGULATORY IMPACT ANALYSIS

Contact Person: Barbara Jones, General Counsel

(1) Type and number of entities affected: 8,729 inmates and 14,211 parolees and probationers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: 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: Funds budgeted for this 1996 - 1998 biennium.

(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

(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 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 Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### STATEMENT OF EMERGENCY 501 KAR 6:020E

In order to continue to operate the Department of Corrections in accordance with KRS Chapters 196 and 197, the department needs to implement this emergency administrative regulation. An ordinary administrative regulation will not suffice as this administrative regulation shall be effective immediately. The Department of Corrections has revised policies and procedures which impact the placement of an inmate in three (3) specific programs. I am requesting that this administrative regulation be declared an emergency so that an inmate who is convicted of a crime resulting in death or serious physical injury may not be eligible for the FIST Program, to exclude an inmate with a history of domestic violence from consideration for placement in the Community Center Program, and clarify ways in which an inmate may be placed in intensive supervision. This emergency administrative regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler at the same time the emergency administrative regulation is being filed.

PAUL E. PATTON, Governor  
DOUG SAPP, Commissioner

### JUSTICE CABINET Kentucky Department of Corrections

#### 501 KAR 6:020E. Corrections policies and procedures.

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 department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

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

(a) "Department of Corrections Policies and Procedures, Volume I, January 8, 1998 November 12, 1997":

1.1 Legal Assistance for Corrections Staff  
1.2 News Media (Amended 1/8/98)

## ADMINISTRATIVE REGISTER - 1632

01-04-01	The operation of Contracted Adult Correctional Facilities	18.13	Population Categories
1.6	Extraordinary Occurrence Reports	18.15	Protective Custody
1.9	Institutional Duty Officer	18.17	Interstate Agreement on Transfers
1.11	Population Counts and Reporting Procedures	18.18	International Transfer of Inmates
1.12	Operation of Motor Vehicles by Department of Corrections Employees	19.1	Government Services Projects
2.1	Inmate Canteen	19.2	Community Services Projects
2.2	Warden's Fund	19.3	Inmate Wage Program
2.10	Surplus Property	20.1	Educational Programs and Educational Good Time
3.12	Institutional Staff Housing	21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)
4.2	Staff Training and Development	21.2	Phase I: Program Selection Assessment Criteria ( <u>Amended 1/8/98</u> )
4.3	Firearms and Chemical Agents Training	21.3	Program Schedule - Phase II and Phase III
4.7	Uniformed Employee Dress Code	21.4	Platoon Size and Composition
6.1	Open Records Law	21.5	Physical Conditions Program Component
7.2	Asbestos Abatement	21.6	Group and Individual Counseling
9.4	Transportation of Inmates to Funerals or Bedside Visits	21.7	Drug and Alcohol Abuse Counseling and Treatment
9.6	Contraband	21.8	Work Programs Component
9.8	Search Policy	21.9	Education and Life Management
9.18	Informants	21.10	Auxiliary Services
9.19	Found Lost or Abandoned Property	21.11	Offenses and Penalties
10.2	Special Management Inmates	22.1	Privilege Trips
10.3	Safekeepers	23.1	Religion
10.4	Special Needs Inmates	25.1	Gratuities
11.2	Nutritional Adequacy of the Diet for Inmates	25.2	Public Official Notification of Release of an Inmate
11.3	Special Diet Procedures	25.3	Prerelease Program
11.4	Alternative Diet	25.4	Inmate Furloughs
13.1	Pharmacy Policy and Formulary	25.6	Community Center Program ( <u>Amended 1/8/98</u> )
13.2	Health Maintenance Services	25.7	Expedient Release
13.3	Medical Alert System	25.8	Extended Furloughs
13.4	Health Program Audits	25.10	Administrative Release of Inmates
13.5	Acquired Immune Deficiency Syndrome	25.11	Victim Notification
13.6	Sex Offender Treatment Program		
13.7	Involuntary Psychotropic Medication Policy		
13.8	Substance Abuse Treatment Program		
13.9	Dental Services		
14.1	Investigation of Missing Inmate Property		
14.2	Personal Hygiene Items		
14.3	Marriage of Inmates		
14.4	Legal Services Program		
14.6	Inmate Grievance Procedures ( <u>Amended 1/8/98</u> )		
15.1	Hair and Grooming Standards		
15.2	Offenses and Penalties ( <u>Amended 1/8/98</u> )		
15.3	Meritorious Good Time		
15-05-01	Restoration of Forfeited Good Time		
15.6	Adjustment Procedures and Programs ( <u>Amended 1/8/98</u> )		
15.7	Inmate Account Restriction		
15.8	Unauthorized Substance Abuse Testing		
16.1	Inmate Visits		
16.2	Inmate Correspondence		
16.3	Telephone Calls ( <u>Amended 1/8/98</u> )		
16.4	Inmate Packages		
17.1 [ <del>17-01-01</del> ]	Inmate Personal Property ( <u>Amended 1/8/98</u> )		
17.2	Assessment Center Operations		
17.3	Controlled Intake of Inmates		
(c) "Department of Corrections Policies and Procedures, Volume III, <u>January 8, 1998</u> [ <del>November 12, 1997</del> ]":			
		27-01-01	Probation and Parole Procedures
		27-02-01	Duties of Probation and Parole Officers
		27-03-01	Workload Formula Supervisor/Staff Ratio
		27-05-01	Testimony, Court Demeanor and Availability of Legal Services
		27-06-01	Availability of Supervision Services
		27-06-02	Equal Access to Services
		27-07-01	Cooperation with Law Enforcement Agencies
		27-08-01	Use of Force
		27-09-01	Kentucky Community Resources Directory
		27-11-01	Intensive Supervision ( <u>Amended 1/8/98</u> )
		27-12-01	Supervision: Case Classification
		27-12-02	Risk Assessment
		27-12-03	Initial Interview
		27-12-04	Conditions of Regular Supervision/Request for Modification
		27-12-05	Releasee's Report
		27-12-06	Grievance Procedures for Offenders
		27-12-07	Employment, Education/Vocational Referral
		27-12-08	Supervision Plan
		27-12-09	Casebook
		27-12-10	Guidelines for Monitoring Supervision Fee
		27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority
		27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
		27-12-13	Community Service Work
		27-12-14	Client Travel Restrictions
		27-13-01	Drug and Alcohol Testing of Offenders
		27-13-02	Alcohol Detection
		27-14-01	Interstate Compact Transfers
(b) "Department of Corrections Policies and Procedures, Volume II, <u>January 8, 1998</u> [ <del>April 14, 1997</del> ]":			
18.1	Classification of the Inmate		
18.5	Custody and Security Guidelines		
18.7	Transfers		
18.9	Out-of-state Transfers		
18-10-01	Preparole Progress Reports		
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures		
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill		

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- 27-14-02 Interstate Compact Out-of-state Probation and Parole Violation
- 27-15-01 Supervision Report; Violations, Unusual Incidents
- 27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence
- 27-17-01 Absconder Procedures
- 27-18-01 Probation and Parole Issuance of Detainer/Warrant
- 27-19-01 Preliminary Revocation Hearing
- 27-20-01 Division of Probation and Parole Controlled Intake Program
- 27-20-02 Prisoner Intake Notification
- 27-20-03 Prisoner Status Change
- 27-21-01 Apprehension and Transportation of Probation and Parole Violators
- 27-22-01 Fugitive Unit - Apprehensions
- 27-22-02 Fugitive Unit - Transportation of Fugitives
- 27-23-01 In-state Transfer
- 27-24-01 Closing Supervision Report
- 27-24-02 Reinstatement of Clients to Active Supervision
- 27-25-01 Application for Final Discharge from Parole
- 27-26-01 Assistance to Former Clients and Dischargees
- 27-27-01 Restoration of Civil Rights
- 27-28-01 Firearms/Explosives: Application for Relief from Disability
- 27-29-01 Parole Review Dates Modification
- 28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)
- 28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)
- 28-01-03 Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)
- 28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules)
- 28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit)
- 28-01-06 Probation and Parole Investigation Reports (Misdemeanant Presentence Investigation Reports for the Circuit and District Courts)
- 28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule)
- 28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)
- 28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports
- 28-02-01 Expedient Release Program
- 28-03-01 Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release
- 28-04-01 Furlough Verifications
- 28-05-01 Out-of-state Investigations

- (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.

(2) This material may be inspected, copied, or obtained at the Office of General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

DOUG SAPP, Commissioner  
 TAMELA BIGGS, Staff Attorney  
 APPROVED BY AGENCY: December 12, 1997  
 FILED WITH LRC: January 8, 1998 at 4 p.m.

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: Tamela Biggs  
 (1) Type and number of entities affected: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

**STATEMENT OF EMERGENCY  
 501 KAR 6:080E**

In order to continue to operate the Department of Corrections in accordance with KRS Chapters 196 and 197, the department needs to implement this emergency administrative regulation. An ordinary administrative regulation shall not suffice as this administrative regulation shall be effective immediately. The Department of Corrections has recently completed an internal review of its classification manual to accurately reflect Corrections practice in assigning an inmate the appropriate score for purposes of suitable institutional or community placement. I am requesting that this administrative regulation be declared an emergency so that an inmate who is convicted of a crime resulting in death or serious physical injury may not be eligible for community custody. This emergency administrative

## ADMINISTRATIVE REGISTER - 1634

regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler at the same time the emergency administrative regulation is being filed.

PAUL E. PATTON, Governor  
DOUG SAPP, Commissioner

### JUSTICE CABINET Department of Corrections Division of Adult Institutions

#### 501 KAR 6:080E. Department of Corrections manuals.

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 authorizes the Justice Cabinet and Department of Corrections to promulgate [commissioner to adopt, amend or rescind] administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards by the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections. [These administrative regulations are in conformity with those provisions:]

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

(1) "Department of Corrections Manuals, January 8, 1998".

(2) ~~It may be inspected, copied, or~~ [Pursuant to the authority vested in the Department of Corrections the following policies and procedures are incorporated by reference on July 14, 1995 and hereinafter shall be referred to as Department of Corrections Manuals. Copies of the procedures may be] obtained ~~at~~ [from] the Office of the General Counsel, Department of Corrections, State Office Building, 501 High Street, Frankfort, Kentucky 40601, Monday through Friday, [or may be reviewed at the Office of General Counsel weekdays from] 8 a.m. to 4:30 p.m.

Section 2. Department of Corrections manuals include:

Offender Records Manual - None

Stock Procedure Manual - None

Food Services Manual - None

Classification Manual - (Amended 1/8/98 [7/14/95])

Diet Manual - None

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: December 12, 1997

FILED WITH LRC: January 8, 1998 at 4 p.m.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs, Staff Attorney

(1) Type and number of entities affected: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: 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: Funds budgeted for this 1996 - 1998 biennium.

(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

(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 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 Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### STATEMENT OF EMERGENCY 904 KAR 2:015E

The administrative regulation 904 KAR 2:015E, Supplemental programs for persons who are aged, blind or have a disability, changes the standards for all levels of care for the State Supplemental Program due to the pass along of the supplemental security income 1998 cost of living increase. This administrative regulation is needed to comply with the agreement the Commonwealth of Kentucky has with the Department of Health and Human Services to pass along any cost of living increases in supplemental security income benefits to state supplementation recipients. The Social Security Administration notified this agency of the amount of the supplemental security income cost of living adjustment in October 1997. An ordinary administrative regulation would not allow the agency sufficient time to have an administrative regulation in place in order to implement the change in the standards for all level of care for the state supplementation applicant or recipient for January 1998. In order to implement the mandated 1998 cost of living increases for eligibility determinations made on or after January 1,

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1998, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

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

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

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

RELATES TO: KRS 205.245, 20 CFR 416.2095, 416.2096, 8 USC 1621, 1641

STATUTORY AUTHORITY: KRS 194.050, 205.245, 42 USC 1382e-g, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is authorized to administer a state funded program of supplementation to all December, 1973, former recipients of aid to the aged, blind and disabled, disadvantaged by the implementation of the Supplemental Security Income Program. KRS 205.245 provides for the mandatory supplementation program and also for supplementation to other needy persons who are aged, blind, or have a disability. The cabinet shall operate a supplement program for certified personal care homes which accept state supplementation recipients and have a thirty-five (35) percent of the residents in the personal care home's occupied licensed personal care beds who have a diagnosis of mental illness or mental retardation. This administrative regulation sets forth the provisions of the supplementation program.

Section 1. Definitions. (1) "Aid to the Aged, Blind and Disabled Program" means the former state funded program for individuals who were aged, blind or had a disability.

(2) "Qualified alien" means an alien who, at the time the person applies for, receives, or attempts to receive state supplementation, is an alien as defined in Section 1(10) of 904 KAR 2:006.

(3) "Specialized personal care home" means a licensed personal care home which receives funding from the Department for Mental Health and Mental Retardation Services to employ mental health professionals who have specialized training in the care of residents with mental illness or mental retardation.

Section 2. Mandatory State Supplementation. (1) Mandatory state supplementation payments shall be equal to the difference between:

(a) The Aid to the Aged, Blind and Disabled Program payment for the month of December, 1973, plus any other income available to the recipient as of that month; and

(b) The total of the Supplemental Security Income Program payment and other income for the current month.

(2) Recipients include former Aid to the Aged, Blind and Disabled Program recipients who became ineligible for the Supplemental Security Income Program due to income but whose special needs entitled them to an Aid to the Aged, Blind and Disabled Program payment as of December, 1973.

(3) Mandatory payments shall continue until:

(a) The needs of the recipient as recognized in December, 1973, have decreased; or

(b) Income has increased to the December, 1973 level.

(4) The mandatory payment shall not be increased unless::

(a) Income as recognized in December, 1973, decreases;

(b) The Supplemental Security Income Program payment is reduced but the recipient's circumstances are unchanged; or

(c) The standard of need utilized by the department in determining optional supplementation payments for a class of recipients is increased.

(5) In cases of a husband and wife living together, income changes after September, 1974, shall not result in an increased mandatory payment unless total income of the couple is less than December, 1973, total income.

Section 3. Optional State Supplementation. (1) Optional state supplementation is available to a person who:

(a) Except as specified in Sections 5, 6, and 7 of this administrative regulation, meets technical requirements and resource limitations of the medically needy program for persons who are aged, blind, or have a disability as contained in 907 KAR 1:011 and 907 KAR 1:004; and

(b) Requires special living arrangements; and

(c) Has insufficient income to meet their need for care.

(2) Special living arrangements shall include:

(a) Residence in a personal care home which:

1. Meets the requirements and provides services as specified in 902 KAR 20:036; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(b) Residence in a family care home which:

1. Meets the requirements and provides services as specified in 902 KAR 20:041; and

2. Is licensed under KRS 216B.010 to 216B.131; or

(c) Situations in which a caretaker must be hired to provide care other than room and board.

(3) Each person applying for or receiving state supplementation shall be required to:

(a) Furnish a Social Security number; or

(b) If a Social Security number has not been issued, apply for a Social Security number.

(4) If potential eligibility exists for Supplemental Security Income Program, application for Supplemental Security Income Program shall be mandatory.

Section 4. Eligibility for Caretaker Services. (1) Services by a caretaker shall be made to enable the individual with an illness or infirmity to:

(a) Remain safely and adequately:

1. At home;

2. In another family setting; or

3. In a room and board situation; and

(b) Prevent institutionalization.

(2) Services by a caretaker shall be made at regular intervals by:

(a) A live-in attendant; or

(b) One (1) or more persons hired to come to the home.

(3) A supplemental payment shall not be made to or on behalf of an otherwise eligible individual if:

(a) The client is taken daily or periodically to the home of the caretaker; or

(b) The caretaker service is provided by the following persons living with the applicant:

1. The spouse;

2. Parent of an adult child who has a disability or a minor child; or

3. Adult child of a parent who is aged, blind or has a disability.

(4) Eligibility for caretaker supplementation shall be verified by agency contact with the caretaker to establish:

(a) How often the service is provided;

(b) The service prevents institutionalization; and

(c) Payment is made for the service.

Section 5. Resource Consideration. (1) Except as stated in subsection (2) of this section, countable resources shall be determined according to policies for the medically needy as contained in 907 KAR 1:004.

(2) The individual or couple shall not be eligible if countable resources exceed the limit of:

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- (a) \$2000 for individual; or
- (b) \$3000 for couple.

Section 6. Income Considerations. (1) Except as noted in subsections (2) through (9) of this section, income and earned income deductions shall be considered according to policies for the medically needy in 907 KAR 1:004.

(2) The optional supplementation payment shall be determined by adding:

(a) Total net income of the applicant or recipient, or applicant or recipient and spouse; and

(b) Except for payments for medical insurance or medical care and services, payments made to a third party in behalf of an applicant or recipient; and

(c) Subtracting the total of paragraphs (a) and (b) of this subsection from the standard of need in Section 7 of this administrative regulation.

(3) Income of the ineligible spouse shall be:

(a) Adjusted by deducting sixty-five (65) dollars and one-half (1/2) of the remainder from the monthly earnings; and

(b) Conserved in the amount of one-half (1/2) of the Supplemental Security Income Program standard for an individual for:

1. Himself; and
2. Each minor dependent child.

(4) Income of the eligible individual shall not be conserved for the needs of the ineligible spouse or minor dependent children.

(5) Income of the child shall be considered when conserving for the needs of the minor dependent child so the amount conserved does not exceed the allowable amount.

(6) The earnings of the eligible individual and spouse shall be combined prior to the application of the earnings disregard of sixty-five (65) dollars and one-half (1/2) of the remainder.

(7) If one (1) member of a couple is institutionalized and the spouse maintains a home, income in the amount of the Supplemental Security Income Program standard for one (1) shall be conserved for the spouse, if this spouse is a recipient of the Supplemental Security Income Program.

(8) A husband and wife residing in the same personal care or family care home may be considered to be living with each other if treating the husband and wife as living apart would prevent either of them from receiving state supplementation.

(9) The Supplemental Security Income Program twenty (20) dollars general exclusion shall not be an allowable deduction from income.

Section 7. Standard of Need. (1) The standard shall be based on living arrangement as follows:

(a) For an eligibility determination for a resident of a personal care home made on or after January 1, 1998, ~~\$828~~ [+997, \$848];

(b) For an eligibility determination for a resident of a family care home made on or after January 1, 1998, ~~\$633~~ [+997, \$623];

(c) Caretaker.

1. For an eligibility determination for a single individual, or an eligible individual with an ineligible spouse who is not aged, blind, or has a disability made on or after January 1, 1998, ~~\$527~~ [+997, \$547];

2. For an eligibility determination for an eligible couple, both aged, blind, or have a disability and one (1) requiring care made on or after January 1, 1998, ~~\$769~~ [+997, \$754];

3. For an eligibility determination for an eligible couple, both aged, blind or have a disability and both requiring care made on or after January 1, 1998, ~~\$813~~ [+997, \$798].

(2) In couple cases, if both are eligible, the couple's income is combined prior to comparison with the standard of need. One-half (1/2) of the deficit is payable to each.

(3) The personal care or family care home shall accept as full payment for cost of care the amount of the standard, based on the living arrangement, minus a forty (40) dollars personal needs

allowance which shall be retained by the client.

Section 8. Temporary Stay in a Medical Institution. (1) A recipient of optional or mandatory state supplementation shall have continuation of state supplementation benefits without interruption for any of the first three (3) full months of medical confinement if:

(a) Admitted to:

1. A hospital;
2. A psychiatric hospital;
3. A nursing facility; and

(b) The recipient's physician shall certify that he expects the recipient to be medically confined for ninety (90) full consecutive days or less; and

(c) The state supplementation recipient receives benefits from the Supplemental Security Income Program.

(2) If discharged in the month following the last month of continued benefits, the temporary absence shall continue through the date of discharge.

Section 9. Citizenship requirements. An applicant or recipient shall be:

(1) A citizen of the United States; or

(2) A qualified alien pursuant to Section 1(2) of this administrative regulation.

Section 10. Residence Requirements. (1) The applicant or recipient shall be a resident of Kentucky.

(2) Supplemental payments may be made to Kentucky residents residing outside the state if:

(a) The individual has been placed in the other state by this state.

(b) Except with regard to the requirement shown in Section 8 of this administrative regulation, the other requirements for eligibility contained in this administrative regulation shall be applicable.

(c) For out-of-state placements, the licensure shall be in accordance with a similar licensure act of the other state.

(d) If there is no similar licensure act in the other state, the payment shall not be made unless this state determines that, except for being in another state, the facility meets standards for licensure under the provisions of KRS 216B.010 to 216B.131.

(e) To be eligible for a supplemental payment while placed out-of-state:

1. The individual shall require the level of care provided in the out-of-state placement;

2. There shall be no suitable placement available in Kentucky; and

3. The placement shall be preauthorized by staff of the Department for Social Insurance.

(3) Except as specified in subsection (9) of this section, an applicant placed in Kentucky by another state shall not be considered a resident of Kentucky.

(4) The state of residence shall be Kentucky for an applicant or recipient of state supplementation if the individual:

(a) Is age twenty-one (21) and over;

(b) Is residing in the state; and

1. Intends to remain permanently or for an indefinite period; or

2. Entered the state with a job commitment or to seek employment.

(5) The applicant or recipient residing in a personal care home shall be considered incapable of indicating intent to become a Kentucky resident if the individual:

(a) Has an I.Q. of forty-nine (49) or less or has a mental age of seven (7) or less, based on the following tests:

1. Bayley Scales of Infant Development;

2. McCarthy Scales of Children's Abilities;

3. Stanford-Binet;

4. Wechsler Adult Intelligence Scale - Revised (WAIS-R);

5. Wechsler Intelligence Scale for Children-III (WISC-III);

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6. Wechsler Intelligence Scale for Children - Revised (WISC-R);

or

7. Wechsler Preschool and Primary Scale of Intelligence (WPPSI);

or

(b) Is judged legally incompetent; or

(c) Is found incapable of indicating intent based on medical or other documentation acceptable to the state.

(6) For an applicant or recipient residing in a family care home or requiring caretaker services, the state of residence shall be Kentucky if the individual is:

(a) Under age twenty-one (21);

(b) Eligible for a supplemental payment based on blindness or disability; and

(c) Residing in the state; or

(d) An individual age twenty-one (21) or over and incapable of indicating intent, is simply residing in the state.

(7) For an applicant or recipient residing in a personal care home who is under age twenty-one (21) or who is age twenty-one (21) or older and became incapable of indicating intent before age twenty-one (21), the state of residence shall be Kentucky if Kentucky is the state of residence of the individual's:

(a) Parents; or

(b) If one has been appointed, his legal guardian; or

(c) Parent applying for the supplemental payment on behalf of the individual if:

1. The other parent lives in another state; and

2. There is no appointed legal guardian.

(8) For an applicant or recipient residing in a personal care home who became incapable of indicating intent at or after age twenty-one (21), the state of residence shall be Kentucky if:

(a) He was living in Kentucky when he became incapable of indicating intent; or

(b) If this cannot be determined, the state of residence shall be Kentucky unless he was living in another state when he was first determined to be incapable of indicating intent.

(9) For an individual subject to a determination of residency according to subsections (7) and (8) of this section, the state of residence shall be Kentucky if Kentucky and the state that would otherwise be the individual's state of residency have entered into an interstate residency agreement providing for reciprocal residency status.

(10) An individual receiving a mandatory state supplemental payment from Kentucky shall be considered a resident of Kentucky if he continues to reside in Kentucky.

(11) An individual receiving a mandatory or optional supplemental payment from another state shall not be considered a resident of Kentucky.

(12) A former Kentucky resident who becomes incapable of indicating intent while residing out of this state, may reestablish Kentucky residency if:

(a) He returns to Kentucky; and

(b) He has a guardian, parent or spouse residing in Kentucky.

Section 11. Persons with Mental Illness or Mental Retardation Supplement. A certified personal care home may qualify for quarterly supplement payments of fifty (50) cents per diem for each state supplementation recipient in their care as of the first calendar day of each qualifying month. The personal care home shall meet the following criteria to qualify for a supplementation payment:

(1) The personal care home shall be licensed in accordance with KRS 216B.010 to 216B.131; and

(2) The personal care home shall care for residents who have:

(a) A primary or secondary diagnosis of mental retardation including mild or moderate, or other ranges of retardation whose needs can be met in a personal care home; or

(b) A primary or secondary diagnosis of mental illness excluding such diagnoses as organic brain syndrome, senility, chronic brain

syndrome, Alzheimer's; or

(c) A medical history that includes a previous hospitalization in a psychiatric facility, regardless of present diagnosis.

(3) The personal care home shall care for a thirty-five (35) percent mental illness or mental retardation population in all of its occupied licensed personal care home beds.

(4) The personal care home shall not be eligible for payments during the time it has a conditional rating by the Office of Inspector General. Rating requirements are specified in KRS 216.550 and 900 KAR 2:030.

(5) The personal care home shall have a licensed nurse or an individual who has received and successfully completed certified medication technician training on duty for at least four (4) hours during the first or second shift each day. The personal care home may not decrease staffing hours of the licensed nurse or individual who has successfully completed certified medication technician training in effect prior to July 1990, as a result of this minimum requirement.

(6) The personal care home shall file an application with the Department for Social Insurance by the tenth working day of the first month of the calendar quarter to be eligible for payment in that quarter.

(a) Quarters shall begin in January, April, July and October.

(b) Once certified, unless eligibility is discontinued, a new application shall not be required.

(c) The personal care home shall provide the Department for Social Insurance with its tax identification number and address as part of the application process.

(7) The personal care home shall provide the Department for Social Insurance with a monthly report.

(a) The report shall list:

1. All residents of the personal care home who were residents on the first day of the month; and

2. The residents' Social Security numbers.

(b) In order to maintain confidentiality, the personal care home shall annotate the monthly report as follows:

1. A star shall indicate a resident has a mental illness or mental retardation diagnosis.

2. A check mark shall indicate a resident receives state supplementation.

3. A star and a check mark shall indicate the resident has a mental illness or mental retardation diagnosis and is a recipient of state supplementation.

(c) The monthly report shall be used for:

1. Certification;

2. Payment; and

3. Audit purposes.

(d) The monthly report shall be postmarked to the Department for Social Insurance by the fifth working day of the month.

(8) The personal care home shall notify the Department for Social Insurance if its mental illness or mental retardation percentage goes below thirty-five (35) percent for all personal care residents. Facilities may be randomly audited to verify percentages and payment accuracy.

Section 12. Training. (1) The personal care home licensed nurse or individual who has successfully completed certified medication technician training shall attend the mental illness or mental retardation basic training workshop provided through the Department for Mental Health and Mental Retardation Services. Other staff may attend the basic training workshop in order to assure the facility always has at least one (1) certified staff employed for certification purposes.

(2) The mental illness or mental retardation basic training shall be provided through a one (1) day workshop. The following topics shall be covered:

(a) Importance of proper medication administration.

(b) Side effects and adverse medication reactions with special

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attention to psychotropics.

(c) Signs and symptoms of an acute onset of a psychiatric episode.

(d) Characteristics of each major diagnosis, for example, paranoia, schizophrenia, bi-polar disorder, or mental retardation.

(e) Guidance in the area of supervision versus patient rights for the population with a diagnosis of mental illness or mental retardation.

(f) Instruction in providing necessary activities to meet the needs of residents who have a diagnosis of mental illness or mental retardation.

(3) Initial basic training shall include the licensed nurse or the individual who has successfully completed certified medication technician training and may include the owner or operator. These individuals shall be trained in the quarter during which the application is filed.

(4) To assure that a staff member who has received basic training is always employed at the facility, a maximum of five (5) may be trained during a year.

(a) If staff turnover results in the loss of the licensed nurse or individual who has successfully completed certified medication technician training and five (5) staff have been trained, the personal care home shall request in writing to the Department for Social Insurance an exemption of the five (5) staff rule.

(b) The personal care home shall have on staff a licensed nurse or individual who has successfully completed certified medication technician training who:

1. Has received the mental illness or mental retardation basic training; or

2. Is enrolled in the next scheduled mental illness or mental retardation basic training workshop at the closest location.

(5) The Department for Mental Health and Mental Retardation Services may provide advanced level training for personal care homes.

(a) Advanced level training shall be provided through one (1) day workshops.

(b) Each advanced level workshop shall consist of two (2) three (3) hour sessions per day.

(c) Each three (3) hour session shall cover a topic appropriate for staff who work with residents who have a diagnosis of mental illness or mental retardation.

(d) Attendance of advanced level training workshops shall be optional for Persons with Mental Illness or Mental Retardation Supplement Program participants.

(6) The Department for Mental Health and Mental Retardation Services shall provide within five (5) working days:

(a) A certificate to direct care staff who complete the workshop; and

(b) A listing to the Department for Social Insurance of staff who completed the training workshop.

(7) The Department for Social Insurance shall pay twenty-five (25) dollars for each staff member receiving basic or advanced level training up to the maximum of five (5) staff per year to a personal care home who has applied for the Persons with Mental Illness or Mental Retardation Supplement Program.

(8) Attendance of the basic training workshop shall be optional for a specialized personal care home.

Section 13. Persons with Mental Illness or Mental Retardation Supplement Program Certification. (1) The Office of the Inspector General, Division of Licensing and Regulation, shall visit the personal care home to certify eligibility to participate in the Persons with Mental Illness or Mental Retardation Supplement Program:

(a) The personal care home's initial Persons with Mental Illness or Mental Retardation Supplement Program certification may be separate from the annual survey;

(b) The initial Mental Illness or Mental Retardation Supplement Program certification shall be in effect until the next licensure survey

that may be greater than or less than twelve (12) months;

(c) A personal care home's annual Persons with Mental Illness or Mental Retardation Supplement Program recertification may be completed during the annual licensure survey;

(d) The Department for Social Insurance shall notify the Division of Licensing and Regulation that the facility is ready to be certified.

(2) The Division of Licensing and Regulation shall review records, observe and interview residents and staff during the certification process. The Division of Licensing and Regulation shall review records to assure the following criteria is met:

(a) Certification is on file at the personal care home to verify staff attended basic training provided by the Department for Mental Health and Mental Retardation Services. This provision shall be waived for a specialized personal care home.

(b) The personal care home's certified staff have trained all other direct care staff through in-service training or orientation regarding the information obtained at the mental illness or mental retardation basic training workshop. The personal care home shall maintain documentation of attendance at the in-service training for all direct care staff.

(c) Activities are being regularly provided and meet the needs of the residents. When residents do not attend group activities, activities shall also be designed to meet the needs of individual residents, for example, reading or other activity that may be provided on an individual basis. Individualized care plans are not required to meet this criteria.

(d) Medication administration meets licensure requirements and licensed nurse or individual who has successfully completed certified medication technician training demonstrates a knowledge of psychotropic drug side effects.

(3) The Division of Licensing and Regulation shall review the personal care home copy of the training certification prior to performing their record review during the Persons with Mental Illness or Mental Retardation Supplement Program certification process.

(4) If thirty-five (35) percent mental illness or mental retardation population is met on the day of the visit, the personal care home shall be deemed to have an ongoing qualifying percentage effective with month of request for certification. The personal care home shall be responsible for notifying the Department for Social Insurance, within ten (10) working days, if the mental illness or mental retardation population goes below thirty-five (35) percent of all occupied personal care beds in the facility.

(5) The Office of the Inspector General, Division of Licensing and Regulation, shall provide a monthly statement to the Department for Social Insurance identifying certified personal care homes eligible for the Persons with Mental Illness or Mental Retardation Supplement Program. This information shall be provided by the fifth working day of each month for the prior month.

(6) The Office of Inspector General, Division of Licensing and Regulation, shall inform the Department for Social Insurance monthly of a personal care home which receive a conditional rating. This information shall be provided by the fifth working day of each month for the prior month.

Section 14. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

JOHN L. CLAYTON, Commissioner  
VIOLA P. MILLER, Secretary  
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: December 29, 1997  
FILED WITH LRC: January 12, 1998 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director



## ADMINISTRATIVE REGISTER - 1639

(1) Type and number of entities affected: There are approximately 5,437 recipients of state supplementation benefits who will be affected by the increase in the state supplementation standards due to the mandated cost of living adjustment.

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

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

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

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: For increases in the state supplementation standards:

1. First year following implementation:

a. The standards for state supplementation recipients increase by \$10 for recipients in personal care homes and family care homes.

b. The standards for state supplementation for recipients of caretaker services increase by:

Single individual or individual with ineligible spouse - \$10

Couple (one or both requiring care) - \$15

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

(3) Effects on the promulgating administrative body: For increases in the state supplementation standards:

(a) Direct and indirect costs or savings (costs to the agency):

1. First year (costs to agency in benefits): \$400,000, already anticipated in the state budget

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

No effect.

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

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

(a) Geographical area in which administrative regulation will be implemented: To be determined after the publication of the Notice of Intent.

(b) Kentucky: To be determined after the publication of the Notice of Intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since state supplementation pass along provisions are set forth through an agreement with the Department of Health and Human Services.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This amendment implements the mandated pass along of the 1998 supplemental security income cost of living increases for eligibility determinations made on or after January 1, 1998, for state supplementation applicants and recipients. The state supplementation recipients residing in personal care or family care homes or receiving caretaker services will be assured of the ability to continue to purchase these services.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this amendment is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Since 1977, the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass along any supplemental security income benefit increases to state supplementation recipients. This amended administrative regulation includes the 1998 cost of living increases to place Kentucky in compliance with

federal supplemental security income guideline. In order to be in compliance, we must assure that the state supplementation benefits are not reduced due to the cost of living increase granted by the Social Security Administration to its beneficiaries. This assures their continued ability to purchase the personal care they need in order to avoid costly institutional care under Title XIX (Medicaid).

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: Since 1977 the Commonwealth of Kentucky has had an agreement with the Department of Health and Human Services to pass along any cost of living supplemental security income benefit increases to state supplementation recipients.

(11) TIERING: Is tiering applied? No. Tiering was not applied since application of policy is applied in a like manner for all state supplementation recipients as set forth through an agreement with the Department of Health and Human Services.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 CFR 416.2095 and 416.2096.

2. State compliance standards. This amended administrative regulation includes the 1998 cost of living increases to place Kentucky in compliance with federal Supplemental Security Income guideline.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation is needed to comply with the agreement the Commonwealth of Kentucky has with the Department of Health and Human Services to pass along any cost of living increases in Supplemental Security Income benefits to state supplementation recipients.

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 907 KAR 3:030E

This emergency administrative regulation is being promulgated to provide coverage and payments for targeted case management and rehabilitative services provided through an agreement with the state Title V agency, the Department for Public Health, for Medicaid eligible children who are at-risk of being institutionalized or are institutionalized. This action must be taken on an emergency basis to assure that medically necessary targeted case management and rehabilitation services are available to Medicaid eligible children in order to maintain the children in the least restrictive appropriate setting. In many instances children have been placed in out-of-state facilities far from home. Return to community-based care, nearer to families, is expected to aid their recovery and prevent deterioration of their mental condition. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health and welfare of the Medicaid-eligible children. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

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

# ADMINISTRATIVE REGISTER - 1640

## CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development

### 907 KAR 3:030E. Coverage and payments for Impact Plus services.

RELATES TO: KRS 205.520, 42 CFR 431.615, 440.130, 447 Subpart B, 42 USC 1396a, d, s

STATUTORY AUTHORITY: KRS 194.050, EO 96-862

EFFECTIVE: December 19, 1997

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 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 provides for coverage and payments for Impact Plus services provided through an agreement with the state Title V agency, the Department for Public Health.

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

(2) "Impact Plus" means the program of mental health services provided through an agreement with the state Title V agency.

(3) "Licensed practitioners of the healing arts" means a practitioner of the healing who is appropriately licensed or who is otherwise exempt from licensure pursuant to KRS 335.010(4).

(4) "Rehabilitative services" means medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under state law, for maximum reduction of a mental disability and restoration of a recipient to his best possible functional level.

(5) "Targeted case-management services" means a set of activities which assist an individual in accessing needed medical, social, educational, and other support services.

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

Section 2. Coverage. Services provided shall be those that meet the terms of the agreement between the department and the Title V agency, which are appropriate for the reduction of mental disability and restoration of a recipient to his highest possible functional level, and which shall be within the following general areas:

(1) Targeted case-management services provided to:

(a) A Medicaid eligible child under the age of twenty-one (21) who meets the conditions and circumstances of the Department for Social Services to be defined as a child:

1. In the custody of the state;
2. Under the supervision of the state; or
3. At risk of being in the custody of the state; or

(b) A Medicaid eligible child under age twenty-one (21) who is:

1. In an institution; or
2. At risk of being institutionalized; and

(2) Rehabilitative services provided to:

(a) A Medicaid eligible child under the age of twenty-one (21) who meets the conditions and circumstances of the Department for Social Services to be defined as a child:

1. In the custody of the state;
2. Under the supervision of the state; or
3. At risk of being in the custody of the state; or

(b) A Medicaid eligible child under age twenty-one (21) who is:

1. In an institution; or
2. At risk of institutionalization.

Section 4. 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) The Title V agency may provide a service:

(a) Directly;

(b) Through agreement with the Kentucky Department for Social Services as the state agency responsible for the provision of child and adult protective services; or

(c) Through agreement with the Kentucky Department for Mental Health and Mental Retardation Services as the agency responsible for oversight of mental health services in the state.

(2) A service which is provided directly by the Title V agency or by the Departments for Social Services or Mental Health and Mental Retardation Services or their subcontractors shall meet appropriate requirements for the service and shall include:

(a) A plan of care;

(b) Supervision;

(c) Documentation of services; and

(d) Reporting.

(3) A provider or subcontractor shall maintain records to document services provided for not less than five (5) years or until any audit dispute or issue is resolved if beyond five (5) years.

Section 5. Access to Records, Providers, and Recipients. (1) A provider or subcontractor shall be required to provide to the department and representatives of agencies or offices referenced in subsection (4) of this section, upon request, information maintained by the provider to document the service provided, information regarding payments claimed by the provider for furnishing services, and information documenting the cost of the service.

(2) Inspection may be on site or through the submittal of written or electronic materials as determined to be appropriate by the department.

(3) The department shall have the right to interview:

(a) Current or previous provider or subcontractor staff with regard to services provided pursuant to this administrative regulation; and

(b) Recipients of targeted case-management or rehabilitative services with regard to services received pursuant to this administrative regulation.

(4) Access to provider or subcontractor records relating to services provided shall be required for:

(a) A representative of the United States Department of Health and Human Services;

(b) The United States Attorney General's Office;

(c) The State Attorney General's Office;

(d) The State Auditor's Office; and

(e) The Office of the Inspector General.

Section 6. Reimbursement. The following reimbursement provisions shall be applicable:

(1) Payments shall be based on cost and shall not exceed the cost of providing the service.

(2) For a service provided directly by the Title V agency or by the Departments for Social Services or Mental Health and Mental Retardation Services, the appropriate agency shall be required to maintain service and cost records to document that payments do not exceed cost.

(3) For a service provided through a subcontractor, the applicable state agency shall maintain records showing payments made to subcontractors on an individual client-per-service basis.

(4) Payment rates for a subcontractor-provided service shall be negotiated between the provider and the subcontractor.

(a) Negotiated rates for a subcontracted service shall not be effective unless approved by the department.

(b) To facilitate the approval process the department's representative may participate directly in the negotiation process and review

## ADMINISTRATIVE REGISTER - 1641

proposed subcontractor payment amounts for approval.

(5) Depending on the service provided, a billable unit of service shall be in increments of:

- (a) Fifteen (15) minutes;
- (b) One (1) hour;
- (c) One (1) day; or
- (d) One (1) month.

Section 7. Incorporation by Reference. (1) "Policies and Procedures Manual for Impact Plus", Department for Medicaid Services, December 1997 Edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 8. Implementation Date. The provisions of this administrative regulation shall be applicable with regard to services provided on or after January 1, 1998.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

APPROVED BY AGENCY: December 18, 1997

FILED WITH LRC: December 19, 1997 at 2 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard (564-6204) or Karen Doyle (564-4321)

(1) Type and number of entities affected: 2000-4000 Medicaid eligible children expected to receive Impact Plus services; all psychiatric hospitals providing services to Medicaid eligible children; all mental health centers in the state.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: This action will be budget neutral. It is expected that Impact Plus expenditures will be in the range of \$10 million annually, with this cost to be offset against current expenditures for out-of-state placements of children in psychiatric facilities, and against savings realized from a reduction of length of stay or intensity level of in-state children in psychiatric facilities.

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds. The revenue needed to fund this program will come from appropriated funds currently available to the Medicaid Program.

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

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

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: To assure that medically necessary targeted case-management and rehabilitative services are available to Medicaid eligible children.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients by not providing medically necessary services to Medicaid eligible children.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government.

3. State the aspect or service of local government to which this administrative regulation relates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollars estimates cannot be determined, provided a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements,

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or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING LEGISLATIVE SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

KENTUCKY REVENUE CABINET  
Office of General Counsel  
Division of Tax Policy  
(As Amended at ARRS, January 14, 1998)

103 KAR 31:030. Direct pay authorization.

RELATES TO: KRS 139.260, 139.400, 139.710  
STATUTORY AUTHORITY: KRS 131.130, 139.260, 139.660,  
139.720 [Chapter 13A]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13A.139, 131.130(1), 139.260, 139.400, and 139.710 authorized the Revenue Cabinet to promulgate administrative regulations for the: (1) assessment, collection, refunding, administration, and enforcement of Kentucky tax laws; and (2) direct pay authorization. This administrative regulation establishes the requirements and procedures for the direct payment of Kentucky sales and use tax on purchases of tangible personal property excluding energy and energy producing fuels. [~~To establish a procedure to facilitate payment of sales and use tax that will be mutually beneficial to the cabinet, the applicant, and retailers dealing with the applicant and will not result in a tax loss either in total or on a cash flow basis.~~] [when the proper tax application cannot be determined at the time of purchase.]

Section 1. Definitions. (1) "Direct pay authorization" or "DPA" means an authorization issued by the Revenue Cabinet that permits a [an eligible] taxpayer to report Kentucky sales and use tax directly to the cabinet on all purchases of tangible personal property, excluding energy and energy-producing fuels.

(2) "Distribution facility" means a specific location which is used to receive, hold, and ship business inventory.

(3) ~~["Eligible taxpayer" means a person engaged in:~~

- ~~(a) Manufacturing;~~
- ~~(b) Extracting minerals, ores, clay, stone, coal, or natural gas;~~
- ~~(c) Operating a transportation company; or~~
- ~~(d) Operating a distribution facility.~~

(4) "Manufacturing" means a process that transforms tangible personal property having no commercial value for its intended use before processing into tangible personal property having appreciable commercial value for its intended use after processing. [where upon the product is transferred from the producing plant for sale or distribution to customers or for further processing at another plant site and subsequent sale.] [Where the Revenue Cabinet finds that it is impossible at the time of purchase of tangible personal property for a manufacturer, transportation company or persons engaged in the business of mining, quarrying, compounding or processing tangible personal property, or their vendors, to determine with any degree of certainty the applicability of the sales or use tax upon such transactions and, where the cabinet finds that it would facilitate and expedite the collection of such taxes by the cabinet to authorize such manufacturer, transportation company, or persons engaged in the business of mining, quarrying, compounding or processing to purchase tangible personal property without the payment by their vendors of the sales or use tax with respect to such property, then such manufacturer, transportation company or persons engaged in the business of mining, quarrying, compounding or processing may be authorized by the cabinet, to purchase tangible personal property without payment

of the use tax to his vendors or reimbursing his vendors for the sales tax provided all of the following conditions are met:

(1) The applicant is both engaged in business and has property (other than inventory held for purposes of sale and office furniture and equipment) located in more than one (1) state.

(2) The applicant must hold a valid Kentucky retail sales and use tax permit.

(3) Written application shall be made to the cabinet for a direct pay authorization. Such application must be made upon a form provided by the cabinet.

(4) The applicant for the direct pay authorization agrees that, in consideration for issuance of a direct pay authorization, he will directly report and pay to the Revenue Cabinet both the sales and use tax that would have been remitted to the cabinet by the applicant's retailer and the applicant had the direct pay authorization not been made. Upon granting of authorization by the cabinet, such person shall report purchases made under the authorization on the retailer's sales and use tax return and shall pay the tax to the Revenue Cabinet on or before the 20th day of the month following the month during which such tangible personal property was used for a taxable purpose.

(5) Such person shall keep such books and records as the cabinet deems necessary to determine the tax liability.

(6) Upon demand of the cabinet, such person shall execute bond or indemnity agreement securing the payment of such taxes to the cabinet in an amount not less than one (1) month's estimated sales and use tax liability.

(7) Said authorization shall not be transferable and may be terminated upon notice by registered mail to the holder thereof at his last known address.]

Section 2. Qualifications. An applicant shall:

(1) Be a person engaged in:

- (a) Manufacturing;
  - (b) Extracting minerals, ores, clay, stone, coal, or natural gas;
  - (c) Operating a transportation company; or
  - (d) Operating a distribution facility; and
- (2) Hold a valid Kentucky retail sales and use tax permit; and
- (3) Have a record of timely payment of taxes administered by the cabinet;

(4) Maintain records in such a manner that, as applicable, the amount of tangible property purchased from:

- (a) A Kentucky vendor may be properly reported; or
  - (b) An out-of-state vendor for storage, use, or other consumption in Kentucky or elsewhere can be verified; and
- (5) Be engaged in business in Kentucky, and own property, other than office furniture and equipment, that is located in more than one (1) state; or

(6)(a) Have been engaged in business in Kentucky in excess of twenty-four (24) months; and

(b) Have purchased tangible personal property of at least ten (10) million dollars for use in his Kentucky operations in the preceding calendar or fiscal year, as applicable. [The applicant shall meet all of the following conditions:

(1) The applicant shall be an eligible taxpayer who is:

(a) Engaged in business in Kentucky and owns property, other than office furniture and equipment, located in more than one (1) state; or

(b) Has been in operation in Kentucky in excess of twenty-four (24) months and makes purchases of tangible personal property, excluding energy and energy-producing fuels, of at least \$10 [\$15] million annually for use in the applicant's Kentucky operations;

(2) The applicant shall hold a valid Kentucky retail sales and use

tax permit:

~~(3) The applicant has a record of timely payment of all taxes administered by the cabinet. [A holder of a direct pay authorization making a purchase pursuant to such authorization must furnish the vendor with a copy of the written authorization issued by the cabinet. Receipt of such copy accepted in good faith will relieve the vendor of the duty of reporting and paying the tax provided he retains the document in his records.]~~

~~Section 3. Application. (1) An [The] applicant shall apply [make written application] to the cabinet for a DPA [direct pay authorization] upon Revenue Form 51A112, "Application for Direct Pay Authorization" [- Revenue Form, 51A112, (9-97)].~~

~~(2) The application shall include:~~

~~(a) The applicant's:~~

- ~~1. Legal business name;~~
- ~~2. Federal Employer Identification Number;~~
- ~~3. Date operations began in Kentucky;~~
- ~~4. Kentucky business address;~~
- ~~5. Mailing address;~~
- ~~6. Type of operation: manufacturing/processing; mining/quarrying; transportation company; or distribution facility;~~
- ~~7. Telephone and fax numbers;~~
- ~~8. Kentucky Employer's Withholding Account Number;~~
- ~~9. Kentucky Corporation Income and License Account Number; and~~
- ~~10. Kentucky Sales and Use Account Number;~~

~~(b) If an applicant is engaged in business and has property, other than office furniture and equipment, located in more than one (1) state, the location of the applicant's home office, and plants or places of business;~~

~~(c) If the applicant is not engaged in business and does not have property, other than office furniture and equipment, located in more than one (1) state, the amount of tangible property purchased for use in the applicant's Kentucky business operations in the last calendar or fiscal year, as applicable;~~

~~(d) Statements relating to records and documentation required by Sections 2(3) and (4) and 7 of this administrative regulation;~~

~~(e) Most recent year's [certified] financial statement certified by the applicant's chief financial officer or a certified public accountant; and~~

~~(f) [(b)] A detailed description of the records maintained to document that the amount of taxable purchases is properly reported.~~

~~Section 4. Requirements. A DPA [The] holder [of a direct pay authorization] shall:~~

~~(1) Furnish all of his vendors, excluding vendors of energy and energy-producing fuels, with a copy of Revenue Form 51A110, "Direct Pay Authorization" [- Revenue Form 51A110, (8-97), issued by the cabinet];~~

~~(2) Report and remit the sales or use tax on all taxable purchases of tangible personal property, excluding energy and energy-producing fuels, that would have been remitted by the applicant's retailer if the DPA [direct pay authorization] had not been granted; and~~

~~(3) Report all taxable purchases in accordance with KRS 139.540, 139.550, 139.560 and 139.590.~~

~~Section 5. Vendor Responsibility. (1) A [The] vendor shall be relieved of the duty of collecting and paying the sales or use tax if [provided] he:~~

~~(a) Accepts a copy of a [the] company's DPA ["Direct Pay Authorization", Revenue Form 51A110 (8-97),] in good faith; and~~

~~(b) Retains the copy in his records pursuant to KRS 139.720(2).~~

~~(2) A [The] vendor shall:~~

~~(a) Include sales for which a DPA [direct pay authorization] has been accepted in Line 1, Gross Receipts, of Revenue Form 51A102, "Sales and Use Tax Return"; and~~

~~(b) Take [the sales and use tax return,] a corresponding deduction [shall be taken] on Line 19, which shall be [and property] labeled "DPA Sales".~~

~~Section 6. Limitations. A DPA [The direct pay] holder shall not: (1) Issue the DPA [direct pay authorization] to a construction contractor; or~~

~~(2) [nor] Allow a contractor to use the holder's DPA [direct pay authorization] to purchase, lease, or rent tangible personal property or purchase taxable services.~~

~~Section 7. Records. A DPA [The] holder [of the direct pay authorization] shall maintain records [as the cabinet deems necessary] pursuant to KRS 139.720(2) and 103 KAR 31:020.~~

~~Section 8. Bond Requirement. Upon demand of the cabinet, the applicant or holder of a direct pay authorization shall execute pursuant to KRS 139.660, a bond or an indemnity agreement securing the payment of the sales or use taxes to the cabinet in an amount not less than \$75,000 and not greater than three (3) times the estimated monthly liability.~~

~~Section 9. Transfer of Authorization. (1) A DPA [in the event of the sale, lease, or other transfer of the business, the direct pay authorization] shall not be transferable upon the sale, lease, or other transfer of the business.~~

~~(2) A DPA [The] holder [of the direct pay authorization] shall notify the cabinet within ten (10) days of the effective date of the sale, lease, or other transfer of the business.~~

~~Section 10. Termination. (1) The cabinet shall terminate a DPA if the DPA holder [direct pay authorization when]:~~

~~(a) [The cabinet determines that the continuation of the direct pay authorization is not in the best interest of the Commonwealth; or~~

~~(b) The holder of the direct pay authorization:~~

~~1. Fails or ceases to be an eligible taxpayer;~~

~~(b) [2.] Fails to timely file its sales and use tax returns and timely pay any tax due; or~~

~~(c) [3.] Fails to comply with any of the provisions of this administrative regulation.~~

~~(2)(a) The cabinet shall notify a DPA [the] holder [of a direct pay authorization] of the termination by certified mail at his last known address.~~

~~(b) Upon receipt of the notification of termination, a DPA [the direct pay] holder shall notify all vendors within thirty (30) days of the date of termination.~~

~~(3) The effective date of the termination shall be the date of the mailing of the termination notice.~~

~~Section 11. Protests. The denial or termination of a DPA may be protested [direct pay authorization is protestable] pursuant to KRS 131.110.~~

~~Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Application for Direct Pay Authorization, Form 51A112 (12-97)";~~

~~(b) "Direct Pay Authorization, Form 51A110 (8-97)"; and~~

~~(c) "Sales And Use Tax Return, Form 51A102 (9-92)".~~

~~(2) This material may be inspected, copied, or obtained at Kentucky Revenue Cabinet, 200 Fair Oaks, Frankfort, Kentucky 40620, or at a Kentucky Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m. ["Application for Direct Pay Authorization", Form 51A112, (9-97) is incorporated by reference:~~

~~(2) "Direct Pay Authorization", Form 51A110, (8-97) is incorporated by reference;~~

~~(3) The incorporated forms may be inspected, copied, or obtained~~

## ADMINISTRATIVE REGISTER - 1645

~~at the Kentucky Revenue Cabinet, 200 Fair Oaks, Frankfort, Kentucky 40620, or at any Kentucky Revenue Cabinet Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.;~~

VINCE LANGE, Acting Secretary  
ALEX W. ROSE, Commissioner, Department of Law  
APPROVED BY AGENCY: December 4, 1997  
FILED WITH LRC: December 8, 1997 at 11 a.m.

### FINANCE AND ADMINISTRATION CABINET State Investment Commission (As Amended at ARRS, January 14, 1998)

#### 200 KAR 14:011. Qualified investments. [General rules:]

RELATES TO: KRS 42.500(9) to (14), 42.520, 42.525 [Chapter 42]

STATUTORY AUTHORITY: KRS 42.500(10), 42.520(2), 42.525  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.500, 42.520, and 42.525 provide [provides] that the State Investment Commission shall implement [prescribe rules for the operation of] the state's investment program by administrative regulation. This administrative regulation establishes the standards that govern the Commonwealth's investment and cash management programs.

Section 1. Definitions. For purposes of this administrative regulation:

(1) "Commission" means the State Investment Commission; and  
(2) [(4)] "Hedge" means a position in a financial instrument [(s)] taken to minimize or eliminate the risk associated with an existing instrument or portfolio of instruments.

(3) [(5)] "Interest rate swaps [and options]" means an agreement governed by an International Swap Dealers Association master contract between two (2) parties to exchange, or have the conditional right to exchange interest rate exposure from fixed rate to variable rate or from variable rate to fixed rate.

(4) "Nationally recognized rating agency" means Moody's Investors Service, Standard and Poor's, or Fitch IBCA.

(5) [(2)] "Office" means the Office of Financial Management and Economic Analysis.

(6) "Options" means a contract that provides the right, but not the obligation, to buy or sell a specific amount of a specific security within a predetermined time period.

(7) [(3)] "Pools" means the investment pools that are managed by the Office of Financial Management and Economic Analysis under the guidance of the State Investment Commission.

Section 2. The commission shall:

(1) Not invest state funds in an institution or instrument that it deems unsafe and a threat to the security of state funds; and

(2) Maintain adequate liquidity to meet the cash needs to the state. [Goals of Investments. The goals of all investments of the Commonwealth shall be to:

(1) Insure safety of principal. The commission shall not allow the investment of state funds in any institution or instrument which it deems unsafe and a threat to the security of those funds.

(2) Maintain adequate liquidity to meet the cash needs of the Commonwealth. [The office shall not execute nor allow the execution of any investment that will negatively impact the short or long-term cash needs of the Commonwealth.]

(3)(a) Within the limits established by the provisions of this administrative regulation, [Maximize yield.] the commission shall invest in securities that [which] maximize yield or return to the Commonwealth [within the safety and liquidity constraints set out by the commission].

(b) The use of leverage, or posting of margin, to increase the

yield of a pool shall be [is] expressly prohibited.

Section 3. ~~[Monies to be invested. The commission shall invest all state funds as defined in KRS 446.010(31) which are excess, surplus, or otherwise available for investment for periods of time of one (1) day or more. These monies are held in cash accounts kept by the Division of Accounts in the Finance and Administration Cabinet.] Interest earned on the cash balances shall [will] be calculated daily on an accrual basis. [Total return takes into account the interest earned plus the change in the value of the securities held in the pool. Negative cash account balances are considered to be borrowed funds and will be charged at the yield earned on the applicable investment pool for the duration of the loan.]~~

Section 4. Investment Criteria. (1) The criteria to determine the amount of funds per investment instrument shall be the:

(a) Liquidity needs of the state in aggregate as budgeted; and

(b) Rates available per instrument; and

(c) Safety of principal and interest.

(2) Investment instruments shall qualify if they are specified

by:

(a) KRS 42.500; and

(b) The provisions of this administrative regulation, 200 KAR 14:081, and 200 KAR 14:091. [Minimum Interest Rates. (1) The

amount of funds per investment instrument shall be determined periodically by the commission at its regular public meetings. Criteria to determine such amounts shall be:

(a) Liquidity needs of the [various] state in aggregate as [agencies for which funds are] budgeted; and

(b) Rates available per instrument, and safety of principal and interest.

(2) Investment instruments shall be qualified as available for use by being:

(a) Specified as such in statute; and

(b) Further qualified under the provisions of 200 KAR 14:081, 200 KAR 14:091.]

(3) Unless specifically authorized by KRS 41.610, the commission shall not invest state funds in an institution or instrument:

(a) For a term of one (1) year or less at a yield less than the yield available on a U.S. Treasury Bill of similar maturity; and

(b) For a term of more than one (1) year, at a yield less than the yield available on U.S. Treasury Notes of similar maturity.

[The commission shall not allow the investment of state funds in any institution or instrument for a term of one (1) year or less at a yield less than the yield available on Treasury Bills of similar maturity unless specifically authorized by statute. For funds to be invested for more than one (1) year, the commission shall not allow investment in any institution or instrument at a yield less than the yield available on Treasury Notes of similar maturity unless specifically authorized by statute.]

Section 5. Investment Policies. [Acceptable Maturity of Investments.] The maturity of investments made by the commission shall be subject to the liquidity needs of the Commonwealth as determined by the commission with the following limits:

(1) U.S. Treasury and agency securities with a maturity less than seven (7) years: no limit, with the exception of U.S. Treasury Strips which shall be limited to twenty (20) percent of each pool.

(2) U.S. agency mortgage backed securities with a final maturity of ten (10) years and a weighted average life of four (4) years or less at projected prepayment speed assumptions.

(3) Collateralized mortgage obligations shall be limited to a weighted average life of four (4) years or less at projected prepayment speed assumptions.

(4) U.S. agency mortgage backed securities and collateralized mortgage obligations shall be [are] limited to twenty-five (25) percent

of total pool assets in aggregate.

~~(3) Collateralized mortgage obligations are limited to a weighted average life of four (4) years or less at projected prepayment speed assumptions and meet the Federal Financial Institutions Examination Council (FFIEC) guidelines for financial institution qualified purchases.]~~

~~(5) [(4)] Asset-backed securities shall be [are] limited to:~~

~~(a) Those rated in the highest category by a nationally recognized rating agency with an expected life of four (4) years or less and a legal final of less than ten (10) years; and~~

~~(b) Twenty (20) percent of total pool assets.~~

~~(6) [(5)] U.S. dollar denominated corporate and Yankee securities issued by foreign and domestic issuers, rated A or higher by a nationally recognized rating agency with a maturity not longer than five (5) years and limited to not more than twenty-five (25) percent of an [any] individual pool [portfolio] and \$25 million per issuer, inclusive of commercial paper, bankers' acceptances, and certificates of deposit.~~

~~(7) [(6)] U.S. dollar denominated sovereign [and supranational] debt shall be rated A1 or higher by a nationally recognized rating agency with a maturity not to exceed five (5) years and limited to not more than five (5) percent of any individual portfolio and \$10 million per issuer.~~

~~(8) [(7)] Money market securities shall be limited to twenty (20) percent of total pool assets and \$25 million per issuer. Money market securities shall include: commercial paper, certificates of deposit, Eurodollars and time deposits rated in the highest short-term rating with assets in excess of \$1 billion and bankers' acceptances rated A or higher. Maturities shall be limited to six (6) months for bankers' acceptances and nine (9) months for all other money market securities.~~

~~(9) [(8)] Repurchase and reverse repurchase agreements collateralized at 102 percent (marked to market daily) with treasuries, agencies, and [FFIEC qualified] collateralized mortgage obligations that meet the requirements established by subsection (4) of this section, with a maximum maturity of one (1) year if [when] executed with approved broker-dealers as provided by Section 9 of this administrative regulation and Kentucky Bank Repurchase Program participants.~~

Section 6. [In-state and Out-of-state Deposits. All funds eligible for investment in certificates of deposit as determined by the commission shall first be offered to financial institutions chartered in Kentucky or by the United States that have their main office located in Kentucky. The rate at which these funds shall be offered shall be set by the commission as set out in KRS Chapter 42. If Kentucky financial institutions eligible for these funds refuse any part of the funds offered, the commission may offer the funds to any commercial bank chartered in the United States, approved by the commission. Any out-of-state investments shall be subject to the same collateralization requirements as in-state investments.

Section 7. Risk Management. The pools may utilize interest rate swaps, over-the-counter and exchange traded U.S. Treasury contracts and options to hedge the portfolio against fluctuations due to changes in interest rates. The pools shall [will] use these securities for bona fide hedging purposes [and not for speculative purposes, as defined by the State Investment Commission. The State Investment Commission will establish operating procedures based upon current market conditions]. [Distribution of Funds Among Types of Institutions. Distribution of funds among types of institutions shall be determined from time to time by the commission at its regular public meetings. The criteria for that distribution shall be:

(1) The institution is permitted by statute to qualify as a depository;

(2) Rates available;

(3) Sufficiency of collateral; and

~~(4) Determination as to whether institutions are meeting the economic development needs of the community.]~~

Section 8. Pools and Operating Procedures. (1)(a) Except for the Budget Reserve Trust Fund, state funds held in accounts the interest of which accrues to the General Fund shall be placed in the short-term pool.

(b) The short-term pool shall not purchase a security with a duration exceeding one (1) year.

(c) The duration of the short-term pool shall not exceed ninety (90) days.

(2)(a) Except as provided by paragraph (b) of this subsection, state funds held in agency or university accounts the interest of which accrues to the agency or university shall be placed in the intermediate pool.

(b) These funds may be placed in the short-term pool, if the commission determines that the liquidity needs of an agency require shorter term investment.

(c) The duration of the intermediate pool shall not exceed three (3) years.

(3)(a) Bond proceeds from state issued bonds shall be placed in the bond proceeds pool.

(b) The bond proceeds pool shall consist of U.S. Treasury and agencies' notes and repurchase agreements.

(4)(a) The portion of the Budget Reserve Trust Fund for the disposition of which the approval of the General Assembly is required, and agency funds which the commission and agency determine need not be expended for a period of two (2) years shall be placed in the long-term pool.

(b) The duration of the long-term pool shall not exceed four and one-half (4.5) years.

(5) No more than ten (10) percent of a pool's assets shall be invested in variable rate instruments.

(6) A pool shall be assessed an annualized charge, calculated and deducted daily, of five basis points (.0005) to defray operating expenses associated with the pool.

Section 9. Approved Broker-dealers. (1) The commission shall approve broker-dealers.

(1) A broker-dealer who was approved by the commission prior to the effective date of this administrative regulation shall be considered an approved broker-dealer.

(2) Except as provided by subsection (1) of this section, on and after the effective date of this administrative regulation, a broker-dealer shall be approved by the commission as an approved broker-dealer if the broker-dealer has met the requirements established by subsection (3), (4), or (5) of this section as applicable.

(3) An approved broker-dealer shall be a broker dealer who:

(a) Is a primary dealer of the Federal Reserve rated A1-P1 by Moody's Investors Service, or Standard and Poor's; or

(b) Maintains an office in Kentucky, and has \$25 million in excess net capital; or

(c) Whose trades are guaranteed by a primary dealer of the Federal Reserve who is rated A1-P1 by Standard and Poor's or Moody's Investors Service.

(4) An approved broker-dealer for repurchase agreements shall:

(a) Be a primary dealer of the Federal Reserve;

(b) Be rated A1-P1 by Standard and Poor's or Moody's Investors Service;

(c) Have transaction amounts limited to his excess net capital; and

(d) Have executed the:

1. Public Securities Association Master Repurchase Agreement prior to entering into a repurchase transaction; and

2. Appropriate Custodial undertaking in Connection with



Master Repurchase Agreement.

(5) An approved broker-dealer for hedge vehicles (swaps and options), shall:

(a) Be a primary dealer of the Federal Reserve with at least \$100 million in excess net capital;

(b) Be rated A1-P1 by Standard and Poor's or Moody's Investors Service;

(c) Have transaction amounts limited to his excess net capital; and

(d) Have executed the:

1. International Swap Dealers' Association Agreement prior to the implementation of a swap; and

2. Commonwealth of Kentucky Master Agreement, Over-the-counter Option Transactions - U.S. Treasury Securities, prior to the implementation of an over the counter option transaction.

(6)(a) Within 180 days of the end of each broker-dealer's fiscal year, a broker-dealer shall submit a copy of the broker-dealer's audited financial statements for that fiscal year.

(b) A broker-dealer who wishes to be approved by the commission as an approved broker-dealer shall submit a copy of the broker-dealer's current audited financial statements

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Commonwealth of Kentucky, Bond Proceeds Pool, Prospectus, (12/97)";

(b) "Commonwealth of Kentucky, Short-term Pool, Prospectus, (12/97)";

(c) "Commonwealth of Kentucky, Intermediate-term Pool, Prospectus, (12/97)";

(d) "Commonwealth of Kentucky, Long-term Pool, Prospectus, (12/97)";

(e) "Public Securities Association Master Repurchase Agreement (12/97)";

(f) "Custodial Undertaking in Connection with Master Repurchase Agreement, Bank of New York (12/97)";

(g) "Custodial Undertaking in Connection with Master Repurchase Agreement, Chase Manhattan (12/97)";

(h) "International Swap Dealers' Association Agreement (12/97)"; and

(i) "Commonwealth of Kentucky Master Agreement, Over-the-counter Option Transactions - U.S. Treasury Securities (12/97)".

(2) This material may be inspected, copied, or obtained at State Investment Commission, Suite 261, Capitol Annex, Frankfort, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.

GORDON L. MULLIS, Secretary

ANGELA C. ROBINSON, Attorney

APPROVED BY AGENCY: November 14, 1997

FILED WITH LRC: November 14, 1997 at noon

FINANCE AND ADMINISTRATION CABINET  
State Investment Commission  
(As Amended at ARRS, January 14, 1998)

200 KAR 14:081. Repurchase agreement.

RELATES TO: KRS 42.500(9) to (14), 42.520, 42.525 [Chapters 41, 42]

STATUTORY AUTHORITY: KRS 42.500(10), 42.520(2), 42.525  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.525 provides that the State Investment Commission shall prescribe standards for the operation of the state's investment program. This administrative regulation establishes the general standards which shall apply to the employment of repurchase agreements as investment vehicles with eligible financial institutions. [commercial banks or

savings and loan associations chartered by the Commonwealth of Kentucky or by an agency of the United States government to do business in Kentucky, providing the main office is in Kentucky; or investment banking firms approved by the State Investment Commission at its open regular meetings.]

Section 1. Definitions. For purposes of this administrative regulation:

(1) "Commission" means the State Investment Commission;

(2) [(4)] "Eligible financial institution" means:

(a) A commercial bank, or savings and loan association:

1. Chartered to do business in Kentucky by the Commonwealth of Kentucky, or an agency of the United States government; and

2. Maintains an office in Kentucky; and

(b) A broker-dealer approved pursuant to the provisions of Section 9 of 200 KAR 14:011. [refers to commercial banks or savings and loan association chartered by the Commonwealth of Kentucky or by an agency of the United States government to do business in Kentucky, provided they maintain a business nexus in Kentucky; or investment banking firms approved by the State Investment Commission.]

(3) [(2)] "Office" means the Office of Financial Management and Economic Analysis;

(4) [(3)] "Repurchase agreement" or "reverse repurchase agreement" means an actual, conditional purchase or sale of securities of the United States Treasury, an [any] agency, instrumentality, or corporation of the United States, or another [any other] security authorized for investment pursuant to KRS 42.500(9) [(6)], with an agreement to resell or repurchase the securities to their original owner on a specific date in the future.

Section 2. Minimum Interest Rates. Except as provided by KRS 41.610, the commission shall not invest [allow] public funds [to be invested] in a [any] repurchase agreement with a yield less than could be received on a [any] directly purchased United States Treasury security of a comparable maturity.

Section 3. [Eligible Investment Institutions. Any commercial bank or savings and loan association chartered by the Commonwealth of Kentucky or by the U.S. government with its main office located in Kentucky shall be considered eligible to enter into repurchase agreements (as defined in this administrative regulation) with the Commonwealth. Any investment banking firm approved by the commission at an open meeting shall be considered eligible.

Section 4. Reporting Requirements for Eligible Investment Institutions. The commission shall inform eligible financial institutions of the reporting requirements for the investment of state funds in eligible financial institutions established by this section. [advise all eligible investment institutions of the following reporting requirements which are prerequisites for the investment of state funds in such institutions:]

(1) An eligible financial institution shall: [For commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with main offices located in Kentucky:]

(a) [The institution shall] Submit a copy of its quarterly financial reports as furnished to Department of Financial Institutions [regulatory bodies], including all accompanying schedules, to the commission within thirty (30) days from the end of each quarter; [The filing of such reports shall be within thirty (30) days from the end of that quarter.]

(b) [The institution shall] Complete and sign the "Public Securities Association Master Repurchase Agreement". [Commonwealth's form of [a] repurchase agreement contract [with the Commonwealth].]

(2) For an approved broker-dealer shall: [investment banking firms:]

(a) [The institution shall] Submit a copy of its annual audited financial statements and copies of quarterly financial statements, as published, to the commission;

(b) [The institution shall] Complete and sign the "Public Securities Association Master Repurchase Agreement" [Commonwealth's form of a] repurchase agreement contract [with the Commonwealth].

Section 4. [Maximum Size of Repurchase Agreement per Institution. The commission shall review on an annual basis the maximum size of repurchase agreements per investment bank. [5: Kentucky Banks and Savings and Loan Associations, Priority for Placement of Repurchase Agreements. Pursuant to KRS 42.520, the commission shall assign public funds to public depositories by priority based on evidence that the public depository serves the convenience and economic development needs of the communities in which they are chartered to do business. Repurchase agreements with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with main offices located in Kentucky shall be placed pursuant to the following guidelines. As loan demand is a measure of economic activity in a community and as investments shorter than one (1) year are unlikely to provide loanable capital to financial institutions, the prioritization factors for placement of repurchase agreements with maturities longer than one (1) year shall be as follows:

(1) For repurchase agreements with maturities equal to or greater than 365 days, the following financial criteria shall be met or exceeded:

(a) A loan to deposit ratio of equal to or greater than seventy (70) percent;

(b) A nonperforming loan to capital ratio of equal to or less than twenty (25) five percent;

(c) A capital to assets ratio of equal to or greater than seven (7) percent; and

(d) A return on assets ratio greater than zero.

(2) Repurchase agreements with maturities equal to or greater than 365 days with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with main offices located in Kentucky shall be limited to \$5,000,000 per institution.

(3) The office shall review the financial ratios listed semiannually to determine eligibility of institutions. Existing repurchase agreements with maturities equal to or greater than one (1) year with institutions which fail to meet the minimum criteria for two (2) consecutive reporting periods shall be subject to call at par value by the commission. Repurchase agreements shall be placed according to:

(a) Availability of funds;

(b) Demand for funds by the institutions; and

(c) Highest loan to deposit ratio of eligible institutions.]

Section 5.] Eligible Securities. The following shall be considered eligible securities for repurchase agreements[:

(1) an investment security [issued or guaranteed by:

(a) The U.S. Treasury; or

(b) An agency, corporation, or instrumentality of the government of the United States]; or

(2) A security] authorized for investment pursuant to KRS 42.500(9) [(6)].

Section 5. [6:] [Maximum Size of Repurchase Agreement per Institution. (1)(a) The commission shall not enter into any repurchase agreement with a commercial bank or savings and loan association of more than \$25,000,000:

(b) A repurchase agreement with a commercial bank or savings and loan association shall not be an amount in excess of its capital

structure or ten (10) percent of the institution's deposits, whichever is less:

(2) There shall be no limitation on the amount of repurchase agreements entered into with investment banking firms:

(3) The commission shall review at a minimum on an annual basis, the maximum size of repurchase agreements per institution:

Section 7. Payment for and Safekeeping Purchases. (1) All transactions shall be conducted on a payment versus delivery basis:

(2) A party shall not allow state funds to be released until delivery of adequate, negotiable collateral has been verified:

(3) Subject to the approval of the commission, securities purchased from commercial banks, savings and loan associations, or investment banks in a repurchase agreement shall be received, verified, and safe-kept by the state's general depository bank or its agent:

Section 8. Eligible Securities. The following shall be considered eligible for repurchase agreements:

(1) An investment security issued or guaranteed by:

(a) The United States Treasury; or

(b) An agency, corporation, or instrumentality of the government of the United States; or

(2) A security authorized for investment pursuant to KRS 42.500(6):

Section 9.] Sufficiency of Securities Purchased. (1) The securities purchased shall have a market value, including accrued interest, of not less than 102 percent of the face value of the repurchase agreement.

(2) [In] The state's general depository banking contract[, the commission] shall require the general depository to review the sufficiency of collateral on all repurchase agreements. This review shall occur at least every seven (7) calendar days with periodic reviews made by the office.

(3) The commission shall demand additional securities to be delivered immediately, if market conditions cause the value of the securities purchased to drop below 102 percent of the face value of the repurchase agreement.

Section 6. [7:] [10:] Status of Parties. (1) [Both] The commission and the eligible financial institutions authorized to enter into repurchase agreements [commercial bank, savings and loan association, or investment bank] shall be considered principals in all repurchase agreements and shall not be considered to be acting as agents for third parties.

(2) All contractual obligations shall apply to and be binding on the commission and the specific eligible financial institution with which the repurchase agreement is initially negotiated and settled.

Section 7. [8:] [11:] Default. (1)(a) If an eligible financial institution with which the commission has entered into a repurchase agreement defaults, or is determined by the commission to be in danger of default, the commission shall set off claims and liquidate property held in respect to the repurchase agreement against obligations owing to the eligible financial institution under other repurchase agreements.

(b) Payments, deliveries, and other transfers made under a repurchase agreement shall be deemed to have been made in consideration of payments, deliveries, and other transfers made under any other repurchase agreement by the eligible financial institution.

(c) The obligation to make payments, deliveries and other transfers under a repurchase agreement may be applied against the obligation to make payments, deliveries and other transfers under any other repurchase agreements of the eligible financial institution and netted. [be entitled to set off claims and apply

~~property held by them in respect to the repurchase against obligations owing to them in respect of any other repurchase agreements thereunder and that payments, deliveries and other transfers made in respect of any repurchase shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other repurchase thereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.] [immediately liquidate all securities delivered to it under the repurchase agreement.]~~

(2)(a) From the proceeds of liquidated property, the commission shall pay itself the full principal and accrued interest due as of the date of liquidation.

(b) Remaining cash balances shall be forwarded to the financial institution with which the repurchase agreement was originally executed.

~~Section 8. [9:] Kentucky Bank Repurchase Program. (1) [Pursuant to KRS 42.520, the commission shall assign public funds to eligible financial institutions by priority based on evidence that the public depository serves the convenience and economic development needs of the communities in which they are chartered to do business.] Repurchase agreements with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with [main] offices located in Kentucky shall be placed pursuant to the following: [guidelines. As loan demand is a measure of economic activity in a community and as investments shorter than one (1) year are unlikely to provide loanable capital to financial institutions, priority shall be placed with maturities longer than one (1) year.~~

~~(1) Institutions with repurchase agreements shall meet or exceed the following financial criteria:]~~

~~(a) A loan to deposit ratio equal to or greater than seven (7) percent.~~

~~(b) A nonperforming loan to capital ratio of equal to or less than twenty-five (25) percent.~~

~~(c) A capital to assets ratio [or] equal to or greater than seven (7) percent; and~~

~~(d) A return on assets ratio greater than zero.~~

~~(2) Repurchase agreements with maturities equal to or greater than 365 days with commercial banks and savings and loan associations chartered by the Commonwealth of Kentucky or by the U.S. government with [main] offices located in Kentucky shall be limited to \$5,000,000 per institution.~~

~~(3) The office shall review the financial ratios listed quarterly to determine eligibility of institutions. Existing repurchase agreements with institutions which fail to meet the minimum criteria for two (2) consecutive quarters shall be subject to call at par value by the commission. Repurchase agreements shall be placed according to:~~

~~(a) Availability of funds;~~

~~(b) Demand for funds by the institutions; and~~

~~(c) Highest loan to deposit ratio of eligible institutions.~~

~~(4)(a) A repurchase agreement with a commercial bank or savings and loan shall not be an amount in excess of its capital structure or [then] ten (10) percent of the institution's deposits, whichever is less.~~

~~(b) The commission shall not enter into a [any] Kentucky Bank Repurchase Program repurchase agreement with a commercial bank or savings and loan association that will cause that institution to exceed in aggregate a total of \$25,000,000 in repurchase agreements.~~

~~(5) Yield charged and collateral requirements for commercial banks and savings and loans.~~

~~(a) Commercial banks and savings and loans submitting U.S. Treasuries and agencies excluding mortgage backed securities [(MBS)] and collateralized mortgage obligations shall [(CMO) will] be charged the same [like] duration yield generic repurchase rate as quoted by Bloomberg Financial Markets [a nationally-recognized market reporter] with 102 percent collateral.~~

~~(b) Commercial banks and savings and loans submitting mortgage-backed securities and collateralized mortgage obligations shall [securities authorized for investment pursuant to KRS 42.500 but not U.S. Treasuries and Agencies but including MBS and collateralized CMO will] be charged the same [like] duration yield generic repurchase rate as posted on Bloomberg Financial Markets [a nationally-recognized market reporter] plus fifty (50) basis points with 105 percent collateral.~~

~~(6) Payment for and safekeeping of purchases.~~

~~(a) All transactions shall be conducted on a payment-versus-delivery basis.~~

~~(b) A party shall not allow state funds to be released until delivery of adequate, negotiable collateral has been verified.~~

~~(c) [Subject to the approval of the commission.] Securities purchased from commercial banks or savings and loan associations in a repurchase agreement shall be received, verified, and safe-kept by the state's general depository bank or its agent.~~

~~[Section 12: Contract. (1) A formal agreement shall be signed by commercial banks, savings and loan associations, and investment banks desiring to enter into repurchase agreements with the Commonwealth.~~

~~(2) Prior to executing a repurchase agreement with the Commonwealth, each commercial bank and savings and loan association and investment bank shall agree to and sign the Commonwealth's repurchase agreement contract.]~~

GORDON L. MULLIS, Secretary  
ANGELA C. ROBINSON, Attorney

APPROVED BY AGENCY: November 14, 1997

FILED WITH LRC: November 14, 1997 at noon

**FINANCE AND ADMINISTRATION CABINET  
State Investment Commission  
(As Amended at ARRS, January 14, 1998)**

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

RELATES TO: KRS 41.600 to 41.620

STATUTORY AUTHORITY: KRS 41.606(1), (2), (5) to (7), 42.510(3), 42.525

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation established the conditions for which small businesses and agribusiness are eligible for loans made available through the Linked Deposit Investment Program and provides for agency review of the information provided by the lending institution as part of the loan package. The Linked Deposit Investment Program, as it pertains to agribusiness, will be monitored by the Department of Agriculture [(department)] and as it pertains to small businesses, will be monitored by the Cabinet for Economic Development [(cabinet)].

Section 1. (1) **The amount of funds available for Linked Deposit Investment Program loans shall be the amount of cash in the state's Unclaimed and Abandoned Property Program.** [Loan and Investment Approval Process. (1) After the cabinet or department has determined that the loan package is complete in accordance with either 307-KAR-5:010 or 302-KAR-3:010 it shall forward the loan package to the State Investment Commission for funding as required by KRS 41.610(5).

(2) Funds for linked deposit investment program loans are derived from the Department of Treasury's unclaimed and abandoned property fund as required by KRS 41.606(1). The availability of funds for linked deposit investment program loans shall be based on the recommendation contained in the Department of Treasury's annual report detailing the amount of money in the unclaimed and abandoned property fund, but shall not exceed the limits established by the

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State Investment Commission. The Department of Treasury shall submit its annual report to the State Investment Commission, the Cabinet for Economic Development and the Department of Agriculture no later than March 31 of each year.]

(2) [(3)] Approval for a new application for a linked deposit investment shall [may] be denied or an existing investment revoked by the State Investment Commission for failure of the financial institution to meet and maintain the eligibility requirements prescribed in KRS 42.500 and 200 KAR Chapter 14 for each investment type.

Section 2. Repayments. The eligible lending institution shall remit to the State Investment Commission by June 30 of each year all loan principal repayments for the preceding year beginning June 1 and ending May 31.

Section 3. Reporting Requirements. The State Investment Commission shall submit to either the Cabinet for Economic Development's Small and Minority Business Division or the Department of Agriculture a copy of the letter confirming each approved linked deposit investment with the eligible lending institution no later than thirty (30) days after the date the linked deposit investment program has been funded.

Section 4. Investment Policies. (1) Linked deposit investments in aggregate of less than \$100,000 for any institution may be in the form of a Certificate of Deposit. Aggregate investments between \$100,000 and \$250,000 may be in the form of a collateralized certificate of deposit with collateral meeting the requirements established by 200 KAR 14:081, Section 8, [same criteria as identified] for the Kentucky Bank Repurchase Program. Any institution with linked deposit loans greater than \$250,000 shall be in the form of a repurchase agreement subject to the terms and conditions established by 200 KAR 14:081, Section 8, for the Kentucky Bank Repurchase Program.

(2) The yield on link deposit investments shall be as prescribed in KRS 41.610.

GORDON L. MULLIS, Secretary  
ANGELA C. ROBINSON, Attorney

APPROVED BY AGENCY: November 14, 1997  
FILED WITH LRC: November 14, 1997 at noon

GENERAL GOVERNMENT CABINET  
Kentucky Board of Dentistry  
(As Amended at ARRS, January 14, 1998)

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

RELATES TO: KRS 313.220(4)

STATUTORY AUTHORITY: KRS 313.220(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.220(4) authorizes the Board of Dentistry to regulate the practice of dentistry in Kentucky. This administrative regulation is necessary to establish the requirements governing the use of general anesthesia, deep sedation, and conscious sedation by a licensed dentist. [This administrative regulation sets forth the rules governing the use of general anesthesia, deep sedation, and conscious sedation by dentists licensed in Kentucky.]

Section 1. Definitions. (1) "Conscious sedation" means a minimally depressed level of consciousness:

(a) Produced by a pharmacological or nonpharmacological method; and

(b) In which the patient is able to independently and continuously:

1. Maintain an airway; and

2. Respond appropriately to physical stimulation and verbal command.

(2) "Deep sedation" means a controlled state of depressed consciousness produced by a pharmacological or nonpharmacological method accompanied by:

(a) Partial loss of protective reflexes; and

(b) Inability to respond purposefully to verbal command.

(3) "General anesthesia" means a controlled state of consciousness:

(a) Produced by a pharmacological or nonpharmacological method; and

(b) Accompanied by:

1. Partial or complete loss of protective reflexes; and

2. Inability to respond purposefully to physical stimulation or verbal command.

(4) "Parenteral" means a sedation technique in which a drug is:

(a) Absorbed directly from the site of its administration into the cardiovascular system, effectively bypassing the gastrointestinal (GI) tract; and

(b) Normally administered by injection with a syringe.

[General anesthesia is a controlled state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or nonpharmacologic method, or a combination thereof.

(2) "Deep sedation" is a controlled state of depressed consciousness, accompanied by partial loss of protective reflexes, including inability to respond purposefully to verbal command, produced by a pharmacologic or nonpharmacologic method or combination thereof.

(3) "Conscious sedation" is a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, produced by a pharmacologic or nonpharmacologic method, or a combination thereof.

These terms refer to the extent of a drug's or drugs' depressant effects upon the central nervous system and should not be confused with the route or combination of routes by which a drug is administered, i.e., oral, inhalation, intravenous, intramuscular, rectal, or submucosal.

(4) "Parenteral" is a term given to those sedation techniques in which a drug is absorbed directly from the site of its administration into the cardiovascular system effectively bypassing the gastrointestinal (GI) tract. This is in contradistinction to the oral and rectal routes of administration in which the drugs are absorbed from the GI tract into the cardiovascular compartment. Common usage of the term parenteral signifies drug administration by injection with a syringe (e.g., IM, SC, IV).]

Section 2. Authorization. (1) A dentist shall not use general anesthesia on an outpatient basis for a dental patient unless he:

(a) Applies for and receives an annual permit of authorization by the Kentucky Board of Dentistry; and

(b) Provides proof of completion of a course of study in advanced cardiac life support (ACLS) sponsored and approved by the American Heart Association within twenty-four (24) months previous to the filing of the application. [For the purposes of this administrative regulation, general anesthesia and deep sedation are the same. No dentist shall employ or use general anesthesia on an outpatient basis for dental patients unless such dentist possesses a permit of authorization issued by the Kentucky Board of Dentistry. Such permit must be renewed annually and the dentist holding such a permit may be reviewed at any time by the board.]

(2) To receive authorization, a dentist shall:

(a) Complete one (1) year of advanced training in anesthesi-

ology and related academic subjects beyond the undergraduate dental school level in a training program as described in Part 2 of the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry; or

(b) Be:

1. A Diplomat of the American Board of Oral Surgery; or

2. Eligible for examination by the American Board of Oral Surgery. [In order to receive authorization, the dentist must show the following and produce evidence that he:

(a) Has completed a minimum of one (1) year advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program as described in Part 2 of the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, in effect as of October 1, 1987; or

(b) Is a Diplomate of the American Board of Oral Surgery, or is eligible for examination by the American Board of Oral Surgery, or is eligible for membership in the American Dental Society of Anesthesiology.]

(3) A permit shall not be needed if a dentist works in conjunction with a trained physician anesthesiologist licensed to practice medicine in Kentucky or a Certified Registered Nurse Anesthetist licensed in Kentucky, if that person:

(a) Is a member of the anesthesiology staff of an accredited hospital; and

(b) Remains on the premises of the dental facility or hospital until the patient regains consciousness. [A dentist will not need a permit to employ or work in conjunction with a trained M.D., D.O. or C.R.N.A., who is a member of the anesthesiology staff of an accredited hospital, provided that such anesthesiologist must remain on the premises of the dental facility or hospital until any patient given a general anesthetic regains consciousness. A C.R.N.A. employed by or working in conjunction with a dentist must work under the direct supervision of a certified dentist or physician.]

(4) A facility where general anesthesia, deep sedation, or conscious sedation with a parenteral drug is employed shall meet board standards to insure that the protocol procedures, facilities, drugs, equipment, and personnel utilization are acceptable for safe and appropriate use. Board standards are established in:

(a) General Anesthesia and Deep Sedation Inspection List; and

(b) Conscious Sedation with Parenteral Drugs Inspection List. [All facilities other than hospitals or surgery centers must meet published ADA standards to insure that the protocol, procedures, facilities, drugs, equipment, and personnel utilization are acceptable for safe and appropriate use.]

(5) A dentist administering general anesthesia or deep sedation shall:

(a) Have completed a course in advanced cardiac life support (ACLS) through a course of study sponsored and approved by the American Heart Association within the past twenty-four (24) months; or

(b) Obtain six (6) hours of continuing education every two (2) years relating to anesthesia safety and emergency procedures. [All dentists [and staff] administering general anesthesia or deep sedation shall have current certification in advanced cardiac life support (ACLS).]

(6) [All] Staff assisting with the administration of general anesthesia or deep sedation shall have current certification in basic life support (BLS) through a course of study sponsored and approved by the:

(a) American Heart Association; or

(b) American Red Cross. [cardiopulmonary resuscitation (CPR).]

(7) Staff assisting with the administration of conscious sedation with a parenteral drug shall have current certification in basic life support (BLS) through a course of study sponsored

and approved by the:

(a) American Heart Association; or

(b) American Red Cross.

(8) Continuing education required by this administrative regulation shall:

(a) Not be used to satisfy other continuing education requirements; and:

(b) Be in addition to other continuing education requirements of 201 KAR Chapter 8. [All dentists administering conscious sedation with parenteral drugs shall have current certification in advanced cardiac life support (ACLS) or shall obtain six (6) hours of continuing education every two (2) years specifically relating to anesthesia safety and emergency procedures:

(8) All staff assisting with the administration of conscious sedation with parenteral drugs shall have current certification in basic life support - cardiopulmonary resuscitation (CPR).

(9) Continuing education required in this administrative regulation may not be used to satisfy any other continuing education requirement and is in addition to all other continuing education requirements in this chapter. [or assisting with the administering of general anesthesia must have certification in basic cardiac life support (CPR). Certification must be renewed as required by the American Heart Association.]

Section 3. Conscious Sedation with Parenteral Drugs. (1) To qualify to use a parenteral drug in conscious sedation, a dentist shall produce evidence that he:

(a) Qualifies under Section 2(5) of this administrative regulation for general anesthesia;

(b) Has completed an approved course in conscious sedation with parenteral drugs in a program approved by the Kentucky Board of Dentistry, which includes:

1. Physical diagnosis and patient evaluation; and

2. Passing a course of didactic and clinical training:

a. Consistent with Part 2 of the ADA Guidelines for teaching the Comprehensive Control of Pain and Anxiety in Dentistry; and

b. With documentation of having treated a minimum of twenty-five (25) cases; or

(c) Is a diplomat, board eligible, eligible for board examination in a specialty, or a graduate of an accredited general practice residency, if he can provide proof of training in the use of conscious sedation with a parenteral drug. The training shall be consistent with Part 2 of the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry.

(2) A dentist and staff administering or assisting with the administration of conscious sedation with a parenteral drug shall have current certification in Basic Life Support (BLS) through a course of study sponsored and approved by the:

(a) American Heart Association; or

(b) American Red Cross.

(3) A dentist administering conscious sedation with a parenteral drug shall:

(a) Have completed a course in Advanced Cardiac Life Support (ACLS) within the past twenty-four (24) months; or

(b) Obtain six (6) hours of continuing education every two (2) years specifically relating to anesthesia safety and emergency procedures.

(4) Continuing education required by this administrative regulation shall:

(a) Not be used to satisfy other continuing education requirements; and:

(b) Be in addition to other continuing education requirements of 201 KAR Chapter 8. [Inspection. The board may at any time require an on-site inspection of the facility, equipment, and personnel. The principles of evaluation will follow the current published standards of the ADA, dental specialty group, or comparable published guidelines. The inspection team will be determined by the board, but will

reflect the principles of peer review.]

Section 4. **Inspection.** (1) If general anesthesia, deep sedation, or conscious sedation with a parenteral drug is employed, the board may conduct an unannounced on-site inspection of a facility to determine that the protocol, procedures, facility, drug, equipment, and personnel utilization meet board standards as established in the:

(a) General Anesthesia and Deep Sedation Inspection List; and

(b) Conscious Sedation with Parenteral Drugs Inspection List.

(2) The inspection team shall:

(a) Be determined by the board; and

(b) Reflect the principles of peer review. [Provisional Permits: New applicants who are qualified by credentials in their application may be granted a temporary provisional permit of one (1) year only.]

Section 5. **Report of Injury or Mortality.** A licensee engaged in the practice of dentistry in the state of Kentucky shall submit a complete report within thirty (30) days to the board of a mortality or other incident occurring in an outpatient facility of the dentist which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a direct result of a dental procedure or related use of general anesthesia, deep sedation, or conscious sedation with a parenteral drug. [Effective Date: Within one (1) year of the effective date of this administrative regulation, each dentist who has been using or employing general anesthesia prior to adoption of this administrative regulation shall make application to the board if such dentist desires to continue to use or employ general anesthesia. If he meets these requirements he shall be issued such permit. An on-site evaluation is at the discretion of the board.]

Section 6. **Personnel.** The following shall be present during the administration of general anesthesia or deep sedation:

(1) The operating dentist to direct the general anesthesia or deep sedation;

(2) A person to observe and monitor the patient; and

(3) An assistant to the operating dentist. [Report of Injury or Mortality: All licensees engaged in the practice of dentistry in the state of Kentucky must submit a complete report within a period of thirty (30) days to the Kentucky Board of Dentistry of any mortality or other incidents occurring in the outpatient facilities of such dentist which results in temporary or permanent physical or mental injury requiring hospitalization of said patient during or as a direct result of dental procedures or general anesthesia related thereto.]

Section 7. **Permit Renewal and Annual Fee.** (1) A permit shall be renewed annually unless the dentist:

(a) Fails to obtain the:

1. Proper certification in ACLS or BLS; or

2. Required hours of continuing education; and

(b) Does not utilize general anesthesia, deep sedation, or conscious sedation with a parenteral drug in a facility that meets board standards.

(2) The annual fee of fifteen (15) dollars shall be paid for renewal of a permit at the time of license renewal. [Personnel: For the administration of general anesthesia or deep sedation, at least three (3) individuals, each appropriately trained, are required. One is the operating dentist, who directs the general anesthesia or deep sedation. The second is a person whose responsibilities are observation and monitoring of the patient. If this person is an appropriately trained professional, he or she may direct the deep sedation or general anesthesia. The third person assists the operating dentist.]

Section 8. **Nitrous Oxide.** (1) To qualify to use nitrous oxide in conscious sedation, a dentist shall complete a university

based course approved by the Kentucky Board of Dentistry.

(2) Equipment used in the administration of nitrous oxide shall have functional safe guard measures that:

(a) Limit the minimum delivered oxygen concentration to thirty (30) percent; and

(b) Provide for scavenger elimination of nitrous oxide gas.

(3) The dentist shall:

(a) Insure that a patient receiving nitrous oxide is constantly monitored; and

(b) Be present in the office while nitrous oxide is being used.

(4) A dentist shall not need a permit to administer nitrous oxide. [Conscious Sedation with Parenteral Drugs: In order for a dentist to be qualified to use parenteral drugs in conscious sedation, he must produce evidence that he:

(1) Qualifies under Section 2(1), (2), or (3) of this administrative regulation for general anesthesia; or

(2) Has completed an approved course in conscious sedation with parenteral drugs in a program approved by the Kentucky Board of Dentistry, which must include:

(a) Physical diagnosis and patient evaluation;

(b) Passing successfully a course of didactic and clinical training consistent with the ADA's Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, in effect as of October 1, 1987, and the documentation of having treated a minimum of twenty-five (25) cases; or

(3) Is a diplomate, board eligible, or eligible for board examination in any specialty, or a graduate of an accredited general practice residency, providing he can submit evidence of training in the use of conscious sedation with parenteral drugs. This training must be consistent with the ADA's Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, in effect as of October 1, 1987, or comparable specialty guidelines.

All dentists and staff administering or assisting with the administration of conscious sedation with parenteral drugs must have certification in basic cardiac life support (CPR). Certification must be renewed as required by the American Heart Association.]

Section 9. **Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) "Application for General Anesthesia and/or conscious sedation permit", (July, 1995 Edition), Kentucky Board of Dentistry;

(b) "ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, Part 2", (1987 Edition), American Dental Association;

(c) "General Anesthesia and Deep Sedation Inspection List", (1997 Edition), Kentucky Board of Dentistry; and

(d) "Conscious Sedation with Parenteral Drugs Inspection List", (1997 Edition), Kentucky Board of Dentistry.

(2) This material may be inspected, copied, or obtained at Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m. [Each dentist who has been using or employing conscious

sedation with parenteral drugs prior to adoption of this administrative regulation shall seek authorization on the prescribed form to the board within one (1) year of the effective date of this administrative regulation if such dentist desires to continue to use or employ conscious sedation with parenteral drugs. The board, based on a formal application by the dentist stating all particulars, may authorize the use or employment of conscious sedation with parenteral drugs to those dentists who have been utilizing conscious sedation in a competent and effective manner for the past three (3) years prior to the effective date of this administrative regulation, but who have not had the benefit of formal training as outlined in this administrative regulation. He must have current certification in basic cardiac life support (CPR).]

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Section 10. Inspection. The board may at any time require an on-site inspection of the facility, equipment, and personnel. The principles of evaluation will follow the current published standards of the ADA, dental specialty group or comparable published guidelines. The inspection team will be determined by the board, but will reflect the principles of peer review.

Section 11. Report of Injury or Mortality. Same as with general anesthesia.

Section 12. Permit Renewal and Annual Fee. The permit will be renewed annually unless the dentist is notified by the board that conditions exist which would prevent permit renewal. The annual fee will be fifteen (15) dollars for such a permit and shall be renewed at the time of license renewal.

Section 13. Nitrous Oxide. (1) In order for a dentist to be qualified to use nitrous oxide in conscious sedation he must:

(a) Have completed a university-based course approved by the Kentucky Board of Dentistry; or

(b) Have used nitrous oxide in his practice for three (3) years prior to the adoption of these rules.

(2) The equipment used must be specifically designed for use in nitrous oxide sedation. All equipment used in the administration of nitrous oxide must have functional safeguard measures. Such safeguard measures are those recognized by the American Dental Association.

(3) The dentist must insure that every patient receiving nitrous oxide is constantly monitored. The presence of the dentist in the office is required while nitrous oxide is being used.

(4) The requirements for reporting injury or mortality are the same as with general anesthesia.

(5) No permit will be required to administer nitrous oxide by the dentist.]

PATRICIA G. HOWELL, RDH, President  
MARK BRENGELMAN, Assistant Attorney General  
APPROVED BY AGENCY: September 9, 1997  
FILED WITH LRC: September 12, 1997 at 4 p.m.

**GENERAL GOVERNMENT CABINET  
Board of Hairdressers and Cosmetologists  
(As Amended at ARRS, January 14, 1998)**

**201 KAR 12:200. Requirements for continuing education for renewal of license.**

RELATES TO: KRS 317A.050(8)

STATUTORY AUTHORITY: KRS 317A.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: [Beginning July 1, 1997,] KRS 317A.050(8) requires a cosmetologist [cosmetologists], cosmetology instructor or [instructors and] nail technician [technicians] to provide proof of continuing education for renewal of license as determined by the board by promulgation of an administrative regulation. This administrative regulation establishes the requirements for sponsoring a continuing education program and for providing proof of attendance at a continuing education program.

Section 1. A sponsor of a continuing education program shall submit a completed "Application for Approval of Continuing Education Program" form to request approval from the board for a program. The application form shall:

(1) Include the:

(a) Title of the program;

(b) Name, address, and telephone number of the sponsoring organization or individual;

(c) Number of clock hours for which approval is requested;

(d) Cost of the program to the attendee;

(e) The program's date, location, and time;

(f) Objective of the program;

(g) Name of the instructor;

(h) Manner of presentation to indicate whether the program

is a:

1. Lecture;

2. Demonstration;

3. Panel; or

4. Hands-on participation program; and

(i) Plan for program evaluation;

(2) Be signed by the sponsor to indicate that the sponsor

agrees to:

(a) Accurately record attendance at each presentation;

(b) Complete a record of attendance confirming the number

of clock hours actually attended for each attendee; and

(c) Submit a list of attendees within thirty (30) days after the program to the board office; and

(3) Be accompanied by a copy of the:

(a) Promotional advertisement for the program;

(b) Instructor's biography and list of credentials;

(c) Course outline; and

(d) Evaluation sheet. [(1) A sponsor of a continuing education program shall request approval of the board on an "Application for Approval of Continuing Education Program" form and shall agree to submit the information required by subsection (2) of this section. The application shall state the date, subject offered, total hours of instruction, names and qualifications of speakers, fees to be charged, evaluation form, and other pertinent information.

(2) The sponsor shall agree to:

(a) Accurately record attendance at each presentation;

(b) Complete a record of attendance confirming the number of clock hours actually attended for each attendee; and

(c) Submit a list of attendees within thirty (30) days after the program to the board office.]

Section 2. [(1)] An application for approval of a continuing education program shall be submitted to the office of the board at least sixty (60) [ninety (90)] days prior to the starting date of the program. The board shall approve or deny the request in writing within thirty (30) [sixty (60)] days of receipt of the application [review] by the board [receipt of the application].

Section 3. (1) The program shall consist of an organized program of learning which:

(a) [(1)] Contributes directly to the competency of the licensee;

(b) [(2)] Pertains to subjects related to the theory, management and practice of cosmetology and nail technology; and

(c) [(3)] Pertains to the health, safety, welfare, and protection of the public including sanitation, sterilization, chemical waste disposal, safety in the work place, first aid, bloodborne pathogens, airborne pathogens, and HIV/AIDS education.

(2) A program that meets the requirements established in subsection (1) of this section shall be approved by the board if it is provided by:

[(a) Relevant programs provided by the following organizations or institutions that have been received and approved by the board include, but are not limited to the following:]

(a) An [(1)] American Red Cross Chapter [Chapters];

(b) The [(2)] American Heart Association;

(c) The [(3)] Cabinet for Health Services;

(d) The [(4)] Kentucky Labor Cabinet, Division of Education and Training; or [and]

(e) The [(5)] Kentucky State Board of Nursing.

(3) [(4)] A program shall be limited to a class size appropriate to the classroom or facility.

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Section 4. A program shall specify the course objectives, content, prerequisites, requirements, and the number of continuing education hours to be earned. The information shall be specified in all promotional materials.

Section 5. A program shall:

- (1) Be generic product related; and
- (2) [shall] Not be used to promote, sell or advertise a product.

Section 6. (1) A sponsor shall be:

(a) [(+) A private or [and] vocational technical schools of cosmetology [offering cosmetology and nail technician courses];

(b) [(2)] An association or organization whose membership consists of licensees of the board;

(c) [(3)] A college, university, or other institution of higher education recognized by the Kentucky Council on Higher Education;

~~[(a) Academic coursework. Successful completion of one (1) academic semester credit or one (1) three (3) hour course will satisfy the total annual continuing education hours required for cosmetologists, nail technicians and instructors of cosmetology renewal. The course shall be completed within the license renewal period and the licensee shall provide an original transcript with the seal of the college or university affixed with their application for renewal.~~

~~[(b) Relevant courses shall include, but not be limited to: biology, chemistry, psychology, health science, and business courses.]~~

~~[(d) An individual who:~~

~~1. Holds [(4) Individuals who hold] an active cosmetologist license, instructor of cosmetology license or nail technicians license; and~~

~~2. Has [have] special education, training and experience in cosmetology;~~

~~[(e) A person who has [(5) Other persons who have] a license, degree, special education, training or [and] experience relating to the subject matter of the program; or~~

~~[(f) A [(6)] state agency program [programs];~~

~~[(2)(a) A manufacturer or distributor product show shall not be approved as a continuing education program.~~

~~[(b) A manufacturer or distributor product class shall be approved if the requirements established in this administrative regulation are met.~~

**Section 7. Academic Coursework. Successful completion of one (1) three (3) hour course shall satisfy the continuing education requirement established by KRS 317A.050(8) if the:**

**(1) Course is completed within the license renewal period;**

**(2) Course is relevant. A course shall be considered relevant if the course:**

**(a) Is biology, chemistry, psychology, health science, or business; or**

**(b) Relates to the practice of the licensee; and**

**(3) Licensee submits an original transcript with the seal of the college or university affixed with the application for license renewal.**

~~[(7) Manufacturers and distributor product shows shall not be approved. Manufacturers and distributor product classes shall be approved provided all provisions of 201 KAR 12:200 are met.]~~

Section 8. [7:] The board may monitor or review a [any] continuing education program approved by the board. Upon evidence of significant variation in the program presented from the program approved, the board may withdraw approval of the hours granted to the program.

Section 9. [8:] (1) In order to receive credit for attendance at a program, a licensee shall:

(a) Complete a "Record of Attendance for Continuing Education Credit" form at the end of the program;

(b) Submit one (1) copy of the form to the program's registration desk at the end of the program; and

(c) Submit one (1) copy of the form with the licensee's renewal application.

(2) The form shall indicate the:

(a) Program title;

(b) Name of the sponsoring organization or individual;

(c) Date, location, and number of hours of the program; and

(d) [the] Licensee's:

1. Name;

2. Address;

3. Phone number; and

4.a. Social Security number; and

b. License number.

Section 10. [9:] A licensee not currently working in a salon may choose to let his [their] license expire and may restore his [said] license [at any time] within five (5) years by obtaining six (6) hours of continuing education and paying a restoration fee of fifty (50) dollars in accordance with KRS 317A.050, Section 11.

Section 11. [10:] Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Application for Approval of Continuing Education Program" (September 13, 1996 edition), Kentucky State Board of Hairdressers and Cosmetologists; and

(b) "Record of Attendance for Continuing Education Credit" (September 13, 1996 edition), Kentucky State Board of Hairdressers and Cosmetologists.

(2) These forms may be inspected, copied, or obtained at Kentucky State Board of Hairdressers and Cosmetologists, 314 West Second Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BEA COLLINS, Chairman

CHERYL LALONDE MOONEY, Board Counsel

APPROVED BY AGENCY: September 2, 1997

FILED WITH LRC: October 28, 1997 at 3 p.m.

### GENERAL GOVERNMENT CABINET Board of Hairdressers and Cosmetologists (As Amended at ARRS, January 14, 1998)

201 KAR 12:210. Requirements for continuing education; active and inactive license and temporary waiver of requirements.

RELATES TO: KRS 317A.050(8), (9)

STATUTORY AUTHORITY: KRS 317A.050(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.050(8) requires a cosmetologist, cosmetology instructor, or nail technician to provide proof of continuing education for renewal of license as determined by the board by promulgation of an administrative regulation. This administrative regulation establishes requirements for continuing education for a licensee with an active or inactive license and for a temporary waiver of the requirements. [This administrative regulation pertains to continuing education requirements for renewal of a license and establishes the requirements for an inactive license.]

Section 1. Definition. **"Continuing education hour" means a fifty (50) minute period excluding each meal or break.** [A continuing education hour is defined as a fifty (50) minute period excluding meals and breaks.]

Section 2. **A person** [These persons] newly licensed during the



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license renewal period shall not be required to complete continuing education as a prerequisite for the first renewal of his [their] license.

Section 3. Continuing education hours exceeding the amount required shall not be carried forward to the next years' requirements.

Section 4. A licensee shall not receive credit for a [any] class repeated within the same licensing year.

Section 5. Inactive Status. (1) A licensee not working in a beauty salon, nail salon, school of cosmetology or actively engaged in the practice or teaching of cosmetology on or after July 15, 1996, may request inactive status. The request for inactive status shall be in writing.

(2) Inactive status shall be granted if [provided] the licensee pays the renewal fee established [set forth] in KRS 317A.050(9).

(3) Inactive status may be applied for, in writing, [at any time] during the licensure year if [provided] the licensee holds a license which is not expired, revoked or suspended.

(4) A licensee requesting inactive status shall not be required to attend continuing education courses.

(5) A licensee on inactive status shall not engage in the practice of cosmetology, nail technology or teaching of cosmetology.

(6) The inactive license shall be renewed in accordance with the requirements established [as set forth] in KRS 317A.050(8).

(7) Before a license is changed from inactive to active status, the licensee shall provide proof that, within the one (1) year period immediately preceding his request to change the status, he has completed:

(a) If he is a cosmetologist or nail technician, six (6) hours of continuing education as required by KRS 317A.050(8); or

(b) If he is a cosmetology instructor, eight (8) hours of continuing education as required by KRS 317A.050(8). [Before a license can be changed from inactive to active status, the licensee shall provide proof of continuing education.]

(8) A licensee actively engaged in the practice of cosmetology, nail technology or instructor of cosmetology who cannot meet the requirements for continuing education for renewal due to temporary disability, undue hardship, or personal or spouse's military duty, may request a waiver or extension of time to complete a continuing education course. A request for waiver shall be submitted, in writing, and include a detailed statement describing the reasons for the request. A waiver [Waivers] may be granted by the board not to exceed one (1) year. If the circumstance of the waiver exceeds one (1) year, the licensee shall reapply, in writing, for an extension of the waiver.

BEA COLLINS, Chairman

CHERYL LALONDE MOONEY, Board Counsel

APPROVED BY AGENCY: September 2, 1997

FILED WITH LRC: October 28, 1997 at 3 p.m.

GENERAL GOVERNMENT CABINET  
Kentucky Board of Examiners of Psychology  
(As Amended at ARRS, January 14, 1998)

201 KAR 26:145. Code of conduct. [Ethical violations:]

RELATES TO: KRS 319.032, 319.082

STATUTORY AUTHORITY: KRS 319.032(1)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(c) requires the board to establish requirements for disciplining a licensee or certificate holder. This administrative regulation establishes a code of conduct for a person practicing psychology. [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 person who meets the requirements established in Section 2 of this administrative regulation. [~~"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, if [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 the [such] authority has been lawfully delegated to the [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 a [any] person who functions under the extended authority of the credential holder to provide psychological services [pursuant to KRS Chapter 319].

Section 2. Client Requirements. (1) Identification of a client.

(a) A client shall be a person who receives a counseling, psychotherapeutic, or other professional psychological service for the treatment or amelioration of emotional distress or behavioral inadequacy.

(b) A corporate entity or other organization shall be considered the client if the professional contract is to provide a psychological service of benefit to the corporate entity or organization.

(c)1. A legal guardian of a minor or legally incompetent adult shall be considered the client for a decisionmaking purpose.

2. The minor or legally incompetent adult shall be considered the client for an issue that:

a. Directly affects the physical or emotional safety of the individual, including a prohibited relationship; or

b. Is specifically reserved to the individual and agreed to by the guardian prior to the rendering of the service.

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(2) A person identified as a client pursuant to subsection (1) of this section shall be deemed to continue to be a client for a period of two (2) years following the last date of service rendered to the person.

**Section 3. 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, if [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 a client [clients] of the innovative nature and the known risks associated with the service [services], so that the client can exercise freedom of choice concerning the service [such services].

(4) Referral. The credential holder shall make or recommend referral to other professional, technical, or administrative resources if [when] a referral is clearly in the best interests of the client [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 the [any] basic test data from which the results [they] were derived;

5. Notation and results of a formal consult [consults] with another provider [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, date, 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 an emergency need of a client [needs of his clients], as appropriate, during a period [periods] of his foreseeable absence [absences] from professional availability.

**Section 4. [3:] Impaired Objectivity and Dual Relationships.** (1)

Impaired credential holder.

(a) The credential holder shall not undertake or continue a professional relationship with a client if [when] the credential holder is [or could reasonably be expected by the board to be:] impaired due to a mental, emotional, physiologic, pharmacologic, or substances abuse condition.

(b) [conditions:] If a condition develops after a professional relationship has been initiated, the credential holder shall:

1. Terminate the relationship in an appropriate manner;

2. [shall] Notify the client in writing of the termination; and

3. [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 if [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 intimacy [intimacies] with the client [or former client]; or

3. Enter into a [financial or other] potentially exploitative [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 exploitative [exploitive] influence by the credential holder.

**Section 5. [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 an [any] evaluation, treatment, or other procedure [procedures], and of the client's right to freedom of choice regarding services provided.

(2) Termination of services.

(a) If [Whenever] professional services are terminated, the credential holder shall offer to help locate alternative sources of professional services or assistance if indicated.

(b) The credential holder shall:

1. Terminate a professional relationship if [when it is reasonably clear that] the client is not benefiting from the relationship; and

2. [shall] Prepare the client appropriately for the [such] termination.

(3) Stereotyping. The credential holder shall not impose on the client a stereotype [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 4(2) [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 if [when] requested to do so by the client.

Section 6. [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 7. [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. Except as provided in this section, the credential holder shall obtain the informed written consent of the client prior to disclosing confidential information. [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 shall disclose confidential information without the informed consent of the client if the credential holder has a duty to warn an intended victim of the client's threat of violence pursuant to KRS 202A.400 or 645.270. [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) Disclosure if the client is a corporation or other organization. If the client is a corporation or other organization, the requirements for confidentiality established in this section shall:

(a) Apply to information that pertains to:

1. The corporation or organization; or

2. An individual, including personal information, if the information is obtained in the proper course of the contract; and

(b) Not apply to personal information concerning an individual if the individual had a reasonable expectation that the information was:

1. Obtained in a separate professional relationship between the credential holder and the individual; and

2. Subject to the confidentiality requirements established in this section.

(4) Services involving more than one (1) interested party. If [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.]

(5) [4:] Multiple clients. If [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 shall [will] be handled. [All parties shall be given opportunity to discuss and to accept whatever limitations to confidentiality adhere in the situation.]

(6) [5:] Legally dependent clients. At the beginning of a profes-

sional 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.

(7) [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.

(8) [7:] Release of confidential information. The credential holder shall [may] release confidential information upon court order [as defined in Section 1 of this administrative regulation] or to conform with state or [federal or provincial] law [rule] or regulation.

(9) [8:] Reporting of abuse of children and vulnerable adults. The credential holder shall be familiar with the [any] relevant law concerning the reporting of abuse of children and vulnerable adults, and shall comply with those laws, including KRS 620.030. [such laws.]

(10) [9:] Discussion of client information among professionals. If [When] rendering professional services as part of a team or if [when] interacting with other appropriate professionals concerning the welfare of the client, the credential holder may share confidential information about the client if [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.

(11) [10:] Disguising confidential information. If [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.

(12) [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.

(13) [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 8. [7:] Representation of Services. (1) Display of credentials [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 a public statement [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 a service or product [any services or products] in a way which misrepresents:

(a) The service or product [services or products];

(b) The degree of his responsibility for the service or product [services or products]; or

(c) The nature of his association with the service or product [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 9. [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 10. [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, parent, legal guardian or other agent [parents, legal guardians or other agents] of the client by an adequate interpretive aid or explanation [aids or explanations].~~

~~(3) Protection of integrity of assessment procedures. The credential holder shall not reproduce or describe in a popular publication, lecture [publications, lectures], or public presentation a [presentations] psychological test [tests] or other assessment device in a way [devices in ways] that might invalidate them.~~

~~(4) Information for professional users. The credential holder offering an assessment procedure or automated interpretation service to another professional [other professionals] shall accompany this offering by a manual or other printed material [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.~~

~~(2) [(3)] Providing supervision. The credential holder shall exercise appropriate supervision over a supervisee [supervisees], as required by [established in] 201 KAR 26:171. [(4) 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.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Examiners of Psychology  
(As Amended at ARRS, January 14, 1998)**

**201 KAR 26:155. Application procedures and temporary license or certificate.**

RELATES TO: KRS 319.050, 319.064

STATUTORY AUTHORITY: 319.032(1)(a), (c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(a) and (c) require the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a psychologist or certification as a psychological associate. This administrative regulation establishes the requirements for applicants for licensure and certification, and the conditions for a temporary license or certificate. [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 after the requirements established in KRS 319.050(2) are met. [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 after the requirements established in KRS 319.064(1) are met.

(3) The application required by subsection (1) or (2) of this section shall be made by submitting a completed Form Psy-1 to the board. The application shall:

(a) Include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his knowledge and belief; and

2. Applicant is aware that the board may take disciplinary action if the application contains a misrepresentation or falsification; and

(b) Be accompanied by:

1. A check or money order payable to the Kentucky State Treasurer for the application fee as required by 201 KAR 26:160;

2. Three (3) letters of reference from persons qualified to evaluate the applicant's professional ability, including two (2) people who have received a Doctorate of Philosophy (Ph.D.) or Education (Ed.D.); and

3. An official transcript for all levels of education required for

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licensure or certification. [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 or Certification. (1) An applicant may request permission to:

(a) Practice psychology on a temporary basis pursuant to KRS 319.050(3); or

(b) Perform functions as a psychological associate pursuant to KRS 319.064(2). [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.]

(2) [(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.

(3) A report [(2) Reports] of supervision shall be submitted on a regular basis as required by [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)(a) 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.

(b) 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 procedures, the candidate for licensure may use the title "Licensed Psychologist".]

Section 3. Postdoctoral Supervisory Experience. (1) The one (1) year of postdoctoral experience required by KRS 319.050(2)(c) shall be a [focused] training-oriented 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:

1. By a:

a. Regional mental health/mental retardation board;

b. College or university; or

c. Government agency;

2. In the supervisor's independent practice, if the supervisor is responsible for the direction and control of the practice of the candidate; or

3. In an independent practice that is approved by the board after submission of a special application letter.

a. A supervisor and a candidate employed in an independent practice shall submit a special application letter to the board if:

(i) The supervisor of record is not the employer; or

(ii) The employer is not an organization listed in subparagraph 1 of this paragraph.

b. The board shall approve the independent practice before the practice begins.

c. The special application letter shall identify the psychological associate, supervisor, and employer.

d. The special application letter shall certify that:

(i) The supervising licensed psychologist is not hired, employed or engaged under contract by the candidate and shall not be terminated by the candidate;

(ii) The candidate is not one (1) of the owners of the independent practice or organization, but rather serves as an employee; and

(iii) The candidate has both administrative and clinical supervision which are provided by the independent practice or organization. [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.]

(3) [(4)] The postdoctoral year shall [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.

(4) [(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.

(5) [(6)] The candidate and the supervisor of record shall design and describe the proposed experience, including the areas listed in subsection (4) [(5)] of this section, at the time of application for temporary licensure.

(6) To qualify as postdoctoral supervisory experience, a supervisory experience at a university shall:

(a) Be proffered by a full-time faculty member;

(b) Include a plan that contains each of the areas established in subsection (4) of this section; and

(c) Include a minimum of 400 hours of direct and indirect client involvement that:

1. Is supervised by a licensed psychologist; and

2. Includes:

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.

[(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:

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- ~~(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.~~

~~(7) [(8)] The board shall not [may refuse to] grant a request for temporary licensure if the request [which] does not contain an explicit and acceptable plan for the postdoctoral experience as required by this section.~~

Section 4. Incorporation by Reference. (1) "Form Psy-1" (January 1998 Edition), Kentucky Board of Examiners of Psychology, is incorporated by reference.

(2) ~~It may be inspected, copied, or obtained at the Board of Examiners of Psychology, 700 Louisville Road, Berry Hill Annex - Suite B, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [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

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**GENERAL GOVERNMENT CABINET**  
**Kentucky Board of Examiners of Psychology**  
**(As Amended at ARRS, January 14, 1998)**

**201 KAR 26:160. Fee schedule.**

RELATES TO: KRS 319.050(2)(a), [~~319.058, 319.062,~~ 319.064(1)(a), 319.071(1)]

STATUTORY AUTHORITY: KRS 319.032(l), (m), 319.071(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(2)(a) and 319.064(1)(a) require an applicant to pay a fee for applying for licensure or certification. KRS 319.071(1) requires a licensee or certificate holder to pay a renewal fee established by the board. KRS 319.032(1)(m) requires the board to promulgate administrative regulations increasing or decreasing the fees for an applicant, licensee, or certificate holder as the board deems necessary. This administrative regulation establishes the application and renewal fees for psychologists and psychological associates. [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) Except as provided in subsection (3) of this section, 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), which shall be:

1. Until March 31, 1999, \$250; and

2. Beginning April 1, 1999, \$350; and [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) Except as provided in subsection (3) of this section, 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), which shall be:

1. Until March 31, 1999, \$250; and

2. Beginning April 1, 1999, \$350.

(3) The application fee established in subsection (1)(b) or (2)(b) of this section shall be waived [Effective 04/01/99 the fee for taking the EPPP shall be \$350;] if a candidate has:

(a) Previously taken the EPPP in another state; and

(b) Achieved a score which would be considered as passing in Kentucky [~~paragraph (b) of this subsection of the application fee shall be waived.]~~

(4) [(3)] Upon successful completion of [all portions of] the application and examination processes, the initial licensure or certification fees shall be as follows:

(a) An applicant [Applicants] for licensure as a psychologist shall pay \$200 for the first three (3) year period;

(b) An applicant [Applicants] for certification as a psychological associate shall pay \$150 for the first three (3) year period.

(5) [(4)] Every three (3) years a licensed psychologist or [psychologists and] certified psychologist [psychologists] with autonomous functioning shall pay to the board a renewal fee of \$300 [~~and shall receive a renewal license or certificate.]~~

(6) [(5)] Every three (3) years a certified psychologist or [psychologists and] psychological associate [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 an application was:

(a) Approved; and

(b) [~~the application has been approved, but is]~~ withdrawn prior to the applicant taking the examination for professional practice in psychology.

(2) The board shall [may] refund the fee for the EPPP or [~~the fee for]~~ the structured oral examination, if applicable, if the application to sit for the examination [these examinations] is denied.

DONALD E. RALPH, Ph.D., Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: October 3, 1997

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GENERAL GOVERNMENT CABINET
Kentucky Board of Examiners of Psychology
(As Amended at ARRS, January 14, 1998)

201 KAR 26:171. Requirements for supervision.

RELATES TO: KRS 319.032(1)(l), 319.050(3), (6), 319.056(3), (4), 319.064(2), (4), 319.082(1), 319.092(3)(d), 319.118(1) [319.050, 319.050, 319.064]

STATUTORY AUTHORITY: KRS 319.032(1)(l)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(l) requires the board to promulgate an administrative regulation governing the supervision of a certified psychologist, psychological associate, candidate for licensure or certification, or a license or certificate holder sanctioned by the board. This administrative regulation defines the requirements for the supervision:

Section 1. A supervisory arrangement [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 a [any] change in the supervisory arrangement at least thirty (30) days prior to the effective date of the arrangement or change.

Section 2. (1) All supervision requirements shall:

(a) Be met with individual, face-to-face, weekly contact between supervisor and supervisee; and

(b) [unless otherwise approved by the board and shall] include additional supervision sessions as needed.

(2) An alternative format of supervision, including two (2) way interactive video, [Other formats of supervision such as two (2) way interactive video (telesupervision)] may be substituted for the [face-to-face] supervisory contact, required by subsection (1) of this section, 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 his [their] obligation to maintain supervision during which period he shall [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 after December 30, 1996 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.

(2) Beginning July 1, 1999, a board approved supervisor shall

obtain a minimum of three (3) continuing education hours as required by 201 KAR 26:175, Section 1(3). The board shall suspend its approval of a supervisor if the supervisor does not complete the required continuing education.

(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 report [be responsible for reporting] to the board an [any] apparent violation of KRS 319.082(1) [the statutes or administrative regulations] on the part of the supervisee.

(3) The supervisor shall [be required to] inform the board immediately of a [any] change in the ability to supervise, or [any change] in the ability of a [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 as [in any way deemed] appropriate to insure that the supervisee's practice of psychology is competent.

(5) The supervisor of record shall be [is] responsible for the practice of psychology by the supervisee. If the board initiates an investigation concerning a supervisee, the [that] investigation shall [also] include the supervisor of record.

(6) For each person supervised pursuant to KRS 319.050(3), (6), 319.056(3), (4), 319.064(2), (4), or 319.092(3)(d) [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) In calculating the amount of time spent in full-time practice while under supervision, 2,000 hours of supervised practice shall be equivalent to one (1) year of experience if the practice was obtained postcertification. ["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:

Table with 3 columns: Credential Status, Reporting Period, Report Due Date(s). Rows include Psychological Associate or Certified Psychologist with 4 or less years of full-time practice, and Certified Psychologist.

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equivalent)		
(c) Temporarily Licensed Psychologist	Every 6 Months and <u>1 month</u> [(w/i/month)] prior to oral exam	
(d) Temporarily Certified Psychological Associate	Every 6 Months	April and October 15th
(e) Sanctioned Psychologist	Quarterly	January, April, July and October 15th

(3) [(2)] The report [reports] shall include:

(a) A description of the frequency, format and duration of supervision;

(b) An assessment of the functioning of the supervisee, including the strengths and weaknesses; and

(c) [any] Other information which may be relevant to an adequate assessment of the practice of the supervisee.

Section 7. (1) If [When] a supervisee has more than one (1) board-approved supervisor, the [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) Read 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) Keep [Keeping] the supervisor adequately informed at all times of his [their] activities and [their] ability to function; and

(b) Seek [Seeking] supervision as needed in addition to a regularly scheduled supervisory session [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 a supervisory report or plan has [reports and plans have] been sent to the board in accordance [keeping] with the reporting schedule established in Section 6(1) of this administrative regulation; and

(c) Report [Be responsible for reporting] to the board a [any] apparent violation of KRS 319.082(1) [the statutes or administrative regulations;] on the part of the supervisor.

Section 11. Identification of Provider. The actual deliverer of a service [services] shall be identified to the client. A billing for a rendered service shall identify which service was [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)] A psychological associate or certified psychologist [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 the proposed change includes [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 shall [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 a 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 a quarterly report [reports] to the board which reflects [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 201 KAR Chapter 26 [the administrative regulations promulgated thereunder];~~

~~(f) Report to the board an [any] apparent violation of KRS 319.082(1) [the statutes or administrative regulations] on the part of the disciplined psychologist;~~

~~(g) Report to the board immediately a [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 as [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 a concern or problem [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 shall [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 pursuant to KRS 319.118(1) 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 sent a written notification letter to the disciplined psychologist. The notification letter shall:

(a) State the name of the supervising psychologist; and

(b) Specify that the disciplined psychologist shall meet with the supervising psychologist and the liaison within thirty (30) days of the date of the notification letter; [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 applicable statutes [statute] and administrative regulations regarding supervision requirements for a disciplined psychologist [psychologists] and assist with the development of a plan of supervision. The plan of supervision shall be written at the [this] first meeting;

(7) Submit the report of supervision to the board for approval. The liaison shall place [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;

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(8) Remain available to the supervising psychologist to provide assistance and information as needed;

(9) Report a problem or concern [any problems or concerns] to the board regarding the supervision and communicate a directive [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

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**GENERAL GOVERNMENT CABINET**  
**Kentucky Board of Examiners of Psychology**  
**(As Amended at ARRS, January 14, 1998)**

**201 KAR 26:175. Continuing education.**

RELATES TO: KRS 319.032(1)(f), 319.050, [319.058;] 391.064  
STATUTORY AUTHORITY: KRS 319.032(1)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(f) requires the board to promulgate an administrative regulation establishing a requirement for [administrative regulations governing the completion of] continuing education as a condition for renewal of a 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 an approved program [programs] beyond the basic educational requirements that meets the requirements established in Section 2(1) of this administrative regulation [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. The continuing education shall:

(a) Provide specific content planned and evaluated to improve the license or certificate holder's professional competence;

(b) Make possible the acquisition of new skills and knowledge required to maintain competence; and

(c) Strengthen the habits of critical inquiry and balanced judgment.

(2) Continuing educational hours shall not carry over from one (1) renewal period to the next.

(3)(a) Except as provided in paragraph (b) of this subsection, beginning July 1, 1999, a licensed psychologist who provides supervision to a certified psychologist or a psychological associate shall include as part of the thirty (30) hours of continuing education required by subsection (1) of this section a minimum of three (3) continuing education hours in the area of supervision theory or techniques.

(b) The requirement established in paragraph (a) of this subsection shall begin 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. [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 shall [to] maintain and provide adequate records including a certificate [certificates] of attendance and documentation of completion of an approved program [programs] of continuing education hours.

Section 4. A [Only] continuing education activity [activities] approved by the board shall satisfy the continuing education requirements for renewal of a license or certificate. A [It shall be the responsibility of the] license or certificate holder shall [to] determine prior to attending a [that the] specific continuing education program that the program:

(1) Has been approved by the board; or

(2) Is offered or sponsored by an organization approved by the board to sponsor a continuing education program [programs].

Section 5. Approved Sponsoring Organizations and Approved Programs. (1) Participation in a continuing education program that is offered or sponsored by an organization listed in this subsection shall satisfy the requirement for continuing education established in Section 2(1) of this administrative regulation: [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 an [any of their] affiliated state chapter [chapters];

(b) A recognized state, regional, national, or international psychological association [associations];

(2) The following programs shall be approved for continuing education:

(a) [e] A course [Courses] for graduate-level academic credit or a workshop [workshops] in psychology or psychiatry offered by a national, regional, or state accredited academic institution or an [institutions or their] affiliated hospital [hospitals] or medical center

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[centers];

(b) ~~[(d)]~~ The Kentucky Mental Health Institute or [and] the Kentucky School of Alcohol and Other Drug Studies sponsored by the Kentucky Department for [of] Mental Health and Mental Retardation Services;

(c) A home study course [courses] provided by the American Psychological Association; and

(d) Interactive videoconferencing provided by an organization [organizations] listed in subsection (1) of this section.

(3) ~~[(2)]~~ (a) The board shall approve an organization that is not listed in Section 5(1) of this administrative regulation as a sponsor of continuing education if the organization:

- 1. Files a written request for approval;
- 2. Pays an application fee of fifty (50) dollars; and
- 3. Proposes to sponsor a continuing education program that meets the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) An approved sponsor shall submit an annual report of the continuing education programs offered during that year.

(c) A sponsor that is approved pursuant to paragraph (a) of this subsection may request renewal of its approval by filing a fifty (50) dollar renewal fee. [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)]~~ (a) The board shall approve a specific continuing education program that is not listed in Section 5(2) of this administrative regulation if the sponsor of the program:

- 1. Files a written request for approval;
- 2. Pays an application fee of fifty (50) dollars; and
- 3. Proposes to sponsor a continuing education program that meets the requirements established in Sections 2(1) and 6 of this administrative regulation.

(b) The approval of a program pursuant to paragraph (a) of this subsection shall permit the sponsor to offer the program one (1) time. The sponsor shall submit a request for renewal and a ten (10) dollar renewal fee for each subsequent request to offer the program. [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. A continuing education program which satisfies [programs which satisfy] the requirements for license or certificate renewal shall meet the following criteria:

- (1) The program shall be:
- (a) [is] Offered or sponsored by an organization which has been approved by the board; or
- (b) A [the] specific program [has been] approved by the board;
- (2) The program shall:
- (a) Have [has] a clearly-stated purpose and defined content area; and

(b) Be [is] consistent with the overall goals of continuing education as defined in Section 1 of this administrative regulation;

(3) A presenter shall be a professional [Presenters are profes-

sionals] qualified in the defined content area;

(4) The program's time shall be [is] clearly stated. Actual contact time shall be a minimum of one (1) continuing education hour;

(5) Attendance shall be [is] recorded by the program's sponsor;

(6) Documentation of completion shall be [is] provided to the participant;

(7) A participant shall [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 continuing education [CE] hours on the following basis:

(a) Each one (1)-hour semester course shall be [judged to be] the equivalent of fifteen (15) continuing education [CE] hours for the purposes of meeting the requirements of this administrative regulation; and

(b) Each one (1)-hour quarter course shall be the equivalent of nine (9) continuing education [CE] hours for the purposes of meeting the requirements of this administrative regulation.

(2) A person who teaches a three (3) hour semester or quarter graduate-level course in psychology at an accredited academic institution shall:

(a) Earn six (6) continuing education hours for teaching the course; and

(b) Not receive:

1. Credit more than once for teaching a particular course during a renewal period; and

2. More than six (6) continuing education hours for these teaching activities.

[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) A person who teaches an approved continuing education workshop or program shall:

(a) Earn continuing education hours on a one (1) to one (1) basis; and

(b) Not receive:

1. Credit more than once for teaching a particular workshop or program during a renewal period; and

2. More than six (6) continuing education hours for these teaching activities.

[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 person who completes a home study course shall:

1. Earn six (6) continuing education hours; and

2. Not receive:

a. Credit more than once for completing a particular study course during a renewal period; and

b. More than six (6) continuing education hours through home study in a renewal period.

(5) A person who participates in teleconferencing in an interactive setting shall:

1. Earn one (1) continuing education hour for each clock hour of participation; and

2. Not receive more than six (6) continuing education hours through interactive teleconferencing participation.

[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

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~~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.

### GENERAL GOVERNMENT CABINET Kentucky Board of Examiners of Psychology (As Amended at ARRS, January 14, 1998)

#### 201 KAR 26:180. Requirements for granting licensure or certification in psychology by reciprocity.

RELATES TO: KRS 319.032(1)(i)  
STATUTORY AUTHORITY: KRS 319.032(1)(i)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing [adoption of administrative regulations for] the granting of a license or certificate through reciprocity. This administrative regulation establishes the requirements for licensure or certification by reciprocity.

Section 1. The board shall [may] issue a license or certificate to an [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;

(a) That is a constituent member of the Association of State and Provincial Psychology Boards; and

(b) 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) Not have a report [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 comply with KRS 319.050(7) [demonstrate that he is qualified in at least one (1) of the specialty areas of clinical, counseling, or school psychology].

Section 5. If an applicant for licensure does not have a postdoctoral supervised year of experience as required by KRS 319.050(2)(a), the board may determine that the applicant's

practice experience is equivalent to the required year of experience. [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.

### GENERAL GOVERNMENT CABINET Kentucky Board of Examiners of Psychology (As Amended at ARRS, January 14, 1998)

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(1)(i)  
STATUTORY AUTHORITY: KRS 319.032(1)(i)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license or certificate to an applicant from another jurisdiction. This administrative regulation establishes the requirements for granting [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 shall [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) Does not have a report [Has no reports] of disciplinary action filed with the Association of State and Provincial Psychology Boards.

(2) The board shall consider whether the applicant meets the requirements established in KRS 319.050(2) and 319.064(2). If an applicant for licensure does not have a postdoctoral supervised year of experience as required by KRS 319.050(2)(a), the board may determine that the applicant's practice experience is equivalent to the required year of experience. [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.]

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(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 the [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 comply with KRS 319.050(7). [~~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.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Examiners of Psychology  
(As Amended at ARRS, January 14, 1998)**

**201 KAR 26:215. Nonresident status.**

RELATES TO: KRS 319.015(8)  
STATUTORY AUTHORITY: KRS 319.015(8), 319.032(1)(a)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.015(8)

authorizes [~~allows~~] a nonresident psychologist temporarily employed in the state to render psychological services for no more than thirty (30) days every two (2) years and requires the board to establish a registration process for nonresident psychologists. This administrative regulation establishes the requirements for registering in Kentucky as a nonresident psychologist. [~~this practice.~~]

Section 1. (1) Pursuant to KRS 319.015(8), a nonresident licensee or certificate holder who seeks to practice temporarily in Kentucky shall file a written registration with the board. The registration shall be a written letter sent to the board:

(a) Indicating his desire to practice in Kentucky pursuant to KRS 319.015(8); and

(b) Stating the dates he intends to practice in Kentucky. [~~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 that the applicant does not have a report [of no-reports] of disciplinary action filed with the Association of State and Provincial Psychology Boards.

(3)(a) Nonresident temporary practice pursuant to KRS 319.015(8) shall be conditionally approved by the chairman of the board if:

1. The applicant for temporary practice meets the conditions for practice established by KRS 319.015(8); and

2. The applicant has registered with the board.

(b) The conditional approval shall terminate at the next regularly scheduled meeting of the board. At that meeting, the board shall determine whether to approve the temporary practice. [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. Pursuant to KRS 319.015(8), the provisions of this administrative regulation shall:

(a) Apply to a nonresident psychologist temporarily employed in the state for a period of less than thirty (30) days every two (2) years; and

(b) 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  
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**GENERAL GOVERNMENT CABINET  
Kentucky Board of Examiners of Psychology  
(As Amended at ARRS, January 14, 1998)**

**201 KAR 26:230. Examinations.**

RELATES TO: KRS 319.032(1)(a), 319.050, [~~319.058;~~] 319.064  
STATUTORY AUTHORITY: KRS 319.032(1)(a)  
NECESSITY, FUNCTION, AND CONFORMITY: KRS

319.032(1)(a) requires the board to promulgate an administrative regulation establishing the examination requirements for an applicant for licensure or certification. KRS 319.050(1) and 319.064(1)(c) require an applicant to successfully complete the required examination prior to licensure or certification. This administrative regulation establishes the examination requirements. [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)(a) An applicant for examination shall:

1. Submit a complete application as required by 201 KAR 26:155, Section 1; and

2. Pay the applicable fee established in 201 KAR 26:160.

(b) [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, including [such as] illness or death in the immediate family, the examination shall [may] be deferred until the next scheduled date without forfeiture of the examination fee. A temporary license or certificate issued to the applicant shall remain in effect if an examination is deferred pursuant to this subsection.

(4) If an applicant fails to appear for or to complete the examination without a valid reason:

(a) The applicant shall forfeit all fees paid; and

(b) A temporary license or certificate issued to the applicant shall be terminated on the scheduled date of the examination.

(5) If an applicant fails to appear for a second scheduled examination without presenting a valid reason in writing, including [such as] illness or death in the immediate family:

(a) The application shall be terminated on the date of the examination; and

(b) 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:

(a) A written examination in accordance with subsection (2) of this section; and

(b) An oral examination in accordance with subsection (6) of this section.

(2) The written examination shall be [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.

(3) Pursuant to KRS 319.050(3), [(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.

(4) [(3)] If an applicant for licensure fails the objective examination, the candidate shall [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 until:

1. The written and oral examinations are successfully completed; or

2. The temporary license is terminated.

(b) The candidate shall [may] not be scheduled for the oral examination until the objective examination (EPPP) has been successfully passed and two (2) years [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.]~~

(5) [(4)] If an applicant for licensure fails the oral examination, the

board shall [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 shall not 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) [(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 the [at least] two (2) examiners shall have successfully passed the oral examination.

[(8) [(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) [(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, as [if] required by 201 KAR 26:160, 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) Pursuant to KRS 319.064(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 shall [may], upon the development of a remediation plan acceptable to the board, reissue the temporary certificate to function under

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supervision until the results of the next regularly scheduled examination are known. ~~[Under no circumstances shall]~~ A temporary certificate **shall not** 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.

### GENERAL GOVERNMENT CABINET Kentucky Board of Examiners of Psychology (As Amended at ARRS, January 14, 1998)

#### 201 KAR 26:250. Employment of a psychological associate.

RELATES TO: KRS 319.032(1)(b), (l), 319.064(4)

STATUTORY AUTHORITY: KRS 319.032(1)(b), (l)

NECESSITY, FUNCTION, AND CONFORMITY: KRS

319.032(1)(l) requires the board to promulgate an administrative regulation governing the supervision and employment of a psychological associate. KRS 319.064(4) prohibits a psychological associate from practicing independently, except under the employment and supervision of a board approved licensed psychologist. This administrative regulation establishes the requirements for the employment of a psychological associate.

~~[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 **not be considered** ~~[be deemed not to be]~~ independent practice.

Section 2. **A** ~~[The]~~ psychological associate may be employed in **a** ~~[the]~~ supervisor's independent practice, if ~~[with]~~ the supervisor is ~~[being]~~ responsible for the direction and control of the practice of the psychological associate.

Section 3. **A special application letter shall:**

**(1) Be submitted to the board by a supervisor and a psychological associate if:**

**(a)1. The psychological associate is employed in an independent practice; and**

**2. The supervisor of record is not the employer; or**

**(b) The employer is not an organization listed in Section 1 of this administrative regulation;**

**(2) Be approved by the board before the practice begins; (3) Identify the psychological associate, supervisor, and employer; and**

**(4) Certify that:** ~~[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:]~~

**(a) [(+)]** The supervising licensed psychologist is not hired, employed or engaged under contract by the psychological associate and **shall not** ~~[cannot]~~ be terminated by the psychological associate;

**(b) [(2)]** The psychological associate is not one of the owners of the independent practice or organization, but rather serves as an employee; and

**(c) [(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 **established** ~~[as defined]~~ in 201 KAR 26:171.

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.

### TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, January 14, 1998)

#### 301 KAR 1:192. Closing Lake Chumbley.

RELATES TO: KRS 150.025(1)(g), 150.620

STATUTORY AUTHORITY: KRS 150.025(1)(g), 150.620

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to **promulgate** ~~[make]~~ administrative regulations **that** apply to a limited area or to the entire state. KRS 150.620 authorizes the department to promulgate administrative regulations for the lands and waters it has acquired. This administrative regulation is necessary to control vandalism at Lake Chumbley and **establishes closing times for Lake Chumbley.**

Section 1. Lake Chumbley and the department-owned property surrounding the lake, in Boyle and Lincoln counties, shall be closed to public access daily from one-half (1/2) hour after sunset until one-half (1/2) hour before sunrise.

C. THOMAS BENNETT, Commissioner  
MIKE BOATWRIGHT, Chairman  
ANN R. LATTA, Secretary  
DOUGLAS SCOTT PORTER, Assistant Attorney General

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APPROVED BY AGENCY: August 21, 1997  
FILED WITH LRC: November 13, 1997 at 1 p.m.

## TOURISM CABINET

Department of Fish and Wildlife Resources  
(As Amended at ARRS, January 14, 1998)

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

RELATES TO: KRS 150.025(1), 150.320(1), 150.330, 150.340, 150.360, 150.603(1), 150.620

STATUTORY AUTHORITY: KRS 150.025(1), 150.360(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) [and ~~150.360(1)~~] authorizes the department to establish open seasons for the taking of wildlife. KRS 150.360(1) authorizes the department to promulgate an administrative regulation restricting the methods for the taking of wildlife. [The function of] This administrative regulation allows [is to allow] the taking of migratory game birds within reasonable limits based upon an adequate supply, and within the frameworks established by the U.S. Fish and Wildlife Service.

Section 1. Definitions. (1) "Migratory game bird [birds]" means mourning dove, wood duck, teal, common moorhen, woodcock, common snipe, purple gallinule, Virginia rail, or [and] sora rail.

(2) "Teal" means green-winged teal, blue-winged teal, or [and] cinnamon teal.

Section 2. Season Dates for Gun Archery and Falconry. A person shall not hunt a migratory game bird [birds] except on a date established [the dates listed] in this administrative regulation.

(1) Doves: September 1 through September 30; October 4 [5] through October 27 [28]; and November 27 [28] through December 2 [3].

(2) Woodcock: October 18 [12] through December 1 [15].

(3) Common snipe: September 17 [18] through November 2 [3] and November 27 [28] through January 25 [26].

(4) Wood duck and teal: September 17 [18] through September 21 [22].

(5) Virginia and sora rails, common moorhen and purple gallinule: September 1 through November 9.

Section 3. Bag and Possession Limits. A person shall not exceed the following limits:

(1) Doves: daily limit, fifteen (15); possession limit, thirty (30).

(2) Woodcock: daily limit, three (3) [~~five~~ (5)]; possession limit, six (6) [~~ten~~ (10)].

(3) Common snipe: daily limit, eight (8); possession limit, sixteen (16).

(4) Virginia rails and sora rails, singly or in the aggregate: daily and possession limit, twenty-five (25).

(5) Common moorhen and purple gallinules singly or in the aggregate: daily limit, fifteen (15); possession limit, thirty (30).

(6) Wood duck and teal:

(a) Daily limit, four (4), which shall not include more than two (2) wood ducks;

(b) Possession limit, eight (8), which shall not include more than four (4) wood ducks.

(7) A person shall leave the head or one (1) fully feathered wing attached to a migratory game bird [birds], except a dove [doves], being held in the field or transported.

Section 4. Shooting Hours. A person shall not take a migratory game bird [birds] except during a time established [the times listed] in this section.

(1) Doves:

(a) From 11 a.m. until sunset during the September and October portions of the season; and

(b) From sunrise to sunset during the November and December portions of the season.

(2) Other species listed in this administrative regulation, from one-half (1/2) hour before sunrise to sunset.

Section 5. Shot Requirements. A person hunting wood duck [ducks] or teal shall not use or possess a shotgun shell [shells]:

(1) Longer than three and one-half (3 1/2) inches; or

(2) Containing:

(a) Lead shot;

(b) Shot not approved by the U.S. Fish and Wildlife Service for waterfowl hunting; or

(c) Shot larger than size "T".

Section 6. Youth Hunting Day. (1) A person who has not reached his 16th birthday may hunt duck, coot or merganser [ducks, coots or mergansers] on October 11.

(2) A person at least eighteen (18) years old shall accompany the juvenile hunter and:

(a) Shall not hunt duck, coot or merganser [ducks, coots or mergansers];

(b) May hunt another species for which there is an open season.

(3) The bag limits for the youth hunting day shall be:

(a) Ducks: six (6), which shall not include more than:

1. Four (4) mallards, no more than two (2) of which shall be hen mallards;

2. Three (3) pintails;

3. Two (2) wood ducks;

4. Two (2) redheads;

5. One (1) canvasback; or

6. One (1) black duck.

(b) Fifteen (15) coots; and

(c) Five (5) mergansers, no more than one (1) of which shall be a hooded merganser.

Section 7. Exceptions to Statewide Migratory Game Bird Seasons on Specified Wildlife Management Areas. (1) On a wildlife management area owned or controlled by the department:

(a) Except as provided in this section [Unless excepted below], all provisions of this administrative regulation shall apply.

(b) A person shall not:

1. Hunt wood duck [ducks] or teal on an area [areas] closed to waterfowl hunting by 301 KAR 2:222;

2. Hunt in an area marked by a sign as closed to hunting;

3. Enter an area marked by a sign as closed to the public.

(2) A person hunting dove [doves] on the Ballard, Barlow Bottoms [Swan Lake, Peal], Sloughs, Ohio River Islands, Duck Island, Kaler Bottoms, Kentucky River or [and] Westvaco Wildlife Management Area [Areas] shall not use or possess a shotgun shell [shotgun shells] containing lead shot.

(3) Ballard Wildlife Management Area. A person shall not hunt[:

(a) a migratory game bird [migratory birds] after October 13, except as provided in 301 KAR 2:221.

[b) Woodcock.]

(4) Central Kentucky Wildlife Management Area.

(a) A person shall not hunt[:

1. a migratory game bird [migratory game birds] after October 13, except as provided in 301 KAR 2:221.

[2. Woodcock.]

(b) A dove hunter shall not carry a firearm [firearms] except during shooting hours.

(5) Grayson Lake Wildlife Management Area.

(a) A migratory game bird hunter shall check in and out daily at a designated check station.



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(b) A person shall not hunt:

1. Within the no wake zone at the dam site marina;
2. On Deer Creek Fork; or
3. On or from the shores of Camp Webb or the state park.

(6) Land Between the Lakes. A person shall not hunt dove [doves], woodcock or common snipe between the last Saturday in September and November 30.

(7) West Kentucky Wildlife Management Area. A person shall not hunt:

(a) Dove [Doves] after October 13, except on tracts 2, 3, 6, and 7 during the November and December portions of the season.

(b) Woodcock and snipe except on tracts 2, 3, 6, and 7.

(c) On a tract [tracts] designated by a number [numbers] followed by the letter "A".

(8) Yatesville Lake Wildlife Management Area. A migratory game bird hunter shall check in and out daily.

(9) A person shall not hunt a migratory game bird [birds] on the main block of Robinson Forest.

Section 8. [7:] Dove Hunter Guidelines on Wildlife Management Areas. (1) The department may establish hunter density guidelines for a dove hunting field [fields] on department property after considering the following:

- (a) Terrain of the field;
- (b) Topography of the field; and
- (c) Providing for approximately forty (40) yards between hunters.

(2) A strategically located sign [signs] shall be posted in a field [fields] advising a hunter [hunters]:

(a) Of the recommended hunter density; and [densities;]

(b) That hunting in excess of the desired hunter density limit shall be at the hunter's own risk.

(3) A hunter behaving in an unsafe or uncooperative manner shall be required to leave the premises.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

SCOTT PORTER, General Counsel

APPROVED BY AGENCY: June 13, 1997

FILED WITH LRC: November 13, 1997 at 1 p.m.

**TRANSPORTATION CABINET**  
**Department of Highways**  
**Division of Transportation Planning**  
**Department of Vehicle Regulation**  
**Division of Motor Carriers**  
**Division of Motor Vehicle Enforcement**  
**(As Amended at ARRS, January 14, 1998)**

603 KAR 5:070. Motor vehicle dimension limits.

RELATES TO: KRS 186.050(11), 186.655, 189.222, 23 CFR Part 658

STATUTORY AUTHORITY: KRS 189.222(1), 23 CFR Part 658  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 189.222 authorizes the Secretary of Transportation to establish reasonable size limits for motor vehicles using the State Primary Road System, which [that] is the [-The State Primary Road System consists of these] roads maintained by the Department of Highways. Further, 23 CFR Part 658 requires that a reasonable access on state-maintained highways and locally controlled highways be included with the list of highways over which motor vehicles with increased dimensions shall be allowed to operate. The federal regulation strongly suggests that the states allow the motor vehicles with increased dimensions to operate with a gross weight of up to 80,000 pounds (36,287.36 kilograms) where the motor vehicles with increased dimensions are

allowed. The federal regulation also requires that vehicles with increased dimensions which are transporting household goods and truck tractors towing only one (1) semitrailer which does not exceed twenty-eight (28) feet (8.53 meters) in length be provided statewide access unless a route is specifically excluded for safety reasons. This administrative regulation establishes [is adopted to set] the maximum motor vehicle and combination vehicle dimensions for all classes of highways. The federal regulation 23 CFR Part 658 sets forth the highways available for use by vehicles with increased dimensions. This administrative regulation includes these highways as well as others which have been constructed to accommodate the motor vehicles with increased dimensions. In addition, 23 CFR 658.19 requires each state to allow the increased dimension vehicles to operate within one (1) driving mile (1.61 kilometers) of the designated highways. On state-maintained highways in Kentucky, the increased dimension vehicles are allowed to operate within five (5) driving miles (8.05 kilometers) of a designated highway. The [However,] bus dimension limits are established [set forth] in 603 KAR 5:071.

Section 1. Definitions. (1) "Length exclusion safety device" means an appurtenance:

(a) That is located at the front or rear of a motor vehicle semitrailer or trailer;

(b) Whose function is related to the safe and efficient operation of the semitrailer or trailer; and

(c) That is not [Shall not be] designated, designed or used for carrying cargo.

(2) "Width exclusion safety device" means an appurtenance:

(a) That is located at the side of a motor vehicle semitrailer or trailer;

(b) Whose function is normally related to the safe and efficient operation of the semitrailer or trailer; and

(c) That is not [shall not be] designated, designed or used for carrying cargo.

Section 2. (1) The following items shall be designated as a width exclusion safety device [devices]:

- (a) Rearview mirrors;
- (b) Turn signal lamps;
- (c) Hand holds for cab entry or egress;
- (d) Splash and spray suppressant devices; and
- (e) Load induced tire bulge.

(2) The following items shall be designated as width exclusion safety devices if [as long as] they do not extend beyond three (3) inches (0.0762 meters) on either side of the vehicle:

- (a) Corner cap;
- (b) Rear or [and] side door hinges and their protective hardware;
- (c) Rain gutters;
- (d) Side marker lamps;
- (e) Lift pads for a piggyback trailer [trailers];
- (f) Hazardous materials placards;
- (g) Tarp and tarp hardware;
- (h) Tie-down assembly on a platform trailer [trailers];
- (i) Wall variation from true flat; and
- (j) Weevil pins or [and] sockets on a low bed trailer [trailers].

Section 3. Except as provided in Section 4 of this administrative regulation, the maximum dimensions for a motor vehicle or combination motor vehicle, except a bus, using a public highway in Kentucky [all motor vehicles and combination vehicles except buses using all classes of highways] shall be as follows:

(1) Height: including body and load, not to exceed thirteen (13) feet and six (6) inches (4.115 meters).

(2) Width: including body and load, not to exceed eight (8) feet (2.44 meters), excluding a [any] width exclusion safety device.

(3) Length. Except as provided in subsection (4) of this section: [The maximum lengths listed below shall not include length

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exclusion-safety-devices:]

(a) The length of a single unit motor vehicle, including a [any] part of the body or load, and [but] excluding a length exclusion safety device, shall not exceed forty-five (45) feet (13.716 meters).

(b) [A single unit motor vehicle transporting utility poles or pipes in which the vehicle and load do not exceed forty-five (45) feet (13.716 meters) shall not be required to obtain an overdimensional permit.

(c) If the front or rear overhang of a single unit motor vehicle exceeds five (5) feet (1.524 meters), an overdimensional permit shall be obtained prior to the operation of the vehicle.

(d) A motor vehicle and trailer or semitrailer combination, including a [any] part of the body or load, and [but] excluding a length exclusion safety device, shall not exceed sixty-five (65) feet (19.812 meters).

(e) If a truck tractor or semitrailer unit is exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot (0.914 meters) front and four (4) foot (1.22 meters) rear overhang shall not be included in the measurement of the sixty-five (65) feet (19.812 meters) limit established in paragraph (d) of this subsection.]

(4) Length exceptions:

(a) If a truck tractor or semitrailer unit is exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot (0.915 meters) front and four (4) foot (1.22 meters) rear overhang shall not be included in the measurement of the sixty-five (65) feet (19.812 meters) limit established in subsection (3)(b) of this section;

(b) A single unit motor vehicle transporting utility poles or pipes in which the vehicle and load do not exceed forty-five (45) feet (13.716 meters) shall be allowed to operate on the public highways of Kentucky.

(5) Weight.

(a) The gross weight limit for each highway segment is established [set forth] in 603 KAR 5:301.

(b) The axle weight limit and the bridge weight formula are established [set forth] in 603 KAR 5:066.

Section 4. (1) A motor vehicle or a combination motor vehicle, except a bus, [Motor vehicles or combination vehicles except buses] with dimensions greater than those specified in Section 3 of this administrative regulation that [but which] do not exceed the dimensions established [set forth] in subsection (2) of this section may be operated without an overweight or overdimensional permit [only] on the following highways:

(a) Those listed in Section 5(1) of this administrative regulation;

(b) [-on] The five (5) mile (8.05 kilometers) access authorized in Section 5(2) of this administrative regulation; and

(c) [on] The one (1) mile (1.61 kilometers) access authorized in Section 5(3) of this administrative regulation.

(2) A motor vehicle, combination motor vehicle, or towed unit, including a [any] part of the body and load, and [but] excluding a length or width exclusion safety device, [Motor vehicles] shall not exceed, without an overdimensional permit, the following width and length dimensions if [when] operating on a highway [those highways] listed in Section 5(1) of this administrative regulation:

(a) Width - 102 inches (2.59 meters) [including any part of the body or load except for width exclusion devices].

(b) Length of a towed unit.

1. [Semitrailers—excluding length exclusion devices;] Fifty-three (53) feet (16.154 meters) [including body and load] if [when] operated in tractor and single semitrailer combination.

2. [Trailers—excluding length exclusion safety devices;] twenty-eight (28) feet (8.53 meters) [including body and load] if [when] operated in a tractor-semi-trailer-trailer combination or a tractor-semi-trailer-semi-trailer combination [-not to exceed two (2) trailers per truck tractor].

3. Twenty-eight (28) feet (8.53 meters) [-excluding length exclusion safety devices, shall be the maximum length of a trailer

including body and load] if [when] operated in a truck-trailer combination.

[3. If the load overhangs the body of the trailer or semitrailer by more than five (5) feet (1.524 meters) an overdimensional permit shall be required regardless of the overall length of the unit, except in truck tractor and semitrailer units exclusively engaged in the transportation of motor vehicles or boats, a three (3) foot (0.914 meters) front and four (4) foot (1.22 meters) rear overhang of the transported vehicles or boats shall be excluded in the measurement.]

4. There shall not be an [no] overall length limitation on a motor vehicle or combination motor vehicle [vehicles operating on highways listed in Section 5(1) of this administrative regulation or on the five (5) mile (8.05 kilometers) local access authorized in Section 5(2) of this administrative regulation] if [as long as] the requirements established [set forth] in this subsection are met.

5. In a tractor semitrailer-semi-trailer combination vehicle in which the two (2) trailing units are connected with a rigid frame extension attached to the rear frame of the first semitrailer which allows for a fifth wheel connection point for the second semitrailer, the length of the extension shall be excluded from the measurement of semitrailer length.

6. If there is not a second semitrailer mounted to the fifth wheel of the rear frame of a semitrailer [-however, when there is no second semitrailer mounted to the fifth wheel], the length of the extension shall be included in the length measurement for the semitrailer.

(3) The gross vehicle weight limit for a motor vehicle with the dimensions established in subsection (2) of this section [set forth in Section 4(2) of this administrative regulation] while operating on a [each of the] highway segment [segments] established [set forth] in Section 5 of this administrative regulation shall be 80,000 pounds (36,287.36 kilograms) except the axle weight limits and bridge weight limits established [set forth] in 603 KAR 5:066 shall not be exceeded.

(4) The dimensions and weights specified in this section shall not be subject to an [any] enforcement tolerance. [tolerances provided in any other section.]

Section 5. (1) [The following highways are designated to permit the] Operation of motor vehicles with increased dimensions that [but which] do not exceed the limitations established [stated] in Section 4(2) of this administrative regulation shall be allowed on the following highways:

The Interstate and National Defense Highway System.

Audubon Parkway - from Pennyrite Parkway at Exit 77 in Henderson to US 60 Bypass in Owensboro.

Bluegrass Parkway - from I-65 at Exit 93 in Elizabethtown to US 60 near Versailles.

Cumberland Parkway - from I-65 at Exit 43 near Smiths Grove to US 27 west of Somerset.

Daniel Boone Parkway - from US 25 north of London to KY 15 north of Hazard.

[Green River Parkway - From I-65 at Exit 20 in Bowling Green to US 60 Bypass in Owensboro.]

Jackson Purchase Parkway - from Tennessee state line to US 62 in Marshall County.

Mountain Parkway and Extension - from I-64 at Exit 98 in Winchester to US 460 at Salyersville.

Pennyrite Parkway - From US 41A south of Hopkinsville to US 41 near Henderson.

Western Kentucky Parkway - from I-24 at Exit 42 south of Eddyville to US 31W/KY 61 in Hardin County.

William H. Natcher (formerly the Green River) Parkway - From I-65 at Exit 20 in Bowling Green to US 60 Bypass in Owensboro.

KY 1 - From the I-64 ramps south of the I-64 interchange at Exit 172 to KY 9 north of I-64 all in Carter County.

KY 3 - From the junction with US 23 at Auxier to the junction with KY 645 south of Inez.

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- KY 4 - The entire circle of Lexington.
- ~~[KY 8 - From the junction with KY 19 at Augusta in Bracken County to a point one (1) mile east of the junction with KY 1597 in Mason County.]~~
- KY 9 - From the junction with KY 1 in Carter County to the junction with I-275 at Exit 77 in Kenton County.
- KY 11 - from the junction with KY 32 in Fleming County to US 62/68 in Maysville.
- KY 15 - from US 119 in Whitesburg to KY 15 Spur/KY 191 at Campton, via KY 7 in Letcher County.
- KY 15 Spur - From KY 15/KY 191 to the Mountain Parkway at Exit 43.
- KY 18 - from KY 237 northwest of Florence to KY 1017 in Florence.
- ~~[KY 19 - From the junction with KY 9 to the junction with KY 8 at Augusta.]~~
- KY 21 - from I-75 at Exit 76 near Berea to US 25 south in Berea.
- US 23 - from the Virginia state line to US 119 near Jenkins.
- US 23 - From the junction with KY 610 at Dorton to the south end of the U.S. Grant Bridge at South Portsmouth.
- US 23 Spur - from US 60 in Ashland to the Ohio state line.
- US 25 - from KY 461 in Rockcastle County to I-75 at Exit 62 in Rockcastle County.
- US 25/421 - from US 421 south of Richmond to KY 876 in Richmond.
- US 25/421 - from KY 418 southeast of Lexington via KY 4 to Nandino Boulevard in Lexington.
- US 25 - from US 42 in Florence to Ohio State Line.
- US 25E - from Virginia state line to I-75 at Exit 29 north of Corbin.
- US 27 - from Tennessee state line to the Ohio State Line (via KY 4 in Lexington).
- US 31E - from Tennessee state line to KY 90 at Glasgow (via the Scottsville Bypass and the Glasgow Bypass).
- US 31E/150 - From the junction with I-265 at Exit 17 in southeast Jefferson County to the junction with I-264 at Exit 16.
- US 31W - from Tennessee state line to KY 255 in Park City, via KY 1008 in Simpson County.
- US 31W - from US 31W Bypass in Elizabethtown to I-264 at Exit 8 in Louisville.
- US 31W Bypass - from Western Kentucky Parkway at Exit 136 to US 31W in Elizabethtown.
- KY 32 - from KY 11 in Fleming County to I-64 at Exit 137 at Morehead.
- KY 35 - from US 127 at Bromley to I-71 at Exit 57 north of Sparta.
- KY 36 - from the Hunter Heights ~~[Kawneer Corporation Plant]~~ Road in Carroll County (running concurrently with US 42 in Carrollton) to KY 227.
- US 41 - from US 68 (Main Street) in Hopkinsville to US 68 (McLean Avenue) in Hopkinsville.
- US 41 - from Pennyriple Parkway at Henderson to Indiana state line.
- US 41A - from Tennessee state line to Pennyriple Parkway at south city limits of Hopkinsville.
- US 41A - From Wanamaker Road north of Dixon in Webster County (milepoint 11.524) to KY 425, the Henderson Bypass in Henderson County.
- US 42 - from I-75 at Exit 180 in Florence to US 25 in Florence.
- US 42 - from KY 36 in Carroll County at milepoint 4.519 (running concurrently with KY 36 for 2.699 miles) north to KY 47 at Ghent.
- US 45 - from the Jackson Purchase Parkway north of Mayfield to US 60 in Paducah.
- US 49 - Concurrent with KY 55 south of Lebanon to north of Lebanon.
- US 51 - from Jackson Purchase Parkway at Exit 1 in Fulton County to Illinois state line.
- KY 52 - from KY 876 in Richmond to KY 499 at Irvine.
- KY 55 - from Cumberland Parkway at Exit 49 in Columbia to US 150 at Springfield, via US 68 and KY 49.
- US 60 - from US 51 in Wickliffe via US 45 in McCracken County to US 62 east of Paducah.
- US 60 - from KY 109 at Sullivan in Union County to KY 425, the Henderson Bypass.
- US 60 - from KY 1554 to US 60B, the Owensboro Bypass, all in Daviess County.
- US 60 - from US 60 Bypass east of Owensboro to KY 69 at Hawesville.
- US 60 - from KY 144 at Hog Wallow to US 31W at Tip Top, all in Meade County.
- US 60 - from US 421/460 at Frankfort to I-75 at Exit 110 near Lexington (via Versailles and KY 4 in Lexington).
- US 60 - from junction of KY 180 near Cannonsburg to US 23 in Ashland.
- US 60 Bypass - from US 60 west of Owensboro to US 60 east of Owensboro.
- KY 61 - from Tennessee state line to KY 90 at Burkesville.
- KY 61 - from the junction with US 31E in Hodgenville to US 31W in Elizabethtown.
- US 62 - from I-24 at Exit 7 in Paducah to US 45 in Paducah.
- US 62 - from US 60 east of Paducah to US 68, all in McCracken County.
- US 62 - from KY 341 northeast of Midway to US 421 in Scott County, concurrent with US 421.
- US 62 - from US 68 at Washington to the Ohio state line at Maysville, all in Mason County.
- US 68 - from US 62 at Reidland to the south ramps of I-24 at Exit 16, all in McCracken County.
- US 68 - from I-24 at Exit 65 in Trigg County to Green River Parkway at Exit 5 at Bowling Green via US 41 in Hopkinsville.
- US 68 - from KY 55 southwest of Campbellsville to KY 55 in Lebanon.
- US 68 - from its east intersection with US 150 in Perryville to its west intersection with US 150 in Perryville.
- US 68 - from US 127 south in Harrodsburg to US 127 north in Harrodsburg.
- US 68 - from US 27 at Paris to US 62 at Washington (via Paris Bypass).
- KY 69 - from US 60 at Hawesville to Indiana state line.
- KY 70 - from I-65 at Exit 53 west of Cave City to KY 90 southeast of Cave City.
- KY 79 - from KY 1051 in Brandenburg to Indiana state line.
- KY 80 - from KY 80B east of Somerset to US 25 north of London.
- KY 80 - from KY 15 north of Hazard to US 23 at Watergap.
- KY 80 - from the south ramps of the Daniel Boone Parkway at Exit 20 to US 421 near Manchester.
- KY 80B - From US 27 at Somerset to KY 80 east of Somerset.
- KY 90 - from KY 70 at Cave City to US 31E north of Glasgow.
- KY 90 - from KY 61 at Burkesville to US 27 at Burnside.
- KY 109 - from KY 670 in Webster County to US 60 in Union County.
- KY 114 - from US 460 east of Salyersville to US 23/460 at Prestonsburg.
- KY 118 - from US 421 and KY 80 northwest of Hyden to the Daniel Boone Parkway at Exit 44.
- US 119 - from KY 15 east of Whitesburg to US 23 near Jenkins.
- US 119 - from US 25E south of Pineville to US 421 at Harlan.
- US 119 - from US 23 at Pikeville to KY 1441 northeast of Pikeville.
- KY 121 - from the Jackson Purchase Parkway at Exit 24, at Mayfield to US 51 in Wickliffe.
- US 127 - from KY 90 west to KY 90 east in Clinton County (concurrent with KY 90).
- US 127 - from the Cumberland Parkway at Exit 62 in Russell County north to the junction with US 127 Bypass and US 150 Bypass

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in Danville.  
 US 127 - from US 127 Bypass north of Danville to US 127 Bypass south of Lawrenceburg.  
 US 127 - from US 127 Bypass north of Lawrenceburg to US 421 in Frankfort.  
 US 127 - from KY 22 in Owenton to KY 35 at Bromley.  
 US 127 Bypass - from US 127 south of Danville to US 127 north of Danville.  
 US 127 Bypass - from US 127 south of Lawrenceburg to US 127 north of Lawrenceburg.  
 KY 144 - from KY 448 south of Brandenburg to US 60.  
 US 150 - from US 62 at Bardstown to US 27 at north city limits of Stanford (via US 68 in Perryville and via the US 150 Bypass in Danville).  
 US 150B - from US 127 south of Danville to US 150 east of Danville.  
 US 150 Bypass - from US 150 at northern city limits of Stanford to US 27, all in Lincoln County.  
 KY 151 - from US 127 near Lawrenceburg to I-64 at Exit 48 near Graefenburg.  
 KY 180 - from I-64 at Exit 185 near Cannonsburg to US 60 at Cannonsburg.  
 KY 191 - from KY 205 north to KY 205 south in Wolfe County, concurrent with KY 205.  
 KY 192 - from I-75 at Exit 38 south of London to Daniel Boone Parkway east of London.  
 KY 205 - from Mountain Parkway at Helechawa to US 460 west in Morgan County, concurrent with KY 191.  
 KY 212 - from the Greater Cincinnati Airport to KY 20, all in Boone County.  
 KY 227 - from I-71 at Exit 44 to KY 36 at Carrollton.  
 US 231 - from US 60 Bypass in Owensboro to Indiana state line.  
 KY 236 - from US 25 at Erlanger to KY 212 near the Greater Cincinnati Airport.  
 KY 237 - from KY 18 east of Burlington to I-275 at Exit 7 in Boone County.  
 KY 245 - from US 150 east of Bardstown to I-65 at Exit 112 south of Shepherdsville.  
 KY 255 - from US 31W (2nd Street) in Park City to the I-65 interchange northwest ramps at Exit 48.  
 KY 259 - from Western Kentucky Parkway at Exit 107 to US 62 in Leitchfield.  
KY 313 - from the I-65 bridge overpass extending west to the junction with US 31W in Radcliffe.  
 KY 341 - from US 62/421 near Midway north to I-64 at Exit 65.  
 KY 348 - from Jackson Purchase Parkway at Exit 43 west of Benton to US 641 in Benton.  
 KY 418 - from US 25 south of Lexington to I-75 at Exit 104.  
 US 421 - from 0.1 mile south of Harlan Appalachian Regional Hospital.  
 US 421 - from Daniel Boone Parkway at Exit 20 to KY 2438 (2nd Street) in Manchester.  
 US 421 - from KY 4 in Lexington to US 62 east in Scott County.  
 US 421 - from US 60/460 in Frankfort to US 127 north.  
 US 421 - from KY 55 south of Newcastle in Henry County to I-71 at Exit 34 west of Campbellsburg.  
 KY 425 - from US 60 at Henderson to the Pennyrile Parkway at Exit 76.  
 US 431 - from US 60 Bypass in Owensboro to US 60 (4th Street) in Owensboro.  
 KY 446 - from US 31W northeast of Bowling Green to I-65 at Exit 28.  
 KY 448 - from KY 144 to KY 1051 at Brandenburg.  
 US 460 - from I-64 at Exit 110 north of Mt. Sterling to KY 686.  
 US 460 - from Mountain Parkway Extension at Exit 75 to US 23 near Paintsville.  
 KY 461 - from KY 80 in Pulaski County to US 25 north of Mt.

Vernon in Rockcastle County.  
 KY 471 - from US 27 in Campbell County to the I-275/471 interchange at Exit 1.  
 KY 555 - from US 150 at Springfield to Bluegrass Parkway at Exit 42.  
 KY 627 - from I-75 interchange at Exit 95 in Madison County to the junction with KY 1958 (Winchester Bypass) in Clark County.  
 US 641 - from Tennessee state line to KY 348 in Marshall County.  
 US 641 Spur - from US 641 south of Benton to the Jackson Purchase Parkway at Exit 41.  
 KY 645 - from US 23 south of Ulysses to KY 3 south of Inez.  
 KY 676 - from US 127 in west Frankfort to US 60 in east Frankfort.  
 KY 686 - from US 460 north of Mt. Sterling to KY 11 south of Mt. Sterling.  
 KY 841 - from US 31W (Dixie Highway) in southwestern Jefferson County to I-65 at Exit 125.  
 KY 841 - from I-71 at Exit 9 in Jefferson County to US 42 northeast of Louisville.  
 KY 876 - from I-75 at Exit 87 at Richmond to KY 52 east of Richmond.  
 KY 922 - from KY 4 in Lexington north to I-64 and I-75 at Exit 115.  
 KY 1008 - from US 31W in south Franklin to US 31W in north Franklin.  
 KY 1017 - from US 25 in Florence to I-75 at Exit 182.  
 KY 1051 - from KY 448 south of Brandenburg to KY 79.  
 [KY 1597 - From KY 3056 northwest of Maysville to KY 8 all in Mason County.]  
 KY 1682 - from US 68 west of Hopkinsville to Pennyrile Parkway at Exit 12.  
 KY 1958 - from KY 627 south of Winchester to I-64 at Exit 94 at Winchester.  
 KY 1998 - from US 27 at Cold Springs to KY 8 near Silver Grove.  
 KY 3071 - from KY 9 to KY 8, all in Mason County.

(2) Except as provided by Section 8 of this administrative regulation, a motor vehicle with an increased dimension as established in Section 4 of this administrative regulation shall be allowed five (5) driving miles (8.05 kilometers) on a state-maintained highway from a highway segment established in subsection (1) of this section to attain reasonable access to a terminal or facility for food, fuel, repairs, or rest.

(3) Except as provided by Section 7 of this administrative regulation, a motor vehicle with an increased dimension as established in Section 4 of this administrative regulation shall be allowed one (1) driving mile (1.61 kilometers) on a nonstate maintained, publicly-owned, public use highway from a highway segment established in subsection (1) of this section to attain reasonable access to a terminal or facility for food, fuel, repair, or rest. [Motor vehicles with the increased dimensions specified in Section 4 of this administrative regulation shall be allowed five (5) driving miles (8.05 kilometers) on state-maintained highways from the highway segments specified in subsection (1) of this section for the purpose of attaining reasonable access to terminals, facilities for food, fuel, repairs and rest.]

(3) ~~Motor vehicles with the increased dimensions specified in Section 4 of this administrative regulation shall be allowed one (1) driving mile (1.61 kilometers) on nonstate maintained public use highways from the highway segments specified in subsection (1) of this section for the purpose of attaining reasonable access to terminals, facilities for food, fuel, repairs and rest.~~

Section 6. (1) Household Goods Transporters. A motor vehicle with an increased dimension as established [Motor vehicles with the increased dimensions specified] in Section 4 of this administrative regulation that is [and which are] used to transport household goods

by a motor carrier certificated by either the Surface Transportation Board [~~interstate Commerce Commission~~] or the Kentucky Transportation Cabinet to transport household goods shall have access to any public roadway in the Commonwealth of Kentucky.

(2) Single unit semitrailers. A motor vehicle with an increased dimension as established [~~Motor vehicles with the increased dimensions specified~~] in Section 4 of this regulation that consists of [~~and which consist of only~~] a truck tractor and single semitrailer which does not exceed twenty-eight (28) feet excluding a [any] length exclusion safety device shall have access to any public roadway in the Commonwealth of Kentucky.

(3) Recreational vehicle. A recreational vehicle which has a registration license plate issued pursuant to KRS 186.050(11), 186.655, or an equivalent statute from another licensing jurisdiction shall have access to any public state-maintained roadway in the Commonwealth of Kentucky if [~~as long as~~] the dimensions of the recreational vehicle do not exceed those established [~~set forth~~] in Section 4 of this administrative regulation. This shall not be considered a waiver of the weight restrictions of a [~~any~~] highway.

Section 7. Nonstate Maintained Exceptions to One (1) Mile (1.61 Kilometers) Automatic Access. The city of Anchorage in Jefferson County [~~following local government~~] has adopted ordinances which exempt for safety reasons certain locally maintained roadways from the automatic one (1) mile (1.61 kilometers) access provision of Section 5(3) of this administrative regulation: [~~The city of Anchorage in Jefferson County~~] The streets all within the corporate city limits of Anchorage listed in the city ordinance which shall not be used by a motor vehicle [~~vehicles~~] with an [~~the~~] increased dimension as established [~~dimensions specified~~] in Section 4 of this administrative regulation shall be [~~are~~]:

- (1) Evergreen Road;
- (2) Bellewood Road;
- (3) Lucas Lane; and
- (4) Old Harris Creek Road.

Section 8. State-maintained Exceptions to Automatic Five (5) Mile (8.05 Kilometers) Access. The Department of Highways has found the following road segment for safety reasons to be exempt from the five (5) mile (8.05 kilometers) automatic access on a state-maintained highway as established [~~highways set forth~~] in Section 5[4](2) of this administrative regulation. These road segments shall not be used by a vehicle with an [~~vehicles with the~~] increased dimension as established [~~dimensions which exceed the dimension limits set forth~~] in Section 4 of this administrative regulation [~~without an overdimensional permit~~]:

KY 146 - from the west boundary of the city of Anchorage at milepoint 4.258 to the east boundary of the city of Anchorage at milepoint 5.878.

KY 418 - from milepoint 2.892 at the intersection with the Blue Sky Parkway just southeast of the I-75 interchange in Fayette County to milepoint 6.089 at the Fayette/Clark County line.

KY 1973 - from milepoint 0.000 at the intersection with US 25 to milepoint 1.866 at its intersection with KY 418, all in Fayette County.

Section 9. Length Measurements. (1) The Federal Highway Administration interpretation of truck length and width exclusive devices published in the "Federal Register" on March 13, 1987 shall govern measuring the length of a semitrailer or trailer. Pages 7834 through 7840 of the March 13, 1987 "Federal Register" are incorporated by reference as a part of this administrative regulation.

(2) The material incorporated by reference may be viewed, copied, or obtained from the Transportation Cabinet, Division of Motor Vehicle Enforcement, 8th Floor, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-3276. The business hours of the division are 8 a.m. to 4:30 p.m. eastern time on weekdays.

ED LOGSDON, Commissioner  
J.M. YOWELL, P.E., State Highway Engineer  
JAMES C. CODELL, III, Secretary

APPROVED BY AGENCY: October 21, 1997  
FILED WITH LRC: November 6, 1997 at 2 p.m.

**TRANSPORTATION CABINET**  
**Department of Highways**  
**Division of Transportation Planning**  
**Division of Operations**  
**(As Amended at ARRS, January 14, 1998)**

**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 a gross vehicle weight limit for a bridge [~~limits for bridges~~] lower than a limit [~~the limits~~] prescribed in KRS 177.9771 on a [~~any~~] bridge which may be damaged or destroyed to the point of catastrophic 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 a local governing body [~~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 1996 [~~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, or [~~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.

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(9) "LN" means line.

(10) "Local governing body" means the fiscal court of a [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 98113 or Section 5(3) of this administrative regulation [97984] [97181, Official Order 97246, or Official Order 97311,] shall not exceed the dimension limits established [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 98113 or subsection (3) of this section and subsection (3) of this section shall be [97984] [97181] [are designated as] the extended weight coal and coal by-products haul road system.

(2) The bridges listed in Transportation Cabinet Official Order 98113 as amended by subsection (5) of this section [97984] [97181] 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.

(3) In addition to the road segments listed in Official Order 98113, the following road segments shall be included in the extended weight coal and coal by-products haul system:

(a) Clark County:

<u>ROAD</u>	<u>FROM</u>	<u>TO</u>
<u>KY 89</u>	<u>15.9 US 60</u>	<u>16.0 KY 627</u>

(b) Franklin County:

<u>ROAD</u>	<u>FROM</u>	<u>TO</u>
<u>US 60</u>	<u>0.0 Shelby CO LN</u>	<u>6.5 US 127</u>
<u>US 60</u>	<u>12.0 KY 676</u>	<u>14.0 Woodford CO LN</u>
<u>US 127</u>	<u>5.2 KY 676</u>	<u>6.1 US 60</u>
<u>KY 676</u>	<u>0.0 US 127</u>	<u>5.3 US 60</u>

(c) Hopkins County:

<u>ROAD</u>	<u>FROM</u>	<u>TO</u>
<u>KY 260</u>	<u>3.7 Haul Road</u>	<u>5.4 KY 254</u>
<u>KY 254</u>	<u>7.3 KY 260</u>	<u>11.4 McLean CO Line</u>

(d) Jefferson County:

<u>ROAD</u>	<u>FROM</u>	<u>TO</u>
<u>US 31E</u>	<u>16.7 US 42</u>	<u>17.8 US 31W</u>
<u>US 31W</u>	<u>7.7 KY 1934</u>	<u>22.0 US 31E</u>
<u>US 42</u>	<u>0.0 US 31E</u>	<u>0.8 US 60</u>
<u>US 60</u>	<u>0.0 US 42</u>	<u>17.4 Shelby CO LN</u>
<u>KY 1934</u>	<u>8.9 KY 2056</u>	<u>10.5 US 31W</u>
<u>KY 2056</u>	<u>0.4 Consumer</u>	<u>1.6 KY 1934</u>

(e) Livingston County:

<u>ROAD</u>	<u>FROM</u>	<u>TO</u>
<u>US 62</u>	<u>1.2 KY 453</u>	<u>2.9 Lyon County Line</u>

(f) Lyon County:

<u>ROAD</u>	<u>FROM</u>	<u>TO</u>
<u>US 62</u>	<u>0.0 Livingston CO LN</u>	<u>12.2 WKY PKWY</u>

(g) McLean County:

<u>ROAD</u>	<u>FROM</u>	<u>TO</u>
<u>US 431</u>	<u>2.5 KY 85</u>	<u>5.0 KY 138</u>

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**KY 85 10.0 US 431**  
**KY 254 0.0 Hopkins CO Line**

**11.7 Private Haul RD**  
**2.7 KY 1155**

**(h) Shelby County:**

**ROAD FROM**  
**US 60 0.0 Jefferson CO LN**

**TO**  
**23.0 Franklin CO LN**

**(i) Woodford County:**

**ROAD FROM**  
**US 60 0.0 Franklin CO LN**

**TO**  
**11.3 Bluegrass PKWY**

**(4) The following road segment shall be deleted from Official Order 98113 and extended weights shall not be transported on it:**

**Livingston County:**

**ROAD FROM**  
**KY 453 2.8 US 62 & US 641**

**TO**  
**4.2 I-24**

**(5) The weights to be posted on the following bridges shall supersede the weights shown in Official Order 98113:**

**(a) Bourbon County:**

**1. On US 27:**

**a. Add new weight limits:**

**Weight Limit - Bridge B23 @ milepoint 2.45**  
**TY I = 20 tons, TY II = 34 tons, TY III = 45 tons, TY IV = 60 tons**  
**Weight Limit - Bridge B22 over Houston Creek @ milepoint 6.20**  
**TY I = 20 tons, TY II = 42 tons, TY III = 50 tons, TY IV = 60 tons**

**b. Delete extended weight limits:**

**Weight Limit - Bridge B1 over Houston Creek @ milepoint 8.95**  
**TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 47 tons**  
**Weight Limit - Bridge B2 over Townsend Creek @ milepoint 15.43**  
**TY I = 20 tons, TY II = 42 tons, TY III = 44 tons, TY IV = 56 tons**

**2. On US 68: Amend the weight limits for the following types**

**of vehicles:**

**Weight Limit - Bridge B12 over Hinkston Creek @ milepoint 9.41**  
**TY II = 42 tons, TY III = 46 tons, TY IV = 60 tons**

**3. On US 460: Delete extended weight limits:**

**Weight Limit - Bridge B1 over Houston Creek @ milepoint 8.95**  
**TY I = 20 tons, TY II = 37 tons, TY III = 38 tons, TY IV = 47 tons**

**(b) Boyd County: On US 23S: Amend the weight limits for the following types of vehicles:**

**Weight Limit - Northbound Bridge B58 over Ohio River @ milepoint 0.03**  
**TY II = 33 tons, TY IV = 56 tons**

**(c) Butler County: On Wm Natcher PKWY: Amend the weight limits for the following types of vehicles:**

**Weight Limit - Bridge B61 over Green River @ milepoint 32.64**  
**TY II = 40 tons, TY IV = 55 tons**

**(d) Carter County: On KY 1: Add new weight limits:**

**Weight Limit - Bridge B104 @ milepoint 11.50**  
**TY I = 20 tons, TY II = 40 tons, TY III = 46 tons, TY IV = 60 tons**

**(e) Fayette County: On KY 4: Amend the weight limits for the following types of vehicles:**

**Weight Limit - Bridge B22 & P over US 60, Versailles Road @ milepoint 4.61**  
**TY II = 43 tons, TY IV = 60 tons**

**(f) Jefferson County:**

**1. On US 42: Add new weight limits:**

**Weight Limit - Bridge B347 over Beargrass Creek @ milepoint 0.23**  
**TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons**

**2. On US 60: Add new weight limits:**

**Weight Limit - Bridge B134 over Beargrass Creek @ milepoint 0.11**  
**TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons**  
**Weight Limit - Bridge B9 over Floyd's Fork @ milepoint 13.56**  
**TY I = 20 tons, TY II = 40 tons, TY III = 44 tons, TY IV = 58 tons**  
**Weight Limit - Bridge B8 over Longrun Creek @ milepoint 15.79**  
**TY I = 20 tons, TY II = 35 tons, TY III = 40 tons, TY IV = 60 tons**

**(g) Lawrence County: On KY 3: Add new weight limits:**

**Weight Limit - Bridge B60 @ milepoint 14.92**  
**TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons**

**(h) Lee County: On KY 11: Add new weight limits:**

**Weight Limit - Bridge B5 @ milepoint 4.17**

**TY I = 20 tons, TY II = 45 tons, TY III = 48 tons, TY IV = 53 tons**

**(i) Letcher County:**

**1. On KY 113: Amend the weight limits for the following types of vehicles:**

**Weight Limit - Bridge B21 @ milepoint 0.01**

**TY III = 44 tons**

**Weight Limit - Bridge B2 over Millstone Creek @ milepoint 2.48**

**TY II = 37 tons, TY III = 44 tons, TY IV = 60 tons**

**Weight Limit - Bridge B3 over Left Fork Millstone Creek @ milepoint 3.25**

**TY II = 43 tons, TY III = 49 tons, TY IV = 60 tons**

**2. On KY 160:**

**a. Amend the weight limits for the following types of vehicles:**

**Weight Limit - Bridge B34 over Kings Creek @ milepoint 12.23**  
**TY II = 39 tons, TY III = 44 tons, TY IV = 60 tons**

**Weight Limit - Bridge B33 over Muddy Branch @ milepoint 12.94**  
**TY II = 30 tons, TY III = 39 tons, TY IV = 56 tons**

**Weight Limit - Bridge B32 over Kings Creek @ milepoint 13.22**  
**TY II = 40 tons, TY III = 45 tons, TY IV = 60 tons**

**b. Add new weight limits:**

**Weight Limit - Bridge B31 @ milepoint 14.73**  
**TY I = 20 tons, TY II = 40 tons, TY III = 45 tons, TY IV = 60 tons**

**Weight Limit - Bridge B29 @ milepoint 18.40**  
**TY I = 20 tons, TY II = 34 tons, TY III = 50 tons, TY IV = 60 tons**

**3. On KY 317: Add new weight limits:**

**Weight Limit - Bridge B12 @ milepoint 0.20**  
**TY I = 20 tons, TY II = 40 tons, TY III = 50 tons, TY IV = 60 tons**

**Weight Limit - Bridge B14 @ milepoint 2.47**  
**TY I = 20 tons, TY II = 33 tons, TY III = 44 tons, TY IV = 60 tons**

**4. On KY 343: Amend the weight limits for the following types**

**of vehicles:**

**Weight Limit - Bridge B127 @ milepoint 0.07**  
**TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons**

**Weight Limit - Bridge B78 over Wright Fork @ milepoint 0.46**  
**TY I = 18 tons, TY II = 19 tons, TY III = 23 tons, TY IV = 37 tons**

**Weight Limit - Bridge B79 over Wright Fork @ milepoint 0.65**  
**TY I = 18 tons, TY II = 19 tons, TY III = 23 tons, TY IV = 37 tons**

**5. On KY 588: Add new weight limits:**

**Weight Limit - Bridge B63 @ milepoint 5.03**  
**TY I = 20 tons, TY II = 29 tons, TY III = 39 tons, TY IV = 56 tons**

**6. On KY 805: Amend the weight limits for the following types**

**of vehicles:**

**Weight Limit - Bridge B22 over Potters Fork @ milepoint 2.99**  
**TY II = 37 tons, TY III = 40 tons, TY IV = 54 tons**

**Weight Limit - Bridge B23 over Potters Fork @ milepoint 4.17**  
**TY II = 38 tons, TY III = 44 tons**

**Weight Limit - Bridge B24 over Potters Fork @ milepoint 4.93**  
**TY II = 33 tons, TY III = 39 tons, TY IV = 60 tons**

**Weight Limit - Bridge B26 over Grays Branch @ milepoint 5.25**  
**TY II = 36 tons, TY III = 41 tons, TY IV = 60 tons**

**7. On KY 931: Amend the weight limits for the following types**

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of vehicles:

Weight Limit - Bridge B1 over Sandlick Creek @ milepoint 10.94  
TY I = 37 tons, TY III = 43 tons, TY IV = 60 tons

(j) Livingston County:

1. On US 62: Add weight limits:

Weight Limit - Bridge B65

TY I = 20 tons, TY II = 25 tons, TY III = 28 tons, TY IV = 36 tons

2. On KY 453: Delete extended weight limits:

Weight Limit - Bridge B42 over RR & Reeds Haul RD @ milepoint 3.08

TY I = 20 tons, TY II = 44 tons, TY III = 46 tons, TY IV = 55 tons

(k) McLean County: On US 431: Add extended weight limits:

Weight Limit - Bridge B15 @ milepoint 9.13

TY I = 20 tons, TY II = 39 tons, TY III = 45 tons, TY IV = 60 tons

(l) Madison County: On KY 876: Add extended weight limits:

Weight Limit - Bridge B37 @ milepoint 7.17

TY I = 20 tons, TY II = 39 tons, TY III = 42 tons, TY IV = 54 tons

(m) Ohio County:

1. On US 62: Amend extended weight limits on the following

types of vehicles:

Weight Limit - Bridge B32 over Branch of Three Lick Fork @ milepoint 11.91

TY II = 38 tons, TY III = 42 tons, TY IV = 60 tons

Weight Limit - Bridge B33 over Three Lick Fork @ milepoint 12.03

TY II = 35 tons, TY III = 41 tons, TY IV = 60 tons

Weight Limit - Bridge B34 over Muddy Creek @ milepoint 12.30

TY II = 36 tons, TY III = 41 tons, TY IV = 60 tons

Weight Limit - Bridge B39 over Muddy Creek Branch @ milepoint 12.46

TY II = 38 tons

2. On US 231: Amend extended weight limits on the following

types of vehicles:

Weight Limit - Bridge B140 over Three Lick Fork Branch @ milepoint 9.78

TY II = 33 tons

Weight Limit - B44 North Fork Muddy Creek Bridge @ milepoint 12.30

TY II = 37 tons, TY III = 44 tons

3. On KY 69: Add the extended weight limits:

Weight Limit - Bridge B80 @ milepoint 10.47

TY I = 20 tons, TY II = 28 tons, TY III = 37 tons, TY IV = 40 tons

4. On KY 85:

a. Add the extended weight limits:

Weight Limit - Bridge B57 @ milepoint 6.09

TY I = 20 tons, TY II = 35 tons, TY III = 50 tons, TY IV = 60 tons

b. Amend the weight limits for the following type of vehicles:

Weight Limit - Bridge B53 over BR West Fork Lewis CK @ milepoint 9.62

TY III = 35 tons

(n) Shelby County: On US 60: Add new weight limits:

Weight Limit - Bridge B26 over Little Bullskin Creek @ milepoint 5.02

TY I = 20 tons, TY II = 21 tons, TY III = 25 tons, TY IV = 43 tons

Weight Limit - Bridge B7 over Clear Creek @ milepoint 11.17

TY I = 20 tons, TY II = 35 tons, TY III = 39 tons, TY IV = 50 tons

Section 6. Restricted Bridge Use. A person shall not operate, or knowingly cause to be operated, on a bridge listed in Official Order 98113 [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 98113 [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) 1. A specific description of the inherent and definite hazardous condition; or

2. [(e)] 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 an 1984 and 1985 Interim Revisions; and

(b) Transportation Cabinet Official Order 98113 [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) 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.

(b) A copy [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) ~~Transportation Cabinet Official Order 98113 [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 [4899]. 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

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: December 2, 1997

FILED WITH LRC: December 4, 1997 at 11 a.m.

**CABINET FOR WORKFORCE DEVELOPMENT**  
**State Board for Adult and Technical Education**  
**(As Amended at ARRS, January 14, 1998)**

**780 KAR 2:131. Repeal of 780 KAR 2:130.**

RELATES TO: KRS 151B.025, 151B.110, 151B.150 [Chapter 45+B]

STATUTORY AUTHORITY: KRS 151B.025, 151B.110

NECESSITY, FUNCTION, AND CONFORMITY: House Bill 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



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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. Therefore, the administrative regulation should be repealed.

Section 1. 780 KAR 2:130, Minimum standards of admission for postsecondary students, is hereby repealed.

J. LARRY STINSON, Chairman  
RODNEY S. CAIN, Secretary  
BEVERLY HAVERSTOCK, General Counsel  
APPROVED BY AGENCY: September 18, 1997  
FILED WITH LRC: November 13, 1997 at 1 p.m.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Division of Building Codes Enforcement (As Amended at ARRS, January 14, 1998)

815 KAR 7:014. Repeal of 815 KAR 7:013.

RELATES TO: KRS 198B.060(18) [Chapter 198B, 815 KAR 7:105]

STATUTORY AUTHORITY: KRS 198B.060(18)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to repeal [administrative regulation] 815 KAR 7:013 which is no longer necessary as a separate administrative regulation since the material is now contained in the Kentucky Building Code, 815 KAR 7:105.

Section 1. [Administrative regulation] 815 KAR 7:013, Kentucky Building Code plan review fees, is repealed.

CHARLES A. COTTON, Commissioner  
LAURA M. DOUGLAS, Secretary  
APPROVED BY AGENCY: October 17, 1997  
FILED WITH LRC: October 28, 1997 at 2 p.m.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Housing, Buildings and Construction Office of State Fire Marshal (As Amended at ARRS, January 14, 1998)

815 KAR 30:060. Certification of underground petroleum storage tank contractors.

RELATES TO: KRS 224.60-105, 224.60-135

STATUTORY AUTHORITY: KRS 224.60-135(5), 227.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-135(5) requires the State Fire Marshal to promulgate administrative regulations requiring a [any] person or organization who installs, repairs, interior lines, installs corrosion protection, closes or removes an underground petroleum storage tank for an owner or operator to demonstrate financial capability, including maintenance of pollution liability insurance and technical competency and proficiency. This administrative regulation establishes the minimum requirements for determining technical competency and proficiency of a company who is [companies who are] responsible for the installation, repair, interior lining, installation of corrosion protection, removal or closure of a system [these systems] by a qualifying individual [individuals] and for determining [to determine] financial capability through proof of insurance.

Section 1. Definitions. (1) "Certified contractor" means an

individual or organization certified by the State Fire Marshal as qualified to:

(a) Engage in the business of installing, repairing, interior lining, installing corrosion protection, removing or closing [removing, closing;] a UPST system; or

(b) Supervise an employee engaged in an activity listed in paragraph (a) of this subsection. [and supervising of other employees engaged in these activities on [the installation, performance of repairs on site for closure or removal of] UPST systems. A person [or organization] may be certified [qualified] pursuant to this administrative regulation to engage in the limited business of removal and closure, interior [or] lining, or installation of corrosion protection, but the certification shall be limited to removal and closure, interior tank lining, or installation of corrosion protection [tank lining;]

(2) "Close" or "closure" means permanently taking an underground storage tank out of service without removing it from the ground.

(3) "Repair" means the restoration of a UPST system [tank or an underground storage tank] or component [its components] that;

(a) Has caused a release of a product from the system or the modification of the tank or a system component; and

(b) Does [-"Repair" shall] not include routine maintenance or corrosion [-cathodic] protection applied to an existing installation [installations], or the application of interior lining.

(4) "Remove" or "removal" means permanently taking an underground storage tank or a component [any of its components] out of service by removing it from the ground.

(5) "Routine maintenance" means servicing the UPST system or a component [any of its components] without excavation or making or the breaking of a connection [any connections] below ground.

(6) ["Supervise" means being physically on site and having the authority and responsibility for the direction of other employees engaged in carrying out the installation of, making repairs on site to, closure, or removal of interior lining or installation of corrosion protection of UPST systems as well as having the authority to exercise independent judgment regarding the recommendation of activities to other employees acting under his direction.

(7) [(6)] "Underground storage tank" is defined by KRS 224.60-100(1).

(7) [(8)] "Upgrade" means a [any] modification or addition to a UPST system except routine maintenance.

[(9) [(7)] "UPST liner" means an individual or organization who applies an interior coating of material to existing [steel and fiberglass reinforced plastic (FRP)] underground storage tanks used solely for the storage of petroleum and petroleum products;]

(8) [(10)] [(8)] "UPST system" means an underground storage tank [as defined by KRS 224.60-100(1)] that is used solely for the storage of petroleum or a petroleum product. [and petroleum products;]

Section 2. (1) A permit for the installation of a [an] UPST system shall not be issued by the State Fire Marshal unless the applicant for the permit:

(a) Is [a] certified by the State Fire Marshal's Office [contractor]; and

(b) Assures the State Fire Marshal's Office, in writing, that the installation shall comply with all applicable requirements of the Natural Resources and Environmental Protection Cabinet promulgated in 401 KAR Chapter 42.

(2) An individual or company shall not install, remove, repair, interior line, install corrosion protection or close a UPST system unless the installation, removal, interior lining, installation of corrosion protection repair[-, interior lining;] or closure:

(a) Is made by a certified contractor; and  
(b) Complies with the applicable administrative regulations of the Natural Resources and Environmental Protection Cabinet, promulgated [set forth] in 401 KAR Chapter 42.

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(3) A certificate authorizing a company to engage in an activity regulated by this administrative regulation shall be issued under the name of the company if the company:

(a) Applies for the certification; and

(b) Has in its employ at least one (1) certified contractor who:

1. Meets the supervision requirements established in Section 3 of this administrative regulation; and

2. Shall:

a. Direct an employee engaged in an activity regulated by this administrative regulation; and

b. Exercise independent judgment regarding the recommendation of an activity to an employee acting under his direction. [A certificate may be issued under the name of a company and the company (may be the certified contractor and) may engage in the activities regulated by this administrative regulation if it has in its employ at least one (1) person who has passed the examination and demonstrated the experience to obtain qualification for the company as a certified contractor and that person supervises the activities described by Section 3 of this administrative regulation.]

Section 3. Supervision Requirements. (1) A certified contractor shall be present on site for each of the following activities:

(a) Preparation of the excavation immediately prior to receiving backfill or a [any] component of the UPST system;

(b) Setting of the UPST system, including placement of an anchoring device, backfilling to the level of the UPST system and strapping[~~; if any~~];

(c) Installing piping and its components, ~~[or] field coating, or corrosion [and cathodically] protecting [any] [the] piping and its components;~~

(d) Final inspection and pressure testing of a component of the tank or piping component [components] of the UPST system; and

(e) Completion of the backfilling and filling of the excavation.

(2) A repair [Repairs] to a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The actual excavation of an existing UPST system [systems];

(b) The actual performance of a repair [repairs] to the UPST system;

(c) The connection of a component [components] of the piping during the repair project;

(d) The pressure testing of the UPST or its associated piping during the repair project;

(e) The replacement of a piping valve, fill pipe, vent, leak detection device, or spill and overflow protection device; [valves, fill pipes, vents, leak detection devices, or spill and overflow protection devices;] and

(f) The addition of a leak detection device or spill and overflow device. [leak detection devices or spill and overflow devices.]

(3) Preparation for closing a UPST system shall require a certified contractor to be present on site for each of the following activities:

(a) The cleaning and purging of a UPST system;

(b) The filling of a UPST system with an inert solid material;

(c) All testing associated with the cleaning and purging processes; and

(d) The disconnection or capping of a component [the components] of the UPST system during the closing.

(4) Removal of a UPST system shall require a certified contractor to be present on site during each of the following activities:

(a) The cleaning and purging of the UPST system;

(b) The actual excavation and removal of the UPST system or a component;

(c) All testing associated with the cleaning and purging processes; and

(d) The disconnection or capping of a component [the components] of the UPST system during the removal.

(5) The interior tank lining of a UPST system shall require a certified contractor to be present on site during each of the following

activities:

(a) The cleaning and purging of the UPST system;

(b) The excavation of the tank top;

(c) The cutting of the top of the tank;

(d) The entry of the tank;

(e) The preparation of the interior of the tank;

(f) The application of the lining of the tank; and

(g) The closing and testing of the tank.

(6) The installation of corrosion protection to a UPST system shall require a certified contractor to be present on site during each of the following activities:

(a) Excavation; and

(b) The installation of an approved corrosion protection system.

Section 4. Certificate Availability. Each certified contractor shall have a copy of the current certificate issued by the State Fire Marshal at the location where he is supervising work. Upon request of a fire official or agent of the Natural Resources and Environmental Protection Cabinet, a certified contractor shall make the current certificate available for inspection.

Section 5. Application for Certification Requirements. Each applicant for certified contractor shall:

(1) Submit an application accompanied by a nonrefundable fee of \$150, to the State Fire Marshal, on application form "SFM/UPST #01, August, 1996", which is incorporated by reference in Section 11 of this administrative regulation;

(2) Be an individual at least eighteen (18) years of age;

(3) Verify to the State Fire Marshal the individual's experience in the installation of, performance of repairs on site to, interior lining of, installation of corrosion protection, closure and removal of UPST systems, as required by Section 6 of this administrative regulation;

(4) Complete the examination requirements of Section 7 of this administrative regulation;

(5) Provide proof of financial capability for taking corrective action and for compensating a third party [third parties] for bodily injury or [and] property damage by submitting certificates of general liability insurance in the minimum amount of \$500,000 and pollution liability insurance or other proof of financial capability to respond to damages in the minimum amount of \$25,000 per occurrence; and

(6) If the individual wishes the certificate to be issued with a company name, indicate the company name [shall be indicated] on the application form. [and] The company shall provide the insurance certificates required by subsection (5) of this section and [otherwise] be subject to this administrative regulation.

Section 6. Experience Requirements. (1) The person making application shall demonstrate that within five (5) years immediately prior to making application, that he has participated in the installation of, performance of repairs on site to, closure of, interior lining of, installation of corrosion protection to, or removal of a minimum of six (6) underground storage tanks ~~[Of the participations, a minimum of three (3) shall have involved the installation of UPST tanks],~~ except that:

(a) Technical training of the type provided and documented by the manufacturer of the underground storage tanks and approved by the State Fire Marshal shall reduce the experience requirements of this subsection by one-third (1/3); or

(b) A BS degree in engineering with a concentration in the area of underground containment systems or a Kentucky license to practice engineering shall reduce the experience requirements of subsection (1) by two-thirds (2/3).

(2)(a) An applicant requesting installer or remover certification shall:

1. Have installed at least three (3) UPST systems;

2. Meet the experience requirements established in subsections (3), (4), and (5) of this section.

(b) A certified installer or remover shall be qualified to perform work on a UPST system. [An applicant requesting installer/remover certification shall have installed at least three (3) UPST systems, plus three (3) other additional experience requirements. The certified installer/remover shall be qualified to perform any and all work on a UPST system.]

(3) An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of removal and closure shall demonstrate experience in removal and closure of six (6) underground storage tanks.

(4) [(3)] An applicant requesting contractor certification pursuant to this administrative regulation for the limited function of tank lining shall demonstrate experience in lining of six (6) underground storage tanks or provide proof of certification from the tank interior lining manufacturer or supplier of lining material.

(5) An applicant requesting certification pursuant to this administrative regulation for the limited function of installing corrosion protection shall demonstrate experience in the installation of six (6) corrosion protection systems.

Section 7. Probationary Certification. If the applicant does not comply with the level of experience required by Section 6 of this administrative regulation, the applicant **shall** [may] receive a probationary certificate under the following conditions:

(1) An applicant shall obtain a minimum score of eighty-five (85) percent on the written examination;

(2) An applicant shall complete three (3) applicable UPST activities for which the applicant seeks certification [tank installations] within one (1) year of the issuance of the certificate;

(3) All UPST activities shall comply with applicable codes and statutes;

(4) An applicant shall not install, interior line, install corrosion protection, remove, close, [line,] backfill around or cover a tank installation during the probationary period without prior approval of the State Fire Marshal's office; and

(5) An applicant shall pay a \$100 add-on inspection fee for each site where a tank is removed, closed, installed, upgraded or repaired by the applicant. [or-installed.]

Section 8. Examination Requirements. Each applicant for certified contractor shall take and pass a written examination administered by the State Fire Marshal in compliance with this section.

(1) The applicant shall submit payment of a twenty-five (25) dollar nonrefundable fee at least ten (10) days prior to the date of examination.

(2) The examination for [full] certification as an installer or remover shall be a written multiple choice examination covering all aspects of the installation, repair, interior lining, installation of corrosion protection, closure, and removal of underground petroleum storage tank systems. The examination shall test the applicant's knowledge of codes, standards, laws and administrative regulations and of current technological and industry recommended practices with respect to the proper installation, repair, interior lining, installation of corrosion protection, closure, and removal of UPST systems.

(3) An applicant who requests to be a certified contractor for the limited purpose of removing and permanently closing a UPST system [UPST systems] shall be tested on knowledge of closure and removal.

(4) An applicant who requests to be a certified contractor for the limited function of interior lining of UPST systems shall be tested on knowledge of cleaning, and lining the interior of an underground petroleum storage tank [tanks].

(5) An applicant who requests to be a certified contractor for the limited purpose of installing corrosion protection shall be tested on the installation, monitoring and general knowledge of a cathodic protection system [systems].

(6) An applicant may request permission to take the examination

orally, upon good cause shown.

(7) [(6)] An applicant shall obtain a minimum score of seventy-five (75) percent on the written examination to satisfactorily pass.

(8) [(7)] An applicant who fails the examination may request reexamination upon payment of a nonrefundable twenty-five (25) dollar fee. An application shall remain pending for that purpose for a period of one (1) year after the date the application was submitted. If the applicant has not requested reexamination within the one (1) year period, the applicant shall file a new application for certification with the State Fire Marshal.

(9) [(8)] **An examination [Examinations]** shall be given monthly in the State Fire Marshal's Office located at 1047 U.S. 127 South, Frankfort, Kentucky.

(10) [(9)] **An examination [All examinations]** shall be graded and the applicant [applicants] notified on the day of the examination. **An examination paper:**

(a) [Examination papers] Shall not be returned to the applicant; **and**

(b) [-but] May be reviewed by the applicant on the day of the examination.

(11) [(10)] With the application, the State Fire Marshal shall furnish the applicant with a set of instructions and sample examination questions. Instruction sheets shall refer the applicant to appropriate laws, administrative regulations and industry publications.

Section 9. Certification and Renewal Procedures. (1) The State Fire Marshal shall issue a certificate to each individual [or company] as **required by [set forth in]** Sections 5 through 7 of this administrative regulation. Each [The] certificate shall be renewed annually for a fee of fifty (50) dollars.

(2) The application or renewal for a certified contractor shall be denied by the State Fire Marshal if the applicant:

(a) Fails to provide the:

1. Information required by the application form SFM/UPST #01;

2. [(b) Fails to provide the] Insurance or financial responsibility certificates; or

3. the fee required for application and examination;

(b) [(c)] Fails to comply with the experience and education requirements of this administrative regulation;

(c) [(d)] Fails to successfully pass the examination required by this administrative regulation; or

(d) [(e)] Makes a misrepresentation or submits **a false statement [false statements]** with the application.

(3) **A certified contractor who fails to renew his certification within a one (1) year period from the most recent expiration date of his certification shall:**

(a) **Be treated as a new applicant;**

(b) **Retake the examination; and**

(c) **Comply with the new applicant requirements.** [If a certified contractor fails to renew his certification within a one (1) year period from the most recent expiration date of his certification, the individual shall be treated as a new applicant and shall be required to retest and otherwise meet all new applicant requirements. [contractor's certificate shall be revoked.] The contractor may become certified at a later date by complying with Sections 5 through 7 of this administrative regulation, and successfully retaking the examination.]

Section 10. Revocation or Suspension of Certification. A certificate issued pursuant to this administrative regulation **shall** [may] be suspended or revoked by the State Fire Marshal if:

(1) The certified contractor negligently, incompetently, recklessly or intentionally violated a provision of this administrative regulation or a required code relating to installation, repair, lining, closure or removal;

(2) The certified contractor recklessly or intentionally caused or permitted a person under the contractor's supervision to install, perform a repair on site to, interior line, install corrosion protection,

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close, [line;] or remove a UPST system in violation of [the Kentucky Standards of Safety (815 KAR 10:050)];

(3) The certified contractor obtained the certification through fraud or misrepresentation;

(4) The individual who took the examination, provided the experience requirements and requested the certificate to be issued with a company's name and proof of insurance is no longer employed by the company in whose name the certificate was issued; or

(5) The certified contractor failed to renew the certification in accordance with Section 9 of this administrative regulation.

Section 11. Incorporation by Reference. (1) Application Form SFM/UPST#01, "Application for Certification as an Underground Tank Contractor", (August, 1996 Edition), State Fire Marshal's Office, is incorporated by reference.

(2) It may be inspected, copied or obtained at the State Fire Marshal's Office, Division of Hazardous Materials, 1047 US 127 South, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

LAURA M. DOUGLAS, Secretary  
DAVE MANLEY, State Fire Marshal  
JUDITH G. WALDEN, General Counsel

APPROVED BY AGENCY: November 10, 1997  
FILED WITH LRC: November 14, 1997 at 10 a.m.

### CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development (As Amended at ARRS, January 14, 1998)

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

RELATES TO: KRS 205.200(2), 205.245, 42 USC 601 et seq. [45 GFR 206.10(a)(2)(ii), 206.10(a)(9)(iii), 206.10(a)(9)(iv)42]

STATUTORY AUTHORITY: KRS [13A.120,] 194.050(1), 205.200, EO 96-862, 42 USC 601 et seq.

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] shall administer the following public assistance programs: Kentucky Transitional Assistance Program (K-TAP) [Aid to Families with Dependent Children (AFDC)] and State Supplementation Program (SSP). This administrative regulation sets forth the procedures used to determine initial and continuing eligibility for assistance under these programs.

Section 1. Eligibility Determination Process. (1) **A household:**

**(a) Shall meet the eligibility criteria in 904 KAR 2:006 and 904 KAR 2:016 for the month payment is intended to cover.**

**(b) Shall not receive:**

**1. Assistance until approval of the application for benefits;**

**2. Benefits prior to application;** [Eligibility shall be determined prospectively. To receive or continue to receive assistance, a household shall meet all of the eligibility criteria for the month payment is intended to cover.]

(2) Each decision regarding eligibility or ineligibility for assistance shall be supported by facts recorded in the applicant's or recipient's case record.

(3) [(a)] The applicant or recipient shall be the primary source of information and shall be required to:

**(a) [1-] Furnish verification of:**

**1. [(a)] Income;**

**2. [(b)] Resources; and**

**3. [(c)] Technical eligibility; and**

**(b) [2-] Give written consent to those contacts necessary to verify or clarify a [any] factor pertinent to the decision of eligibility.**

**(4) If [(b)-When] informed in writing of the appointment or necessary information to be provided, failure of the applicant or recipient to appear for a scheduled interview or present required information at the time requested shall be considered a failure [by the applicant or recipient] to present adequate proof of eligibility.**

**(5)(a) An employee for the Department for Social Insurance shall record information for determining initial eligibility for Kentucky Transitional Assistance Program (K-TAP) on Form K-100, Kentucky Automated Management and Eligibility System (KAMES) - Integration Application and applicable supplements.**

**(b) An employee for the Department for Social Insurance shall record information for recertification to determine continuing eligibility for Kentucky Transitional Assistance Program (K-TAP) using Form PR-1, Program Recertification.**

Section 2. Continuing Eligibility. (1) The recipient shall be responsible for reporting within ten (10) days any change in circumstances which may affect eligibility or the amount of payment.

(2) Eligibility shall be redetermined:

(a) **If [When] a report is received or information is obtained about changes in circumstances;**

(b) **[At least] Every twenty-four (24) [twelve (12)] months for State Supplementation Program [SSP] cases in which Supplemental Security Income (SSI) is not received; and**

(c) **[Except for cases identified in the alternate redetermination plan, at least every six (6) months for AFDC cases; and**

(d) **[At least] Every twelve (12) months for Kentucky Transitional Assistance Program (K-TAP) [AFDC] cases, [identified in the alternate redetermination plan.**

(3) An AFDC case shall be identified in the alternate redetermination plan if:

(a) **The case is not based on a deprivation of unemployment of one (1) of the parents, as specified in 904 KAR 2:006, Section 9; and**

(b) **The case does not include a recipient who has earned income; or**

(c) **The application of exclusions and deductions from income, set forth in 904 KAR 2:016, Section 4, permit the case to qualify for the maximum payment for the household size, as specified in 904 KAR 2:016, Section 7; and**

(d) **At least one (1) of the following conditions shall be met:**

1. **The household contains a recipient of Supplemental Security Income (SSI) benefits;**

2. **The case has been active for three (3) or more years; or**

3. **The case does not contain an adult member. However, if the household contains an otherwise eligible adult who was excluded from the case for failure to comply with a technical requirement, as specified in 904 KAR 2:006 or 904 KAR 2:370, the agency may retain the case in the standard six (6) month redetermination schedule.]**

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

**(a) Form KIM-100, Kentucky Automated Management and Eligibility System (KAMES) - Integration Application, (January 1995 Edition), Cabinet for Families and Children;**

**(b) Form KIM-100, Supplement A;**

**(c) Form KIM-100, Supplement B;**

**(d) Form KIM-100, Supplement C;**

**(e) Form KIM-100, Supplement D;**

**(f) Form KIM-100, Supplement E;**

**(g) Form KIM-100, Supplement F;**

**(h) Form KIM-100, Supplement G;**

**(i) Form KIM-100, Supplement H;**

**(j) Form KIM-100, Supplement I;**

**(k) Form KIM-100, Supplement J;**

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(l) Form KIM-100, Supplement K;  
(m) Form KIM-100, Supplement L;  
(n) Form KIM-100, Supplement M;  
(o) Form KIM-100, Supplement N;  
(p) Form KIM-100, Supplement O;  
(q) Form KIM-100, Supplement P;  
(r) Form KIM-100, Supplement Q;  
(s) Form KIM-100, Supplement R;  
(t) Form KIM-100, Supplement S;  
(u) Form KIM-100, Supplement SS;  
(v) Form KIM-100, Supplement T;  
(w) Form KIM-100, Supplement U;  
(x) Form KIM-100, Supplement V;  
(y) Form KIM-100, Supplement W;  
(z) Form KIM-100, Supplement X;  
(aa) Form KIM-100, Supplement XX;  
(bb) Form KIM-100, Supplement Y;  
(cc) Form KIM-100, Supplement Z; and  
(dd) Form PR-1, Program Recertification, October 1997,  
Department for Social Insurance.

(2) This material may be inspected, copied, or obtained at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Material Incorporated by Reference: (1) The form used for recertification to determine continuing eligibility for Kentucky Transitional Assistance Program (K-TAP), if the Kentucky Automated Management and Eligibility System (KAMES) is unavailable for use, is the "PR-1", "Program Recertification", edition October 1997.

(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. [Reviews of SSP Cases. (1) SSP cases containing SSI income shall be reviewed every six (6) months to:

- (a) Determine that the special need for which supplementation is granted continues to exist;
  - (b) Verify living situation and income; and
  - (c) Adjust the SSP payment, if appropriate.
- (2) SSP cases not containing SSI income shall be reviewed six (6) months following the yearly redetermination to:
- (a) Review all items subject to change; and
  - (b) Adjust the SSP payment, if appropriate.]

JOHN L. CLAYTON, Commissioner  
VIOLA P. MILLER, Secretary  
CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: December 2, 1997  
FILED WITH LRC: December 4, 1997 at 3 p.m.

**CABINET FOR FAMILIES AND CHILDREN**  
Department for Social Insurance  
Division of Management and Development  
(As Amended at ARRS, January 14, 1998)

**904 KAR 2:046. Adverse action; conditions.**

RELATES TO: KRS 205.200(2), 205.245, 45 CFR 205.10(a)(4), 206.10(a)(4), 42 USC 601 et seq.  
STATUTORY AUTHORITY: KRS [13A.120;] 194.050(1), 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] shall administer public assistance programs including Kentucky Transitional Assistance Program (K-TAP) [Aid to Families with Dependent Children (AFDC)]

and mandatory and optional supplementation of persons who are aged, blind and have a disability. This administrative regulation sets forth the conditions under which an application is denied or assistance is decreased or discontinued and advance notice requirements.

Section 1. Definitions. (1) "Applicant" means an individual applying for:

- (a) State supplementation benefits; or
  - (b) Kentucky Transitional Assistance Program (K-TAP) [AFDC] benefits.
- (2) "Application" means the process set forth in 904 KAR 2:035.
- (3) "Recipient" means:
- (a) A person who is aged, blind, or has a disability receiving state supplementation benefits; or
  - (b) A member of a Kentucky Transitional Assistance Program (K-TAP) [an-AFDC] assistance group as defined in 904 KAR 2:016.

Section 2. Reasons for Adverse Action. (1) An application shall be denied if:

- (a) Income or resources exceed the standards for the specific assistance program as set forth in 904 KAR 2:016 and 904 KAR 2:015;
  - (b) The applicant does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 904 KAR 2:006, 904 KAR 2:015 and 904 KAR 2:370;
  - (c) Despite receipt of written notice detailing the additional information needed for a determination, the applicant fails to provide sufficient information or clarify conflicting information necessary for a determination of eligibility;
  - (d) The applicant fails to keep the appointment for an interview;
  - (e) The applicant requests in writing voluntary withdrawal of application;
  - (f) Department staff is unable to locate the applicant; or
  - (g) The applicant is no longer domiciled in Kentucky.
- (2) Assistance shall be discontinued or decreased if:
- (a) Income or resources of the recipient increase or deductions decrease resulting in reduced or discontinued benefits as set forth in 904 KAR 2:016 or 904 KAR 2:015;
  - (b) The recipient does not meet technical eligibility criteria or fails to comply with a technical requirement as set forth in 904 KAR 2:006, 904 KAR 2:015 or 904 KAR 2:370;
  - (c) Despite receipt of written notice detailing the additional information needed for a redetermination, the recipient fails to provide sufficient information or clarify conflicting information necessary for a redetermination of eligibility;
  - (d) The recipient fails to keep the appointment for an interview;
  - (e) The cabinet is recovering Kentucky Transitional Assistance Program (K-TAP) [AFDC] overpayments through recoupment;
  - (f) Department staff is unable to locate recipient;
  - (g) The recipient is no longer domiciled in Kentucky;
  - (h) Change in program policy adversely affects the recipient; or
  - (i) For Kentucky Transitional Assistance Program (K-TAP) [AFDC] only, the grant amount is less than ten (10) dollars.

Section 3. Notification of Denial of Applications. If an application is denied, the applicant shall be given:

- (1) **A "KIM-105, General Notice of Action", form which shall include: [Written notification of the denial which shall include:]**
- (a) The reason for the denial; and
  - (b) The cites of the applicable state administrative regulation.
- (2) The right to a fair hearing as provided by 904 KAR 2:055.

Section 4. Advance Notice of a Decrease or Discontinuance. (1) The recipient shall be given ten (10) days advance notice of the proposed action if a change in circumstances indicates:

- (a) A money payment shall be:
  1. Reduced;

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2. Suspended; or
3. Discontinued; or

(b) An individual shall be removed from the Kentucky Transitional Assistance Program (K-TAP) [AFDG] grant, even if the grant increases.

(2) The ten (10) days advance notice of the proposed action shall:

- (a) Be **given on a "KIM-105, General Notice of Action" form**; [in writing;]
- (b) Explain the reason for the proposed action;
- (c) Cite the applicable state administrative regulation;
- (d) Extend the opportunity to confer with the worker or to request a fair hearing.

(3) A hearing request received during the advance notice period may result in delay of the decrease or discontinuance pending the hearing officer's decision, as provided in 904 KAR 2:055, Section 4.

Section 5. Exceptions to the Advance Notice Requirement. An advance notice of proposed action shall not be required, but written notice of action taken shall be given, if the decrease or discontinuance results from:

(1) Information reported by the recipient if the recipient signs a waiver of the notice requirement indicating understanding of the consequences;

(2) A clear written statement, signed by the recipient, that he no longer wishes assistance is received by the department;

(3) Factual information that the recipient, or a Kentucky Transitional Assistance Program (K-TAP) [an-AFDG] payee when there is no relative who can serve as a new payee, has died is received by the department;

(4) Whereabouts of the recipient are unknown and mail addressed to him is returned indicating no known forwarding address; however, a returned check shall be made available to him if his whereabouts become known during the payment period covered by the returned check;

(5) Establishment by the agency that assistance has been accepted in another state;

(6) Removal from the home of a Kentucky Transitional Assistance Program (K-TAP) [an-AFDG] child by judicial order or voluntary placement in foster care by his legal guardian;

(7) The person who is aged, blind or has a disability and is a supplementation recipient, enters a nursing facility resulting in vendor payment status;

(8) The recipient enters:

- (a) A penal institution; or
- (b) If under sixty-five (65), a tuberculosis hospital; or
- (c) If between twenty-one (21) and sixty-five (65), a mental hospital;

(9) The granting of a special allowance, or time limited assistance, which:

(a) Shall be terminated at the end of a specified period or under specific conditions; and

(b) The recipient shall be informed in writing **on a "KIM-105, General Notice of Action" form** at the time the allowance or assistance is granted of the automatic termination; and

(c) The notice may be provided at the time of approval, or subsequently.

Section 6. **Incorporation by Reference.** (1) **"KIM-105, General Notice of Action", (2/98 Edition), Department for Social Insurance, is incorporated by reference.**

(2) **It may be inspected, copied, or obtained at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.** [Material incorporated by Reference. (1) The form necessary for adverse action in the Kentucky Transitional Assistance Program (K-TAP) [AFDG] and Mandatory and Optional Supplementation Programs is being incorporated [effective December 1, 1993]. This form is the

~~"KIM-105", "General Notice of Action", edition 2/98 (8/97) [revised 9/94];~~

~~(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: December 2, 1997

FILED WITH LRC: December 4, 1997 at 3 p.m.

**CABINET FOR FAMILIES AND CHILDREN**  
**Department for Social Insurance**  
**Division of Management and Development**  
**(As Amended at ARRS, January 14, 1998)**

### 904 KAR 2:055. Hearings and appeals.

RELATES TO: KRS 205.231, **205.237**, 45 CFR 205.10, 255.2, 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS Chapter 13B, 194.050(1), 205.231, [205.237;] 45 CFR 205.10, [251.5;] 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 shall provide for a system of hearings to be available to any applicant for or recipient of an assistance program who is dissatisfied with any action or inaction on the part of the cabinet. This administrative regulation sets forth the methods by which the hearing requirement is fulfilled for Aid to Families with Dependent Children now called the Kentucky Transitional Assistance Program (K-TAP), the Home Energy Assistance Program, and the State Supplementation Program.

Section 1. Informing the Applicant or Recipient of His Rights. (1) Each applicant or recipient shall be informed of his right to a hearing:

- (a) Orally and in writing when application is made; and
- (b) In writing when an action is taken affecting his claim in accordance with KRS 13B.050.

(2) Each applicant or recipient shall be informed of:

- (a) The method by which he may obtain a hearing; and
- (b) That he may be represented by:

1. An authorized representative who may be:

- a. Legal counsel;
  - b. A relative;
  - c. A friend; or
  - d. Other spokesperson; or
2. Himself.

Section 2. Request for a Hearing. (1) An applicant or recipient or an authorized representative acting on his behalf, may request a hearing by filing a request with the Department for Social Insurance at either:

- (a) The local office; or
- (b) The central office.

(2) The applicant or recipient shall clearly indicate a desire for a hearing by submitting a statement:

- (a) In written form; or
- (b) Orally, later submitted in writing by the applicant or recipient.

(3) A written request for a hearing may be sent to the Cabinet for Families and Children, Division of Administrative Review, Hearing Branch, 275 East Main, Frankfort, Kentucky 40621.

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Section 3. Time Limitation for Hearing Request Regarding Assistance Payments. (1) To be considered timely, a written or oral request from an applicant or recipient shall be received by the department 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; or
2. Decrease or discontinuance of an active case; or

(c) The time period the action is pending if the hearing issue is delay in action.

(2) Up to 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; or

(b) The applicant or recipient is unable to read or to comprehend the right to request a hearing on the:

1. Notice of adverse action; or
2. Notice of decrease or discontinuance; or

(c) The applicant or recipient moved resulting in delay in receiving or failure to receive the:

1. Notice of adverse action; or
2. Notice of decrease or discontinuance; or

(d) Serious illness of the applicant or recipient; or

(e) The reason for the delay was no fault of the applicant or recipient, as determined by the hearing officer.

Section 4. Continuation of Assistance Program Benefits. (1) Assistance shall be continued through the month in which the hearing officer's decision is rendered if the request:

(a) Results from dissatisfaction regarding a proposed discontinuance, suspension or decrease; and

(b) Is received within ten (10) days of the date on the:

1. Advance notice of adverse action; or
2. Notice of decrease or discontinuance.

(2) Assistance shall be reinstated and continued through the month in which the hearing officer's decision is rendered if the request is:

(a) Received within twenty (20) days of the date on the:

1. Advance notice of adverse action; or
2. Notice of decrease or discontinuance; and

(b) The reason for delay meets the good cause criteria contained in Section 3 of this administrative regulation.

(3) 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, regulation, or policy of the cabinet.

(4) Continued or reinstated benefits shall be [are] considered overpayments if the agency decision is upheld.

(5) If the applicant or recipient requests the discontinuance, suspension or decrease in assistance be in effect pending the hearing officer's decision, assistance shall not be continued or reinstated through the month in which the hearing officers' decision is rendered.

~~[(6) Continuation or reinstatement of benefits pending a hearing decision shall not apply to child care and supportive services payments for job opportunities and basic skills participants.]~~

Section 5. Acknowledgment of the Request. (1) A hearing request shall be acknowledged by the hearing branch.

(2) The acknowledgment letter shall contain information regarding:

(a) The hearing process, including the right to case record review prior to the hearing;

(b) The right to representation; and

(c) 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.

(3) Subsequent notification shall comply with the requirements of

KRS 13B.050.

(a) All parties to the hearing shall be provided at least twenty (20) days timely notice of the date of the hearing to permit adequate preparation of the case.

(b) The applicant or recipient may request less timely notice of the date set for the hearing to expedite the scheduling of the hearing.

(4) A hearing complying with the requirements of KRS Chapter 13B shall be scheduled on a timely basis to assure that no more than ninety (90) days shall elapse from the date of the request to the date of the decision.

Section 6. Withdrawal or Abandonment of Request. (1) The applicant or recipient may withdraw his request for a hearing prior to release of the hearing officer's decision, but he shall be granted the opportunity to discuss withdrawal with his legal counsel or representative, if any, prior to finalizing the action.

(2) A hearing request shall be considered abandoned if the applicant or recipient fails without prior notification to report for the hearing.

(3) 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 good cause criteria contained in Section 3 of this administrative regulation.

Section 7. Applicant's or Recipient's Rights Prior to a Hearing. (1) An applicant or recipient shall receive notice consistent with KRS 13B.050, including:

(a) His right to 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 the claim.

(2) When the hearing involves medical issues, a medical assessment by other than the person or persons involved in the original decision shall be obtained at cabinet expense if the hearing officer considers it necessary.

(3) If a medical assessment at cabinet expense is requested by the applicant or recipient and denied by the hearing officer, the reason for denial shall be set forth in writing.

Section 8. Postponement of a Hearing. (1) The applicant or recipient shall be entitled to a postponement of a hearing if:

(a) The request for the delay is made prior to the hearing; and

(b) The need for the delay is due to an essential reason beyond the control of the applicant or recipient in accordance with good cause criteria contained in Section 3 of this administrative regulation.

(2) The decision to grant the postponement shall be made by the hearing officer.

(3) The postponement of the hearing shall not exceed thirty (30) days from the date of the request.

Section 9. Corrective Action for Assistance Program Benefits. (1) If after a review of the case record, but prior to scheduling a hearing, the hearing officer determines that action taken or proposed to be taken is incorrect, he shall authorize corrective action in the form of:

(a) Assistance to which the applicant or recipient would have been entitled but for the incorrect decision; or

(b) If the issue was a proposed action, continuing assistance.

(2) The applicant or recipient then shall be given the opportunity to withdraw the hearing request, but the hearing shall be scheduled if the applicant or recipient wishes to pursue the request.

Section 10. Conduct of a Hearing. (1) The hearing shall be conducted in accordance with the requirements of KRS 13B.080 and 13B.090.

~~[(a) The hearing officer shall:~~

~~1. Be impartial; and~~

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~~2. Disqualify himself for any reason set forth in KRS 13B.040.~~

~~(b) The applicant or recipient may challenge the hearing officer by presentation of factual evidence that the impartiality criteria are not met.]~~

(2) The hearing shall be conducted in-state where the applicant or recipient may attend without undue inconvenience.

(3) If necessary to secure full information on the issue, the hearing officer may examine each party who appears and his witnesses.

(4) The hearing officer may schedule a hearing and take additional evidence as is deemed necessary.

(5)(a) Parties to a telephonic hearing who wish to introduce documents or written materials not yet supplied to the opposing parties into the record at the hearing shall immediately mail copies of the documents to the hearing officer and to the opposing party.

(b) All parties to the telephonic hearing shall submit all available documentary evidence to be used during the hearing to the hearing officer and the opposing party prior to convening of the hearing.

(c) Failure to provide both the hearing officer and the opposing party with copies of evidence referenced in paragraphs (a) and (b) of this subsection may result in its being excluded from the record.

Section 11. The Decision. (1) After the hearing is concluded, the hearing officer shall set forth in writing his finding of facts and conclusions of law:

- (a) Specifying the reasons for the decision; and
- (b) Identifying the supporting evidence and regulations.

(2) A copy of the decision shall be mailed to:

- (a) The applicant or recipient and his representative; and
- (b) The local office of the Department for Social Insurance.

~~[(3) The decision, with respect to the issues considered, shall be final unless further appeal is initiated within twenty (20) days from the date of mailing of the decision.]~~

Section 12. Appeal from Decision of Hearing Officer. (1) Any applicant or recipient or his authorized representative wishing to appeal the decision of a hearing officer may do so by filing an appeal to an appeal board appointed in accordance with KRS 205.231(3).

(2) The appeal request shall be considered timely, when an oral or written request is received in a local office or the hearing branch of the Department for Social Insurance within twenty (20) days of the date on which the hearing officer's decision was mailed; or

(3) If the good cause criteria in Section 3 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 in writing or orally, later reduced to writing; and
- (b) Considered filed on the day it is received.

Section 13. Applicant's or Recipient's Rights Prior to Appeal Board Consideration. (1) An appeal to the appeal board shall be acknowledged in writing to the applicant or recipient and his authorized representative.

(2) The acknowledgment shall:

- (a) Offer the opportunity to file a brief or submit new and additional proof; and
- (b) State the tentative date on which the board will consider the appeal.

Section 14. Appeal Board Review. (1) An appeal to the appeal board shall be considered upon:

- (a) The records of the department; and
- (b) The evidence or exhibits introduced before the hearing officer unless the applicant or recipient specifically requests permission to file additional proof.

(2) When an appeal is being considered on the record, the parties may:

(a) Present written arguments; and

(b) At the board's discretion, be allowed to present oral 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 board after seven (7) days notice to the parties, giving them the opportunity:

- (a) To object to introduction of additional evidence; or
- (b) To rebut or refute any additional evidence.

Section 15. The Appeal Board Decision. (1) The decision of the appeal board, duly signed by members of the board, shall:

(a) Set forth in writing the facts on which the decision is based; and

(b) Except as provided in subsection (2) of this section, be irrevocable in respect to the issues in the individual case unless set aside through the judicial review process pursuant to KRS 13B.140 and 13B.150.

(2) The appeal board shall be allowed to reverse the decision in subsection (1) of this section if the following criteria are met:

(a) The correct determination of eligibility based on incapacity or disability is the only issue being considered in the appeal board decision; and

(b) Within twenty (20) days of the appeal board decision, the applicant or recipient, whose incapacity or disability is the issue of the hearing, receives and provides to the appeal board an award letter for benefits based on disability including:

1. Supplemental security income;
2. Retirement, survivors and disability insurance;
3. Federal black lung benefits;
4. Railroad retirement benefits; or
5. Veterans Administration benefits based on 100 percent disability.

Section 16. Payments of Assistance. (1) Payments of assistance to carry out decisions of hearing officers 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 the entire period in which assistance was withheld, the month in which incorrect action of the cabinet adversely affected the applicant or recipient.

(2) For reversals involving reduction of benefits, action shall be taken to restore benefits within ten (10) days of the receipt of the hearing decision.

Section 17. Limitation of Fees. (1) **The cabinet shall not be responsible for payment of attorney fees.**

**(2) An attorney representing an applicant or recipient shall not charge more than the following amounts for his services:** [~~Although the cabinet and its officers and employees, either in their official or personal capacity, are not liable for payment of any attorneys fees, the cabinet shall, in accordance with KRS 205.237, set the maximum fee that an attorney may charge the applicant or recipient for representation in all categories of public assistance as follows:]~~

(a) Seventy-five (75) dollars for preparation and appearance at hearing before a hearing officer;

(b) Seventy-five (75) dollars for preparation and presentation, including any briefs, of appeals to the appeal board;

(c) \$175 for preparation and presentation, including pleadings and appearance in court, of appeals to the circuit court;

(d) \$300 for preparatory work and briefs and all other matters incident to appeals to the Court of Appeals.

~~(3) [(2)]~~ The fee agreed to by the representative and his client within the above maximums shall be deemed to have the approval of the cabinet.



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(4) Collection of an attorney fee shall be the responsibility of the counsel or agent. The fee shall not be deducted from the benefits check of an applicant or recipient. [(3) Enforcement of payment of the fee shall be a matter entirely between the counsel or agent and the applicant or recipient. The fee shall not be deducted, either in whole or in part, from the benefit checks otherwise due and payable to the applicant or recipient.]

Section 18. Special Provisions for the Kentucky Works Program. (1) A participant in the Kentucky Works Program may request a hearing for the resolution of a complaint regarding:

(a) A working condition; or  
(b) The wage rate used to calculate the hours of participation required by the program.

(2) A participant in the Kentucky Works Program may appeal a hearing decision regarding an issue in subsection (1) of this section, in accordance with KRS 13B.110 and 13B.120.

Section 19. Incorporation by Reference. (1) "PAFS-78, Request for Hearing, Appeal, or Withdrawal", (June 1997 Edition), Cabinet for Families and Children, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Social Insurance, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [Special Provisions Relating to Participants in a Work-related Program under the Kentucky Works [Job Opportunities and Basic Skills] Program. (1) A participant in a work-related program under the Kentucky Works [Job Opportunities and Basic Skills] Program may request a hearing for the resolution of a complaint with respect to:

(a) On-the-job working conditions; and  
(b) Workers' compensation coverage; and  
(c) Wage rates used in calculating the hours of participation required of individuals in community work experience programs of the Job Opportunities and Basic Skills Program;

(2) A participant in a work-related program under the Kentucky Works [Job Opportunities and Basic Skills] Program may appeal a hearing decision regarding an issue listed in subsection (1) of this section within twenty (20) days of the receipt of the state's written decision.

(a) The appeal shall be sent to the Office of Administrative Law Judges, U.S. Department of Labor, Vanguard Building, Room 600, 1111 20th Street, NW, Washington, DC 20036.

(b) Copies of the appeal, and any brief in support thereof, shall be sent to:

1. The Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; and

2. The Assistant Secretary for Family Support, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Sixth Floor, Washington, DC 20447.

(c) The appeal shall contain the following information:  
1. The full name, address and telephone number of the Kentucky Works [Job Opportunities and Basic Skills] Program participant;  
2. The provisions of the Social Security Act or federal regulations believed to have been violated;  
3. A copy of the original complaint filed with the state; and  
4. A copy of the state's findings and decision regarding the complaint.

Section 19.] [Material Incorporated by Reference. (1) The form necessary for requesting a hearing, appeal, or withdrawal is being incorporated, [effective June 1, 1996.] This form is the "PAFS-78", "Request for Hearing, Appeal, or Withdrawal", edition June 1997, [revised May 1, 1996.]

(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: December 1, 1997  
FILED WITH LRC: December 4, 1997 at 3 p.m.

**CABINET FOR HEALTH SERVICES**  
**Office of Inspector General**  
**Division of Licensing and Regulation**  
**(As Amended at ARRS, January 14, 1998)**

906 KAR 1:120. Informal dispute resolution.

RELATES TO: [~~KRS 13A.100(1);~~] 42 CFR 488.301, **488.331**  
STATUTORY AUTHORITY: KRS 194.030(11)(b), 42 CFR 488.331, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: **42 CFR 488.331 requires the cabinet to establish an informal dispute resolution process to be used by a provider to informally dispute a finding of deficiency at a nursing facility or skilled nursing facility. This administrative regulation establishes the informal dispute resolution process.** [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 a **remedy** [remedies] applied to effect prompt compliance by a provider with program requirements.

(3) [(4)] "Immediate jeopardy" means as defined in 42 CFR 488.301.

(4) [(5)] "Plan of correction" means a description of actions by a provider to correct a **deficiency** [deficiencies].

(5) [(6)] "Provider" means a **nursing facility or skilled nursing** facility subject to the requirements of 42 CFR 488.331.

(6) [(7)] "Regional program manager" means the regional program manager responsible for the survey and survey team, or his designee.

(7) [(8)] "Statement of deficiencies" means the written notification to the provider describing how the provider fails to meet participation requirements.

(8) [(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 a cited **deficiency** or [deficiencies and] scope and severity **assessment** [assessments] that constitutes 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 **deficiency** [deficiencies] in dispute;

(b) Explain the dispute and provide a detailed basis for the dispute; **and**

(c) **If desired, request a face-to-face meeting between the provider and the survey agency.**

(4) **Documentation in support of the provider's position** [Documents, if any,] shall be attached to the request.

(5) The request and attachments shall be delivered to the regional

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program manager on or before the mandated return date for the plan of correction.

(6) A request for informal dispute resolution shall not delay an [any] enforcement action.

Section 3. Review Process. (1) The survey agency review team shall:

(a) Make the determination regarding the resolution of the dispute; and

(b) Include:

1. The regional program manager, or his designee; and

2. A certified surveyor who did not participate in:

a. The original survey; or

b. The decision to issue the disputed deficiency.

(2) If requested under Section 2(3)(c) of this administrative regulation, a face-to-face meeting shall be conducted by the survey agency. [The regional program manager and appropriate survey staff shall make the determination regarding the resolution of the dispute.]

(3) [(2)] The provider shall be advised verbally of the determination, with written confirmation to follow.

(4) The determination shall be made within thirty (30) days of receipt of a request for informal dispute resolution.

TIMOTHY L. VENO, 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.

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ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

TRANSPORTATION CABINET  
(Amended After Hearing)

600 KAR 6:010. Definitions.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation adopts the definitions to be used in all of the administrative regulations set forth in 600 KAR Chapter 6.

Section 1. Definitions. (1) "Award" means the presentation of an agreement or contract to a professional.

(2) "Cabinet" means the Kentucky Transportation Cabinet.

(3) "Change order" means as defined in KRS 45A.030(2).

(4) "Competitive negotiation" means as described in KRS 45A.085.

(5) "Consultant" means a firm which has been selected to perform engineering or related services for the cabinet as the prime firm in accordance with 600 KAR 6:060.

(6) "Continuous professional liability policy" means professional liability insurance coverage which is maintained without a gap in coverage in order to become and to remain prequalified with the Transportation Cabinet.

(7) "Contract" means as defined in KRS 45A.030(5).

(8) [(7)] "Contract modification" means as defined in KRS 45A.030(6).

(9) [(8)] "Cost per unit of work" means a price based on units when the extent of work cannot be defined but a cost of the work per unit can be determined in advance with reasonable accuracy.

(10) [(9)] "Cost plus a fixed fee" means a price based on the actual allowable cost of the work plus any preestablished fixed amount for operating margin.

(11) [(10)] "DBE" means a disadvantaged business enterprise as defined and certified in accordance with the provisions of 600 KAR 4:010.

(12) [(11)] "Direct salary" means the salary of persons directly involved with and chargeable to a specific project, e.g., engineering or draftsman time spent on a project.

(13) [(12)] "Firm" means an individual or other entity which offers professional engineering or related services.

(14) [(13)] "Lump sum" means a fixed price, including cost and operating margin, agreed upon between a consultant and cabinet for a group of tasks without a breakdown of individual values, i.e., a lot price.

(15) [(14)] "Modification" means a formal revision to the terms of a contract.

(16) [(15)] "Noncompetitive negotiation" means as described in KRS 45A.095.

(17) [(16)] "Overhead costs" means the indirect costs, including salaries and other costs, not chargeable to any specific project. These costs normally support the different projects in which a firm is involved, e.g., accounting, general maintenance and repair, building rent, utilities, furniture, etc.

(18) "Overhead submission packet" means a package of information containing a summary of the firm's overhead expense accounts, the direct labor and indirect labor rates, and direct costs of the items outlined in 600 KAR 6:080, Section 1 (3).

(19) "Prequalification" means the evaluation of professionals in which the cabinet considers such factors as financial capability,

technical expertise, experience, past performance, [reputation,] and management, in order to develop a list of professionals qualified to contract with the cabinet for professional engineering or related services.

(20) "Prequalification category" means a type of project for which professional engineering or related services are contracted.

(21) "Prime" means a consultant awarded a contract under 600 KAR 6:070 and who performs at least fifty (50) percent of the dollar value of the work for a project.

(22) [(17)] "Principal" means any individual who owns directly or indirectly more than ten (10) percent of the voting interest in a consulting firm or who is an officer of the firm (i.e., president, treasurer, vice president, secretary, or director).

(23) "Project-specific professional liability insurance" means separate professional liability coverage which provides noncancelable coverage for the duration of a specific project and continuing through a discovery period after construction is complete.

[(18)] "Proof of necessity" means the justification to employ consulting engineers, architects, appraisers, attorneys, consultants and others:

(19) "Prequalification" means the evaluation of professionals in which the cabinet considers such factors as financial capability, reputation, and management, in order to develop a list of professionals qualified to contract with the cabinet for professional engineering or related services:

(20) "Prequalification category" means a type of project for which professional engineering or related services are contracted.]

(24) [(21)] "Professional engineer" means an individual or firm licensed to practice engineering in the Commonwealth of Kentucky under KRS Chapter 322.

(25) [(22)] "Professional engineering or related services" means specialized engineering or related professional services performed by individuals, consultants, or other organizations of recognized technical competence, education or experience that are involved in the planning, design, construction, maintenance or operation of Kentucky's transportation systems.

(26) "Professional liability policy" means claims-made insurance coverage for professional engineering or related services which indemnifies a firm and past or present partners, officers, directors, stockholders or employees while acting within the scope of their duties for the firm against the following:

(a) A negligent act;

(b) An error or omission in performing a professional service; or

(c) Failure to provide a service in accordance with standard of care.

(27) [(23)] "Professional services" means specialized services performed by individuals or consultants of recognized technical competence.

(28) [(24)] "Project" means an undertaking by the Transportation Cabinet as defined in KRS 45A.800(4).

(29) [(25)] "Project manager [supervisor]" means the director of the user division or person designated by the user division director to oversee the performance of a consultant to perform contracted services on a project.

(30) "Proof of necessity" means the justification to employ consulting engineers, architects, appraisers, attorneys, consultants and others.

(31) [(26)] "Proposal" means an offer made by a firm to the cabinet as a basis for negotiations for entering into a contract.

(32) [(27)] "Salary additives" means employer-paid fringe benefits including an employer portion of FICA, hospitalization, group life insurance, unemployment contributions to the state and other similar

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benefits.

(33) [(28)] "Scope of work" means all services and actions required of the consultant by the contract.

(34) [(29)] "Services" means as defined in KRS 45A.030(19).

(35) [(30)] "Six (6) year plan" means the document prepared by the Transportation Cabinet in accordance with the provisions of KRS 176.419 through 176.470.

(36) "Standard of care" means the ordinary and reasonable care required and established by expert testimony of what a reasonable and prudent professional would have done under the same or similar circumstances.

(37) [(31)] "Subconsultant" means a second consultant contracted to a prime consultant for the performance of work contracted by the cabinet to the prime consultant.

(38) [(32)] "Termination clause" means a contract clause which allows the cabinet to terminate, at its own discretion, the performance of work and to make settlement of the consultant's claims.

(39) [(33)] "User division" means as defined in KRS 45A.800(6).

(40) [(34)] "Work unit" means an item on a list of tasks which are required to be accomplished by the consultant in order to satisfactorily complete the scope of work.

J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: January 6, 1998

FILED WITH LRC: January 6, 1998 at noon

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra Pullen Davis, Staff Assistant

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts.

(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: This administrative regulation only contains the definitions which are applicable to this entire chapter of administrative regulations, 600 KAR 6:010 to 080. For the set of administrative regulations which, with very few changes, amend existing administrative regulations, there is an expense to each firm which averages \$300 to prepare and submit the required prequalification forms each year. In addition, a complete proposal for a particular project will also cost each firm making a proposal to the Transportation Cabinet approximately \$500 per proposal. With 250 firms prequalified each year the cost of prequalification to the industry is approximately \$75,000. Approximately 20 separate firms submit proposals on each project advertised by the Transportation Cabinet. With about 60 projects each year, there is a cost to the industry of about \$600,000 to prepare the proposals.

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

1. First year following implementation: While the administrative regulation specifies the specific forms which the firms are required to use to apply for prequalification or to submit a proposal, the process is mandated by KRS Chapter 45A. Through the amendments to this administrative regulation, 600 KAR 6:040, and 600 KAR 6:070, the Transportation Cabinet is adding an additional prequalification requirement of continuous professional liability insurance coverage in a minimum amount of \$1 million. The cost to individual firms will vary greatly depending on the size of the firm and the complexity of the projects for which they are prequalified. It is possible that a cost of

\$300,000 will be incurred by the largest firms. However, it should be noted that many of the firms already carry professional liability insurance.

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

3. Additional factors increasing or decreasing costs: (note any effects upon competition): None

(3) Effects on the promulgating administrative body: The Transportation Cabinet is required to review the 250 applications for prequalification and 1200 proposals on projects each year. Not only is the entire staff of the Contract Negotiating Branch of Division of Professional Services constantly involved in this process, but also the user divisions are required to involve significant amounts of man-hours in the reviews and evaluations. Approximately 100 change orders are issued on these contracts each year. It is almost as time-consuming to negotiate a change order as the original contract. The amendments to the administrative regulation require the selection committee members to complete more forms certifying that the process required by KRS Chapter 45A have been carried out.

(a) Direct and indirect costs or savings: The annual budget for the Contract Negotiating Branch of the Division of Professional Services is \$300,000. At least double that cost is incurred collectively by the user divisions each year.

1. First year: The total cost to the Transportation Cabinet is approximately \$900,000.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assured of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Review and evaluation of any applications for prequalification received and the evaluation of all proposals submitted on projects.

(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 Road Fund as authorized in the Transportation Cabinet budget.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of continuing to not require professional liability insurance for prequalified firms was discarded, because if the consultant does make a mistake which results in injury to a person or property damage, the Transportation Cabinet wants the injured party to be reimbursed for the injury. The alternative of continuing to require all persons to be physically present in order to conduct a Consultant Selection Committee meeting was discarded in view of the great advances made in teleconferencing and computer access.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments: The majority of this regulatory impact analysis relates to all of the administrative regulations to which the definitions in 600 KAR 6:010 refer.

(11) Tiering: Was tiering applied? No. There is no way to tier

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definitions. However, when considering the entire chapter of administrative regulations as a whole, there are different requirements for the prequalification categories. In addition, subconsultants do not have to submit as much information to the Transportation Cabinet as does the firm executing the main contract.

### TRANSPORTATION CABINET (Amended After Hearing)

#### 600 KAR 6:040. Prequalification of firms for professional engineering or related services.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 23 CFR 172, 49 CFR 18, 23 USC

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth the procedure and standards for the prequalification of firms for professional engineering or related services while implementing the provisions of KRS 45A.800 to 45A.835.

Section 1. Application for Prequalification for Professional Engineering or Related Services. (1) A firm desiring consideration for prequalification shall complete each qualification questionnaire pertaining to the categories for which prequalification is desired. [The prequalification questionnaire forms are incorporated by reference in Section 8 of this administrative regulation.]

(2)(a) A firm desiring to be considered for an award as a prime shall provide an original certificate of a continuous professional liability policy in an amount not less than \$1,000,000 with the application.

(b) A certificate of self-insurance shall not be accepted by the Transportation Cabinet. [submitted.]

(3) The completed prequalification form and original certificate of a continuous professional liability policy shall be submitted to the Division of Professional Services, 6th Floor, Room 610, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(4) If a prequalified firm ceases to exist or ceases to provide engineering services as a prime, it shall continue to maintain a minimum of \$1,000,000 in professional liability insurance for a project that was designed by the firm for two (2) years beyond the date the project was opened to traffic.

(5) After March 31, 1998, a firm shall have filed the proof of professional liability insurance required by subsection (1) of this section in order to submit a proposal on a project to the Transportation Cabinet.

Section 2. Evaluation of Applications for Prequalification. (1) Each firm's qualifications for a requested prequalification category shall be reviewed by the offices or divisions within the cabinet with expertise in that requested prequalification category.

(2) The Division of Professional Services shall review and maintain the original certificate of continuous professional liability policy for each firm desiring prequalification as a prime.

(3) The criteria for prequalification to be used by the user divisions and offices are listed in the Appendix to the Consulting Engineer and Related Services Prequalification Application as adopted July 1994 which is incorporated by reference in Section 8 of this administrative regulation.

(4) [(3)] The head of the user division or office shall notify the Division of Professional Services of its evaluation results.

(5)(a) The Transportation Cabinet may verify the financial and other information included in the application of a firm.

(b) Verification may be accomplished in the same manner as an audit performed pursuant to 600 KAR 6:080.

(6) [(4)](a) The Division of Professional Services shall notify each

firm of all evaluation results involving that firm.

(b) If a firm is disapproved for any requested prequalification category or service, the firm shall also be notified of the appeals procedure set forth in Section 6 of this administrative regulation.

Section 3. Annual Requalification. (1) A prequalified firm shall annually submit the following to the Division of Professional Services:

(a) [qualification and performance data] On or prior to its anniversary dates of prequalification:

1. Qualification and performance data; and

2. An original certificate of continuous professional liability policy in an amount not less than \$1,000,000; and

(b) Within five (5) months of the end of the firm's fiscal year, an updated overhead submission packet.

(2) The annual application shall include a [eleven (11)] completed set [sets] of the appropriate qualification forms and a copy [eleven (11)] copies of the firm's current marketing brochure, if one exists, for each functional area for which the firm is requesting prequalification. [unless different instructions are communicated to the firm either verbally or in writing.]

(3) Failure to submit the completed forms or the original certificate of a continuous professional liability policy in a timely manner shall cause the removal of the firm's prequalification status.

(4) The annual renewal application shall be evaluated in accordance with the provisions of Section 2 of this administrative regulation.

Section 4. Changes in Firm. (1) A prequalified firm shall notify the Division of Professional Services of the following:

(a) A major change [any major changes] either increasing or decreasing the firm's professional or financial qualifications, capabilities, or personnel; or

(b) A change in:

1. The address of the firm;

2. Name of the firm;

3. The continuous professional liability policy on file with the Division of Professional Services; or

4. Another [address, name change, or other] of the major qualification criteria.

(2) The user division or office shall review the updated information received from the firm and shall reclassify the firm as appropriate with respect to types of work and capacity of the firm.

(3)(a) If a prequalified firm fails to notify the Division of Professional Services of a change of the address, it may be removed from the list of prequalified firms until it notifies the division of its new address.

(b) If the change of address notification is submitted to the Division of Professional Services during what would have been the firm's prequalification year and no other changes have occurred in the firm, the firm shall be restored to the list of prequalified firms.

(c) Removal from the list of prequalified firms pursuant to this subsection, shall not be a basis for appeal under the provisions of Section 6 of this administrative regulation.

Section 5. Removal from List of Prequalified Firms. (1) A firm may be removed from the list of prequalified firms by the Consultant Prequalification Committee for any of the following reasons:

(a) Failure to submit an annual application on the firm's anniversary date;

(b) Falsification of the firm's prequalification application as to its qualifications;

(c) Falsification of the firm's response to announcement of any project;

(d) Violation of the Executive Branch Ethics Law contained in KRS Chapter 11A;

(e) Falsification of the information provided to the Transportation Cabinet for audit purposes;

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(f) Failure to have a current license from the Kentucky Professional Board of Registration;

(g) Failure to notify the Transportation Cabinet of the loss of personnel which has an impact on the firm's prequalification or project management within thirty (30) days; [or]

(h) Violation of the firm's certification that the firm's owner, principals or partners, or any family member having an interest of ten (10) percent or more in any business entity involved in the performance of the contract have not contributed more than the amount specified in KRS 121.056(2) to the gubernatorial campaign of the current governor;

(i) Failure to maintain with the Division of Professional Services a current certificate of a continuous professional liability policy in an amount not less than \$1,000,000;

(j) Failure to annually submit an up-to-date overhead submission packet to the Division of Professional Services; [or]

(k) Failure to perform on a project in a manner acceptable to the Transportation Cabinet; or

(l) Failure to provide access to the information required by 600 KAR 6:080.

(2) The Chairperson [~~Chairman~~] of the Prequalification Committee shall notify the firm in writing of its proposed removal from the list of prequalified firm and the reason for the proposed removal.

Section 6. Appeal Procedure for Firms Not Prequalified or Removed from Prequalified List. (1) The cabinet shall establish a permanent Consultant Prequalification Committee to evaluate the statements of qualifications of firms which appeal a disapproval rating or removal from the list of prequalified firms.

(2) The members of the Consultant Prequalification Committee shall be the following:

(a) Director, Division of Professional Services, Chairperson;

(b) Director, Division of Aeronautics;

(c) Director, Division of Traffic;

(d) Director, Division of Highway Design;

(e) Director, Division of Bridge Design;

(f) Director, Division of Materials;

(g) Director, Division of Transportation Planning;

(h) Director, Division of Environmental Analysis;

(i) Director, Division of Operations;

(j) Director, Division of Construction; and

(k) Director, Division of Multimodal Programs.

(3) A firm may appeal a [any] disapproval relating to its request for approval of a prequalification category pursuant to Section 2 of this administrative regulation.

(4) A firm may appeal its removal from the list of prequalified firms pursuant to Section 5 of this administrative regulation.

(5) An appeal pursuant to this section of this administrative regulation shall be made in writing to the Chairperson [~~Chairman~~] of the Consultant Prequalification Committee within thirty (30) days of notification of the action of the Transportation Cabinet.

(6) The basis of the appeal and the relief sought shall be stated in the written communication to the chairperson [~~chairman~~].

(7)(a) Within sixty (60) days from receipt of an appeal, the committee members or their designees shall review the appeal and shall make a decision regarding the appeal.

(b) If the firm agrees, the committee may delay its decision for an additional sixty (60) days while the committee meets with the firm to discuss the appeal.

(8) The committee shall notify the State Highway Engineer and the firm of its decision.

(9) If the firm's appeal is denied by the committee, the firm may appeal the decision within thirty (30) days of written notice:

(a) Relating to nonqualification to the State Highway Engineer; or

(b) Relating to removal from the list of prequalified firms to the Secretary of the Transportation Cabinet.

(10) The State Highway Engineer or Transportation Cabinet

Secretary, as appropriate, shall notify the firm of his decision within thirty (30) days. The decision of the State Highway Engineer or Transportation Cabinet Secretary shall be final.

Section 7. Conditional Prequalification. (1) The user division or office or Consultant Prequalification Committee may grant conditional prequalification to a firm if the firm:

(a) Has no direct highway or transportation experience but has identified personnel who have technical training or education and other types of experience which may allow the firm to perform the required services; or

(b) Performed poorly on past projects for the cabinet or has been removed from the list of prequalified firms for performance-related reasons and has restructured itself to address the problems.

(2) After the firm has performed services for the cabinet in the category of work for which it was conditionally prequalified, it may request a prequalification determination from the committee in accordance with Section 1 of this administrative regulation.

(3) Denial of conditional prequalification of a firm to perform services for the cabinet shall not be appealed.

Section 8. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) Consulting Engineer and Related Services Prequalification Application, TC 40-1, July 1994 edition;

(b) Prequalification Requirements for Geotechnical Drilling Services, TC 64-540, May 1992 edition;

(c) Prequalification Requirements for Geotechnical Engineering Services, TC 64-541, May 1992 edition; [and]

(d) Prequalification Requirements for Geotechnical Laboratory Services, TC 64-542, May 1992 edition; and

(e) Appendix to the Consulting Engineer and Related Services Prequalification Application, July 1994 edition.

(2) All material incorporated by reference as a part of this administrative regulation may be obtained, viewed, or copied at the Division of Professional Services, 6th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4555. The office 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

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: January 6, 1998

FILED WITH LRC: January 6, 1998 at noon

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra Pullen Davis, Staff Assistant

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts.

(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: For the set of administrative regulations which, with very few changes, amend the existing administrative regulations, there is an expense to each firm which averages \$300 to prepare and submit the required prequalification forms each year. In addition, a complete proposal for a particular project will also cost each firm making a proposal to the Transportation Cabinet approximately \$500 per proposal. With 250 firms prequalified each year the cost of prequalification to the industry is

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approximately \$75,000. Approximately 20 separate firms submit proposals on each project advertised by the Transportation Cabinet. With about 60 projects each year, there is a cost to the industry of about \$600,000 to prepare the proposals.

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

1. First year following implementation: While the administrative regulation specifies the specific forms which the firms are required to use to apply for prequalification or to submit a proposal, the process is mandated by KRS Chapter 45A. Through the amendments to this administrative regulation, 600 KAR 6:040, and 600 KAR 6:070, the Transportation Cabinet is adding an additional prequalification requirement of continuous professional liability insurance coverage in a minimum amount of \$1 million. The cost to individual firms will vary greatly depending on the size of the firm and the complexity of the projects for which they are prequalified. It is possible that a cost of \$300,000 will be incurred by the largest firms. However, it should be noted that many of the firms already carry professional liability insurance.

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

3. Additional factors increasing or decreasing costs: (note any effects upon competition): None

(3) Effects on the promulgating administrative body: The Transportation Cabinet is required to review the 250 applications for prequalification and 1200 proposals on projects each year. Not only is the entire staff of the Contract Negotiating Branch of Division of Professional Services constantly involved in this process, but also the user divisions are required to involve significant amounts of man-hours in the reviews and evaluations. Approximately 100 change orders are issued on these contracts each year. It is almost as time-consuming to negotiate a change order as the original contract. The amendments to the administrative regulation require the selection committee members to complete more forms certifying that the process required by KRS Chapter 45A have been carried out.

(a) Direct and indirect costs or savings: The annual budget for the Contract Negotiating Branch of the Division of Professional Services is \$300,000. At least double that cost is incurred collectively by the user divisions each year.

1. First year: The total cost to the Transportation Cabinet is approximately \$900,000.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assured of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Review and evaluation of any applications for prequalification received and the evaluation of all proposals submitted on projects.

(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 Road Fund as authorized in the Transportation Cabinet budget.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of continuing to not require professional liability insurance for prequalified firms was discarded, because if the consultant does make a mistake which results in injury to a person or property damage, the Transportation Cabinet wants the injured party to be reimbursed for the injury. The alternative of continuing to require all persons to be physically present in order to conduct a Consultant

Selection Committee meeting was discarded in view of the great advances made in teleconferencing and computer access.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments: The majority of this regulatory impact analysis relates to all of the administrative regulations to which the definitions in 600 KAR 6:010 refer.

(11) Tiering: Was tiering applied? No. When considering the entire chapter of administrative regulations as a whole, there are different requirements for the prequalification categories. In addition subconsultants do not have to submit as much information to the Transportation Cabinet as does the firm executing the main contract.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code, and 23 CFR 172.7. The cited federal regulation requires that a state using federal aid on projects utilize qualifications-based procedures in the award of engineering and design-related services contracts.

2. State compliance standards. This administrative regulation sets forth the qualification procedures which all engineering and related services contractors must follow and comply with.

3. Minimum or uniform standards contained in the federal mandate. The mandate requires just that the state have a qualifications-based procedure and that it be approved by the U.S. Department of Transportation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The prequalification procedures are applicable not only to federal-aid projects but also those state funded projects since any prequalified consultant will be able to submit a proposal on a federally-funded project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A prequalified firm may be selected for a federally-funded project at any time. Therefore, even if it has only previously been selected for state-funded projects, it has to be prequalified in accordance with the federal mandate.

### TRANSPORTATION CABINET (Amended After Hearing)

**600 KAR 6:070. Contracting for professional engineering or related services.**

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 13A.100(1), 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC

NECESSITY, FUNCTION, AND CONFORMITY: 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.

Section 1. Methods of Contracting with Consultants. (1) The

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following methods of contracting with consultants shall be acceptable:

- (a) Lump sum;
- (b) Cost plus a fixed fee;
- (c) Specific rates of compensation; or
- (d) Cost per unit of work.

(2)(a) When the cabinet chooses the lump sum method of contracting, the consultant shall present a statement to the Division of Professional Services showing the probable cost for the elements of work and the expected operating margin.

(b) This statement shall include a supported breakdown of the direct and indirect costs and subconsultant costs which the consultant expects to incur.

(c) The method of dividing the project into work units and the calculation of related time units shall be devised so that the estimate can be easily reviewed.

(d) The Division of Professional Services and the user division shall verify the following supporting documentation before recommending the contract for approval:

1. Reasonableness of the amount proposed and consideration of the degrees of risk and responsibility to be assumed by the consultant;
2. The extent, scope, complexity, character and duration of the required services;
3. Professional and financial investments to be required of the consultant;
4. The consultant's normally-expected return for such services;
5. Conditions under which the consultant is expected to perform;
6. The cabinet's estimate of the appropriate amount for the services required; and
7. The cabinet's findings on the basis of experience and knowledge.

(3)(a) When the cabinet chooses the cost plus a fixed fee method of contracting, an upper limit of payment of actual cost shall be established which cannot be exceeded without obtaining cabinet approval.

(b) During negotiations, the Division of Professional Services or other negotiation unit shall be responsible for establishing the upper limit along with the fixed fee to be paid to the consultant for the services required.

(c) The Division of Professional Services or other negotiation unit shall establish the fixed fee and an upper limit based on past experience gained from negotiations of similar projects, judgment regarding scheduling and complexity of work and the user division's estimates.

(4)(a) When the cabinet chooses the specific rate of compensation method of contracting, the Division of Professional Services or other negotiation unit shall document the basis on which the amount specified as the upper limit or upset limit was established.

(b) The agreement shall contain provisions which permit adjustment to this upper limit when the consultant establishes, and the user division agrees, that there has been or is to be a significant change in the:

1. Scope, complexity or character of the services to be performed;
2. Conditions under which the work is required to be performed;
3. Duration of the work if the change from the time period specified in the agreement for completion of the work warrants such adjustment.

(c) In the case of statewide agreements under which there is to be subsequent individual authorizations, the establishment of a maximum amount for the overall contract shall be submitted to the LRC's Personal Service Contract Review Subcommittee. A maximum amount shall be established for each of the individual authorizations which shall not exceed the maximum amount for the overall contract.

(5)(a) When the cabinet is using the cost per unit of work method of compensation, the consultant shall be paid on the basis of units completed.

(b) This method of contracting is appropriate when the extent of the work cannot be definitely defined but when cost of the work per unit may be determined in advance with reasonable accuracy.

(c) A proposal using this method of contracting shall be supported in the same manner as that indicated for the lump sum method used for consultants.

(6)(a) For an individual acting as a consultant, the specific rates of compensation shall include the direct salary costs, salary additives, indirect costs and the net fee. The agreement of supporting data shall specifically identify these costs.

(b) Other direct costs may be included as an element of a specific rate or as independent cost items.

Section 2. Prenegotiation Procedures. (1)(a) A consultant selected pursuant to 600 KAR 6:060 shall meet with cabinet representatives in accordance with the schedule identified in the procurement bulletin issued pursuant to 600 KAR 6:050 to discuss in detail the scope of services to be provided by the consultant for the project.

(b) The Transportation Cabinet may require a consultant to obtain project-specific professional liability insurance for an unusual project.

(c) If project-specific professional liability insurance is required:  
1. A firm's audit may be reexamined to determine if a change in the overhead rate is needed; or

2. And there is more than one (1) consultant involved in the project, the consultants may jointly purchase the insurance.

(2) After this meeting, the consultant shall submit the following to the cabinet:

(a) For roadway design, work units which quantify the tasks to be performed to achieve the roadway design services that appeared in the advertisement or procurement bulletin and an identification of the assignment of the work units to the prime consultant or a subconsultant.

1. The cabinet has the following options regarding the submittal:
  - a. Concur;
  - b. Modify and return the modification to the consultant; or
  - c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.

(b) For structure work, work units include a description of the structure to be designed including but not limited to type, length, span arrangement, curves, skew, pilings based on preliminary geotechnical information, an identification of the assignment of the work units to the prime consultant or a subconsultant, and any other pertinent considerations.

1. The cabinet has the following options regarding the submittal:
  - a. Concur;
  - b. Modify and return the modification to the consultant; or
  - c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.

(c) For environmental services, a scope of work for each task and corresponding person-hours to achieve each task and an identification of the assignment of the work units to the prime consultant or a subconsultant.

(d) For geotechnical assessments, a copy of the work units and corresponding cost derivatives to achieve each task which qualifies and quantifies the tasks to be performed to achieve the geotechnical services that appear in the announcement and an identification of the assignment of the work units to the prime consultant or a subconsultant.

1. The cabinet has the following options regarding the submittal:
  - a. Concur;
  - b. Modify and return the modification to the consultant; or



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c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.

(e) For bridge maintenance inspection, a copy of work units and proposed equipment usage to achieve the inspection services that appeared in the announcement and an identification of the assignment of the work units to the prime consultant or a subconsultant.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the consultant; or

c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.

(f) For planning studies, work units which qualify the tasks to be performed to achieve the planning study services that appeared in the announcement and an identification of the assignment of the work units to the prime consultant or a subconsultant.

1. The cabinet has the following options regarding the submittal:

a. Concur;

b. Modify and return the modification to the consultant; or

c. Reject and ask the consultant to evaluate and resubmit the work units.

2. After an agreement on the work units between the cabinet and the consultant, each shall independently develop production rates to be applied to the work units to determine person-hours for each task.

(3) The consultant shall submit to the Division of Professional Services a fair and reasonable fee proposal which shall be prepared using the following:

(a) Personnel classifications and average wage rates for each classification as they appear in the audit and adjusted for work in the future years;

(b) Distribution of work by the personnel classifications;

(c) Overhead rates as determined by an audit;

(d) Subconsultants and fee proposals for each;

(e) Direct expenses not included in the overhead and subject to the limitations of subsections (5), (6), (7), and (8) of this section; and

(f) Person-hours to achieve the agreed upon task to achieve the scope of services that appear in the advertisement or procurement bulletin.

(4) After the Division of Professional Services requests a proposal and fee estimate from the consultant, the user division shall:

(a) Prepare an estimate of resources required to complete the project;

(b) Discuss the project with other divisions and request resource estimates from them as necessary; and

(c) Coordinate all of the resource estimates from other divisions to be used by the Division of Professional Services in negotiation of the contract.

(5)(a) Except as set forth in subparagraph (b) of this subsection, for contract negotiation purposes, the maximum allowable overhead rate shall be 150 percent;

(b) For contract negotiation purposes, if a consultant or subconsultant offers special expertise in engineering or related services which is outside normal project development activities, the limitations in 600 KAR 6:080, Section 2, may be suspended and the allowable overhead rate may exceed 150 percent if:

1. The director of the Division of Professional Services recommends approval;

2. The State Highway Engineer recommends approval;

3. The Secretary of the Transportation Cabinet approves; and

4. The approved overhead rate does not exceed the actual overhead rate established pursuant to 48 CFR Part 31.

(6) For contract negotiation purposes, travel expenses for

consultant employees or survey crews shall be limited to those incurred from an office in Kentucky or the border of Kentucky nearest the consultant's office;

(7) For contract negotiation purposes, direct expenses shall be limited to the following items and limits:

(a) Passenger car - ~~twenty-seven (27)~~ [twenty-five (25)] cents per mile;

(b) Truck or four (4) - wheel drive vehicle - thirty-five (35) cents per mile;

(c) Lodging:

1. Professional staff - fifty-five (55) dollars per night per person; and

2. Survey field personnel - seventy (70) dollars per night for two (2) persons in one (1) room;

(d) Meals:

1. Breakfast - ~~six (6)~~ [five (5)] dollars per day per person;

2. Lunch - ~~seven (7)~~ [six (6)] dollars per day per person; or

3. Dinner - ~~fourteen (14)~~ [thirteen (13)] dollars per day per person;

(e) Printing of reports for distribution external to the Transportation Cabinet - estimated cost from the printer per document;

(f) Travel time for a survey crew - travel time to and from a job site in hours multiplied by the survey crew wage rate multiplied by one and three-tenths (1.3) for salary additives;

(g) Special equipment which is project-specific;

(h) Capital cost of money; and

(i) Computer time, if accounted for as a direct charge, shall not exceed fifteen (15) dollars per hour.

(8) For contract negotiation purposes, the maximum direct salary per year shall be:

(a) \$90,000 for a nonprincipal or nonpartner of a firm; and

(b) \$100,000 for a principal or partner of a firm. [shall be \$90,000 per year.]

Section 3. Contract Negotiations. (1)(a) The Division of Professional Services shall be the designated negotiating agent for the Department of Highways in the Cabinet.

(b) If professional engineering or related services are requested by user divisions within the cabinet but not in the Department of Highways, that user division shall be responsible for negotiating the fee.

(2)(a) The Division of Professional Services or other designated negotiation unit shall receive the proposal and fee estimate from the consultant. The proposal submitted by the consultant shall include either a statement that the payment shall be based on the percentage of work completed or the proposed project milestones and corresponding maximum percentage payments and a breakdown of the estimated fee for performing the work including the following:

1. Direct salaries;

2. Overhead;

3. Other direct costs including cost of materials which are not included in the overhead;

4. Subconsultant costs;

5. Operating margin; and

6. Use of DBE firms.

(b) The Division of Professional Services or other designated negotiation unit shall analyze the proposal and may confer with others regarding the proposal as necessary. The proposal shall be used as a basis for further negotiation of the professional services agreement.

(c) Unreasonable or deliberately inflated proposals shall be rejected and may be cause for terminating negotiations in accordance with KRS 45A.825(9).

(3) If the contract which is being negotiated uses a method of compensation other than lump sum, the consultant shall use an accounting system which segregates and accumulates reasonable, allocable and allowable costs to be charged to a contract for an audit by the External Audit Branch.

(4)(a) If a consultant intends to utilize the services of a subconsul-

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tant to perform any part of the work, at the time of negotiations the consultant shall submit a fee proposal for the amount of work to be subcontracted.

(b) The fee proposal shall be based on the audited overhead and wage rates for the subconsultant.

(c) A subconsultant shall be prequalified with the cabinet to perform the services to be subcontracted to it if the services are required to be prequalified.

(d) Prior approval from the Division of Professional Services or other negotiation unit shall be necessary.

(e) If a consultant desires to utilize a subconsultant to perform part of the work after a contract has been approved and notice has been given to begin work, the procedures set forth in Section 6 of this administrative regulation shall be followed.

(5) A consultant which is awarded a contract for professional engineering or related services with the cabinet shall perform at least fifty (50) percent of the dollar value of the work for the project unless otherwise approved by the Director of the Division of Professional Services.

(6)(a) The operating margin allowed a professional engineering or related services consultant shall be allowed only on the negotiated direct labor and overhead costs regardless of the type of contract and shall not exceed the following:

1. Lump sum contract:

a. Fifteen (15) percent of the total direct labor cost plus overhead costs for a contract, including all contract modifications, less than \$2,000,000; or

b. Ten (10) percent of the total direct labor cost plus overhead costs for a contract, including all contract modifications, equal to or in excess of \$3,000,000; or

c. For a contract with the total direct labor cost, plus overhead cost of \$2,000,000 to \$3,000,000, the operating margin shall be fourteen (14) percent to ten (10) percent with a one (1) percent reduction for each \$200,000 increase in fee.

2. Unit price contract - fifteen (15) percent of the estimated unit cost at the time of execution of the contract.

(b) A cost plus fixed fee contract shall have a lump sum fee equal to ten (10) percent of the estimated cost at the time of the execution of the agreement.

(7) The Division of Professional Services or other negotiation unit shall compare the consultant's established fee with the cabinet's estimate to determine both the reasonableness of the fee and areas of substantial differences which may require further negotiation.

(8) The Division of Professional Services or other negotiation unit shall negotiate with the consultant to establish a reasonable fee and basis of payment, including incremental payments for completed work where appropriate, for the services to be performed under the contract.

(9)(a) The consultant shall keep written documentation of each negotiation meeting and shall submit to the Division of Professional Services or other negotiation unit the following:

1. Minutes of negotiations;
2. As-negotiated fee;
3. As-negotiated person-hours;
4. Classification percentage distribution; and
5. Direct cost breakdowns.

(b) The public shall not be denied access to the items set forth in paragraph (a) of this subsection.

(10) After the Division of Professional Services or other negotiation unit has negotiated a contract, the head of the unit shall comply with the provisions of KRS 45A.825(10).

Section 4. Contract Preparation and Execution. (1) The Division of Professional Services or other negotiation unit shall prepare an agreement or contract to over the services to be provided, method and amount of payment, the time of completion and necessary special provisions.

(a) The agreement shall also include by reference the General Provisions Attachment as revised July 1994 unless the project is for a consultant structure inspection. The General Provisions Attachment is incorporated by reference as a part of this administrative regulation.

(b) If the project is for a consultant structure inspection, the agreement shall also include by reference the Division of Operations, Consultant Structure Inspection Provisions as revised in May 1993. The Division of Operations, Consultant Structure Inspection Provisions Form is incorporated by reference as a part of this administrative regulation.

(2) The contract and negotiation minutes shall be sent to the consultant for the signature of an authorized representative. All original documents shall be returned to the Division of Professional Services or other negotiation unit.

(3) The contract shall be reviewed and approved by the secretary of the cabinet.

(4) When the project is subject to approval from the FHWA and after the contract has received final approval from the cabinet, the Division of Professional Services shall send to the FHWA the following requesting their approval:

(a) A copy of the contract;

(b) The negotiated fee and person-hours;

(c) The consultant's fee and person-hour proposal;

(d) The cabinet's person-hour estimate;

(e) The minutes of the negotiation;

(f) The minutes of the predesign conference;

(g) A copy of the advertisement and announcement;

(h) The list of firms that responded to the announcement in a timely manner;

(i) The written approval from the secretary of the cabinet to engage a professional firm;

(j) The minutes of the Professional Engineering Services Selection Committee;

(k) The memorandum from the Chairman of the Selection Committee stating the ranking of the three best-qualified firms by the Professional Engineering Services Selection Committee; and

(l) The audit report of overhead and wage rates which was used to establish the fee.

(6) If FHWA does not approve the contract, the secretary of the cabinet, after discussion with the State Highway Engineer and staff, may decide to modify the contract, redefine the project, terminate the project or ask for reconsideration by the FHWA.

Section 5. Notice to Proceed and Payments. (1)(a) Before a notice of approval for payment can be issued, funds shall be encumbered by the cabinet.

(b) The funds for statewide contracts shall be encumbered on a project by project basis.

(2) ~~After~~ When the Division of Professional Services or other negotiation unit receives notification ~~[a copy of the transmittal sheet]~~ indicating that the LRC Personal Service Contract Review Subcommittee has received the contract and project information for review, a notice to proceed shall be transmitted ~~[sent]~~ to the consultant indicating that it may commence work but it shall not bill for services until specifically authorized to do so. For projects requiring approval of a unit of the federal government, notice to proceed shall not be issued until the federal approval is obtained.

(3) When the LRC Personal Service Contract Review Subcommittee issues a notification of acceptance on a contract, the Division of Professional Services or other negotiation unit shall issue a letter to the consultant informing it that it may bill the cabinet for charges incurred while working on the project.

(4)(a) If the LRC Personal Service Contract Review Subcommittee objects to the contract and the cabinet determines that the contract is to be canceled, the Division of Professional Services or other negotiation unit shall notify the consultant of the cancellation and shall take necessary steps to close the contract.

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(b) If the cabinet determines that the contract is to be modified to comply with the concerns of the LRC Personal Service Contract Review Subcommittee, the Division of Professional Services or other negotiation unit shall notify the consultant of the necessary modifications and shall follow the contract modification and change order procedures specified in Section 7 of this administrative regulation.

(c) If the cabinet determines that the contract is to be executed as submitted to the LRC Personal Service Contract Review Subcommittee, the Division of Professional Services or other negotiation unit shall issue a letter to the consultant informing it that it may bill the cabinet for charges incurred while working on the project.

Section 6. Contract Administration. All work performed under a professional services contract shall be subject to general supervision, direction, review and approval by the cabinet.

(1)(a) A project **manager** [supervisor] shall be assigned to the project by the director or office head of the user division.

(b) The division director or office head may serve as the project **manager** [supervisor].

(c) The project **manager** [supervisor] shall be responsible for coordinating all cabinet activities with the consultant and for providing necessary supervision through the duration of the contract. This coordination shall include the following:

1. Scheduling, monitoring and controlling the consultant's activities;

2. Reporting the status of these activities to the appropriate authority;

3. Periodically reviewing the work to determine if the work:

a. Is acceptable;

b. Is in accordance with the agreement for the particular project; and

c. Scope has changed to the point that it may require a supplemental agreement and increased or decreased compensation; and

4. Completing and processing the Consultant Monthly Report Form incorporated by reference in Section 9 of this administrative regulation.

(2)(a) During the project, the consultant may subcontract with other firms to perform specialized services in a manner similar to Section 1(4) of this administrative regulation. The subconsultant shall be prequalified by the cabinet in accordance with the provisions of 600 KAR 6:040 if the services that are subcontracted are required to be prequalified.

(b) If the services to be performed by the subconsultant are subject to prequalification by the cabinet and were not previously identified in the original negotiation or subsequent change orders, the consultant shall submit a request for a fee adjustment for the person-hours to be performed by the subconsultant.

(c) If the subconsultant services are not subject to prequalification procedures and exceed \$25,000, they shall be reviewed by the External Audit Branch for reasonableness of cost. For subcontracts equal to or less than \$25,000, the Director of the Division of Professional Services or other negotiation unit, upon recommendation of the negotiator, may accept the rates and costs if they are reasonable and in line with past costs incurred for similar work.

Section 7. Contract Modifications. (1) When it is determined by either the consultant or the cabinet that one (1) or more of the following conditions are acceptable and necessary, a contract modification for a fee or schedule adjustment may be requested:

(a) Change in termini or section;

(b) Addition of major phases of work to the negotiated scope of work;

(c) Modification of previously approved work resulting from factors beyond the control of the consultant;

(d) Modification of a major item, if in the original contract, the item is designated as a basis of the original negotiations and the conditions for a change order consideration are identified in the original

contract;

(e) Delay by the cabinet as outlined in each contract;

(f) Use of a subconsultant for services previously identified to be done by the consultant or other subconsultant; or

(g) Availability of current audit established in accordance with 600 KAR 6:080.

(2) The request for a contract modification may be originated by the Division of Professional Services, user division, highway district office or the consultant.

(3) When the director or office head of the user division determines the change is appropriate, the user division shall advise the consultant in writing of the contemplated change in the scope, complexity, extent, character or duration of the original agreement.

(a) When additional or reduced compensation is justified, the user division shall request a revised proposal from the consultant.

(4) The contract modification shall be negotiated using the procedures set forth in Sections 1, 2, and 3 of this administrative regulation.

(5) The Division of Professional Services or other negotiation unit shall send the Change Order form TC 40-17 as revised June 1992 or the Construction Consultant Change Order form, TC 63-53 revised June 1992, to the consultant for its approval. These forms are incorporated by reference in Section 11 of this administrative regulation.

(6) After approval by the cabinet, the change order, LRC's proof of necessity form and other supporting documentation shall be submitted to the LRC Personal Service Contract Review Subcommittee.

(7) For projects requiring FHWA oversight, the approved change order shall be sent to the Federal Highway Administration for approval in accordance with Section 4(4) of this administrative regulation.

(8) Funds shall be encumbered by the cabinet sufficient to pay for the approved change order.

(9) If a change order results in a fee negotiated for the change order in other than lump sum as a method of compensation, the consultant shall use an accounting system which segregates and accumulates allocable and allowable costs which are to be charged to the change order.

Section 8. Completion of Contract. (1) Upon completion of the contract, the cabinet shall review the work performed to determine that it meets the terms and conditions of the contract and shall evaluate the consultant for future reference.

(2) The project **manager** [supervisor] or the director of the user division shall review the work performed by the consultant, including any progress and final reports, to determine that all terms and conditions of the contract have been met before processing the final voucher for payment or releasing the consultant.

(3) Before approving the final invoice for payment, the director of the user division or the project supervisor shall evaluate the consultant and prepare written documentation of the consultant's performance on the project.

(4) The user division shall send the consultant written documentation of the consultant's performance for the project. Copies of the documentation shall be placed in the contract file maintained by the Division of Professional Services and in the consultant's experience record file.

(5)(a) The consultant may appeal in writing a below average rating to the user division director within thirty (30) days of written documentation of the consultant's performance for the project.

(b) The appeal shall specifically set forth the reasons why the consultant believes the below average rating is in error.

(c) The user division director shall notify the consultant within thirty (30) days from the consultant's appeal of the director's decision of whether or not to revise the performance rating.

(d) The consultant may appeal in writing the user division director's decision to the Chairman of the Consultant Prequalification

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Committee within thirty (30) days.

(e) The Consultant Prequalification Committee shall review all documentation relating to the consultant's performance for the project. The committee may discuss the performance rating with the project supervisor or the consultant.

(f) The committee shall notify the consultant and the user division of its decision within ninety (90) days from the consultant's appeal.

(g) If the consultant's appeal is denied by the Consultant Prequalification Committee, it may appeal the decision to the State Highway Engineer within thirty (30) days of written notice of denial of its appeal by the Consultant Prequalification Committee.

(h) The State Highway Engineer shall notify the consultant of his decision within thirty (30) days.

(i) The decision of the State Highway Engineer shall be final.

(j) If the performance evaluation documentation is revised, the initial documentation shall be removed from all files and replaced with the revised performance document.

(6) The Director of the Division of Professional Services or head of other negotiation unit shall request the External Audit Branch to perform a final audit if appropriate. The audit shall determine the total allowable contract costs and the total dollars to be paid to the consultant. All contracts utilizing a cost plus fixed rate method of payment shall be audited.

(7) The user division shall forward the Federal Highway Administration a copy of all progress and final reports for federal-aid projects if required or requested by the FHWA.

Section 9. Cancellation of Contract. (1) Each professional service contract shall include a provision for the termination of the agreement and shall allow for the cancellation of the contract by the cabinet with proper notice to the consultant.

(2) When the cabinet decides to cancel a professional services contract, the Division of Professional Services or other negotiation unit shall notify the consultant of the cancellation and of the reasons for the cancellation.

(3) The cabinet shall be liable only for payment of services up to the effective date of cancellation of the contract as specified by the terms of the contract.

(4) The cabinet shall be liable for a demobilization fee equal to ten (10) percent of the remaining balance of the contract not to exceed \$25,000.

Section 10. Payments to Consultants. Before payment of a partial or final request for payment, the cabinet shall review the work of the consultant, including any progress or final reports, to ensure that the work for which the payment is to be made has been completed and that the terms and conditions of agreement have been satisfactorily followed.

(1) During the course of the project, progress billings shall be submitted by the consultant as agreed upon in the contract. The consultant shall submit an Engineer's Pay Estimate, TC 61-408 revised March 1988 and a Consultant Monthly Report, TC 61-2 revised October 1995 as an invoice to the chief district engineer or director of the user division or to their designees. [~~These two (2) forms are incorporated by reference in Section 11 of this administrative regulation.~~]

(2) The chief district engineer or director of the user division or his designee shall review the Engineer's Pay Estimate and Consultant Monthly Report, verify that the work has been completed as described in the document, and sign both forms.

(3) If an Engineer's Pay Estimate is not needed to be submitted to the chief district engineer or director of the user division within a given month, the Consultant Monthly Report shall still be submitted.

(4) Final invoices and requests for payment shall be authorized only after all work has been reviewed and accepted or approved, including any final reports prepared by the consultant. All terms and conditions of the contract shall be satisfactorily met and the final audit

shall be performed prior to processing the final payment.

Section 11. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Change Order," Form TC 40-17, June 1992 edition;

(b) "Construction Consultant Change Order", Form TC 63-53, June 1992 edition;

(c) "Engineer's Pay Estimate", Form TC 61-408, March 1988 edition; [and]

(d) "Consultant Monthly Report", Form TC 61-2, October 1995 edition;

**(e) "General Provisions Attachment (Exhibit 15-07)", July 1994 edition; and**

**(f) "Consultant Structure Inspection Provisions (Exhibit 15-07A)", May 1993 edition.**

(2) All material incorporated by reference as a part of this administrative regulation may be obtained, viewed or copied at the Division of Professional Services, 6th Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. Its telephone number is (502) 564-4555. Its office 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  
TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: January 6, 1998

FILED WITH LRC: January 6, 1998 at noon

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra Pullen Davis, Staff Assistant

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms which provide proposals on projects and ultimately negotiate contracts.

(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: For the set of administrative regulations which, with very few changes, amend existing administrative regulation 600 KAR 1:101, there is an expense to each firm which averages \$300 to prepare and submit the required prequalification forms each year. In addition, a complete proposal for a particular project will also cost each firm making a proposal to the Transportation Cabinet approximately \$500 per proposal. With 250 firms prequalified each year the cost of prequalification to the industry is approximately \$75,000. Approximately 20 separate firms submit proposals on each project advertised by the Transportation Cabinet. With about 60 projects each year, there is a cost to the industry of about \$600,000 to prepare the proposals.

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

1. First year following implementation: While the administrative regulation specifies the specific forms which the firms are required to use to apply for prequalification or to submit a proposal, the process is mandated by KRS Chapter 45A. Through the amendments to this administrative regulation, 600 KAR 6:040, and 600 KAR 6:070, the Transportation Cabinet is adding an additional prequalification requirement of continuous professional liability insurance coverage in a minimum amount of \$1 million. The cost to individual firms will vary greatly depending on the size of the firm and the complexity of the projects for which they are prequalified. It is possible that a cost of \$300,000 will be incurred by the largest firms. However, it should be

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noted that many of the firms already carry professional liability insurance.

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

3. Additional factors increasing or decreasing costs: (note any effects upon competition): None

(3) Effects on the promulgating administrative body: The Transportation Cabinet is required to review the 250 applications for prequalification and 1200 proposals on projects each year. Not only is the entire staff of the Contract Negotiating Branch of Division of Professional Services constantly involved in this process, but also the user divisions are required to involve significant amounts of man-hours in the reviews and evaluations. Approximately 100 change orders are issued on these contracts each year. It is almost as time-consuming to negotiate a change order as the original contract. The amendments to the administrative regulation require the selection committee members to complete more forms certifying that the process required by KRS Chapter 45A have been carried out.

(a) Direct and indirect costs or savings: The annual budget for the Contract Negotiating Branch of the Division of Professional Services is \$300,000. At least double that cost is incurred collectively by the user divisions each year.

1. First year: The total cost to the Transportation Cabinet is approximately \$900,000.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assured of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Review and evaluation of any applications for prequalification received and the evaluation of all proposals submitted on projects.

(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 Road Fund as authorized in the Transportation Cabinet budget.

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of continuing to not require professional liability insurance for prequalified firms was discarded, because if the consultant does make a mistake which results in injury to a person or property damage, the Transportation Cabinet wants the injured party to be reimbursed for the injury. The alternative of continuing to require all persons to be physically present in order to conduct a Consultant Selection Committee meeting was discarded in view of the great advances made in teleconferencing and computer access.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed administrative regulation if in conflict:

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

(10) Any additional information or comments: The majority of this regulatory impact analysis relates to all of the administrative regulations to which the definitions in 600 KAR 6:010 refer.

(11) Tiering: Was tiering applied? No. When considering the entire chapter of administrative regulations as a whole, there are

different requirements for the prequalification categories. In addition, subconsultants do not have to submit as much information to the Transportation Cabinet as does the firm executing the main contract.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code and 23 CFR 172.5.

2. State compliance standards. The state has promulgated this administrative regulation setting forth the method of negotiating of the reimbursement to be paid to the selected consultant.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate specifies that the contracting agency shall prepare written procedures for each method of procurement it proposes to utilize. These procedures are required to set forth each step used in the method of negotiating of the reimbursement to be paid to the selected consultant.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The method for negotiating of the reimbursement to be paid to the selected consultant is extended to all projects regardless of the source of funding for a particular project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This is not a conflict with the federal regulation, just a way of simplifying all negotiations with the Transportation Cabinet.

### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Vehicle Enforcement (Amended After Hearing)

**601 KAR 1:025. Transporting hazardous materials by air or highway.**

RELATES TO: KRS 174.400 through 174.425, 49 CFR 107, 130, 171-173, 175, 177, 180

STATUTORY AUTHORITY: KRS 174.410(2), 49 CFR Parts 130, 171-173, 175, 177, 180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Natural Resources and Environmental Protection Cabinet and the Secretary of the Cabinet for Human Resources (now Health Services), shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 CFR (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.425 relating to the transportation of hazardous materials by air or highway. This administrative regulation implements these statutory provisions.

Section 1. The hazardous materials transportation regulations adopted and issued by the United States Department of Transportation relating to the following subjects shall govern the transportation of hazardous materials within Kentucky if the transportation of hazardous material is by air or highway:

(1) 49 CFR Part 107, effective October 1, 1997 [1996 as amended at 62 Fed. Reg. 2970, January 21, 1997]. Part 107 sets forth the requirements for a national registration of the transporters of hazardous materials.

(2) 49 CFR Part 130 effective October 1, 1997 [1996]. Part 130 sets forth general information, regulations and definitions applicable to oil spill prevention and response plans;

(3) 49 CFR Part 171 effective October 1, 1997, as amended at 62 Fed. Reg. 65188, December 10, 1997 [1996, as amended at 61 Fed. Reg. 65958, December 16, 1997; 61 Fed. Reg. 68952, December 30, 1996; 62 Fed. Reg. 1208, January 8, 1997; 62 Fed. Reg.

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1217, January 8, 1997; 62 Fed. Reg. 2970, January 21, 1997; 62 Fed. Reg. 7638, February 19, 1997]. Part 171 sets forth general information, regulations and definitions applicable to all hazardous materials transportation;

(4) 49 CFR Part 172 effective October 1, 1997, as amended at 62 Fed. Reg. 66898, December 22, 1997, and 62 Fed. Reg. 66900, December 22, 1997 [1996, as amended at 62 Fed. Reg. 1217, January 8, 1997 and 62 Fed. Reg. 14334, March 26, 1997]. Part 172 lists and classifies those materials which the United States Department of Transportation has designated as hazardous materials for purposes of transportation and prescribes the requirements for the following:

(a) Shipping papers;  
(b) Package marking; and  
(c) Labeling and transport vehicle placarding applicable to the shipment and transportation of those hazardous materials;

(5) 49 CFR Part 173 effective October 1, 1997 [1996, as amended at 61 Fed. Reg. 51495, October 2, 1996; 61 Fed. Reg. 68952, December 30, 1996; 62 Fed. Reg. 1208, January 8, 1997; 62 Fed. Reg. 1217, January 8, 1997; and 62 Fed. Reg. 14334, March 26, 1997]. Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging;

(6) 49 CFR Part 175 effective October 1, 1997, as amended at 62 Fed. Reg. 66898, December 22, 1997 [1996, as amended at 62 Fed. Reg. 1217, January 8, 1997]. Part 175 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to aircraft operators transporting hazardous materials aboard, attached to or suspended from civil aircraft;

(7) 49 CFR Part 177, effective October 1, 1997, as amended at 62 Fed. Reg. 66898, December 22, 1997 [1996, as amended at 62 Fed. Reg. 1217, January 8, 1997]. Part 177 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to private contract or common motor carriers transporting hazardous materials on public highways;

(8) 49 CFR Part 178 effective October 1, 1997 [1996 as amended at 62 Fed. Reg. 14334, March 26, 1997]. Part 178 prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials; and

(9) 49 CFR Part 180, effective October 1, 1997 [1996, as amended at 62 Fed. Reg. 1208, January 8, 1997]. Part 180 prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and any other function having an effect on the continuing qualification and use of a packaging used to transport hazardous materials.

### Section 2. Material Incorporated by Reference. (1) The following material is incorporated by reference as a part of this administrative regulation:

(a) 62 Fed. Reg. 65188, December 10, 1997;

(b) 62 Fed. Reg. 66898, December 22, 1997;

(c) 62 Fed. Reg. 66900, December 22, 1997.

(2) The material incorporated by reference in this administrative regulation may be inspected, copied, or obtained at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, 501 High Street, 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) 564-3276.

[Section 2. Material Incorporated by Reference. (1) The following material is incorporated by reference as a part of this administrative regulation:

(a) 61 Fed. Reg. 51495, October 2, 1996;

(b) 61 Fed. Reg. 65958, December 16, 1996;

(c) 61 Fed. Reg. 68952, December 30, 1996;

(d) 62 Fed. Reg. 1208, January 8, 1997;

(e) 62 Fed. Reg. 1217, January 8, 1997;

(f) 62 Fed. Reg. 2970, January 21, 1997;

(g) 62 Fed. Reg. 7638, February 19, 1997;

(h) 62 Fed. Reg. 14334, March 26, 1997.

(2) The material incorporated by reference in this administrative regulation may be inspected, copied, or obtained at the Division of Motor Vehicle Enforcement, 8th Floor, State Office Building, Corner of High and Clinton Streets, 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) 564-3276.]

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

RON CHRISTOPHER, Office of General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: January 5, 1998 at 9 a.m.

### REGULATORY IMPACT ANALYSIS

Contact Person: Sandra Pullen Davis

(1) Type and number of entities affected: All transporters of hazardous materials by highway or air 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: A public hearing was not requested. However, there is no known cost of living or employment impact expected in Kentucky as a result of the changes to 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: A public hearing was not requested. However, there is no known cost of doing business impact expected in Kentucky as a result of the changes to 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: No change as a result of the changes to the administrative regulation.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal Highway Administration funding through the Motor Carrier Safety Assistance Program Grant.

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

(a) Geographical area in which administrative regulation will be implemented: A public comment hearing was not held. However, no economic impacts are anticipated.

(b) Kentucky: Same as above

(7) Assessment of alternative methods; reasons why alternatives were rejected: Only one alternative exists to the administrative regulation amendment as proposed. The do-nothing alternative was rejected because of the requirement in KRS Chapter 174 that the federal regulations be adopted. Therefore, the new federal regulations are proposed to be adopted because all changes are currently allowed by U.S. DOT. A motor carrier should not be cited for complying with the new federal requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There should be an added measure of safety in the transportation of hazardous materials, particularly on public highways.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Possibly, since the list of hazardous materials covered under this administrative regulation has been revised to include several additional materials, they will now have to be packaged, labeled, shipped and placarded in accordance with the safety procedures established in this administrative regulation. There should be fewer air or highway problems with the transportation of these hazardous materials if the administrative regulation is promulgated.

(c) If detrimental effect would result, explain detrimental effect: Without the safest and most up-to-date shipping and transportation procedures being implemented and enforced, it is possible that highway crashes could cause more environmental problems due to spills, leakage, or explosions.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: The proposed amendment adopts changes to the 49 CFR Parts which govern the transportation of hazardous materials by air or highway and are included in this administrative regulation. These changes were published in the "Federal Register" during the last several months.

The changes of significance are as follows:

(a) Amends the hazardous materials regulations to maintain alignment with corresponding provisions of international standards. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), these revisions are necessary to facilitate the transport of hazardous materials in international commerce.

(b) Allows the transportation of certain liquid hazardous materials in nonspecification open-head fiber drums until September 30, 1999, if the fiber drums have been filled before, and are not emptied and refilled after, the expiration of the current authority for the use of these packagings.

(c) Amends the hazardous materials regulations to add a specific shipping description to the Hazardous Materials Table for chemical oxygen generators and to require approval of a chemical oxygen generator, and its packaging, when the chemical oxygen generator is to be transported with its means of initiation attached. Oxygen generators currently are transported under several different shipping descriptions which identify chemical constituents but do not identify that the packaged articles are oxygen generators. These changes will facilitate the identification of oxygen generators in transportation, making it easier to comply with and enforce existing prohibitions against the carriage of chemical oxygen generators on passenger aircraft and in inaccessible locations on cargo aircraft, and enhance packaging requirements.

(d) Changes hazardous materials regulations to assist emergency response personnel in responding to and mitigating the effects of incidents involving the transportation of hazardous materials, and to improve safety to transportation workers and the public.

(e) Incorporates safety requirements for mobile and temporary liquefied natural gas (LNG) facilities by referencing the National Fire Protection Association (NFPA) Standard 59A (1996 edition), Standard for the Production, Storage and Handling of Liquefied Natural Gas (LNG). This rule will reduce the burden on the industry and state and federal governments by eliminating waiver requirements for mobile and temporary LNG facilities.

(f) Adopts temporary requirements for cargo tank motor vehicles in certain liquefied compressed gas service. It requires a specific marking on affected cargo tank motor vehicles and requires motor carriers to comply with additional operational controls intended to compensate for the inability of passive emergency discharge control systems to function as required by the hazardous materials regulations. The interim operational controls specified in this rule will improve safety while the industry and government continue to work to develop a system that effectively stops the discharge of hazardous materials from a cargo tank if there is a failure of a transfer hose or piping.

These operational controls are necessary because a substantial portion of the industry failed to comply with an important excess flow requirement, which has been in place since 1941, and has failed to comply with the IFR.

(g) Removes Radiation Protection Program regulations and related modal provisions that require the development and maintenance of a written radiation protection program for persons who offer, accept for transportation, or transport radioactive materials. This action is necessary to address difficulties and complexities concerning implementation of and compliance with the requirements for a radiation protection program, as evidenced by comments received from the radioactive material transportation industry and other interested parties.

The remainder of the changes are technical or clarifying in nature or are an attempt by the U.S. Department of Transportation to restructure the hazardous materials regulations to reduce repetitive statements.

(11) TIERING: Is tiering applied? Yes. The adopted federal regulations are tiered based on the amount and type of hazardous material being transported.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 CFR Part 350 encourages each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance. The states may apply for a Motor Carrier Safety Assistance Program Grant to implement this federal policy. To be eligible for such a grant the state must adopt and assume responsibility for enforcement of the federal motor carrier safety regulations found in 49 CFR Parts 107, 130, 171 - 173, 177, 178, and 180.

2. State compliance standards. Kentucky has been a participant in the Motor Carrier Safety Assistance Program since its inception in the 1980's. The Transportation Cabinet has adopted all of the federal regulations contained in 49 CFR Parts 107, 130, 171 - 173, 177, 178, and 180.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

- a. The listing of the materials and their minimum quantities which require a material to be treated as a hazardous material;
- b. Establishes the emergency response information requirements for each transporter of a hazardous material;
- c. Defines the general requirements for shipping and packaging of each type of hazardous material;
- d. Defines the unacceptable hazardous material shipments on a highway;
- e. Establishes requirements for the transportation of hazardous materials that are unique to highway transportation;
- f. Establishes shipping container specifications for the transportation of hazardous materials;

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g. Establishes the qualification and maintenance requirements for cargo tanks which are used in the transportation of hazardous materials; and

h. Establishes an oil spill prevention and response plan for all transporters of oils.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. State law requires that the transportation of hazardous materials by air be regulated in accordance with the federal regulations. Therefore 49 CFR Part 175 relating to the carriage of hazardous materials by aircraft has also been adopted even though the federal incentive program does not include this part.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. State law requires that the transportation of hazardous materials by air be regulated in accordance with the federal regulations.

### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Driver Licensing (Amended After Hearing)

#### 601 KAR 11:040. Medical waivers for intrastate operators of commercial motor vehicles.

RELATES TO: KRS Chapter 281A, 281.600, 49 CFR Part 383, 49 CFR Part 391

STATUTORY AUTHORITY: KRS 281A.040, 281.600, 49 CFR 383 Subpart E, 49 CFR 391 Subpart E

NECESSITY, FUNCTION, AND CONFORMITY: The federal requirements for the issuance of a commercial driver's license to a driver operating in interstate commerce include a certification that the driver meets the qualification requirements contained in 49 CFR Part 391. The Federal Highway Administration does not require a person who operates entirely in intrastate commerce to be subject to 49 CFR Part 391. He is subject however, to Kentucky driver qualification requirements. In 601 KAR 1:005 the Transportation Cabinet adopted the majority of the driver qualification requirements of 49 CFR Part 391 on both an interstate and intrastate commerce basis. However, medical waivers in addition to those allowed in 49 CFR 391.49 are allowed by the Federal Highway Administration for drivers operating exclusively in intrastate commerce. This administrative regulation sets forth the procedure and standards for obtaining an intrastate medical waiver.

Section 1. Application for Intrastate Medical Waiver. (1) A commercial driver may apply to the Transportation Cabinet for a medical waiver if he:

(a) Operates exclusively in intrastate commerce; and

(b) Has failed to meet the physical requirements of 49 CFR 391, Subpart E, which govern ~~adopted in~~ 601 KAR 1:005.

(2) The application for medical waiver shall be on Kentucky Transportation Cabinet form TC 94-38, "Request for Medical Waiver" effective December 1996. ~~(January, 1991. This form is incorporated by reference as a part of this administrative regulation.)~~

(3)(a) A copy of the completed medical examination form required by 49 CFR 391.43 and 601 KAR 1:005 shall be attached to the application for medical waiver.

(b) The medical examination form shall have been completed by a health care professional as ~~(delineated in 49 CFR Part 390.5 and)~~ adopted in 601 KAR 1:005, Section 7.

(c) The medical examination form shall indicate the reason the applicant failed to meet the requirements of 49 CFR 391 Subpart E.

(4)(a) Except as provided in paragraph (b) of this subsection, ~~((d)1-)~~ a copy of the applicable supplemental medical report form shall

be completed by a licensed doctor of medicine or osteopathy ~~(shall be attached to the application for medical waiver).~~

(b) [2-] The "Vision Conditions" form shall ~~(may)~~ be completed by a licensed doctor of optometry or ophthalmology.

(e) ~~The following supplemental medical report forms each with an edition date of December 1990, shall be incorporated by reference as a part of this administrative regulation:~~

~~1. "Cardiovascular Conditions";~~

~~2. "Neurological Conditions";~~

~~3. "Musculoskeletal Conditions";~~

~~4. "Metabolic Conditions";~~

~~5. "Alcohol or Other Drug Dependence";~~

~~6. "Mental and Emotional Conditions"; and~~

~~7. "Vision Conditions".~~

(f) The licensed doctor of medicine or osteopathy shall determine which ~~(ones)~~ of the following ~~(these)~~ supplemental medical report forms are applicable to the medical waiver applicant:

1. "Cardiovascular";

2. "Neurological";

3. "Musculoskeletal";

4. "Metabolic";

5. "Alcohol or Drug Dependence"; and

6. "Mental and Emotional Conditions".

(4) The application for medical waiver, medical examination form and supplemental medical report form shall be submitted to the Transportation Cabinet, Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622.

~~[(5) A copy of the forms incorporated by reference may be obtained, inspected or copied at the Division of Driver Licensing, State Office Building, Frankfort, Kentucky 40622 by writing or appearing in person, 8 a.m. to 4:30 p.m. Eastern time, Monday through Friday.]~~

Section 2. (1) The Division of Driver Licensing shall base its decision on granting the requested medical waiver on the information obtained from the following:

(a) Driving history record of the applicant;

(b) Original medical examination form; and

(c) Supplemental medical report form;

(d) A skills test if suggested by the Medical Review Board, the applicant if his medical problem is exoskeletal or visual, or the provisions of this administrative regulation; and

(e) Any other information supplied to the Division of Driver Licensing about the driving ability of the applicant by the Medical Review Board, a physician, police officer or acquaintance.

(2) The following medical guidelines shall be considered by the Division of Driver Licensing in evaluating the information related to the commercial driver:

(a) Paraplegics or quadriplegics.

~~[+]~~ If the applicant has a loss or impairment of foot, leg, arm, hand or fingers, he shall not be issued a medical waiver unless he passes a skills test administered by the Kentucky State Police in the commercial vehicle adapted for his specific disability.

~~[2. If a waiver is issued, it shall be vehicle specific.~~

~~3. If the applicant makes any adjustments to the specially adapted commercial vehicle or acquires a different commercial vehicle, it shall be approved by the Division of Driver Licensing prior to operation by the person with the medical waiver.]~~

(b) Vision. To be considered for a medical waiver, the commercial driver shall:

1. Have a distance visual acuity of 20/60 (Snellen) or better with corrective lenses in one (1) or both eyes;

2. Have horizontal visual fields which are not narrowed to less than 110 degrees of total visual field;

3. Readily distinguish which light of traffic signals and devices showing standard red, green and amber is illuminated;

4. Not wear bioptic lenses; and



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5. Not have uncorrectable double vision.

(c) Hearing. A waiver of 49 CFR 391.41(11) shall be issued.

(d) Epilepsy or other condition likely to cause loss of consciousness. A commercial driver with epilepsy or other condition which may cause loss of consciousness shall:

1. Have been seizure free for one (1) year prior to requesting the waiver;

2. Not have experienced loss of consciousness, blackout, fainting or disorientation in the year immediately prior to requesting the waiver; and

3. Be reliable in taking his prescribed medication to be considered for a medical waiver as proven by the blood content levels of his medication.

(e) Cardiovascular.

1. In the year immediately preceding a waiver request, a commercial driver shall not have experienced:

a. A fainting or blackout spell;

b. Uncontrollable attacks of choking, suffocation, or shortness of breath; or

c. Uncontrollable instances of syncope or vertigo.

2. A commercial driver shall not have heart disease symptoms while:

a. Operating a motor vehicle; or

b. Sitting at rest.

3. A commercial driver shall not have:

a. Difficulty in breathing;

b. Painful breathing; or

c. An aortic or ventricular aneurysm.

4. A commercial driver's:

a. Blood pressure shall not be irregular; or

b. Diastolic blood pressure shall not consistently be above 110 millimeters of mercury.

(f) Diabetes. A commercial driver shall not have:

1. An uncontrolled condition of diabetes; or

2. In the year immediately preceding a waiver request, had an instance of diabetes shock or coma.

(g) Alcohol or drugs. A commercial driver shall have been free of addiction to or abuse of alcohol or other drugs for at least one (1) year.

(h) Emotional or mental. A commercial driver shall:

1. Not exhibit homicidal, suicidal, or destructive behavior;

2. In the year immediately preceding a waiver request, not have experienced bouts of:

a. Extreme anxiety;

b. Depression;

c. Paranoia;

d. Confusion;

e. Delusions; or

f. Hallucinations.

3. Not, in the three (3) years immediately preceding a waiver request, have been hospitalized for a mental or emotional condition.

Section 3. (1) If a commercial driver is granted a medical waiver, he shall submit to medical reexaminations required by the Division of Driver Licensing.

(2) After a reexamination, a waiver shall remain in effect if the physician performing the reexamination certifies that:

(a) The condition for which a waiver was issued has not worsened; and

(b) An additional nonqualifying condition has not manifested.

(3)(a) The driving history record of a commercial driver approved for a medical waiver may be evaluated by the Division of Driver Licensing at any time [:

1. ~~At any time~~; and

2. ~~At least once a year~~.]

(b) If a review of the person's driving history record, submitted medical information, or related items would cause the person to

ordinarily be referred to the Medical Review Board under the provisions of 601 KAR 13:090[0+0], the waiver or waiver request shall be referred to the Medical Review Board for evaluation.

(4)(a) After completion of a test of the commercial driver's driving skills requested by the Division of Driver Licensing, the Kentucky State Police shall submit to the Division of Driver Licensing:

1. The test results; and

2. Recommendations for waiver refusal or restrictions on a medical waiver.

(b) If a medical waiver with restrictions is issued, the restriction shall be noted on the commercial driver's motor vehicle operator's license or commercial driver's license.

(5) If an intrastate medical waiver is issued to a commercial driver, he shall notify the Division of Driver Licensing immediately of any change in or worsening of his physical or mental condition.

(6) If an intrastate medical waiver is issued to a commercial driver with a progressive disease, the Division of Driver Licensing may require the commercial driver to submit to a periodic skills test with the Kentucky State Police.

(7) If an intrastate medical waiver is issued to a person with a pacemaker, he shall submit an annual report on the functioning of the device to the Division of Driver Licensing.

(8) A medical waiver shall be cancelled if a commercial driver fails to within forty-five (45) days:

(a) Submit to a periodic report requested by the Division of Driver Licensing; or

(b) Report for a skills test.

(9) The employer of a commercial driver who has obtained a medical waiver shall notify the Division of Driver Licensing of a change in the commercial driver's:

(a) Physical or mental condition; or

(b) Employment or employment conditions.

Section 4. (1) If a commercial driver is denied a medical waiver by the Division of Driver Licensing, he may request reconsideration from ~~[appeal to]~~ the Commissioner of the Department of Vehicle Regulation. In considering the request for reconsideration ~~[appeal]~~, the Commissioner of the Department of Vehicle Regulation shall request from the Medical Review Board established in accordance with 601 KAR 13:090[0+0] a review of the case and recommendation on the request for reconsideration ~~[appeal]~~.

(2) The request for reconsideration ~~[appeal]~~ shall be filed with the Commissioner of the Department of Vehicle Regulation in writing within thirty (30) days of the decision of the Division of Driver Licensing.

(3) A member of the Medical Review Board with specific qualifications in the medical area relating to the request for reconsideration ~~[appeal]~~ shall review the request ~~[appeal]~~ when requested by the commissioner.

(4) The commissioner's review shall be based on the information provided to the Division of Driver Licensing, the recommendation of the Medical Review Board and any additional information requested by the commissioner.

(5) ~~The findings of the Commissioner of the Department of Vehicle Regulation shall be administratively final.~~

(6) The Commissioner of the Department of Vehicle Regulation shall provide a copy of his findings to the:

(a) Commercial driver; and

(b) Division of Driver Licensing.

(6) ~~(7)~~ A commercial driver aggrieved by the findings of the Commissioner of the Department of Vehicle Regulation may file an appeal with the Secretary of the Transportation Cabinet in accordance with the provisions of KRS Chapter 13B. ~~[appeal to Franklin Circuit Court.]~~

Section 5. Medical Review Board. Any applicant denied a medical waiver under the provisions of this administrative regulation shall be

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referred to the Medical Review Board under the provisions of 601 KAR 13:090[0+10].

Section 6. Waiver Cancellation. If at any time after the issuance of a medical waiver, the Division of Driver Licensing cancels the waiver pursuant to the provisions of this administrative regulation, the driver's commercial driver's license shall also be cancelled.

Section 7. Material Incorporated by Reference. (1) The following Transportation Cabinet forms are incorporated by reference as a part of this administrative regulation:

(a) TC 94-38, "Request for Medical Waiver" effective December 1996;

(b) TC 94-38A "MEDICAL REPORT FORM - Vision" effective October 1996;

(c) TC 94-38B "MEDICAL REPORT FORM - Metabolic" effective June 1995;

(d) TC 94-38C "MEDICAL REPORT FORM - Neurological" effective April 1996;

(e) TC 94-38D "MEDICAL REPORT FORM - Cardiovascular" effective March 1994;

(f) TC 94-38E "MEDICAL REPORT FORM - Musculoskeletal" effective March 1994;

(g) TC 94-38F "MEDICAL REPORT FORM - Alcohol or Drug Dependence" effective February 1991; and

(h) TC 94-38G "MEDICAL REPORT FORM - Mental and Emotional Conditions" effective March 1994.

(2) The material incorporated by reference in this administrative regulation may be viewed, copied, or obtained from the Transportation Cabinet, Division of Driver Licensing, Second Floor, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-6800. The hours of operation are 8 a.m. to 4:30 p.m. weekdays. It is also available from the Driver Licensing Office of any Circuit Court Clerk.

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: December 23, 1997

FILED WITH LRC: January 6, 1998 at noon

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra Pullen Davis

(1) Type and number of entities affected: The 4,000+ motor carriers based in Kentucky and the drivers of their commercial motor vehicles.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Public hearing was not held, but no effect on the cost of living or employment are anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Public hearing was not held, but no effect on the cost of living or employment are anticipated.

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

1. First year following implementation: An individual who cannot pass the medical examination for a commercial driver's license may choose to apply for a medical waiver. If so, he must complete the appropriate ones incorporated by reference in this administrative regulation. Further, he will have to undergo a medical examination. The cost of the additional medical examinations will be approximately \$75 per person. However, of the 300 anticipated waiver applications, we anticipate 80% will be eligible for the medical waivers and

therefore, able to retain or obtain jobs as commercial drivers. Assuming a salary of \$20,000 per person the overall savings to the applicants will be almost \$0.5 million.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The Transportation Cabinet will be required to review the 300 applications for medical waiver. Physicians may have to be retained on contract to evaluate the applications and supplemental medical report forms of those persons who apply for the medical waiver.

1. First year: The cost to the Transportation Cabinet will be the cost of reviewing the applications.

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

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The Transportation Cabinet will have to carefully monitor each of the persons granted a medical waiver to ensure that the person continues to safely operate a commercial motor vehicle.

(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 monies appropriated for use of the Department of Vehicle 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: A public hearing was not held, however, no economic impact is anticipated.

(b) Kentucky: A public hearing was not held, however, no economic impact is anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: None. The General Assembly in 1992 required the Transportation Cabinet to continue issuing medical waivers as long as the Federal Highway Administration allowed.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: The vast majority of these motor carriers operate on an interstate basis and are subject to the federal motor carrier safety regulations. The promulgation of this administrative regulation allows a commercial driver who operates exclusively on an intrastate commerce basis to apply for a medical waiver. In the first year 1300 persons applied for the medical waiver. These were persons who are not legally able to operate a commercial motor vehicle under the current federal and state administrative regulations, but who have been driving anyway. (Most are unaware of the requirement for a biennial medical examination.) We anticipate an additional 300 applications for a medical waiver this year.

(11) TIERING: Is tiering applied? Yes. Tiering was applied in this administrative regulation by allowing persons who would otherwise be ineligible for a commercial driver's license to apply for a medical waiver and setting standards for the issuance of the waivers.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title XII of PL 99-570 mandated the issuance of Commercial Driver's

Licenses by all states. The Federal Highway Administration promulgated 49 CFR Part 383 to implement this requirement. While 49 CFR Part 383 mandates that the commercial driver meet the physical requirements in 49 CFR Part 391, the Federal Highway Administration did allow states who were already allowing drivers in intrastate commerce to be licensed with less stringent standards to continue this practice for two years after the CDL requirement was in place. This administrative regulation formally adopts the medical waivers allowed for intrastate commercial vehicle operators. There is no federal mandate or standard for these waivers. Therefore the remaining questions in this form are not applicable.

2. State compliance standards. Not applicable.

3. Minimum or uniform standards contained in the federal mandate. Not applicable.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Not applicable.

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

**LABOR CABINET**  
**Department of Workers' Claims**  
**(Amended After Hearing)**

**803 KAR 25:120. Training or education programs eligible for retraining incentive benefits.**

RELATES TO: KRS [Chapter] 342.040(3), 342.732

STATUTORY AUTHORITY: KRS [Chapter 13A:] 342.732(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.732 requires the Commissioner of the Department of Workers' Claims to promulgate administrative regulations to approve bona fide training or education programs eligible to receive a maximum of \$5,000 for standard instruction, tuition, and material costs directly from the employer for a student who has been awarded [in which an employee may enroll, while continuing to work in the mining industry, and have payment of] retraining incentive benefits [made to the institution conducting the training or education program on a semimonthly basis].

Section 1. Definitions. (1) "Bona Fide Training or Education Program" means a postsecondary education or training program [that has been in existence for at least two (2) years, which provides not less than a four (4) month program of training] to prepare students for gainful employment [in an occupation other than the severance or processing of coal], which has been certified by the Commissioner of the Department of Workers' Claims as eligible for receipt of instruction, tuition, and material costs [retraining incentive benefits (RIB)] pursuant to this administrative regulation.

(2) "RIB student" is a student receiving retraining incentive benefits and meeting the requirements established in KRS 342.732(1)(a).

Section 2. Certification by Commissioner. (1) Any training institution or education program seeking certification from the commissioner of the Department of Workers' Claims as a "bona fide training or education program" shall apply by letter to the following address: Commissioner/Retraining Incentive Benefit Education Program Certification, Department of Workers' Claims, 1270 Louisville Road, Frankfort, Kentucky 40601.

(2) Each application shall:

(a) Provide proof of licensure and accreditation [assurance that tuition and other required instructional materials shall be paid in installments, each of which shall be payable not more often than bimonthly and shall not exceed on dollar amounts the sum granted the RIB student for like periods by the RIB award, less the RIB

student's travel expenses as set forth in Section 4 of this administrative regulation];

(b) Provide evidence that the successful completion of the training or education program shall qualify a student for gainful employment [other than work in the severance and processing of coal];

(c) Include catalogs, brochures, or other descriptive material pertaining to education or training programs and their costs [Describe the training or education offered, and the professional experience of the instructional staff];

(d) Provide any available job placement rates for students who have completed the education or training program [Describe the history of the program relative to the number of students who participated, the number who completed the course, and the number of students who were successful in obtaining job placement in the field covered by the course];

(e) Provide assurances that funds paid to the program under this administrative regulation shall be applied only to tuition charges and the purchase of instructional materials; and

(f) Provide assurance that the insurance carrier or self-insured employer will be notified in writing within ten (10) days of the date that a RIB student ceases to participate in the program or graduates].

Section 3. Each program certified by the commissioner shall:

(1) Apply funds paid to the program under this administrative regulation only to instruction, tuition, material costs, and any fees necessary for the completion of the program;

(2) Notify an insurance carrier or self-insured and the Department of Workers' Claims in writing within ten (10) days of the date that a RIB student ceases to participate in the program or graduates;

(3) Send bills directly and promptly to the self-insured employer or insurance carrier for standard instruction, tuition, material costs, and any fees necessary for the completion of the program.

Section 4. Continuing Eligibility. (1) The Commissioner of the Department of Workers' Claims shall certify the eligibility of a training or education program for RIB students following receipt of an application from the program adequate to assure that the criteria outlined in this administrative regulation have been met.

(2) If at any time thereafter the commissioner has reason to believe that certification of the program should be terminated, the program shall:

(a) Be given notice of the termination of certification thirty (30) days in advance; and

(b) [shall] Have the opportunity to challenge the termination by requesting a hearing before the commissioner within the thirty (30) day notice period.

Section 5. RIB Student Responsibilities. (1) The RIB student shall notify the self-insured employer or the insurance carrier and the Commissioner of the Department of Workers' Claims in writing within seven (7) days of the following events:

(a) Application for admission to a training or education program;

(b) Enrollment and participation date;

(c) Withdrawal from a class or program for reasons other than completion;

(d) Graduation; and

(e) Return to work, including name and address of employer, job title, and earnings.

(2) Copies of the following documents shall be submitted to the self-insured employer or insurance carrier and the Commissioner of the Department of Workers' Claims within seven (7) days of receipt:

(a) All final grades; and

(b) Notice of academic or disciplinary probation or expulsion. [4-

Travel Expenses. An employee who participates in a bona fide training or education program pursuant to this administrative regulation may request reimbursement for travel expenses at a rate not to exceed that paid to state employees under 200 KAR 2:006 or other

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appropriate Finance and Administration Cabinet administrative regulations.]

Section 6. [5.] Alternative Agreements. The RIB student [the training program,] and the employer or insurance carrier responsible for payment of RIB benefits may in writing agree that the number of instruction hours per week for a RIB student in [time and amounts of payments to] a bona fide training or education program may vary from that established [set forth] in KRS 342.732(1)(a) [Section 2(2)(a) of this administrative regulation].

**Section 7. Any training or education program participating in a student financial aid program administered by the Kentucky Higher Education Assistance Authority is exempt from submitting an application for certification by the commissioner.**

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: January 5, 1998

FILED WITH LRC: January 5, 1998 at 4 p.m.

### REGULATORY IMPACT ANALYSIS

Contact Person: Carla H. Montgomery

(1) Type and number of entities affected: Training and education programs certified to offer training and education to injured employees who receive retraining incentive benefits. Currently, there are no certified programs.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. The amendments to this regulation should not affect the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. Cost of business should not be affected by amendments.

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

1. First year following implementation: Programs that are certified must give notice to the Department of Workers' Claims if a student ceases to participate in a program.

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

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: No direct or indirect costs or savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No new reporting or paperwork requirements for the agency.

(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 public comments were received. No economic impact is expected.

(b) Kentucky: No public comments were received. No economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The amendments to the regulation bring it into

conformity with statutory changes made in the Special Legislative Session on Workers' Compensation in December 1996. If no amendments are made, the regulation is in conflict with statutory provisions.

(8) Assessment of expected benefits: To bring regulation into conformity with statutory requirements. Also to clean up the language of the regulation.

(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 detrimental effect.

(c) If detrimental effect would result, explain detrimental effect:

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) Tiering: Tiering is not applied. All programs certified by the Department of Workers' Claims would be treated equally.

### CABINET FOR HEALTH SERVICES

Office of Certificate of Need  
(Amended After Hearing)

#### 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

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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) Applicants who have had proposals for certificates of need approved under the nonsubstantive review provisions of Section 8 of this administrative regulation may request the cabinet to change the specific location to be designated on the certificate of need, provided that the applicant file a written request with the cabinet within thirty (30) days of the date of approval. Such request shall include the reason why the change is necessary.**

(9) 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.

**(10) [(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.

**(11) [(+0)]** 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 ground ambulance providers, air ambulance providers, and 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 and rehab agencies 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.

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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

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existing and operating by July 15, 1997, if such ambulatory surgery center was initially established as a private office or clinics of physicians.

**(c) The proposal involves a physician-owned magnetic resonance imaging service currently serving a family practice residency program at a regional medical center.**

(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.

(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. **(1) Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.**

**(2) The purchase of all capital stock or a controlling interest of capital stock of a person who is the holder of an approved certificate of need for the establishment of a new health facility shall not constitute the sale, trade or transfer of a certificate of need to another person for purposes of KRS 216B.061(1)(h) and 216B.061(5). [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

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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



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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

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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: December 17, 1997

FILED WITH LRC: December 23, 1997 at 10 a.m.

### 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 6:015E.

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  
Department for Health Services  
(Amended After Hearing)**

**902 KAR 17:041. State Health Plan for facilities and services.**

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

STATUTORY AUTHORITY: KRS 216B.010, 216B.015, 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 its programs under the Cabinet for Health Services. KRS 216B.015 requires the Cabinet for Health Services to oversee development and annual updating of the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS 216B.

Section 1. Incorporation by Reference. (1) The 1998-2000 Kentucky State Health Plan, as amended January 15, 1998, is hereby incorporated by reference.

Section 2. Updating of Inventories and Need Analysis. (1) The

cabinet shall update the inventory of licensed and/or certificate of need approved health services and health facilities as well as the need analysis contained in the State Health Plan on a periodic basis to reflect any changes in inventory or need projections for health services and health facilities, and the most current update shall be used in making certificate of need decisions.

(2) Notice of such updates shall be published in the cabinet's certificate of need newsletter.

(3) Such updates may be inspected, copied, or obtained at the Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m. Monday through Friday.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: January 15, 1998

FILED WITH LRC: January 15, 1998 at 11 a.m.

REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Kendell, 564-9592

(1) Type and number of entities affected: KRS 216B.015(18) requires the Cabinet for Health Services to oversee the development and annual updating of the State Health Plan, a critical element of the certificate of need process.

(2) Direct and indirect costs or savings to those affected: None

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: 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 comment 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: None

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 if revenue to be used for implementation and enforcement of administrative regulation: None

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

(a) Necessity of proposed regulation if in conflict:

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

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(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not applied due to the number of facilities and providers contained in the incorporated document.

### CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development (Amended After Hearing)

#### 904 KAR 2:006. Technical requirements for the Kentucky Transitional Assistance Program (K-TAP) [-AFDG].

RELATES TO: KRS 205.010, 205.200(2), (3), 45 CFR 205.10, 205.52, 232.11-12, 232.40-48, 233.10, 233.40, 233.50, 233.90, 233.100, 8 USC 1611-1645, 42 USC 601 et seq., 602, "Expansion of Definition of Specified Caretaker Relative", Transmittal No. ACF-AT-91-33 (December 12, 1991), U.S. Department of Health and Human Services, Administration for Children & Families, Office of Family Assistance, "Determining AFDC Eligibility When the Only Dependent Child Receives Foster Care Benefits", Transmittal No. ACF-AT-94-5 (February 28, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, PL 104-208

STATUTORY AUTHORITY: KRS 194.050(1), 205.010, 205.200(2), (3), 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, now named the Kentucky Transitional Assistance Program, the block grant program funded under 42 USC 601 et seq. KRS 205.200(2) requires that the conditions of eligibility to receive money grants from Aid to Families with Dependent Children, now named the Kentucky Transitional Assistance Program, be prescribed by administrative regulations in conformity with 42 USC 602 and federal regulations. This administrative regulation sets forth the technical requirements of school attendance, residence, citizenship, deprivation, living with a relative, age, one (1) category of assistance, work registration, cooperation in child support enforcement activities, strikers, minor teenage parent provisions, time limits and potential entitlement for other programs for eligibility for benefits from the Kentucky Transitional Assistance Program [Aid to Families with Dependent Children].

Section 1. Definitions. (1) "Battered or subjected to extreme cruelty" means an individual who has been subjected to:

- (a) Physical acts that resulted in, or threatened to result in, physical injury to the individual;
- (b) Sexual abuse;
- (c) Sexual activity involving a dependent child;
- (d) Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;
- (e) Threats of, or attempts at, physical or sexual abuse;
- (f) Mental abuse; or
- (g) Neglect or deprivation of medical care. ["Aid to Families with Dependent Children (AFDC)" means a money payment program for children who are deprived of parental support or care due to death, continued absence, physical or mental incapacity of a parent.

(2) "Aid to Families with Dependent Children Unemployed Parent (AFDC-UP)" means AFDC benefits are paid when both parents are in the home and at least one (1) parent is unemployed.;

(2) [(3)] "Child" means an individual;

(2) [(3)] "Child" means an individual;

1. Age fifteen (15) or under;

2. Age sixteen (16) or seventeen (17) in regular full-time attendance in elementary, junior high, or high school or equivalent level of vocational or technical school;

3. Age [or under or, if] eighteen (18), in regular full-time attendance in high school or equivalent level of vocational or technical school and expected to complete a course of study;

a. Before reaching age nineteen (19); or

b. During the month of the 19th birthday; or

4. Under age eighteen (18) and a high school graduate.

(3) "Domestic violence" means "battered or subjected to extreme cruelty" as defined in subsection (1) of this section.

(4) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF) program, means a money payment program for children who are deprived of parental support or care due to:

(a) Death, continued voluntary or involuntary absence of a parent;

(b) Physical or mental incapacity of one (1) parent when both parents are in the home; or

(c) Unemployment of at least one (1) parent when both parents are in the home.

[(4) "Deprivation" means loss of parental support due to the unemployment, death, voluntary or involuntary absence, or incapacity of a child's natural or adoptive parent.]

(5) "Kentucky Works" means a program which assists recipients of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance. [gainful employment and self-support;] ["Job Opportunities and Basic Skills (JOBS)" means a program which assists recipients of AFDC in obtaining the necessary education and training that will lead to gainful employment and self-support;]

(6) "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married or is married and not living with the spouse; and

(c) Has a minor child in the applicant's or recipient's care.

(7) "Parent" means the natural, adoptive, or adjudicated (including administrative establishment of paternity) parent of the child.

(8) [(7)] "Principal wage earner (PWE)" means the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month of application for K-TAP [AFDG] benefits based on the deprivation of unemployment.

(9) [(8)] "Prior labor market attachment (PLMA)" means the parent has earned not less than fifty (50) dollars during each of six (6) or more calendar quarters ending on March 31, June 30, September 30 or December 31, with any thirteen (13) calendar quarter period ending within one (1) year of the application, for K-TAP [AFDG] benefits based on the deprivation of unemployment.

(10) "Qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive K-TAP, is:

(a) Lawfully admitted for permanent residence under 8 USC 1101 et seq.;

(b) Granted asylum under 8 USC 1158;

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

(d) Paroled into the United States under 8 USC 1182(d)(5) for a period of at least one (1) year;

(e) An alien whose deportation is being withheld under 8 USC 1253(h);

(f) Granted conditional entry pursuant to 8 USC 1153(a)(7) as in effect prior to April 1, 1980; or

(g) Lawfully residing in any state and is:

1. A veteran as defined in 38 USC 101 with a discharge characterized as an honorable discharge and not on account of alienage;

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

3. The spouse or unmarried dependent child of an individual described in paragraph (g)1 or 2 of this subsection;

(h) Battered or subjected to extreme cruelty in the United States

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by:

1. A spouse or a parent; or  
2. A member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, the battery or cruelty; or

(i) A child of an alien who has been battered or subjected to extreme cruelty in the United States by:

1. A spouse or a parent of the alien without the active participation of the alien in the battery or cruelty; or

2. A member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to or acquiesced to the battery or cruelty.

(j) Provisions in paragraph (h) and (i) of this subsection shall apply only if:

1. The alien no longer resides in the household with the individual responsible for the battery or cruelty;

2. There is a substantial connection between the battery or cruelty and the need for the benefit; and

3. The alien has been approved or has a petition pending for:

a. Status as a spouse or child of a United States citizen pursuant to clause (ii), (iii), or (iv) of 8 USC 1154(a)(1)(A);

b. Classification pursuant to clause (ii) or (iii) of 8 USC 1154(a)(1)(B); or

c. Suspension of deportation and adjustment of status pursuant to 8 USC 1254(a)(3).

(11) "Second chance home" means an entity that provides a minor teenage parent a supportive and supervised living arrangement in which a minor teenage parent is required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote long-term economic independence and the well-being of the child of the minor teenage parent.

(12) [(9)] "Striker" means an employed individual who is participating in:

(a) A work stoppage;

(b) A concerted slowdown of work; or

(c) An interruption of operations at his place of employment.

(13) [(10)] "Supplemental Security Income (SSI)" means monthly cash payments made under the authority of:

(a) 42 USC 1381 to 1385 to the aged, blind and persons with a disability;

(b) 42 USC 1382e; or

(c) 42 USC 1382.

(14) "Unemployed parent" (UP) case means K-TAP benefits paid to a family when both parents are in the home and at least one (1) parent is unemployed.

(15) "Work" means the following:

(a) Except for two (2) parent cases, for all families work means at least twenty (20) hours or more per week of:

1. Unsubsidized employment;

2. Subsidized employment;

3. Work experience training;

4. Community services; or

5. Participation in work programs established by the cabinet.

(b) For two (2) parent cases work means at least thirty-five (35) hours or more per week of:

1. Unsubsidized employment;

2. Subsidized employment;

3. Work experience training;

4. Community services; or

5. Participation in work programs established by the cabinet.

Section 2. Age and School Attendance. (1) The definition of a "child", as specified in Section 1 of this administrative regulation shall be met for at least one (1) person in the home.

(2) Verification of school attendance shall be required for:

(a) A child who is sixteen (16), seventeen (17), or eighteen (18) years of age, in order to determine his continuing eligibility; or

(b) A minor teenage parent pursuant to Section 18(1) of this administrative regulation. [A child who is sixteen (16) to eighteen (18) years of age and living in an active JOBS county, in order to determine his status as exempt or nonexempt for participation in the JOBS program, as specified in 904 KAR 2:370.]

(3) Full- and part-time school attendance is defined in 904 KAR 2:016, Standards for need and amount for K-TAP [-AFDC].

(4) Unless the parent states the child shall not reenter school, a child shall be considered in regular attendance in months in which he is not attending because of:

(a) Official school or training program vacation;

(b) Illness;

(c) Convalescence; or

(d) Family emergency.

(5) Verification of a high school diploma for a child under age eighteen (18) who is a high school graduate shall be required.

Section 3. Enumeration. (1) Each person included in the K-TAP [AFDC] case shall furnish his Social Security number or apply for a number if one has not been issued.

(2) Refusal to furnish the Social Security number or apply for a number shall result in the ineligibility of the person whose Social Security number is not furnished [verified].

(3) The agency shall assist an individual in making application for a Social Security number, if needed.

Section 4. Residence and Citizenship. (1) Residence. A resident shall be [is] anyone who:

(a) Is living in the state voluntarily and not for a temporary purpose; or

(b) Entered the state with a job commitment or seeking employment; and

(c) Is not receiving assistance funded by a block grant program under 42 USC 601 et seq. [AFDC-benefits] from another state.

(2) Citizenship.

(a) Except as provided in paragraphs (b) and (c) of this subsection, K-TAP [AFDC] shall be provided only to United States[-] citizens.

(b) A qualified alien, as defined in Section 1(10) of this administrative regulation, who entered the United States before August 22, 1996, who is otherwise eligible for K-TAP, shall be eligible for assistance.

(c) A qualified alien, as defined in Section 1(10) of this administrative regulation, who entered the United States on or after August 22, 1996, shall not be eligible for K-TAP for a period of five (5) years beginning on the date of the alien's entry into the United States. The following exceptions apply to this provision:

1. An alien who is admitted to the United States as a refugee under 8 USC 1157.

2. An alien who is granted asylum under 8 USC 1158.

3. An alien whose deportation is being withheld under 8 USC 1253(h); or

4. An alien who is lawfully residing in Kentucky and is:

a. A veteran as defined in 38 USC 101 with a discharge characterized as an honorable discharge and not on account of alienage;

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

c. The spouse or unmarried dependent child of an individual described in clause a or b of this subparagraph.

(d) [2. Aliens lawfully admitted for permanent residence; or

3. Aliens otherwise permanently residing in the United States under color of law.

(b) Failure of the parent or other adult, applying for or receiving benefits, to sign a citizenship or alien status declaration shall cause the needs of the parent or other adult to be removed from the case.

Section 5. Deprivation. (1) To be eligible for K-TAP [AFDC], a

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child shall be in need and shall be deprived of parental support or care [meet the definition of deprivation] as specified in Section 1(4) of this administrative regulation.

(2) A specific deprivation factor shall be verified for each child for whom assistance is approved.

Section 6. Deprivation Due to Death. The death of either parent shall qualify a child as deprived due to death.

Section 7. Deprivation Due to Absence. (1) To be considered deprived due to absence, a needy child shall be physically separated from the parent and:

(a) The nature of the absence of the parent interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

(b) The known or indefinite duration of absence precludes counting on the parent's performance of his function in planning for the present support or care of the child.

(2) Absence may be voluntary or involuntary.

(a) Voluntary absence includes:

1. Divorce;
2. Legal separation;
3. Marriage annulment;
4. Desertion:

a. Of thirty (30) days or more if:

- (i) The parent voluntarily leaves; or
- (ii) The parent refuses to accept the child into his home; or

b. Of less than thirty (30) days if:

(i) The child leaves the parent because the parent was requiring the child to live under circumstances hazardous to the health or morals of the child; or

(ii) One (1) of the parents in the home is required by the court to leave the home because that parent was requiring the child to live under circumstances hazardous to the health or morals of the child; or

(iii) The child is voluntarily placed with relatives following a finding by the Department for Social Services that the home is unsuitable; or

(iv) The child is placed by the court with a specified relative other than the parent; or

(v) The child is eligible and receiving benefits based on the unemployment or the incapacity of a parent and one (1) of the parents subsequently leaves the home; or

(vi) Both parents are absent from the home;

5. Forced separation of seven (7) days or more; or
6. Birth out-of-wedlock.

(b) Involuntary absence includes:

1. Commitment to a penal institution for thirty (30) days or more;
2. Long-term hospitalization;
3. Deportation; or
4. Single parent adoption.

(3) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday shall be [is] considered absent from the home.

Section 8. Deprivation Due to Incapacity. (1) Each determination of a deprivation of incapacity shall be based on a full consideration and assessment of the following factors affecting the claimant:

- (a) Medical;
- (b) Social; and
- (c) Economic.

(2) If a verified medical condition exists, then all relevant social and economic factors shall be considered to determine whether the parent's condition is the cause of and results in the parent's inability to support or care for the child.

(3) Incapacity exists in a case when the following criteria are met:

(a) It is medically determined that one (1) parent has a physical

or mental disability, illness or impairment which was:

1. Present at the time of application; and
2. Which has continued or is expected to last for a period of at least thirty (30) calendar days.

(b) The thirty (30) day period may include a period in which the claimant is undergoing:

1. Planned diagnostic studies; or
2. Evaluation of rehabilitation potential; and

(c) It is determined by nonmedical evaluation that the disability, illness or impairment is debilitating to the extent of reducing substantially or eliminating the parent's ability to support or care for an otherwise eligible child.

(4) A determination regarding incapacity shall be made by:

a. Field staff if the following criteria are met:

1. The parent declares physical inability to work;
2. The worker observes some physical or mental limitation; and
3. The parent:

a. Is receiving SSI; or

b. Is age sixty-five (65) or over; or

c. Has been determined to meet the definition of blindness as contained in 42 USC 1382c or 42 USC 416 by the Social Security Administration; or

d. Has been determined to meet the definition of permanent and total disability as contained in 42 USC 1382c or 42 USC 416 by either:

(i) The Social Security Administration; or

(ii) The medical review team of the Department for Social Insurance; or

e. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction with no reexamination requested and there is no visible improvement in condition; or

f. Is receiving Retirement, Survivors and Disability Insurance, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter; or

g. Is receiving Veterans Administration benefits based on 100 percent disability, as verified by an award letter; or

h. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, the physician is also requested to indicate if incapacity existed as of application date; or

i. Is recovering from surgery, illness or injury which requires a period of time for recovery, up to six (6) weeks, as specified by a physician statement. Periods longer than six (6) weeks shall be determined through the medical review team; or

j. Is on approved sick leave recovering from surgery, illness or injury for the duration of the approved sick leave if the employer is holding the job for the individual's return, as verified by the employer; or

k. Is a woman in a high risk pregnancy, during the duration of the pregnancy, as verified by physician statement.

(b) The medical review team, consisting of a licensed physician and a social worker employed by the agency, if a determination by field staff is precluded.

(5) Factors to be considered by the medical review team in making the medical determination shall include:

(a) The claimant's medical history and subjective complaints regarding an alleged physical or mental disability, illness or impairment; and

(b) Competent medical testimony relevant to:

1. Whether a physical or mental disability, illness or impairment exists;

2. Whether the disability, illness or impairment is sufficient to reduce the parent's ability to support or care for a child; and

3. Whether the disability, illness or impairment is likely to last thirty (30) days.

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(6) Factors to be considered in making the nonmedical evaluation shall include:

(a) The claimant's:

1. Age;
2. Employment history;
3. Vocational training;
4. Educational background; and

5. Subjective complaints regarding the alleged effect of the physical or mental condition on the claimant's ability to support or care for the child; and

(b) The extent and accessibility of employment opportunities available in the claimant's area of residence.

(7) In determining the extent and accessibility of available employment opportunities, the limited employment opportunities of individuals with a disability shall be taken into account; and

(a) Available printed materials that provide information regarding available employment opportunities shall be researched;

(b) The local Department for Employment Service office shall be contacted regarding accessible employment opportunities within the claimant's area of residence; and

(c) The claimant shall be referred, if necessary, for further appraisal of his abilities.

(8) A written report shall be made of the determination under this subsection.

(9) Each claimant shall be provided timely and adequate notice of and an opportunity for a fair hearing as provided in 904 KAR 2:055.

Section 9. Deprivation Due to Unemployment. (1) The determination that a child is deprived of parental support due to the unemployment of a parent when both parents are in the home shall be based on the determination that the principal wage earner meets the criteria of unemployment and has a PLMA.

(2) The determination of the PWE shall include the following:

(a) If the agency is unable to secure primary evidence of earnings to determine which parent is the PWE, the agency shall designate the PWE using the best evidence available.

(b) [b:] If both parents earned identical amounts of income, or no income, the agency shall designate the parent meeting the criteria of unemployment, as specified in subsection (3) of this section.

(c) Earnings of each parent shall be considered in determining the PWE regardless of when their relationship began.

(d) The PWE designation shall remain with the same parent as long as assistance is received on the basis of the same application.

(3) Unemployment. A parent shall be considered to be unemployed if:

(a) Employed less than 100 hours in a calendar month; or

(b) Employment exceeds 100 hours in a particular month, but the work is intermittent and the excess is of a temporary nature. This would be evidenced by the fact that the parent:

1. Was under the 100 hour standard in the prior two (2) months; and

2. Is expected to be under the 100 hour standard in the following month.

(4) PLMA shall be established if the parent:

(a) Attests to an employment history meeting the definition in Section 1(9) [(5)] of this administrative regulation;

(b) Within twelve (12) months prior to application, received unemployment compensation; or

(c) Is currently receiving unemployment compensation or if potentially eligible, has made application for and complies with the requirements to receive unemployment insurance benefits.

(5) In determining whether or not criteria in subsection (4) of this section is met, the following shall be taken into consideration:

(a) Participation in the Kentucky Works [JØBS] Program shall be considered as earning an income in determining PLMA.

(b) Full-time attendance, as defined by the school or institution, may be substituted for two (2) of the six (6) calendar quarters.

Qualifying activities shall be:

1. An elementary;

2. Secondary; or

3. Vocational or technical training course designed to prepare the individual for gainful employment.

(c) Gross income from self-employment and farming qualify as earned income in determining PLMA. The self-employed individual does not have to realize a profit to meet this requirement.

(6) Restrictions. Unemployment shall not exist if the PWE:

(a) Is on strike;

(b) Is temporarily unemployed:

1. Due to weather conditions or lack of work;

2. If there is a job to return to; and

3. Return can be anticipated within thirty (30) days or at the end of a normal vacation period;

(c) Is unavailable for full-time employment;

(d) Is under contract for employment, unless a written statement from the employer verifies that the individual is subject to release from the contract if full-time employment is secured;

(e) Has not met the criteria of unemployment for at least thirty (30) days;

(f) Is not:

1. Registered for work under Section 14 of this administrative regulation; or

2. Subject to Kentucky Works [JØBS], as specified in 904 KAR 2:370; or

(g) Has refused a bona fide offer of employment or training for employment without good cause in the thirty (30) days prior to [AFØG] UP eligibility or during the course of receipt of [AFØG] UP benefits. Good cause exists if criteria specified in 904 KAR 2:016, Section 4(4)(a)1, 2, 3, or 4 are met.

Section 10. Living with a Specified Relative. To be eligible for K-TAP [AFØG] a needy child shall be living in the home of a relative as follows:

(1) A blood relative, including:

(a) Father;

(b) Mother;

(c) Grandfather;

(d) Grandmother;

(e) Brother;

(f) Sister;

(g) Uncle;

(h) Aunt;

(i) Nephew;

(j) Niece;

(k) First cousin; and

(l) First cousin once removed;

(2) A relative of the half-blood;

(3) Preceding generations denoted by prefixes of:

(a) Grand;

(b) Great;

(c) Great-great; or

(d) Great-great-great;

(4) A stepfather, stepmother, stepbrother, stepsister;

(5) Any person listed in subsections (1) through (4) of this section if the alleged father has had paternity established through the administrative determination process as specified in Section 11 of this administrative regulation.

(6) An adoptive parent, the natural and other legally adopted child and other relative of the adoptive parent.

(7) The husband or wife of any person listed in subsections (1) through (6) of this section, even if the marriage may have terminated, providing termination occurred after the birth of the child.

(a) For K-TAP [AFØG] eligibility purposes, a couple that has been considered married by a state with common-law marriage provisions shall be considered married.



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(b) The statement of the applicant or recipient that he resides in a state which recognizes common-law marriage shall be accepted as verification by the agency.

(8) Cash assistance shall not be provided for a child who is absent, or expected to be absent, from the home for a period of thirty (30) consecutive days or more unless good cause exists. Good cause for absence, or expected absence, of the child from the home for a period of thirty (30) consecutive days or more, shall exist if the parent continues to exercise care and control of the child and the child is absent due to: [If the specified relative continues to exercise control over the child, a child is considered as living in the home even when temporarily absent for:]

- (a) Medical care;
- (b) Attendance at school including boarding school;
- (c) College or vocational school;
- (d) Emergency foster care, as verified by the Department for Social Services; or

(e) If it is intended that the child will return to the home and the parent or specified relative maintains parental control of the child, short visits with friends or relatives.

(9) A child shall be removed from the benefit group the first administratively feasible month following thirty (30) consecutive days from the date the child is placed in emergency foster care. If the only eligible child in the benefit group is absent due to emergency foster care, the otherwise eligible parent or parents in the benefit group shall:

(a) Remain eligible for sixty (60) days from the date the child is placed in emergency foster care; and

(b) If no other eligible child is in the benefit group, be discontinued the first administratively feasible month following sixty (60) days from the date the child is placed in emergency foster care.

(10) If a specified relative fails to notify the agency of a thirty (30) consecutive day or more absence of the child for a reason other than one (1) of the good cause reasons listed in subsection (8) of this section, the specified relative shall not be eligible for his share of K-TAP benefits during the period of the child's unreported absence of thirty (30) consecutive days or more. Ineligible benefits received by the specified relative and child during the period of the child's unreported absence of thirty (30) consecutive days or more shall be recouped pursuant to Section 10 of 904 KAR 2:016.

Section 11. Administrative Establishment of Paternity. (1) An administrative determination of paternity as set forth in this administrative regulation shall be used only to establish relationship for K-TAP eligibility and shall be [is] limited to situations in which the following types of evidence are present:

- (a) A birth certificate listing the alleged parent; or
- (b) Legal documents such as:

- 1. Hospital records;
- 2. Juvenile court records;
- 3. Wills; and

4. Other court records which clearly indicate the relationship of the alleged parent or relative; or

(c) Receipt of statutory benefits as a result of the alleged parent's circumstances; or

(d) A sworn statement or affidavit of either parent acknowledging paternity plus one (1) of the following:

- 1. School records;
- 2. Bible records;
- 3. Immigration records;
- 4. Naturalization records;
- 5. Church documents, such as baptismal certificates;
- 6. Passport;
- 7. Military records;
- 8. U.S. Census records; or

9. Notarized [Sworn] statement or affidavit from an individual having specific knowledge about the relationship between the alleged

parent and child.

(2) Rebuttal of administrative paternity may occur if:

(a) The parent or, in the absence of the parent, the caretaker relative alleges the evidence present in subsection (1)(a) or (b) of this section is erroneous and provides substantiation of the erroneous information; and

(b) The parent or caretaker relative provides a notarized [sworn] statement or affidavit acknowledging the erroneous information and containing the correct information on the actual alleged parent.

(3) Presence of the notarized [sworn] statement or affidavit specified in subsection (2)(b) of this section shall [will] serve as rebuttal to the evidence present in subsection (1)(a) or (b) of this section and a determination of paternity shall [will] not be acknowledged.

Section 12. One (1) Category of Assistance. (1) A child or adult relative shall not be eligible for K-TAP [AFDC] if receiving SSI.

(2) If a child who receives SSI meets the K-TAP [AFDC] requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP [AFDC] if all other eligibility factors are met.

(3) If a child who receives foster care benefits meets the K-TAP [AFDC] requirements of age, deprivation and living in the home of a specified relative, the specified relative may be approved for K-TAP [AFDC] if all other eligibility factors are met.

Section 13. Strikers. (1) A family shall be ineligible for benefits for any month in which the parent, with whom the child is living is, on the last day of the month, participating in a strike; and

(2) A specified relative other than the parent shall be ineligible for benefits for any month if, on the last day of the month, the relative is participating in a strike.

Section 14. Work Registration. (1) An adult applicant or recipient of the K-TAP benefit group [in a case based on the deprivation of unemployment, the PWE and the second parent] shall register for work except for a member who is:

(a) Under age eighteen (18);

(b) Age sixty (60) or over;

(c) Age eighteen (18) or nineteen (19) years old in full-time school attendance as set forth in Section 1(11) of 904 KAR 2:016;

(d) Receiving benefits based on 100 percent disability;

(e) An individual who has received benefits based on 100 percent disability within the past twelve (12) months but lost the benefits due to income or resources and not an improvement in the disability; or

(f) Employed thirty (30) hours or more per week at minimum wage or more. [with the Department for Employment Services if:

(a) He resides in a non-JOBS county; or

(b) He resides in a JOBS county and is exempt from participation as specified in 904 KAR 2:370.]

(2) Unless an exception in subsection (1) of this section applies, failure of an adult member in the assistance group [the PWE or the second parent] to register for work shall result in:

(a) Prior to April 1, 1998 for an applicant, denial of the application for the benefit group; or

(b) Prior to April 1, 1998 for a recipient, pro rata reduction of the grant for the benefit group. [removal of the needs of the individual who fails to register.]

(c) On or after April 1, 1998, pro rata reduction of the K-TAP grant for the benefit group.

Section 15. Kentucky Works. [JOBS Training Program.] The technical requirements for participation in the Kentucky Works [JOBS] Program are specified in 904 KAR 2:370.

Section 16. Cooperation in Child Support Enforcement Activities. (1) The Department for Social Insurance shall attempt to secure

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parental support, and if necessary establish paternity, for children receiving K-TAP [AFDC] based on the following voluntary absence deprivation factors:

- (a) Divorce;
- (b) Desertion;
- (c) Birth out-of-wedlock;
- (d) Legal separation;
- (e) Forced separation; or
- (f) Marriage annulment.

(2) With the exception of good cause reasons, specified in subsection (4) of this section, avoidance of the twenty-five (25) percent reduction of the amount of the payment maximum in K-TAP benefits pursuant to subsection (7) of this section shall be [inclusion of a specified relative in the AFDC budget is] dependent upon the applicant's or recipient's [his] cooperation in child support activities. This includes ~~;~~ but is not limited to:

(a) Identifying the noncustodial [absent] parent or obligor;

(b) Providing information to assist in the location of the noncustodial [absent] parent or obligor;

(c) Establishing paternity; and

(d) Forwarding child support payments received to the agency.

(3) The Cabinet for Families and Children [Human Resources] shall provide written notice to the applicant or recipient that he may claim good cause for refusing to cooperate.

(4) The applicant or recipient shall be determined to have "good cause" for failing to cooperate only when one (1) or more of the following criteria is met:

(a) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to the child; or

(b) The applicant or recipient's cooperation is reasonably anticipated to result in physical or emotional harm of a serious nature to himself to such an extent that it would reduce his capacity to care for the child adequately; or

(c) The child was conceived as a result of incest or forcible rape and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(d) Legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction and the department believes it would be detrimental to the child to require the applicant's or recipient's cooperation; or

(e) The applicant or recipient is being assisted by a public or licensed private social service agency:

1. To resolve whether to keep the child or release him for adoption; and

2. Discussion has not gone on for more than three (3) months; and

3. The cabinet believes it would be detrimental to the child to require the applicant's or recipient's cooperation.

(5) Unless an extension is granted, the applicant or recipient shall have twenty (20) days from the date the good cause claim is filed to provide evidence to substantiate the claim.

(a) Evidence upon which a determination of good cause shall be made includes ~~;~~ but is not limited to ~~;~~ the following:

1. Birth certificates, medical, or law enforcement records indicating that the child was conceived as a result of incest or forcible rape;

2. Court documents or other records indicating legal proceedings for adoption of the child by a specific family are pending before a court of competent jurisdiction;

3. Records (court, medical, criminal, child protective services, social services, psychological or law enforcement) indicating the noncustodial parent or obligor, [absent] or the alleged parent might inflict physical or emotional harm on the child or caretaker relative;

4. A written statement from a public or licensed private social service agency that assistance is being given to the applicant or recipient to resolve the issue of whether to keep the child or relinquish the child for adoption and the issue has not been pending more than

three (3) months; or [and]

5. Notarized statements from individuals, other than the applicant or recipient, with knowledge of the circumstances which provide the basis for the "good cause" claim.

(b) In each good cause determination based upon anticipation of serious emotional harm to the child or caretaker relative, the following shall be considered:

1. The present emotional state of the individual subject to emotional harm;

2. The emotional health history of the individual;

3. The extent and probable duration of the individual's emotional impairment; and

4. The extent of involvement required by the individual in establishing paternity or enforcing support obligations.

(c) When the good cause claim is based on the anticipation of physical harm to the child or caretaker relative, and corroborative evidence is not submitted:

1. The agency shall conduct an investigation if it is believed that:

a. Corroborative evidence is not available; and

b. The claim is credible without corroborative evidence.

2. If the agency conducts an investigation of a good cause claim, it shall not contact the noncustodial parent or obligor, or the [absent or] alleged parent regarding support unless the contact is necessary to establish the good cause claim.

3. If it is necessary for the agency to make the contact, the worker shall notify the applicant or recipient of the proposed contact to either:

a. Obtain permission for the contact; or

b. To enable the applicant or recipient to:

(i) Present additional evidence or information so that such contact is unnecessary;

(ii) Withdraw the application for assistance or request discontinuance of K-TAP [AFDC]; or

(iii) Have the good cause claim denied.

(6) After receipt of evidence to substantiate the good cause claim or conducting an investigation, the agency shall:

(a) Document the case;

(b) Determine that:

1. Good cause exists and support activities cannot be initiated without endangering:

a. The best interests of the child; or

b. The physical or emotional health of the child or the relative; or

2. ~~[Good cause exists and support activities can be initiated without endangering the physical or emotional health of the child or the relative; or~~

~~3.]~~ Good cause does not exist.

(c) Advise the applicant or recipient [specified relative] in writing of the result of the good cause claim determination; and

(d) Identify each case in which good cause is established, but may be subject to change, for subsequent review.

(7) If the specified relative refuses to cooperate without good cause criteria being claimed, or claimed but not deemed to be met by the agency:

(a) K-TAP benefits shall be reduced by twenty-five (25) percent of the amount of the maximum payment for the appropriate family size pursuant to Section 8 of 904 KAR 2:016; [The relative shall be ineligible for benefits;] and

(b) The agency shall attempt to obtain a protective payee to administer the K-TAP [AFDC] payment on behalf of the child.

(8) If, after the reduction of the K-TAP payment [exclusion from the grant] for failure to cooperate, the specified relative states he will cooperate, the agency shall:

(a) Remove the twenty-five (25) percent reduction in benefits effective the first administratively feasible month if the individual states he will cooperate and verification of cooperation is provided timely; [Add the specified relative to the case effective with the date the individual states he will cooperate;]

(b) Remove the protective payee from the case; and

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(c) Not authorize back payments for the period of time for which the individual did not cooperate.

Section 17. Potential Entitlement for Other Programs. (1) An applicant or recipient shall apply for and comply with the requirements to receive any benefit if potential entitlement exists.

(2) Except for the PWE in an [AFDG] UP case, failure to apply for another benefit or comply with its requirements shall result in ineligibility for K-TAP [AFDG].

(3) If a PWE or second parent in an [AFDG] UP case fails to apply for unemployment insurance benefits or comply with its requirements, the PWE or second parent shall have his needs removed from the case.

(4) If an applicant or recipient voluntarily reduces the amount of benefits received from another source, other than for the purpose of reimbursing the source for a previous overpayment, this action shall result in ineligibility.

Section 18. Minor Teenage Parents. (1) A minor teenage parent shall participate in educational activities directed toward the attainment of a high school diploma, or its equivalent, or a cabinet approved alternate education or training program if the minor teenage parent:

(a) Has a minor child at least twelve (12) weeks of age in his care; and

(b) Has not completed a high school education (or its equivalent).

(2) Except as provided in subsection (4) of this section, a minor teenage parent and his minor child shall reside in:

(a) A place of residence maintained by:

1. A parent;

2. A legal guardian;

3. An adult relative as described in Section 10 of this administrative regulation; or

(b) An appropriate adult supervised supportive living arrangement, that includes a second chance home or maternity home, taking into consideration the needs and concerns of the minor teenage parent.

(3) The cabinet shall provide or assist the minor teenage parent in locating a second chance home, maternity home, or other appropriate adult supervised supportive living arrangement if:

(a) The minor teenage parent does not have:

1. A parent, legal guardian or appropriate adult relative as described in Section 10 of this administrative regulation who is living or whose whereabouts are known; or

2. A living parent, legal guardian, or other appropriate adult relative as described in Section 10 of this administrative regulation who otherwise meets applicable state criteria to act as the legal guardian of the minor teenage parent, who would allow the minor teenage parent to live in the home of the parent, guardian, or relative as described in Section 10 of this administrative regulation; or

(b) The cabinet determines:

1. The minor teenage parent or the minor child of the teenage parent is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the minor teenage parent's own parent or legal guardian; or

2. Substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the minor teenage parent and the minor child lived in the same residence with the minor teenage parent's own parent or legal guardian.

(4) The requirement in subsection (2) of this section shall be waived if:

(a) The cabinet determines living in the place of residence maintained by the parent, legal guardian, or adult relative as described in Section 10 of this administrative regulation is not in the best interest of the minor child taking into consideration the needs and concerns of the minor child; or

(b) The cabinet determines the minor teenage parent's current living arrangement is appropriate.

(5) If circumstances change and the current arrangement ceases to be appropriate based on the needs and concerns of the minor teenage parent, the cabinet shall assist the minor teenage parent in finding an alternate appropriate arrangement.

(6) The minor teenage parent shall complete a "Teen Parent Personal Responsibility Plan", form PA-202TP.

(7) If the minor teenage parent is determined to be ineligible for K-TAP as a result of not complying with provisions found in Section 18 of this administrative regulation, payments to a protective payee shall continue for the eligible child of the minor teenage parent.

(8) Even if exemption criteria is met and the cabinet determines the minor teenage parent's current living arrangement is appropriate, a minor teenage parent and his child, who do not reside in a place of residence maintained by a parent, legal guardian, other adult relative as described in Section 10 of this administrative regulation, second chance home or maternity home, shall be considered an adult regarding benefit time limitations pursuant to Section 19 of this administrative regulation.

Section 19. Benefit Time Limits. (1) K-TAP shall not be provided to a benefit group, as defined by Section 1 of 904 KAR 2:016, that includes an adult, or minor teenage parent pursuant to Section 18(8) of this administrative regulation, who has received assistance for sixty (60) months from a **federally-funded** program funded under 42 USC 601 et seq., whether or not consecutive.

(2) A month or months of assistance received by an otherwise eligible benefit group shall not be counted toward the sixty (60) months lifetime limit:

(a) If the benefit group contains an adult who is battered or subjected to extreme cruelty pursuant to Section 23 of this administrative regulation; or

(b) During a month or months the benefit group is not issued a K-TAP check in accordance with 904 KAR 2:050.

(3) After assistance has been received for sixty (60) months, an otherwise eligible benefit group containing one (1) of the following individuals shall be allowed an extension of the sixty (60) months time limit, during the period the individual:

(a) Is battered or subjected to extreme cruelty;

(b) Has a physical or mental disability prohibiting work as determined by the cabinet;

(c) Is required to provide constant care of a household member who is a parent, spouse or child with a disability and no alternative care arrangement is available; or

(d) Is a grandparent caring for an eligible child who would otherwise be placed in foster care.

(4) If otherwise eligible, a benefit group containing a member who has lost a job within thirty (30) days of reaching the sixty (60) month time limit shall receive a three (3) month extension of the time limitation.

(5) Each month of participation in the wage supplementation component of Kentucky Works, pursuant to 904 KAR 2:370, Section 2 shall count toward the sixty (60) month lifetime limit.

(6) Within twenty-four (24) months of receiving K-TAP assistance, whether or not consecutive, a parent or caretaker relative receiving assistance, shall work or participate in approved work activities, if available, as defined in Section 1(15) of this administrative regulation.

(7) Time limitations shall apply to a sanctioned or penalized individual as defined in 904 KAR 2:016, Section 1.

Section 20. Receiving Assistance in Two (2) or More States. K-TAP assistance shall be denied for ten (10) years to a person who has:

(1) Been convicted in federal or state court of having made a fraudulent statement or representation committed after August 22, 1996, with respect to the place of residence of the individual in order to receive assistance simultaneously from two (2) or more states:

(a) Under a program funded under:

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1. 42 USC 601 et seq.;
2. 42 USC 1396; or
3. 7 USC 2011 et seq.; or

(b) For benefits received under supplemental security income.

(2) The requirement in subsection (1) of this section shall not apply to a conviction for any months beginning after the granting of a pardon by the President of the United States with respect to the conduct which was the subject of the conviction.

Section 21. Fugitive Felons. (1) K-TAP assistance shall not be provided to:

(a) An individual fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or an attempt to commit a crime, committed or attempted to be committed after August 22, 1996, which is a felony; or

(b) Violating a condition of probation or parole imposed under federal or state law.

(2) Subsection (1) of this section shall not apply with respect to conduct of an individual for any month beginning after the President of the United States grants a pardon with respect to the conduct.

Section 22. Denial of Assistance for Drug Felons. (1) An individual convicted under federal or state law of an offense committed after August 22, 1996, classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use or distribution of a controlled substance as defined in 21 USC 802(6), shall not be eligible for K-TAP benefits.

(2) Each individual applying for K-TAP benefits shall be required to state in writing whether the individual or any member of the household has been convicted of a crime described in subsection (1) of this section.

Section 23. Domestic Violence. (1)(a) A K-TAP applicant or recipient shall be screened for a history of domestic violence.

(b) If the applicant or recipient is identified as a victim of domestic violence or with a history of domestic violence and at risk of further domestic violence as determined by the cabinet, the individual shall be referred to counseling and supportive services.

(2) If compliance with the following K-TAP requirements would make it more difficult for an individual receiving K-TAP to escape domestic violence or unfairly penalize the individual who is or has been victimized by domestic violence, or an individual who is at risk of further domestic violence, as determined by the cabinet, the individual shall not be required to meet:

(a) Residency requirements pursuant to Section 4 of this administrative regulation;

(b) Child support cooperation requirements pursuant to Section 16 of this administrative regulation;

(c) Time limitations, for so long as necessary and otherwise eligible, pursuant to Section 19 of this administrative regulation; or

(d) Participation in Kentucky Works requirements pursuant to 904 KAR 2:370.

Section 24. Immunizations. (1) Except as provided under KRS 214.036, a recipient of K-TAP shall maintain current immunizations for an under school age child, pursuant to the Cabinet for Health Services, Department for Public Health Immunization Schedule in 902 KAR 2:060.

(2) The parent or caretaker relative shall be sanctioned, as defined in 904 KAR 2:016, Section 1, for failure to maintain current immunizations.

Section 25. Material Incorporated by Reference. (1) Forms necessary to establish technical eligibility requirements for the K-TAP [AFDC] program, with the exception of Kentucky Works [JOBS] participation, are being incorporated [effective December 1, 1993]. These forms include:

(a) PA.1C Supplement D, "Qualifying Parent Fact Sheet, edition 5/97" [revised 3/92];

(b) PA-14, "Declaration of citizenship or Alien Status, edition 8/97" [revised 11/94];

(c) PA-33D, "Child's Certification of School Enrollment/Attendance, edition 8/97" [revised 1/92];

(d) PA-121, "Good Cause Claim/Determination, edition 8/97" [revised 8/87];

(e) PA-202TP, "Teen Parent Personal Responsibility Plan, edition 2/97" [PA-125, revised 6/83];

(f) PA-219, "Kentucky Works Program Fact Sheet, edition 4/97" [PA-125 Supplement A, revised 6/83];

(g) PA-125 Supplement B, revised 12/82;

(h) PA-125.1, revised 5/90;

(g) [(f)] PA-511, "Work Registration Form, edition 10/92" [revised 10/92];

(j) KA-125, revised 7/92;

(k) KA-125, Supplement A, revised 1/93;

(l) KA-125, Supplement B, revised 7/92;

(m) KA-125, Supplement C, revised 7/92;

(n) [(m)] CS-333, "Facts About the Child Support Enforcement Program, edition 5/97" [revised 10/94]; and

(i) [(e)] CS-333.1, "Facts About the Right to Claim Good Cause, edition 5/97" [revised 9/86].

(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: January 9, 1998

FILED WITH LRC: January 15, 1998 at 11 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP), the program which replaces the Aid to Families with Dependent Children program (AFDC). As of August 1997, approximately 60,530 families in Kentucky (monthly average) receive K-TAP.

(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: A public hearing scheduled on December 22, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. No written or oral comments were received regarding direct or indirect costs or savings on the cost of living and employment in the geographical area.

(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: A public hearing scheduled on December 22, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. No written or oral comments were received regarding the cost of doing business in the geographical 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: First year following implementation: The individuals who are applicants or recipients of AFDC, now K-TAP, who are minor teenage parents will have additional compliance, reporting or paperwork requirements due to the completion of a

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personal responsibility plan. This form, PA-202TP, will be completed by the minor teenage parent. This form assists the minor teenage parent in outlining future goals to be achieved by the minor teenage parent and her child. Individuals required to complete the form will be interviewed during the next case recertification and will not be required to make a special trip to the office to complete the form; therefore, the individual will not be fiscally impacted by the completion of this form. Verification of school attendance and living arrangements for minor teenage parents will also be required. These two eligibility requirements are mandated by 42 USC 601 et seq. The individual will be assisted by the caseworker in obtaining any required verification for these two eligibility requirements.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

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

a. Time limits - a five-year limit and a two-year limit for work: no immediate cost impact-budget neutral.

b. Minor teenage parent and domestic violence provisions effective 2/1/97, is no cost impact to the Department for Social Insurance for the first year (SFY 97). There may be discontinued cases due to the minor teenage parent requirement of living in an adult supervised setting; however, the cost savings in benefits to the agency would be negligible. The second chance home provides a minor teen parent with support which would be budget neutral to the agency. Minor teenage parents who are determined by the cabinet to be allowed to waive requirements of adult supervised setting would be budget neutral to the agency for benefit costs for the first year (SFY 97).

c. Qualified alien provisions are budget neutral to the agency effective 2/1/97.

d. Grant reduction of 25 percent of grant maximum due to noncooperation of child support activities effective March 1, 1997, is budget neutral to the agency.

e. K-TAP form revisions, printing and system form revisions effective February 1, 1997, is \$10,200 costs to the agency for the first year (SFY 97).

f. Ineligibility of 16 to 18 year olds not in school effective 9/1/97 is \$2,000,000 savings to the agency for the first year (SFY 98).

g. Adding good cause for absence of a child for 60 days due to emergency foster effective 8/1/97 is \$14,000 cost to the agency for the first year (SFY 98).

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are as listed below:

a. Time limits - a five-year limit and a two-year limit for work: no immediate cost impact-budget neutral.

b. Minor teenage parent and domestic violence provisions- For the second (SFY 98) and subsequent year, it is estimated that the total cost of staff time to the Department for Social Services (DSS) to provide the services to carry out the minor teenage parent and domestic violence provisions is between \$198,100 and \$296,900. There may be discontinued cases due to the minor teenage parent requirement of living in an adult supervised setting; however, the cost savings in benefits to the agency (DSI) would be negligible. The second chance home provides a minor teen parent with support which would be budget neutral to the agency (DSI). Minor teenage parents who are determined by the cabinet to be allowed to waive requirements of adult supervised setting would be budget neutral to the agency (DSI) for benefit costs for the second year (SFY 98).

c. Qualified alien provisions are budget neutral to the agency.

d. Grant reduction of 25 percent of grant maximum due to noncooperation of child support activities is budget neutral to the agency.

e. K-TAP form revisions, printing and system form revisions is no cost to the agency for the second year (SFY 98).

f. Ineligibility of 16 to 18 year olds not in school is \$2,400,000

savings to the agency for the second (SFY 99) year.

g. Adding good cause for absence of a child for 60 days due to emergency foster effective is \$14,000 cost to the agency for the second year (SFY 99).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal 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: A public hearing scheduled on December 22, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. No written or oral comments were received regarding economic impact in the geographical area.

(b) Kentucky: A public hearing scheduled on December 22, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. No written or oral comments were received regarding economic impact in Kentucky.

(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 requirements for the 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 requirements found in 42 USC 601 et seq., and to implement K-TAP that replaces the AFDC 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 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: A public hearing scheduled on December 22, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. Written comments were received by close of business on December 22, 1997, and changes were made to the administrative regulation as a result of these written comments.

(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

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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**  
**(Amended After Hearing)**

**904 KAR 2:016. Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP) [; AFDC].**

RELATES TO: KRS [47-011-] 205.200(2), 205.210(1), 205.211, 42 CFR 435.831, 45 CFR 233, 233.20(a)(13), 25 USC 1408, 42 USC 602(a)(8)(A)(viii), 602(a)(13), 602(a)(39), PL 103-66 § 13736, 13742, "Treatment of Retroactive SSI and Child Support Collected During the SSI Retroactive Period", Transmittal No. ACF-AT-93-20 (November 2, 1993), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, Transmittal No. ACF-AT-94-17 (August 3, 1994), U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance

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 is required to administer the public assistance programs. KRS 205.200(2) and 205.210(1) require that the secretary establish the standards of need and amount of assistance for the Aid to Families with Dependent Children Program, now named the Kentucky Transitional Assistance Program (K-TAP), the block grant program funded by 42 USC 601 et seq. This administrative regulation sets forth the standards of [by-which] the need for and the amount of a Kentucky Transitional Assistance Program payment including Relocation Assistance Program and Family Alternatives Diversion [an aid to families with dependent children assistance payment is established].

Section 1. Definitions. (1) [~~Aid to families with dependent children (AFDC) means a money payment program for children who are deprived of parental support or care due to death, continued absence, physical or mental incapacity or unemployment of a parent.~~

(2) "Benefit group" means a group composed of one (1) or more children and may include as specified relative any person specified in 904 KAR 2:006, Section 10 [3].

(a) The benefit group shall include:

1. The dependent child;

2. The child's [eligible] parent living in the home with the needy child who is:

a. Eligible for K-TAP; or

b. Ineligible for K-TAP due to benefit time limitations pursuant to 904 KAR 2:006, Section 19; and

3. All eligible siblings living in the home with the needy child.

(b) If the benefits to the household would be greater by excluding an otherwise eligible child related by subsidized adoption to the other members, this child shall not be included in the benefit group.

(c) If the dependent child's parent is a minor living in the home with his eligible parent, the minor's parent shall also be included in the benefit group if the minor's parent applied for assistance.

(d) The incapacitated or unemployed natural or adoptive parent of the child who is living in the home shall be included as second parent if the technical eligibility factors are met.

(2) [(3)] "Beyond the control" means:

(a) Loss or theft of the money;

(b) The individual to whom the lump sum was designated no longer lives in the household, making the lump sum income inaccessible; or

(c) Expenditure of the lump sum income to meet extraordinary expenses, that are not included in the K-TAP [AFDC] Standard of Need.

(3) [(4)] "Burial space" means a space and certain related services used for the remains of a deceased person. This includes:

(a) A grave site;

(b) Costs to open and close the grave;

(c) A crypt;

(d) A mausoleum space;

(e) A casket;

(f) A vault;

(g) An urn; and

(h) A headstone.

(4) [(5)] "Change in circumstances" means a change in income and or dependent care expenses which affects the ongoing K-TAP [AFDC] payment. This shall include:

(a) Beginning or ending employment;

(b) Change in employers or obtaining additional employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in the dependent care expense due to a change in provider, number of hours of care, number of individuals for whom care is given, or amount charged; or

(f) Change in farm cropping arrangements or type of self-employment activities.

(5) [(6)] "Claimant" means the individual responsible for an overpayment.

(6) [(7)] "Countable income" means income which remains after excluded income and appropriate deductions are removed from gross income.

(7) [(8)] "Deduction" means an amount subtracted from gross income to determine countable income.

(8) [(9)] "Excluded income" means income that is received but not counted in the gross income test.

(9) "Family Alternatives Diversion (FAD) Program" means the Kentucky Transitional Assistance Program benefit paid to a FAD eligible family to meet a short-term need.

(10) "Full-time employment" means employment of thirty (30) hours per week or 130 hours per month or more.

(11) "Full-time school attendance" means a workload of at least:

(a) The number of hours required by the individual program for participation in an adult basic education program, a general educational development program or a literacy program; or

(b) Twelve (12) semester hours or more in a college or university; or six (6) semester hours or more during the summer term; or the equivalent in a college or university if other than a semester system is used; or

(c) The number of hours required by the individual high school or [v] vocational school to fulfill their definition of full time.

(12) "Gross income limitation standard" means 185 percent of [the sum of] the assistance standard, as set forth in Section 8 of this administrative regulation.

(13) [~~Job opportunities and basic skills (JOBS) means a program which assists recipients of K-TAP [AFDC] in obtaining the necessary education and training that will lead to gainful employment and self-support.~~

(14) "Job Training Partnership Act Program (JTPA)" means a program that prepares youth and unskilled adults for entry into the labor force. Only those individuals who are certified as eligible for the program can benefit from JTPA funds.

(14) "Kentucky Transitional Assistance Program (K-TAP)", Kentucky's Temporary Assistance for Needy Families (TANF)

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Program, means a money payment program for children who are deprived of parental support or care due to:

- (a) Death, continued voluntary or involuntary absence of a parent;
- (b) Physical or mental incapacity of one (1) parent when both parents are in the home; or
- (c) Unemployment of at least one (1) parent when both parents are in the home.

(15) "Kentucky Works" means a program which assists recipients of K-TAP in obtaining education, training, experience and employment necessary to leave public assistance. [gainful employment and becoming self-sufficient.]

(16) [(15)] "Lump sum income" means income that does not occur on a regular basis, and does not represent accumulated monthly income received in a single sum.

(17) [(16)] "Minor" means any person who is under the age of eighteen (18) or under the age of nineteen (19) in accordance with 904 KAR 2:006, Section 1 [45 CFR 233.90(b)(3)]. EXCEPTION: For the purpose of deeming income, a minor parent is a parent [con-sidered any person] under the age of eighteen (18).

(18) [(17)] "Part-time employment" means employment of less than thirty (30) hours per week or 130 hours per month or not employed throughout the entire month.

(19) [(18)] "Part-time school attendance" means a workload of anything less than "full-time school attendance."

(20) "Penalized individual" means a person who is required to be included in the benefit group but fails to fulfill an eligibility requirement which causes a pro rata reduction in benefits of the benefit group. If otherwise eligible, a penalized individual remains a member of the benefit group.

(21) [(19)] "Prospective budgeting" means computing the amount of assistance based on income and circumstances which will exist in the month(s) for which payment is made.

(22) [(20)] "Recoupment" means recovery of overpayments of assistance payments.

(23) "Relocation Assistance Program (RAP)" means the K-TAP benefit for a RAP eligible K-TAP recipient to meet moving related expenses when a specific job opportunity exists for the K-TAP recipient requiring the recipient to relocate in order to access the employment.

(24) [(21)] "Sanctioned individual" means any person who is required to be included in the benefit group but who is excluded from the benefit group due to failure to fulfill an eligibility requirement.

(25) [(22)] "Self-employment income" means income from a business enterprise from which no taxes are withheld prior to receipt of the income by the individual.

(26) [(23)] "Supplemental security income (SSI)" means monthly cash payments made under the authority of:

- (a) 42 USC 1381 to 1385 to the aged, blind and disabled;
- (b) 42 USC 1382e; or
- (c) 42 USC 1382.

(27) [(24)] "Unavailable" means that the income is not accessible to the K-TAP [AFDG] benefit group for use toward basic food, clothing, shelter, and utilities.

(28) [(25)] "Work expense standard deduction" means a deduction from earned income intended to cover mandatory pay check deductions, union dues, tools and transportation.

Section 2. Resource Limitations. (1) Real and personal property shall be considered if:

- (a) Available to the benefit group; and
- (b) Owned in whole or in part by:
  - 1. An applicant or recipient;
  - 2. A sanctioned or penalized individual; or
  - 3. The parent of a dependent child, even if the parent is not an applicant or recipient, if the dependent child is living in the home of the parent.
- (2) The amount that can be reserved by each benefit group shall

not be in excess of \$2,000 [~~\$1,000~~] equity value excluding those items specifically listed in subsection (3) of this section:

(3) Excluded resources. The following resources shall be excluded from consideration:

- (a) One (1) owner-occupied home;
- (b) [~~Equity value up to \$1,500 for~~] One (1) motor vehicle;
- (c) Basic household items essential for day-to-day living, including:

- 1. Furniture;
- 2. Appliances; and
- 3. Clothing.
- (d) Gift or inheritance not legally available until a later date;
- (e) Nonessential item with a value of less than fifty (50) dollars;
- (f) All resources of a recipient of SSI or the state supplementation program living in the home;
- (g) Equity value of all equipment, livestock or other inventory used in a farming or self-employment enterprise;
- (h) Crops and animals raised for home consumption.
- (i) Real property which the benefit group is making a good faith effort to sell, for a period of nine (9) months or less. If excluded:
  - 1. The benefit group shall agree to repay K-TAP [AFDG] benefits received beginning with the first month of the exemption.
  - 2. Any amount of K-TAP [AFDG] paid during that period that would not have been paid if the disposal of property had occurred at the beginning of the period is considered an overpayment.
  - 3. The amount of the repayment shall not exceed the net proceeds of the sale.
  - 4. If the property has not been sold within the nine (9) months, or if eligibility stops for any other reason, the entire amount of assistance paid during the nine (9) month period shall be treated as an overpayment;

- (j) Children's toys and bicycles;
- (k) Household pets;
- (l) Resources of a child excluded from the K-TAP [AFDG] grant;
- (m) Resources of an individual not receiving assistance but living in the home including:

- 1. The stepparent;
- 2. Parent or legal guardian of a minor parent;
- 3. The spouse of a nonresponsible specified relative; or
- 4. The spouse of a minor dependent child;
- (n) Amount of the K-TAP [AFDG] grant;
- (o) Proceeds (sale price less indebtedness) from the sale of a home, including initial or down payment from land contract sale, for six (6) months if client plans to invest in another home.

- (p) Funds in an individual retirement account, retirement or deferred compensation account during the period of unavailability;
- (q) Excluded income, as specified in Section 4 of this administrative regulation;

- (r) Principal and accrued interest of an irrevocable trust during periods of unavailability;
- (s) One (1) burial space per K-TAP [AFDG] family member;
- (t) \$1,500 of the value of prepaid burial funds and cash surrender value of burial insurance policies per family member;

- (u) Principal of a verified loan;
- (v) Up to \$12,000 to Aleutians and \$20,000 to individuals of Japanese ancestry for payment made by the United States Government to compensate for hardship experienced during World War II;
- (w) Payment made from the Agent Orange Settlement Fund issued by Aetna Life and Casualty to veterans or their survivors;
- (x) Earned income tax credit payments in the month of receipt and the following month;

- (y) Any payment received from the Radiation Exposure Compensation Trust Fund; and

- (z) A nonrecurring lump sum SSI retroactive payment that is made to a K-TAP [an AFDG] recipient who is not ongoing eligible for SSI, in the month paid and the next following month; and
- (aa) Up to a total of \$5,000 in individual development accounts.

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excluding interest accruing, pursuant to subsection (7) of this section.

(4) Disposition of resources.

(a) An applicant or recipient shall not have transferred or otherwise divested himself of property without fair compensation in order to qualify for assistance.

(b) The household's application shall be denied, or assistance discontinued if:

1. It is determined by the cabinet that the transfer was made expressly for the purpose of qualifying for assistance; and

2. The uncompensated equity value of the transferred property, when added to total resources, exceeds the resource limit.

(c) The time period of ineligibility shall be based on the resulting amount of excess resources and begins with the month of transfer.

(d) If the amount of excess transferred resources does not exceed \$500, the period of ineligibility shall be one (1) month; the period of ineligibility shall be increased one (1) month for every \$500 increment up to a maximum of twenty-four (24) months.

(5) Lifetime care agreement.

(a) The existence of a valid agreement between the applicant or recipient and another individual or organization in which the applicant or recipient has surrendered his resources in exchange for lifetime care shall make the case ineligible.

(b) The agreement shall be considered invalid if the individual or organization with whom the agreement was made provides a written statement that the resources have been exhausted.

(6) Resources held jointly by more than one (1) person.

(a) Bank accounts requiring one (1) signature for withdrawals.

1. Unless the other owner is a recipient of SSI, the total balance of the account is considered available to the K-TAP [AFDG] applicant or recipient.

2. If the other owner receives SSI, the balance is divided evenly by the number of owners and only the K-TAP [AFDG] applicant or recipient's share is considered available.

(b) For bank accounts which require more than one (1) signature for withdrawals, determine the K-TAP [AFDG] applicant or recipient's share by obtaining a written statement from the other owners as to the division.

(c) If there is no predetermined allocation of shares from a business enterprise, determine applicant or recipient's available share by dividing the value of the business enterprise by the number of owners.

(d) If resources are held jointly other than those listed in paragraphs (a) through (c) of this subsection, the applicant or recipient's share is determined by dividing the value of the resource by the number of owners.

(e) Rebuttal of ownership may be accomplished if the applicant or recipient asserts he does not contribute to or benefit from a jointly held resource and he provides:

1. A written statement regarding ownership, who deposits and withdraws; and

2. A written statement from each of the other owners which corroborates the applicant's or recipient's statement, unless the account holder is a minor or is incompetent; and

3. Verification that the applicant's or recipient's name has been removed from the resource.

(7)(a) To be considered an exempt resource, the individual development account shall have been established on or after May 1, 1997, funded through periodic contributions by a member of the benefit group using funds derived from earned income which was earned after May 1, 1997, for a qualified purpose.

(b) A qualified purpose to establish an individual development account shall be for:

1. Postsecondary educational expenses which shall include:

a. Tuition and fees required for the enrollment or attendance of a student at an eligible educational institution; and

b. Fees, books, supplies and equipment required for courses of instruction at an eligible educational institution;

c. An eligible educational institution shall be:

(i) An institution described in 20 USC 1088(a)(1) or 1141(a); or

(ii) An area vocational education school as defined by 20 USC 2471(4)(C) or (D);

2. First home purchase which includes:

a. Costs of acquiring, constructing, or reconstructing a residence; and

b. Usual or reasonable settlement, financing, or other closing costs;

3. Business capitalization expenditures for a business that does not contravene any law or public policy, as determined by the cabinet, pursuant to a qualified plan. A qualified plan shall:

a. Include capital, plant, equipment, working capital, and inventory expenses;

b. Be approved by a financial institution; and

c. Include a description of services or goods to be sold, a marketing plan, and projected financial statements. Assistance of an experienced entrepreneurial advisor may be required; or

4. Other purpose allowed by federal regulations or clarifications.

(c) Funds held in an individual development account shall not be withdrawn except for one (1) or more of the qualified purposes listed in paragraph (b) of this subsection;

(d) To be considered an exempt resource, an individual development account shall be matched by funds from:

1. A nonprofit organization; or

2. Funding permitting, a state or local government agency acting in cooperation with an organization described in subparagraph 1 of this paragraph.

Section 3. Income Limitations. In determining eligibility for K-TAP [AFDG] the following shall apply:

(1) Gross income test.

(a) The total gross non-K-TAP [AFDG] income shall not exceed the gross income limitation standard. This income includes:

1. Income of the benefit group;

2. Income of a parent who does not receive SSI or state supplementation;

3. Income of a sanctioned or penalized individual;

4. An amount deemed available from the parent of a minor parent living in the home with the benefit group;

5. An amount deemed available from a stepparent living in the home;

6. An amount deemed available from the spouse of a minor dependent child living in the home; and

7. An amount deemed available from an alien's sponsor and sponsor's spouse if living with the sponsor.

(b) Excluded income types specified in Section 4(1) of this administrative regulation shall apply.

(c) If total gross income exceeds the gross income limitation standard, the benefit group is ineligible.

(2) Applicant eligibility test.

(a) An applicant eligibility test shall be applied if:

1. The gross income is below the gross income limitation standard; and

2. The benefit group has not received assistance during the four (4) months prior to the month of application; or

3. The benefit group has a member added to the case and that member:

a. Has earned income; and

b. Has not received assistance during the four (4) months prior to being added to the case.

(b) The total gross income after application of excluded income and deduction policy set forth in Section 4(1) and (2) of this administrative regulation shall be compared to the [assistance] standard of need set forth in Section 8 of this administrative regulation.

(c) If income exceeds this standard, the benefit group is ineligible.

(d) For a benefit group which meets the gross income test but has



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received assistance any time during the four (4) months prior to the application month, the applicant eligibility test shall not apply.

(3) Benefit calculation.

(a) If the benefit group meets the criteria set forth in subsections (1) and (2) of this section, benefits shall be determined by subtracting excluded income and applicable deductions in Section 4(1), (2), and (3) of this administrative regulation.

(b) If the benefit group's income, after subtracting excluded income and applicable deductions, exceeds the ~~[benefit]~~ standard of need for the appropriate benefit group size as set forth in Section 8 of this administrative regulation, the benefit group is ineligible.

(c) Amount of assistance shall be determined prospectively.

(4) Ineligibility period.

(a) A period of ineligibility shall be established for a benefit group whose income in the month of application or during any month for which assistance is paid exceeds the limits as set forth in subsections (2) or (3) of this section due to receipt of lump sum income.

(b) The ineligibility period shall be:

1. The number of months which equals the quotient of the division of total countable income by the standard of need as set forth in Section 8 of this administrative regulation for the appropriate benefit group size; and

2. Effective with the month of receipt of the nonrecurring lump sum amount.

(c) The ineligibility period shall be recalculated if any of the following circumstances occur:

1. The standard of need set forth in Section 8 of this administrative regulation increases and the amount of grant the benefit group would have received also changes;

2. Income, which caused the calculation of the ineligibility period, has become unavailable for reasons that were beyond the control of the benefit group;

3. The benefit group incurs and pays necessary medical expenses not reimbursable by a third party;

4. An individual, who is required to be a member of the benefit group, joins the K-TAP [AFDC] household during an established ineligibility period; or

5. The benefit group reapplies during an established ineligibility period and the agency determines that policy has changed to exclude the criteria originally used to establish the ineligibility period.

Section 4. Excluded Income and Deductions ~~[income]~~. All gross non-K-TAP [AFDC] income received or anticipated to be received by the benefit group, sanctioned or penalized individual, natural parent, spouse of a dependent child and parent of a minor parent living in the home with the benefit group and stepparent living in the home, shall be considered with the application of excluded income and deduction policy as set forth in the following subsections:

(1) Gross income test. Incomes listed in this subsection shall be excluded:

(a) Deductions applicable to stepparent income, income of the spouse of a minor dependent child, or income of the parent of a minor parent in the home with the benefit group, as set forth in Section 6 of this administrative regulation;

(b) Deductions applicable to alien sponsor's income, as set forth in Section 7 of this administrative regulation;

(c) Deductions applicable to self-employment income;

~~(d) [Earnings received by a dependent child from participation in programs under the program for a period not to exceed six (6) months within a given calendar year;~~

~~(e) Unearned income received by a dependent child from participation in a JTPA program;~~

(f) The difference between the standard of need and the payment maximum for the benefit group, as specified in Section 8 of this administrative regulation, for households in which a member receives a JTPA stipend;

(g) ~~(g)~~ Value of United States Department of Agriculture program

benefits including:

1. Donated foods;

2. Supplemental food assistance received under 42 USC 1771;

3. Special food service program for children under 42 USC 1775;

4. Nutrition program for the elderly under 42 USC 3001; and

5. The monthly food stamp allotment;

~~(f) [(h)]~~ Reimbursement for transportation in performance of employment duties, if identifiable;

~~(g) [(i)]~~ The value of Kentucky Works [JOBS] supportive services payments ~~[and self-initiated supportive services payments]~~ authorized under 904 KAR 2:017;

~~(h) [(j)]~~ Nonemergency medical transportation payments;

~~(i) [(k)]~~ Payments from complementary programs if no duplication exists between the other assistance and the assistance provided by the K-TAP [AFDC] program;

~~(j) [(l)]~~ Educational grants, loans, scholarships, including:

1. Payments obtained and used under conditions that preclude their use for current living costs; and

2. All education grants and loans to any undergraduate made or insured under any program administered by:

a. The United States Commissioner of Education; or

b. The Bureau of Indian Affairs.

~~(k) [(m)]~~ Highway relocation assistance;

~~(l) [(n)]~~ Urban renewal assistance;

~~(m) [(o)]~~ Federal disaster assistance and state disaster grants;

~~(n) [(p)]~~ Home produce utilized for household consumption;

~~(o) [(q)]~~ Housing subsidies received from federal, state or local governments;

~~(p) [(r)]~~ Receipts distributed to members of certain Indian tribes by the federal government under 25 USC 459, 1261 and 1401;

~~(q) [(s)]~~ Funds distributed per capita to or held in trust for members of any Indian tribe by the federal government under 25 USC 459, 1261 and 1401;

~~(r) [(t)]~~ Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving under programs authorized by 42 USC 5001 and 42 USC 5011, including:

1. Foster grandparents;

2. Senior health aides;

3. Senior companions;

4. Service Corps of Retired Executives; and

5. Active Corps of Executives;

~~(s) [(u)]~~ Payments to "Volunteers in Service to America" (VISTA) participants under 42 USC 1451 if less than the minimum wage under state or federal law, whichever is greater;

~~(t) [(v)]~~ Payments from the Cabinet for Families and Children, Department for Social Services, for child foster care, or adult foster care;

~~(u) [(w)]~~ Payments made under the Low Income Home Energy Assistance Program under 42 USC 8621, and other energy assistance payments which are made to an energy provider or provided in-kind;

~~(v) [(x)]~~ The first fifty (50) dollars of child support payments collected in a month which represents the current month's support obligation ~~[and is returned to the assistance group];~~

~~(w) [(y)]~~ For a period not to exceed six (6) months within a given year, Earnings of a dependent child attending ~~[in full-time]~~ school ~~[attendance];~~

~~(x) Earnings of a dependent child under eighteen (18) who is a high school graduate;~~

~~(y) [(z)]~~ Nonrecurring gifts of thirty (30) dollars or less received per calendar quarter for each individual included in the assistance group;

~~(z) [(aa)]~~ The principal of a verified loan;

~~(aa) [(bb)]~~ Up to \$12,000 to Aleuts and \$20,000 to individuals of Japanese ancestry for payments made by the United States Government to compensate for hardships experienced during World War II;

~~(bb) [(cc)]~~ Income of an individual receiving SSI;

~~(cc) [(dd)]~~ The essential person's portion of the SSI check;

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(dd) ~~[(ee)]~~ Income of an individual receiving mandatory or optional state supplementary payments;

(ee) ~~[(ff)]~~ The advance payment or refund of earned income tax credit;

(ff) ~~[(gg)]~~ Payments made directly to a third party on behalf of the applicant or recipient by a nonresponsible person;

(gg) ~~[(hh)]~~ Child support received in a month for which the K-TAP [AFDC] payment is suspended;

(hh) ~~[(ii)]~~ In-kind income;

(ii) ~~[(jj)]~~ Income of a technically ineligible child;

(jj) ~~[(kk)]~~ Payments made from the Agent Orange Settlement Fund;

(kk) K-TAP ~~[(ll)]~~ AFDC back payments;

(ll) ~~[(mm)]~~ Income of legal guardian of a minor parent, unless the guardian meets the degree of relationship as specified in 904 KAR 2:006, Section 10;

(mm) ~~[(nn)]~~ Payments made from the Radiation Exposure Compensation Trust Fund;

(nn) ~~[(oo)]~~ Up to \$2,000 per year of income received by individual Indians denied from leases or other uses of individually-owned trust or restricted lands; and

(oo) ~~[(pp)]~~ Payments made to individuals because of their status as victims of Nazi persecution.

(2) Applicant eligibility test. Excluded income in subsection (1) of this section and any applicable deduction listed in this subsection shall be applied:

(a) ~~[Earnings received from participation in the Job Corps Program under JTPA by an K-TAP [AFDC] child;~~

~~(b) Earnings of a dependent child in full-time school attendance for a period not to exceed six (6) months within a given year;~~

(e) Standard work expense deduction of ninety (90) dollars for full-time and part-time employment; and

(b) ~~[(d)]~~ On or after November 1, 1995, if the caregiver is not the parent, legal guardian or a member of the benefit group, the dependent care disregard shall:

1. Be allowed as a work expense for:

a. An able bodied child age thirteen (13) or over and not under court supervision;

b. An incapacitated adult living in the home and receiving K-TAP [AFDC];

c. A sanctioned individual whose earned income is considered available to the K-TAP [AFDC] household;

d. At the option of the recipient, a K-TAP [An AFDC] case which would otherwise be ineligible for K-TAP [AFDC] without the benefit of the disregard for child care; or

e. The month of application for K-TAP [AFDC] benefits; and

2. Shall not exceed:

a. \$175 per month per individual for full-time employment; or

b. \$150 per month per individual for part-time employment; or

c. \$200 per month per individual for child under age two (2).

(3) Benefit calculation. After eligibility is established, exclude or deduct all incomes listed in subsections (1) and (2) of this section as well as deductions listed in this subsection:

(a) Child support payments assigned and actually forwarded or paid to the department; and

(b) First thirty (30) dollars and one-third (1/3) of the remainder of earned income not already deducted for each member of the benefit group.

1. The one-third (1/3) portion of this deduction shall not be applied to an individual after the fourth consecutive month it has been applied to his earned income.

2. The thirty (30) dollar portion of this deduction shall be applied concurrently with the one-third (1/3) deduction and for an additional eight (8) consecutive months following the expiration of the concurrent period.

3. These deductions shall not be available to the individual until he has not been a recipient for twelve (12) consecutive months; and

(c) For new employment, or increased wages, acquired after approval and reported timely, a one (1) time only disregard per employed adult member of the benefit group, the amount of two (2) full calendar months earnings.

1. The two (2) months earnings disregard shall be consecutive, and at the option of the recipient.

2. If otherwise eligible, a sanctioned or penalized member of the benefit group may receive the two (2) months earnings disregard. [Earnings of a child in full-time school attendance or earnings of a child in part-time school attendance, if not working full-time.]

(4) Exceptions. Deductions from earnings in subsections (2)(a) and (b) ~~[(e) and (d)]~~ and (3)(b) of this section shall not apply for any month in which the individual:

(a) Reduces, terminates, or refuses to accept employment within the period of thirty (30) days preceding such month, unless good cause exists as follows:

1. The individual is unable to engage in the employment or training for mental or physical reasons; or

2. The individual has no way to get to and from the work site or the site is so far removed from the home that commuting time would exceed three (3) hours per day; or

3. Working conditions at a prospective job or training site would be a risk to the individual's health or safety; or

4. A bona fide offer of employment at a minimum wage customary for this work in the community was not made; or

5. The child care arrangement is terminated through no fault of the applicant or recipient; or

6. The available child care does not meet the needs of the child, for example, a [disabled] child with a disability; or

7. The parent is temporarily absent from work on approved educational leave; or

8. ~~[The JOBS participant leaves employment in an attempt to improve skills, become self-sufficient and leave the K-TAP [AFDC] rolls; or~~

9.] The individual is needed in the home to care for another ill or incapacitated household member and no other household member is available to provide needed care.

(b) Requests assistance be terminated for the primary purpose of evading the four (4) month limitation on the deduction in subsection (3)(b) of this section;

(c) Fails to report and increase in earnings, which impacts eligibility, within ten (10) days of the change, unless good cause exists as follows:

1. The benefit group has been directly affected by a natural disaster;

2. An immediate family member living in the home was institutionalized or died during the ten (10) day report period; or

3. The responsible relative in the case, and if different, the member employed, is out of town for the entire ten (10) day report period.

(5) Changes in income and resources of the benefit group that contains a member who is participating in the wage supplementation component of Kentucky Works pursuant to 904 KAR 2:370 shall be disregarded for the first six (6) months of wage supplementation component participation.

Section 5. ~~[Direct] Child Care Payments.~~ With the exception of those circumstances outlined in Section 4(2)(b) ~~[(d)]~~ of this administrative regulation, on or after November 1, 1995, child care expenses incurred as a result of employment shall be paid according to 905 KAR 2:150. ~~[(~~

~~(1) Be made directly to the provider, in an amount equal to the actual cost, up to a payment maximum based on local market rates in administrative regulation 904 KAR 2:017; and~~

~~(2) Be authorized upon the receipt of appropriate verification of the cost of care.]~~

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Section 6. Income and Resources of an Individual Not Included in the Benefit Group. (1) The income provisions of this section shall apply to the following individuals, living in the home but not included in the benefit group, as described in subsection (2) of this section:

- (a) A stepparent;
  - (b) The spouse of a minor dependent child;
  - (c) The spouse of a specified relative other than a parent;
  - (d) A parent barred from receiving assistance due to failure to meet alien status; or
  - (e) A parent of a minor parent.
- (2) Income. The gross income of the individual is considered available to the benefit group, subject to the following deductions:
- (a) The first ninety (90) dollars of the gross earned income;
  - (b) An amount equal to the K-TAP [AFDC assistance] standard of need for the appropriate family size, as set forth in Section 8 of this administrative regulation for:

- 1. The support of the individual; and
  - 2. Any other person living in the home if:
    - a. His needs are not taken into consideration in the K-TAP [AFDC] eligibility determination; and
    - b. He is or may be claimed as a dependent for purposes of determining his federal personal income tax liability by the individual.
  - (c) Any amount actually paid to a person not living in the home who is or may be claimed by him as a dependent for purposes of determining his personal income tax liability by the individual;
  - (d) Payments for alimony or child support to a person not living in the home by the individual;
  - (e) Income of an SSI recipient who is listed in subsection (1) of this section; or
  - (f) A retroactive SSI payment, which is counted in determining eligibility and the amount of payment to the K-TAP [AFDC] unit in the month received, in any subsequent month.
- (3) Sanction exception. The income of any sanctioned individual is not eligible for the deductions listed in this section.
- (4) ~~[Resources:]~~ Resources which belong solely to the stepparent, spouse of a minor dependent child, spouse of a specified relative other than a parent or parent of a minor parent are not considered in determining eligibility of the parent, minor dependent child, or specified relative other than a parent or the benefit group.

Section 7. Alien Income and Resources. (1) For the purposes of this section the alien's sponsor and sponsor's spouse (if living with the sponsor) shall be referred to as sponsor.

(2) The gross non-K-TAP [AFDC] income and resources of an alien's sponsor shall be deemed available to the alien, subject to deductions set forth in this section, for a period of three (3) years following entry into the United States.

(3) If an individual is sponsoring two (2) or more aliens, the income and resources shall be prorated among the sponsored aliens.

(4) A sponsored alien is ineligible for any month in which adequate information on the sponsor or sponsor's spouse is not provided.

(5) If an alien is sponsored by an agency or organization, which has executed an affidavit of support, that alien is ineligible for benefits for a period of three (3) years from date of entry into the United States, unless it is determined that the sponsoring agency or organization:

- (a) Is no longer in existence; or
  - (b) Does not have the financial ability to meet the alien's needs.
- (6) The provisions of this subsection shall not apply to those aliens identified in subsection (5) of this section.

(a) Income. The gross income of the sponsor is considered available to the benefit group subject to the following deductions:

- 1. Twenty (20) percent of the total monthly gross earned income, not to exceed \$175;
- 2. An amount equal to the K-TAP [AFDC assistance] standard of need for the appropriate family size as set forth in Section 8 of this

administrative regulation of:

- a. The sponsor; and
  - b. Other persons living in the household:
    - (i) Who are or may be claimed by the sponsor as dependents in determining his federal personal income tax liability; and
    - (ii) Whose needs are not considered in making a determination of eligibility for K-TAP [AFDC];
3. Amounts paid by the sponsor to nonhousehold members who are or may be claimed as dependents in determining his federal personal tax liability;
4. Actual payments of alimony or child support paid to non-household members; and
5. Income of a sponsor receiving SSI or K-TAP [AFDC].
- (b) Resources. Resources deemed available to the alien shall be the total amount of the resources of the sponsor and sponsor's spouse determined as if he were a K-TAP [an AFDC] applicant in this state, less \$1,500.

Section 8. Payment Maximum. (1) The K-TAP [AFDC] payment maximum includes amounts for food, clothing, shelter, and utilities.

(2)(a) Countable income, as determined by the provisions of Section 9 of this administrative regulation, is subtracted in determining eligibility for and the amount of the K-TAP [AFDC] assistance payment, as follows:

	Effective December 1, 1995	
Number of Eligible Persons	Payment Maximum	Standard of Need
1 person	\$186	\$394
2 persons	\$225	\$460
3 persons	\$262	\$526
4 persons	\$328	\$592
5 persons	\$383	\$658
6 persons	\$432	\$724
7 or more persons	\$482	\$790

(b) The gross income limit is as follows for the appropriate family size:

Number of Eligible Persons	Maximum Gross Income Limits
<u>1 Person</u>	<u>\$ 729</u>
<u>2 Persons</u>	<u>\$ 851</u>
<u>3 Persons</u>	<u>\$ 974</u>
<u>4 Persons</u>	<u>\$1096</u>
<u>5 Persons</u>	<u>\$1218</u>
<u>6 Persons</u>	<u>\$1340</u>
<u>7 or more Persons</u>	<u>\$1462</u>

(3) Since the payment maximum does not meet full need, effective July 1, 1989, a forty-five (45) percent ratable reduction shall be applied to the deficit between the family's countable income and the standard of need for the appropriate family size.

(4)(a) The assistance payment shall be fifty-five (55) percent of the deficit or the payment maximum, whichever is the lesser amount.

(b) As a result of applying the forty-five (45) percent ratable reduction listed in subsection (3) of this section, an eligible payment to an otherwise eligible family with no income shall be calculated in accordance with KRS 205.200(2).

Section 9. Best Estimate. (1) The agency shall compute the benefit using its best estimate of income which will exist in the payment month.

(2) The following methods shall be used by the agency to calculate a best estimate:

- (a) For cases with earned income, other than self-employment earned income:

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1. The agency:

a. Shall not round cents to the nearest dollar before adding or multiplying hourly or daily earnings; but

b. Shall round cents to the nearest dollar before adding or multiplying weekly, biweekly, semimonthly, monthly, quarterly, or annual amounts.

2. Unless it does not represent the ongoing situation, the agency shall use income from all pay periods in the preceding two (2) calendar months.

3. The agency shall determine a monthly amount by:

a. Adding gross income from each pay period;

b. Dividing by the total number of pay periods considered;

c. Converting the pay period figure to a monthly figure by multiplying a weekly amount by four and one-third (4 1/3), a biweekly amount by two and one-sixth (2 1/6), or a semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the agency shall compute the anticipated monthly income by:

a. Multiplying the hourly rate by the estimated number of hours to be worked in a pay period; or

b. Multiplying the daily rate by the estimated number of days to be worked in the pay period; and

c. Converting the resulting pay period figure to a monthly amount by multiplying a weekly amount by four and one-third (4 1/3), a biweekly amount by two and one-sixth (2 1/6), or a semimonthly amount by two (2); and

d. Rounding to the nearest dollar.

(b) For cases with unearned income, other than unearned self-employment income, the agency shall determine a monthly amount by:

1. [Not] Rounding cents to the nearest dollar;

2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis;

3. Unless it does not represent the ongoing situation, averaging the amount of nonstable unearned income received in the three (3) prior calendar months.

(c) For cases with self-employment income:

1. If the self-employment enterprise has been in operation for at least a year, the agency shall prorate the income by dividing the income from the last calendar year by twelve (12).

2. If the self-employment enterprise has been in operation for less than a year, the agency shall prorate the income by dividing by the number of months the business has been in existence.

3. The agency shall determine profit by:

a. Rounding the total gross income to the nearest dollar;

b. Rounding the total amount of allowable expenses to the nearest dollar;

c. Dividing each by twelve (12), or the appropriate number of months, and rounding to the nearest dollar; and

d. Subtracting the rounded monthly expense from the rounded monthly income.

(3) The best estimate shall be recalculated:

(a) At six (6) month intervals for cases with:

1. Earned or unearned income other than self-employment; or

2. Income from a self-employment enterprise which has not been in existence for at least one (1) year;

(b) At twelve (12) month intervals for cases with a self-employment enterprise which has been in existence for at least one (1) year;

(c) Whenever the agency becomes aware of a change in circumstances; or

(d) To reflect a mass change in the standard of need or payment maximum [payment] standard as set forth in Section 8 of this administrative regulation.

Section 10. K-TAP [AFDG] Recoupment. Except for those over-

payments in administrative regulation 904 KAR 2:017, the following provisions are effective for all overpayments discovered on or after April 1, 1982, regardless of when the overpayment occurred.

(1) Necessary action will be taken promptly to correct and recoup any overpayments.

(2) Overpayments, including assistance paid pending hearing decisions, shall be recovered from:

(a) The claimant;

(b) The overpaid assistance unit;

(c) Any assistance unit of which a member of the overpaid assistance unit has subsequently become a member; or

(d) Any individual member of the overpaid assistance unit whether or not currently a recipient.

(3) Overpayments shall be recovered through:

(a) Repayment by the individual to the cabinet; or

(b) Reduction of future K-TAP [AFDG] benefits, which shall result in the assistance group retaining, for the payment month, family income and liquid resources of not less than ninety (90) percent of the amount of assistance paid to a like size family with no income in accordance with Section 8 of this administrative regulation; or

(c) Civil action in the court of appropriate jurisdiction.

(4) In cases which have both an overpayment and an underpayment, the cabinet shall offset one against the other in correcting the payment to current recipients.

(5) Neither reduction in future benefits nor civil action shall be taken except after notice and an opportunity for a fair hearing as specified in 904 KAR 2:055 is given and the administrative and judicial remedies have been exhausted or abandoned.

Section 11. Avoiding an Overpayment. (1) A K-TAP [An-~~AFDG~~] recipient may voluntarily return a benefit check to avoid an overpayment if:

(a) The case is totally ineligible for the month for which the check is issued; and

(b) The check has not been reduced for recoupment of a previous overpayment.

(2) If a check is voluntarily returned, the agency shall determine whether or not the recipient is due a refund as described in Section 12 of this administrative regulation.

Section 12. Refund. A recipient shall be due a refund in the following situations:

(1) The agency recoups an amount in excess of the actual overpayment;

(2) The agency offsets an overpayment and an underpayment and finds a balance owed to the recipient;

(3) A recipient voluntarily returns a K-TAP [an-~~AFDG~~] check to avoid an overpayment and the current month obligation of child support was collected by the agency during the month the K-TAP [AFDG] check was intended to cover, leaving a balance owed to the recipient.

Section 13. Correction of Underpayments. The following provisions apply to all K-TAP [AFDG] payments:

(1) The department shall promptly correct an underpayment to:

(a) A current K-TAP [AFDG] recipient; and

(b) One who would be a current recipient if the error causing the underpayment had not occurred.

(2) The difference between the payment received by the recipient and the actual entitlement amount shall be issued to the underpaid assistance group.

(3) In a determination of ongoing eligibility, the corrective payment to the assistance group shall not be considered as income or a resource in:

(a) The month the payment is paid; or

(b) The next following month.

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Section 14. Family Alternatives Diversion (FAD). (1) The cabinet shall make available in limited areas family alternatives diversion assistance to eligible families to allow the family to maintain self-sufficiency. The cabinet shall expand the program into additional areas until statewide implementation is completed.

(2) To qualify for family alternatives diversion benefits, the K-TAP benefit group as defined in Section 1(1) of this administrative regulation shall:

(a) Meet K-TAP income and resource requirements pursuant to Sections 2, 3(1), 4(1), and 6 of this administrative regulation;

(b) Meet technical requirements of K-TAP pursuant to 904 KAR 2:006;

(c) Not be currently receiving ongoing K-TAP benefits;

(d) Have a verified short-term need to include:

1. Transportation;

2. Child care;

3. Child support;

4. Housing; or

5. Employment related problem.

(e) Be determined by the cabinet to be self-supporting or would be self-supporting if the short-term need is met; and

(f) Not have received a FAD payment anytime during the previous twelve (12) months.

(3) The Transitional Assistance Self-assessment Survey Form, FA-1, shall be used to screen applicants for K-TAP and to determine eligibility for FAD along with the FA-2, Family Alternatives Assessment form.

(4) The cabinet shall determine through the screening process if a potential K-TAP eligible benefit group may be an eligible family to receive FAD benefits. The K-TAP eligible benefit group shall be notified of the option to decline FAD benefits in lieu of applying for ongoing K-TAP benefits. FAD shall be utilized instead of K-TAP if requested by the benefit group and if the benefit group is deemed eligible for FAD.

(5)(a) The benefit group's countable gross income shall include the earned and unearned income listed in Sections 3 and 4 of this administrative regulation.

(b) The benefit group's gross income shall be computed using the best estimate of income pursuant to Section 9 of this administrative regulation.

(c) The benefit group's total gross earned and unearned income as determined in paragraph (b) of this subsection shall be compared to the maximum gross income scale for K-TAP pursuant to Section 8(2)(b) of this administrative regulation.

(d) If the benefit group's total gross earned and unearned income exceed the maximum gross income limit for the appropriate benefit group size, pursuant to Section 8(2) of this administrative regulation, the family shall not be eligible for a FAD payment.

(e) The total FAD payment for an eligible family shall be the amount necessary to resolve the emergency, not to exceed \$1,500 per application for FAD.

(f) The amount of the eligible FAD payment may be issued in one (1) or more checks or vouchers to the eligible FAD benefit group or to a vendor for payment of the short-term need, as determined by the cabinet.

(g) For an eligible family, only one (1) approval shall be necessary to issue one (1) or more checks, as needed, to resolve one (1) or more emergencies during the twelve (12) month FAD application period, not to exceed a total of \$1,500. [As long as TANF funding is used, receipt of a FAD payment shall count as one (1) month of K-TAP assistance for purposes of the sixty (60) month time limit of assistance if all eligible payments are issued in one (1) month. If payments are issued in more than one (1) month, the corresponding number of months shall be counted toward the sixty (60) month time limit for receipt of K-TAP.]

(h) An eligible benefit group may only be approved for FAD once in a twelve (12) month period.]

(6) Receipt of a FAD payment shall exclude the benefit group from receiving ongoing K-TAP benefits for twelve (12) months unless nonreceipt would result in:

(a) Abuse or neglect of a child, as determined by the cabinet; or

(b) The parent's inability to provide adequate care or supervision due to the loss of employment through no fault of the parent as determined by the cabinet.

(7) An application shall be taken or a referral made for the following benefits as needed for a FAD eligible family:

(a) Food stamps;

(b) Medicaid; and

(c) Child care.

(8) For a FAD eligible benefit group, referrals for other services shall be made as needed to:

(a) Other agencies including:

1. The Division of Child Support Enforcement;

2. The Department for Social Services;

3. The Cabinet for Health Services; and

4. The Department for Employment Services; or

(b) Charitable organizations.

(9) Other services shall be offered as needed through the Department for Employment Services or other contractors to the FAD eligible benefit group to include the following services:

(a) Job search;

(b) Job readiness assessment; and

(c) Life skills.

(10) Hearing rights for FAD shall be the same as hearing rights for a K-TAP recipient pursuant to 904 KAR 2:055.

Section 15. Relocation Assistance Program. (1) If an employment opportunity exists for a K-TAP recipient and relocation to the area of the employment would be required in order to access the employment, the K-TAP recipient may qualify for a Relocation Assistance Program payment. To qualify the applicant for the Relocation Assistance Program shall:

(a) Be a current recipient of K-TAP;

(b) Have a verified offer of employment with wages in an amount equal to thirty (30) hours or more per week at the minimum hourly wage rate; and

(c) Be required to move to access the verified offer of employment and have a new residence available.

(2) The eligible payment shall be issued to assist an eligible K-TAP recipient in meeting moving related expenses. Moving related expenses shall include:

(a) Moving van rental to the area of the verified employment;

(b) Apartment or house rental for the first month's rent in the area of the verified employment; and

(c) Security deposit, utility hook-up fees, or other moving related fees approved by the cabinet for the apartment or house listed in paragraph (b) of this subsection.

(3) The Relocation Assistance Program payment amount shall be a payment of:

(a) \$500; or

(b) Up to \$900 based on the actual verified moving related expenses as listed in subsection (2) of this section.

(4) An otherwise eligible recipient of the Relocation Assistance Program shall receive no more than two (2) payments in a five (5) year period; however, additional payments may be received with approval of management staff of the Department for Social Insurance.

(5) The cabinet shall assist the applicant for relocation assistance to determine if income received from employment from the new location is sufficient to cover living expenses at the new residence including the completion of a household budget with the applicant in order to make this determination.

(6) The offer of employment, including hourly wage and number of hours, and the availability of a new residence shall be verified by written statement or phone contact.

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(7) The cabinet shall provide follow-up case management to assist the family with the transition.

(8) Families who are not currently receiving K-TAP but would be eligible for K-TAP may receive assistance to relocate through FAD.

(9) A K-TAP recipient may refuse without penalty any offer of employment which would require relocation.

(10) Hearing rights for the Relocation Assistance Program shall be the same as hearing rights for a K-TAP recipient pursuant to 904 KAR 2:055.

Section 16. Material Incorporated by Reference. (1) Forms necessary for the determination of financial eligibility and recovery of overpayments in the K-TAP [AFDC] program are incorporated [effective December 1, 1993]. These forms include:

(a) PA-30.2, "Payment Receipt, edition 2/97" [revised 7/85];

(b) PA-35, "Sale of Property Agreement to Repay K-TAP Benefits to the Commonwealth of Kentucky, edition 8/97" [revised 2/91];

(c) [PA-36, revised 1/85;

(d)] PA-37, "Bridge-the-Gap Payment Form, edition 5/97";

(d) FA-1, "Transitional Assistance Self-assessment, edition 2/97";

(e) FA-2, "Family Alternatives Assessment, edition 8/97";

(f) RA-1, "Application for Relocation Assistance, edition 2/97". [revised 12/95;

(e) PA-412, revised 1/91; and

(f) PA-415, revised 11/89.]

(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: January 9, 1998

FILED WITH LRC: January 15, 1998 at 11 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who apply for or receive benefits under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP), the program which replaces the Aid to Families with Dependent Children program (AFDC). As of August 1997, approximately 60,530 families in Kentucky (monthly average) receive K-TAP.

(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: A public hearing scheduled on December 22, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. No written or oral comments were received regarding direct or indirect costs or savings on the cost of living and employment in the geographical area.

(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: A public hearing scheduled on December 22, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. No written or oral comments were received regarding the cost of doing business in the geographical 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: The individuals who are applicants or recipients of AFDC, now K-TAP, will not have any

additional compliance, reporting or paperwork requirements, except for the completion of a self assessment form, FA-1, and the FA-2 Family Alternatives Assessment for applicants of this program, in locations where Family Alternatives Diversion is available and for completion of a RA-1 for applicants of Relocation Assistance Program.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

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

a. Excluding one (1) vehicle per household effective February 1, 1997, is \$50,000 cost to the agency for the first year (SFY 97).

b. Relocation assistance - A K-TAP payment of \$500 up to \$900 to meet moving related expenses in order to access employment effective February 1, 1997, is \$100,000 cost to the agency for the first year (SFY 97).

c. Family alternative diversion - A one-time payment in lieu of on-going cash assistance payments to maintain self-sufficiency is budget neutral to the agency.

d. Alien income and resources policy is budget neutral to the agency.

e. Ratable reduction is no change in current policy and is budget neutral to the agency.

f. K-TAP form revisions is a cost of \$33,800 to the agency for the first year (SFY 97).

g. Disregard of earnings for two (2) months effective May 1, 1997, is a cost of \$262,000 to the agency for the first year (SFY 97). Even though there is a two (2) month cost to the agency, there will be long-term savings due to clients getting jobs and going off K-TAP benefits. That savings is indeterminable.

h. Increase in the resource limit from \$1,000 to \$2,000 per family effective May 1, 1997, is a cost to the agency for the first year (SFY 97) due to the possible increase in eligible recipients; however, the cost to the agency is indeterminable.

i. Exemption of individual development accounts effective May 1, 1997, is cost neutral to the agency for the first year (SFY 97).

j. Elimination of the six (6) months period in a year to consider earnings of a dependent child in school attendance effective May 1, 1997, is cost neutral to the agency for the first year (SFY 97).

k. Disregard financial changes for a family with a member participating in wage supplementation component of Kentucky Works (diverting the K-TAP grant to an employer who has hired the recipient and is paying wages to the individual) effective August 1, 1998, is cost neutral to the agency for the first year (SFY 98).

l. Disregard of earnings of a dependent child under 18 who is a high school graduate, effective August 1, 1997, is minimal; however, the projection is indeterminable for the first year (SFY 98).

2. Continuing costs or savings: The breakdown of costs and savings to the agency for the second year are listed below:

a. A cost of excluding one (1) vehicle per household is \$300,000 for the second (SFY 98) as a cost to the agency.

b. Relocation assistance - A K-TAP payment of \$500 up to \$900 to meet moving related expenses in order to access employment is \$710,400 for the second year (SFY 98).

c. Family alternative diversion - A one-time payment in lieu of on-going cash assistance payments to maintain self-sufficiency is budget neutral to the agency for the second year (SFY 98).

d. Alien income and resources is budget neutral to the agency for the second year (SFY 98).

e. Ratable reduction is no change in current policy and is budget neutral to the agency for the second year (SFY 98).

f. K-TAP form revisions is no cost to the agency for the second year (SFY 98).

g. Disregard of earnings for two (2) months is an indeterminable cost to the agency for the second year (SFY 98). Even though there is a two (2) month cost to the agency, there will be long-term savings

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due to clients getting jobs and going off K-TAP benefits. That savings is indeterminable.

h. Increase in the resource limit from \$1000 to \$2,000 per family is a cost to the agency for the second year (SFY 98) due to the possible increase in eligible recipients; however, the cost to the agency is indeterminable.

i. Exemption of individual development accounts is cost neutral to the agency for the second year. (SFY 98).

j. Elimination of the six (6) months period in a year to consider earnings of a dependent child in full-time school attendance is cost neutral to the agency for the second year (SFY 98).

k. Disregard financial changes for a family with a member participating in wage supplementation component of Kentucky Works (diverting the K-TAP grant to an employer who has hired the recipient and is paying wages to the individual) effective August 1, 1997, is cost neutral to the agency for the second year (SFY 99).

l. Disregard of earnings of a dependent child under 18 who is a high school graduate, effective August 1, 1997, is minimal; however, the projection is indeterminable for the second year (SFY 99).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal 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: A public hearing scheduled on December 22, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. No written or oral comments were received regarding economic impact in the geographical area.

(b) Kentucky: A public hearing scheduled on December 22, 1997, as a result of the publication of the administrative regulation was not held since no requests were received. No written or oral comments were received regarding economic impact in Kentucky.

(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 a 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 requirements found in 42 USC 601 et seq., and to implement K-TAP that replaces the AFDC 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 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: A public hearing scheduled on December 22, 1997, as a result of the publication of the

administrative regulation was not held since no requests were received. Written comments were received by close of business on December 22, 1997, and changes were made to the administrative regulation as a result of these written comments.

(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 (Amended After Hearing)

**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(2)(c). [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

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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, Section 2(2)(c).

(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 [AFDG] 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) Except for the exclusions listed in [With the exception of payments described in Sections 7 and 10 [8 and 12] of] this administrative 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 2(2)(c).

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

WESTERN REGION  
 RURAL COUNTIES  
 COUNTY NAMES: BALLARD, GALLOWAY, CARLISLE, FULTON, GRAVES, HICKMAN, MARSHALL  
 PURCHASE AREA DEVELOPMENT DISTRICT #1

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

WESTERN REGION  
 URBAN COUNTIES  
 COUNTY NAMES: CHRISTIAN  
 PENNRYLE AREA DEVELOPMENT DISTRICT #2

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

WESTERN REGION  
 RURAL COUNTIES  
 COUNTY NAMES: GALDWELL, GRITTENDEN, HOPKINS, LIVINGSTON, LYON, MUHLENBURG, TODD, TRIGG  
 PENNRYLE AREA DEVELOPMENT DISTRICT #2

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

WESTERN REGION  
 URBAN COUNTIES  
 COUNTY NAMES: DAVIESS, HENDERSON  
 GREEN RIVER AREA DEVELOPMENT DISTRICT #3

	Special Needs						Pre-School						School-Age		
	PT		Max	Infants		Max	Toddlers		Max	School		Max	Age		PT
	FT	PT		FT	PT		FT	PT		FT	PT		FT	PT	
Center-based	\$13	16	282	13	16	282	13	16	282	13	14	282	13	10	260
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: HANGOCK, MCLEAN, OHIO, UNION, WEBSTER  
GREEN RIVER AREA DEVELOPMENT DISTRICT #3

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

RURAL COUNTIES

COUNTY NAMES: ALLEN, BARREN, BUTLER, EDMONSON, HART, LOGAN, METCALFE, MONROE, SIMPSON, WARREN  
BARREN RIVER AREA DEVELOPMENT DISTRICT #4

	Special Needs					Pre-School					School-Age					
	PT		Infants		PT		Toddlers		PT		School		PT		Age	
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	
Center-based	\$13	16	282	13	16	282	13	16	282	13	14	282	12	8	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

RURAL COUNTIES

COUNTY NAMES: BRECKINRIDGE, GRAYSON, HARDIN, LARUE, MARION, MEADE, NELSON, WASHINGTON  
LINCOLN TRAIL AREA DEVELOPMENT DISTRICT #5

	Special Needs					Pre-School					School-Age					
	PT		Infants		PT		Toddlers		PT		School		PT		Age	
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	
Center-based	\$12	16	260	13	16	282	13	16	282	13	14	282	12	8	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	

CENTRAL REGION

URBAN COUNTIES

COUNTY NAMES: BULLITT, JEFFERSON, OLDHAM, SHELBY  
KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs					Pre-School					School-Age					
	PT		Infants		PT		Toddlers		PT		School		PT		Age	
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	
Center-based	\$15	15	325	15	12	325	15	14	325	14	15	303	12	16	260	
Group Home	\$14	14	303	14	11	303	14	11	303	13	10	282	11	8	238	
Family/In-Home	\$15	13	325	13	12	282	13	12	282	12	12	260	10	12	217	

CENTRAL REGION

RURAL COUNTIES

COUNTY NAMES: HENRY, SPENCER, TRIMBLE  
KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY AREA DEVELOPMENT DISTRICT #6

	Special Needs					Pre-School					School-Age					
	PT		Infants		PT		Toddlers		PT		School		PT		Age	
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	
Center-based	\$15	15	325	16	12	347	16	14	347	15	15	325	14	16	303	
Group Home	\$14	14	303	15	15	325	15	15	325	15	10	325	13	8	282	
Family/In-Home	\$15	13	325	15	12	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 Needs			Infants			Toddlers			Pre-School			School-Age		
	PT	FT	Max	PT	FT	Max	PT	FT	Max	PT	FT	Max	PT	FT	Max
	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max	FT	PT	Max
Center-based	\$16	16	347	16	13	347	14	14	303	14	15	303	13	16	282
Group Home	\$15	15	325	15	12	325	13	11	282	13	10	282	12	9	260
Family/In-Home	\$15	14	325	14	12	303	12	12	260	12	12	260	11	12	238

### GENTRAL REGION

#### RURAL COUNTIES

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

NORTHERN KENTUCKY AREA DEVELOPMENT DISTRICT #7

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

### EASTERN REGION

#### RURAL COUNTIES

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

BUFFALO TRACE AREA DEVELOPMENT DISTRICT #8

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

### EASTERN REGION

#### RURAL COUNTIES

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

GATEWAY AREA DEVELOPMENT DISTRICT #9

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

### EASTERN REGION

#### URBAN COUNTIES

COUNTY NAMES: BOYD, CARTER, GREENUP

FIVCO AREA DEVELOPMENT DISTRICT #10

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

### EASTERN REGION

#### RURAL COUNTIES

COUNTY NAMES: ELLIOTT, LAWRENCE

FIVCO AREA DEVELOPMENT DISTRICT #10

	Special Needs			Infants			Toddlers			Pre-School			School-Age		
	PT	FT	Max	PT	FT	Max	PT	FT	Max	PT	FT	Max	PT	FT	Max
	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			Infants			Toddlers			Pre-School			School-Age		
	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
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			Infants			Toddlers			Pre-School			School-Age		
	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
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  
 GUMBERLAND VALLEY AREA DEVELOPMENT DISTRICT #13

	Special Needs			Infants			Toddlers			Pre-School			School-Age		
	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
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, GUMBERLAND, GREEN, MCGREARY, PULASKI, RUSSELL, TAYLOR, WAYNE  
 LAKE GUMBERLAND AREA DEVELOPMENT DISTRICT #14

	Special Needs			Infants			Toddlers			Pre-School			School-Age		
	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
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			Infants			Toddlers			Pre-School			School-Age		
	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
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, MERGER, NICHOLAS, POWELL  
 BLUEGRASS AREA DEVELOPMENT DISTRICT #15

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

- (7) Child care payments shall be limited as follows:
- (a) Six (6) semesters (three (3) years) for a two (2) year post-secondary program;
  - (b) Eight (8) semesters (nine (9) with good cause) for a four (4) year postsecondary program with an additional semester when:
    1. If only one (1) additional semester is needed to complete the degree requirements; and
    2. If satisfactory progress is being made;
  - (c) No restrictions on other education and training activities.
  - (8) These limits apply to both full-time and part-time enrollment.
  - (9) In preemployment or precomponent, if necessary to guarantee that the child care arrangement shall not be lost, child care payments shall be provided for a period of:
    - (a) Up to two (2) weeks prior to the scheduled start of employment or component activity; and
    - (b) Up to one (1) month during a break in employment or component activity if subsequent employment or component activity is scheduled to begin within that period.
  - (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~~]; 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 [AFDG] 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 [AFDG], 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 [AFDG] 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~~]; 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 [AFDC] case remains active;
- (c) Transitional extension; [or]
- (d) OJT participants discontinued from K-TAP [AFDC], 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: December 19, 1997

FILED WITH LRC: December 29, 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 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: A public hearing was held on November 21, 1997, as a result of requests received following the publication of the administrative regulation and written comments were received. No written or oral comments were received regarding direct or indirect costs or savings on the cost of living and employment in the geographical area.

(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: A public hearing was held on November 21, 1997, as a result of requests received following the publication of the administrative regulation and written comments were received. No written or oral comments were received regarding direct or indirect costs or savings on the cost of doing business in the geographical area.

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

1. First year following implementation: The 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 \$400 in a 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 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

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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: A public hearing was held on November 21, 1997, as a result of requests received following the publication of the administrative regulation and written comments were received. No written or oral comments were received regarding economic impact in the geographical area.

(b) Kentucky: A public hearing was held on November 21, 1997, as a result of requests received following the publication of the administrative regulation and written comments were received. No written or oral comments were received regarding economic impact in Kentucky.

(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. A public hearing scheduled on November 21, 1997, as a result of the publication of the administrative regulation was held since requests were received. Written comments were also received. The administrative regulation was amended following the hearing as a result of written and oral comments received by close of business on November 21, 1997.

(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 (Amended After Hearing)

#### 904 KAR 2:370. Technical requirements for Kentucky Works [~~Job Opportunities and Basic Skills~~].

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

STATUTORY AUTHORITY: KRS 194.050(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~~



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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 **federally-funded** 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.

**3. If the family does not receive federally-funded child care assistance, a minimum of thirty-five (35) hours per week shall be required for both parents combined.**

(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.

(4) An applicant of K-TAP shall be informed in writing of the availability of the exceptions to participation in Kentucky Works listed in Section 3 of this administrative regulation. [:

(a) 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

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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;

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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.

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(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. **Deprivation based on incapacity is determined according to 904 KAR 2:006, Section 8;** [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 AFDG 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 AFDG] 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 AFDG 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 assessment 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 assessment 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.

(d) The penalty in paragraph (a) or (b) of this subsection shall not be applied until after conciliation procedures are conducted pursuant to Section 5 of this administrative regulation. [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 AFDG grant, the agency shall not take into account the needs of the sanctioned individual, beginning with the first administratively feasible month after JOBS

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sanctions begin:

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

- ~~1. Is exempt for reasons other than those in Section 2(6), (9) and (11) of this administrative regulation;~~
- ~~2. Is participating; or~~
- ~~3. Has volunteered to participate in JOBS.~~

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

Section 8. Hearings and Appeals. Applicants or recipients of benefits under programs described herein who are dissatisfied with any action or inaction on the part of the cabinet shall have the right to a hearing under 904 KAR 2:055.

Section 9. [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];
- (c) [(e)] PA-218A, "New Chance Referral, edition 4/97" [revised 7/94];
- (d) [(d)] PA-219, "Kentucky Works Program Fact Sheet, edition 5/97" [revised 7/94];
- (e) KW [(e)-JOBS]-105, "Kentucky Works Referral Form (Participant), edition 4/97" [revised 6/91];
- (f) KW [JOBS]-201, revised 1/91;
- (g) [JOBS]-202, "K-TAP Transitional Assistance Agreement, edition 4/97" [revised 10/94];
- (h) KW [(h)-JOBS]-204, "Conciliation Contact, edition 5/97" [revised 1/94];
- (i) KW [(i)-JOBS]-205, "Conciliation Results, edition 5/97" [revised 8/91];
- (j) KW-211, "Noncompliance Contact, edition 5/97";
- (k) KW-240, "Work Experience Program-Participant Agreement, edition 1/98";
- (l) KW-244, "WEP Work Site Agreement Amendment, edition 1/98";
- (m) KW-241 "WEP Work Site Agreement, edition 2/98 [1/98];
- (n) KW-245 "Notice of WEP Discontinuance, edition 1/98";
- (o) KW-246 "WEP Referral Form, edition 1/98".
- [(f) 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: December 17, 1997

FILED WITH LRC: December 29, 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 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: A public hearing was held on November 21, 1997, as a result of requests received following the publication of the administrative regulation and written comments were received. No written or oral comments were received regarding direct or indirect costs or savings on the cost of living and employment in the geographical area.

(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: A public hearing was held on November 21, 1997, as a result of requests received following the publication of the administrative regulation and written comments were received. No written or oral comments were received regarding cost of doing business in the geographical area.

(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, since they meet an exemption criteria for a limited period, will be

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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: A public hearing was held on November 21, 1997, as a result of requests received following the publication of the administrative regulation and written comments were received. No written or oral comments were received regarding the economic impact on the geographical area.

(b) Kentucky: A public hearing was held on November 21, 1997, as a result of requests received following the publication of the administrative regulation and written comments were received. No written or oral comments were received regarding the economic impact on Kentucky.

(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: A public hearing scheduled on November 21, 1997, as a result of the publication of the administrative regulation was held since requests were received. Written comments were also received. The administrative regulation was amended following the hearing as a result of written and oral comments received by close of business on November 21, 1997.

(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

**ADMINISTRATIVE REGISTER - 1749**

**PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JANUARY 15, 1998**

**PERSONNEL BOARD  
(Amendment)**

**101 KAR 1:325. Probationary periods.**

RELATES TO: KRS 18A.075, 18A.0751, 18A.111

STATUTORY AUTHORITY: KRS 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.111 relates specifically to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or 12th month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Conservation Officer Trainee	12 months
2112	DES Duty Officer	12 months
2113	DES Duty Officer Senior	12 months
2306	Park Ranger	12 months
2308	Facility Security Sergeant	12 months
2309	Facility Security Lieutenant	12 months
2311	Facility Security Officer	12 months
2312	Park Ranger Captain	12 months
2322	Facility Security Officer II	12 months
2401	Police Communications Dispatcher	12 months
2403	Police Communications Dispatcher Senior	12 months
2404	Police Communications Dispatcher Coordinator	12 months
2405	Police Communications Dispatcher Supervisor	12 months
2408	MVE Trainee	12 months
2480	Water Patrol Officer	12 months
2493	Mounted Security Officer	12 months
2494	Mounted Security Sergeant	12 months
2495	Mounted Security Captain	12 months
2496	Mounted Security Officer Trainee	12 months
3254	Boiler Inspector Trainee	12 months
3416	Financial Institution Examiner Trainee	12 months
3601	Alcoholic Beverage Enforcement Officer	12 months
3734	Assessment Conference Officer	12 months
5120	Student Development Trainee	12 months
5141	Vocational Rehabilitation Teacher Rank III	12 months
5142	Vocational Rehabilitation Teacher Rank II	12 months
5143	Vocational Rehabilitation	12 months

6248	Teacher Rank I Residential Facility Superintendent I	12 months
6250	Residential Facility Superintendent III	12 months
6252	Residential Facility Superintendent II	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months
7250	Forest Ranger Technician	12 months
7251	Forest Ranger Technician Senior	12 months
7252	Forest Ranger Technician Chief	12 months
7253	Forest Ranger Technician District	12 months
7255	Forest Resource Advisor	12 months
7257	Forestry Fire Management Program Coordinator	12 months
7259	Forestry Resource Education Program Coordinator	12 months
9175	Public Accounts Auditor Trainee	12 months
9859	Environmental Administrative Hearing Officer	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. When the employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

(4) When an applicant [employee] is appointed to a position from a competitive register, such appointment shall be considered as an initial appointment.

(5) Effective July 1, 1991, the following job classifications in the Department of Education shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
5303	Exceptional Children Consultant I	12 months
5304	Exceptional Children Consultant II	12 months
5305	Exceptional Children Program Manager I	12 months
5306	Exceptional Children Program Manager II	12 months
5309	Education Academic Program Consultant I	12 months
5310	Education Academic Program	12 months

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	Consultant II	
5311	Education Academic Program Manager I	12 months
5312	Education Academic Program Manager II	12 months
5313	Education Administration Program Consultant I	12 months
5314	Education Administration Program Consultant II	12 months
5315	Education Administration Program Manager I	12 months
5316	Education Administration Program Manager II	12 months
5321	Education Facilities Program Consultant	12 months
5323	Education Facilities Program Manager	12 months
5324	Education Instructional Services Advisor	12 months
5325	School Accreditation Evaluator	12 months
5327	School Accreditation Evaluation Manager	12 months
5329	School Food Services Program Consultant	12 months
5330	School Food Services Program Coordinator	12 months
5331	School Food Services Program Manager	12 months
5337	Education Financial Analyst	12 months
5341	Education Health/P.E. Program Consultant I	12 months
5342	Education Health/P.E. Program Consultant II	12 months
5343	Education Reading Program Consultant I	12 months
5344	Education Reading Program Consultant II	12 months
5345	Education Social Studies Program Consultant I	12 months
5346	Education Social Studies Program Consultant II	12 months
5347	Education Science Program Consultant I	12 months
5348	Education Science Program Consultant II	12 months
5349	Education Language Arts Program Consultant I	12 months
5350	Education Language Arts Program Consultant II	12 months
5351	Education Math Program Consultant I	12 months
5352	Education Math Program Consultant II	12 months
5353	Education Primary Program Consultant I	12 months
5354	Education Primary Program Consultant II	12 months
5355	Education Vocational Program Consultant I	12 months
5356	Education Vocational Program Consultant II	12 months

Section 2. Promotional Probationary Period. (1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional

probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. If an employee fails to satisfactorily complete a promotional probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his reversion. The notification shall advise the employee of the effective date of reversion. When the employee is notified, copies of the notice of reversion shall be forwarded to the Secretary of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the sixth month following promotion, except as provided in KRS 18A.111.

Section 3. Probationary Period Upon Reinstatement. An employee who is reinstated, except an employee ordered reinstated pursuant to KRS 18A.111(3), to a position in the classified service no later than twelve (12) months after the beginning of a break in the classified service shall be reinstated with status. An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

MICHELLE M. KELLER, Chairperson

ROBERT A. BOWMAN, General Counsel

APPROVED BY AGENCY: January 9, 1998

FILED WITH LRC: January 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 24, 1998, at 9 a.m., at 5 Fountain Place, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 1998, five working days prior to the scheduled hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: R. Hanson Williams, Executive Director, Commonwealth of Kentucky, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, Telephone: (502) 564-7830, Fax: (502) 564-1693.

### REGULATORY IMPACT ANALYSIS

Contact Person: R. Hanson Williams

(1) Type and number of entities affected: This regulation affects all state agencies. The proposed amendment provides for reinstatement to the classified service no later than 12 months after a break in the classified service.

(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. Cost of living and employment not affected.

(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. Cost of doing business not affected.

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



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competition) for the:

1. First year following implementation: Compliance does not result in increased reporting, paperwork or cost.

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

(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 source of revenue is the respective agency's budget for its employees.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. No economic impact.

(b) Kentucky: No public comments received. No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There is no alternative.

(8) Assessment of expected benefits: Clarifies reinstatement rights to the classified service by an employee who has had a twelve (12) month or less break in the classified service.

(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 detrimental effect on environment and public health will result if not implemented.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not conflict, overlap or duplicate any statute, administrative regulation or government policy.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. This regulation must apply equally to all classified employees in all state agencies with classified employees.

### PERSONNEL BOARD (Amendment)

#### 101 KAR 1:335. Employee actions.

RELATES TO: KRS 18A.075, 18A.0751

STATUTORY AUTHORITY: KRS 18A.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 directs that comprehensive administrative regulations be promulgated by the Personnel Board for the classified service governing demotion, transfer, reinstatement and reemployment. KRS 18A.115 relates to promotion of career employees.

Section 1. Definitions. "Class series" means a group of positions that are similar as to the duties performed and have:

(1) Varying levels of:

(a) Discretion;

(b) Responsibility;

(c) Minimum requirements of training, experience, or skill; and  
(2) Schedules of compensation that are commensurate with minimum requirements.

Section 2. Work Station. (1) The official work station of employees assigned to an office shall be the street address where the office is located.

(2) The official work station of a field employee shall be that address to which the employee is assigned at the time of appointment to the employee's current position.

(3) Nothing within this administrative regulation shall be construed as prohibiting an appointing authority from assigning an employee to work in a different site within the county of employment.

Section 3. Demotion. (1) Demotions for cause shall be intra-agency only.

(2) Voluntary demotion.

(a) A voluntary demotion shall be made only if an employee with status requests a voluntary demotion on a written form prescribed by the Department of Personnel.

(b) The form shall include:

1. A statement of the reason for the request;

2. The effective date of the demotion;

3. The position from which he requests demotion;

4. The position to which he will be demoted;

5. A statement that the employee waives his right to appeal the demotion.

(c) The employee shall forward a copy of the request to the Commissioner of Personnel.

(3) Voluntary demotions may be interagency or intra-agency.

Section 4. Transfers. (1) An employee with status may be transferred pursuant to the provisions of this administrative regulation.

(2)(a) Transfers may be on a voluntary or involuntary basis.

(b) An appointing authority shall establish a reasonable basis for selecting an employee for involuntary transfer.

(c) If an employee has not requested a transfer in writing, a transfer shall be deemed involuntary.

(3) Involuntary transfer, same county.

(a) Prior to the effective date of an involuntary transfer, an employee shall receive a written notice of involuntary transfer.

(b) The notice shall state the:

1. Employee has been selected for transfer;

2. New work station;

3. Reason for the transfer;

4. Employee is required to report to the new work station;

5. Effective date of the transfer; and

6. Right of the employee to appeal the transfer to the board within sixty (60) days of receipt of the notice of involuntary transfer, excluding the date the notice is received.

(c) A copy of the notice shall be forwarded to the Commissioner of Personnel.

(d) An employee shall report to the new work station upon the date specified in the notice.

(4) Involuntary transfer, out of county. If an involuntary transfer is to a position with a work station in a different county:

(a) An employee is entitled to travel and moving expenses as provided by administrative regulations promulgated by the Finance and Administration Cabinet;

(b) An employee shall receive the notice of involuntary transfer established in subsection (3)(a) and (b) of this section at least thirty (30) days prior to the effective date of the transfer;

(c) The notice shall contain:

1. The information specified in subsection (3)(b) of this section; and

2. A statement that the employee is entitled to:

a. Reimbursement of travel expenses incurred within thirty (30)

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days of the effective date of the notice; and

b. Moving expenses, if any.

(5) Involuntary transfers shall be intra-agency only.

(6) Voluntary transfer.

(a) Prior to a voluntary transfer, an employee with status shall request a voluntary transfer on a written form prescribed by the Department of Personnel.

(b) The form shall include:

1. A statement of the reason for the request;

2. The effective date of the transfer;

3. The position, including identifying number, from which he requests a transfer;

4. The position, including identifying number, to which he requests a transfer; and

5. A statement that the employee waives his right to appeal the transfer.

(c) The employee shall forward a copy of the request to the Commissioner of Personnel.

(7) Voluntary transfers may be interagency or intra-agency.

Section 5. (1) A request for reinstatement may be approved if it has been:

(a) Made at the request of the appointing authority; and

(b) Approved by the Commissioner of Personnel.

(2) Approval shall include a finding that:

(a) The candidate for reinstatement meets the current qualifications for the job classification to which he is being reinstated; and

(b) Has previously held status at that grade level or higher.

(3) If the reinstatement is to a classification outside of the classification series where the employee has previously held status, the candidate shall pass the appropriate examination prior to reinstatement.

MICHELLE M. KELLER, Chairperson

ROBERT A. BOWMAN, General Counsel

APPROVED BY AGENCY: January 9, 1998

FILED WITH LRC: January 15, 1998 at 8 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 24, 1998, at 9 a.m., at 5 Fountain Place, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by February 17, 1998, five working days prior to the scheduled hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: R. Hanson Williams, Executive Director, Commonwealth of Kentucky, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, Telephone: (502) 564-7830, Fax: (502) 564-1693.

### REGULATORY IMPACT ANALYSIS

Contact Person: R. Hanson Williams

(1) Type and number of entities affected: This regulation affects all state agencies. The proposed amendment brings into conformity the definition of "work station" with existing regulations.

(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. Cost of living and employment not affected.

(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. Cost of doing business not affected.

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

1. First year following implementation: Compliance does not result in increased reporting, paperwork or cost.

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

(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 source of revenue is the respective agency's budget for its employees.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received. No economic impact.

(b) Kentucky: No public comments received. No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative is to not amend the regulation and thereby perpetuate the confusion on the definition of work station.

(8) Assessment of expected benefits: By amending this regulation, it brings into conformity the definition of work station in all administrative regulations.

(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 detrimental effect on environment and public health will result if not implemented.

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

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not conflict, overlap or duplicate any statute, administrative regulation or government policy.

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

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. This regulation must apply equally to all classified employees in all state agencies with classified employees.

### GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (Amendment)

#### 201 KAR 20:070. Licensure by examination.

RELATES TO: KRS 314.041(1), (5), 314.051(2), (3)

STATUTORY AUTHORITY: KRS 314.041(1), 314.051(2), (3), 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(2) requires an applicant for licensure as a registered nurse to pass an examination prescribed by the board. KRS 314.041(5) requires an applicant for licensure as a registered nurse to pay applicable examination fees. KRS 314.051(2) requires an applicant for licensure

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as a licensed practical nurse to pay applicable examination fees. KRS 314.051(3) requires an applicant for licensure as a licensed practical nurse to pass an examination prescribed by the board. KRS 314.131(1) authorizes the board to promulgate administrative regulations to implement the provisions of KRS Chapter 314. This administrative regulation establishes criteria and fees for the licensure of nurses by examination.

Section 1. Eligibility for Licensure by Examination. (1) To be eligible for licensure by examination for graduates of Kentucky programs and other state or territorial nursing programs, applicants shall:

(a) For graduates of Kentucky programs of nursing, have the nursing program submit verification on "Certified List of Program of Nursing Graduates" that the applicant has:

1. Completed the program of nursing; and
2. Successfully completed all requirements for a degree, diploma or certificate.

(b) For graduates of the programs of nursing outside Kentucky, submit an official transcript of nursing program.

(c) Submit:

1. A properly executed application for licensure;
2. Application for licensure fee; and
3. One (1) passport type photograph (two (2) x three (3) inches) taken within the past six (6) months, with the photograph signed and dated by the applicant on the front under the facial features and by the nurse administrator of U.S. nursing program, if graduated therefrom, on the back of the photograph. A snapshot shall not be submitted.

(d) Submit certified copies of court records of any misdemeanor or felony convictions with a letter of explanation.

(e) Notify the board in writing as soon as a new address is established after submitting the application.

(f) Submit a copy of a marriage certificate or court order to change name, if name is changed after the original application is filed.

(g) Abide by and cooperate with security procedures established by the board, when taking the examination.

(h) Apply to take and pass the national council licensure examination or its equivalent as specified in Section 3 of this administrative regulation.

(i) Pay fees for application for licensure established by this administrative regulation and 201 KAR 20:240.

(j) Meet the requirement of 902 KAR 2:150, Human immunodeficiency virus education, initial professional licensure.

(2) An application for licensure shall be valid for a period of one (1) year from the date the applicant is declared eligible to take the examination.

Section 2. Graduates of Foreign Nursing Schools. To be eligible for application for licensure by examination, a graduate of a foreign nursing school shall comply with the provisions of this section.

(1) ~~A registered nurse applicant shall submit a certificate of successful completion of the Commission on Graduates of Foreign Nursing Schools examinations, unless the applicant:~~

~~(a) is licensed as a registered nurse in a jurisdiction or territory governed by the United States;~~

~~(b) Has received a graduate degree in nursing from a university or college in the United States; or~~

~~(c) is a graduate of a program of nursing in Canada.~~

(2) If licensed in another country, or in a jurisdiction or territory governed by the United States, the applicant shall submit a statement from the licensing authority that the:

- (a) Applicant is a licensee in good standing;
- (b) License has not been revoked, suspended, or probated; and
- (c) Licensee has not been suspended or otherwise disciplined in the licensing country.

(2) [(3)] An applicant shall submit proof of legal permanent or

temporary residency under the laws and regulations of the United States.

(3) [(4)] An applicant shall meet the requirements of Section 1 of this administrative regulation.

(4) [(5)] Credentials in a foreign language shall be translated at the applicant's expense by an official translation agency or approved college or university.

Section 3. Licensing Examination Standards. (1) An applicant shall pass the national council licensure examination or an examination that meets the criteria established by subsection (2) of this section.

(2) An applicant who has taken an examination other than the state board test pool examination or national council licensure examination subsequent to 1953 shall provide evidence to the board that the examination met the following standards of equivalency:

(a) Accepted psychometric procedures are used in the development of the examination;

(b) The examination is available to the board in the English language;

(c) The examination test plan blueprint is available for board review and adequately identifies test content and content weighting;

(d) Test items are available for board review and demonstrate the testing of competency necessary for safe practice;

(e) At least one (1) of the reliability estimations for the examination is 0.80 or higher;

(f) The examination is revised after each administration to insure currency and security of content;

(g) The examination is given under strict security measures;

Section 4. Retaking the Examination. (1) An examination candidate who fails to achieve a passing result may retake the examination after meeting:

(a) The requirements of Section 1 of this administrative regulation and, if applicable, Section 2 of this administrative regulation; and

(b) Submission of:

1. The retake application; and
2. The applicable fee.

(2) The examination may be retaken no more often than once every three (3) months from the date the last examination was taken by the applicant.

Section 5. Release of Examination Scores. The board shall release examination numerical results to:

(1) The candidate;

(2) Other state boards of nursing;

(3) The National Council of State Boards of Nursing, Inc.; and

(4) An individual or agency who submits an applicant's or licensee's written authorization for their release.

Section 6. Incorporation By Reference. (1) "Certified List of Program of Nursing Graduates", (2/96), is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky, Monday through Friday, 8:30 a.m. to 4:30 p.m.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: December 12, 1997

FILED WITH LRC: January 14, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on February 23, 1998 at 9 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 13, 1998, 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

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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: All graduates of foreign nursing schools applying for licensure by examination. Number varies.

(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: N/A

(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: N/A

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

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Unknown

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs: Unknown

(b) Reporting and paperwork requirements: N/A

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

N/A

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency operating 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: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: N/A

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not applied since the proposed amendments would apply to all affected parties equally.

## GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (Amendment)

### 201 KAR 20:110. Licensure by endorsement.

RELATES TO: KRS 314.041(4), 314.051(5)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: To assure that licensed nurses applying for licensure in Kentucky have met equivalent standards required of graduates of Kentucky programs of nursing. To provide some security in the endorsement process.

Section 1. Eligibility for Licensure by Endorsement. (1) To be eligible for licensure by endorsement, applicants shall:

(a) Hold a high school diploma or equivalent.

(b) Have completed a state approved program of practical nursing for licensed practical nurse licensure or a state approved program of registered nursing for registered nurse licensure equivalent to Kentucky requirements.

(c) Have taken a licensure examination acceptable to the board and shall have achieved a passing score equivalent to Kentucky requirements as stated in 201 KAR 20:070 or as determined by the board for applicants licensed prior to 1953.

(d) Have and submit a copy of a current active license to practice nursing in another U.S. jurisdiction or Canada.

(e) Accurately complete and submit application form and necessary information for licensure in Kentucky.

(f) Submit a recent (within past six (6) months) two (2) x three (3) inches photograph which shall be signed and dated on the front under the facial features. Snapshots are not acceptable.

(g) Submit the current fee for a licensure application.

(h) Have submitted by the licensing authority verification of licensure as a nurse in the United States jurisdiction of original licensure or the country of original licensure (if not licensed in the United States), including a statement that the license is in good standing and has not been revoked, suspended, limited, probated or otherwise disciplined by the licensing authority and is not subject to any pending disciplinary action.

(i) Report any disciplinary action(s) taken or pending on licenses by other jurisdictions.

(j) Submit official copies of court records of any misdemeanor and felony convictions with a letter of explanation.

(k) Meet the requirement of 902 KAR 2:150.

(2) An application is valid for a period of one (1) year from date of submission to board. The applicant shall:

(a) Submit a copy of a marriage certificate or court order to change name after the original application is filed.

(b) Notify the board in writing as soon as any new address is established after submitting the application.

(3) After one (1) year from date of receipt of application, the applicant shall:

(a) Submit new application.

(b) Submit current licensure application fee.

(c) Meet requirements as stated in this section.

Section 2. Graduates of Foreign Nursing Schools. (1) All graduates of foreign nursing schools shall:

(a) Meet the requirements of Section 1 of this administrative regulation.

(b) Submit official transcript of nursing program.

(2) Graduates of foreign nursing schools who are not citizens of the United States shall submit evidence of legal permanent or temporary residency in the United States [according to the laws and regulations of the U.S. Department of Justice, Immigration and Naturalization Services and the U.S. Department of Labor].

(3) Credentials in a foreign language shall be translated at the

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applicant's expense by an official translation agency or approved college or university.

~~Section 3. [Graduates of Canadian Nursing Schools. (1) All graduates of Canadian nursing schools shall meet requirements in Sections 1 and 2 of this administrative regulation:~~

~~(2) Applicants who took the Canadian nurses association test service examination shall have:~~

~~(a) Successfully completed an examination that meets the criteria of 201 KAR 20:070, Section 3; and~~

~~(b) Achieved a standard score of 350 on the five (5) part examination given prior to August, 1980, or 400 on the comprehensive examination given after August, 1980.~~

~~Section 4.] Nursing Practice and Continuing Education Requirements. (1) The applicant who has been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years shall submit evidence to verify such active practice.~~

~~(2) The applicant who has not been actively licensed and engaged in nursing practice for at least 500 hours during the preceding five (5) years shall complete fifteen (15) contact hours in continuing education, for each year since the last year in which the applicant can demonstrate at least 100 hours of active practice. This provision does not apply to applicants who have been licensed for less than five (5) years from the date of initial licensure.~~

~~(3) No applicant shall be required to complete more than 150 contact hours in continuing education, provided that at least thirty (30) contact hours shall have been earned within the twenty-four (24) months preceding the date of application for active Kentucky licensure status.~~

~~(4) Continuing education earned more than ten (10) years preceding the date of application shall not be counted toward meeting the requirements stated in subsection (2) and (3) of this section.~~

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: December 12, 1997

FILED WITH LRC: January 14, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on February 23, 1998 at 9 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 13, 1998, 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: Canadian nurse applicants. Number varies.

(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: N/A

(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: N/A

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

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Unknown

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency operating 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: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Canadian nurse applicants will be required to take the same licensure exam as American nurse applicants.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Unknown

(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: N/A

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not applied since the proposed amendments would apply to all affected parties equally.

### GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (Amendment)

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

RELATES TO: KRS 314.011, 314.031, 314.071(4), 314.091, 314.161, 314.991

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: To provide for the orderly conduct of hearings and to protect the due process rights of nurses and applicants.

Section 1. Purpose and Rule of Construction. The purpose of this administrative regulation is to enable the board to conduct an orderly and reasonably expeditious search for the truth while ensuring that due process is afforded to the licensee or applicant. Accordingly, this administrative regulation shall be liberally construed so as to aid that process.

Section 2. Composition of the Hearing Panel. (1) Disciplinary actions shall be heard by a hearing panel consisting of two (2)

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members of the board and a hearing officer, who may be an assistant attorney general or other attorney designated by the board.

(2) A hearing officer and one (1) member of the board may conduct a hearing for consideration of reinstatement of a revoked or suspended license and consideration of removal of a license from probationary status.

(3) A board member who has participated in the investigation of a disciplinary action or who has discussed the merits of an action with the agency staff or who has personal knowledge of the facts giving rise to a disciplinary action shall not sit on a panel hearing that particular action nor participate in the adjudication of the matter.

(4) The hearing shall be transcribed by a court stenographer.

Section 3. Rights of the Licensee or Applicant. The licensee or applicant shall have the right to be present and to be heard by the hearing panel, to be represented by legal counsel, to present evidence, to cross examine witnesses presented by the board, and to make both opening and closing statements. The licensee or applicant shall also have the right to have subpoenas issued. The licensee or applicant shall bear the cost of serving the subpoenas.

Section 4. Prehearing Disclosure of Evidence. (1) By the board. The names, addresses and telephone numbers of witnesses expected to be called by the board and copies of documents to be introduced at the hearing shall be made available upon request of the licensee or applicant. The licensee or applicant shall also be permitted to examine any items of tangible evidence in the possession of the board, upon request.

(2) By the licensee or applicant. At least ten (10) days prior to the scheduled hearing date the licensee or applicant shall furnish to the legal counsel for the board copies of any documents which the licensee or applicant intends to introduce at the hearing, and a list of the names, addresses, and telephone numbers of any witnesses to be presented to the hearing panel by the licensee or applicant. The licensee or applicant shall also produce for inspection any items of tangible evidence within its possession or control which it intends to introduce at the hearing.

(3) At least ten (10) days prior to the scheduled hearing date the licensee or applicant shall also file with the board written response to the specific allegations contained in the notice of charges. Allegations not properly answered will be deemed admitted. The panel may for good cause permit the late filing of an answer.

(4) Sanctions for failure to comply with prehearing disclosure. If a party fails to comply with this section the panel hearing the disciplinary action may refuse to allow into evidence such items or testimony as have not been disclosed, may continue the action to allow the opposing party a fair opportunity to meet the new evidence, or may make such other order as it deems appropriate. Sanctions shall be applied by the hearing officer but may be overridden by the unanimous vote of the board members of the panel.

(5) Continuing duty to disclose. After disclosure has been completed each party shall remain under an obligation to disclose any new or additional items of evidence or witnesses which may come to its attention. Such additional disclosure shall take place as soon as practicable. Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.

Section 5. Order of Proceeding. (1) The hearing officer shall call the meeting to order and shall identify the parties to the action and the persons present. The hearing officer shall ask the parties to state for the record any objections or motions. The hearing officer shall rule upon any objections or motions, subject to be overridden by the unanimous vote of the board members of the panel. Opening statements shall then be made, with the attorney for the board proceeding first. Either side may waive its opening statement, but opening statements may not be reserved.

(2) The taking of proof shall commence with the calling of

witnesses on behalf of the board. Such witnesses shall be examined first by the attorney for the board, then by the licensee or applicant or that person's attorney, and finally by members of the hearing panel. Rebuttal examination of witnesses shall proceed in the same order. Documents or other items may be introduced into evidence as appropriate.

(3) Upon conclusion of the case for the board the licensee or applicant shall call its witnesses. Such witnesses shall be examined first by the licensee or applicant or that person's attorney, then by the attorney for the board, and finally by the members of the hearing panel. Rebuttal examination of those witnesses shall proceed in the same order. Documents or other evidence may be introduced as appropriate.

(4) At the conclusion of the proof the parties shall be afforded the opportunity to make a closing statement, with the attorney for the board always proceeding last. The hearing officer may impose reasonable limitations upon the time allowed for opening and closing statements.

(5) The hearing officer shall also be responsible for enforcing the general rules of conduct and decorum and expediting the hearing by keeping the testimony and exhibits relevant to the case.

Section 6. Rules of Evidence. (1) The hearing panel shall not be bound by the technical rules of evidence. The hearing panel may receive any evidence which it considers to be reliable, including testimony which would be hearsay if presented in a court of law. Documentary evidence may be admitted in the form of copies or excerpts, and need be authenticated only to the extent that the panel is satisfied of its genuineness and accuracy. Tangible items may be received into evidence without the necessity of establishing a technical legal chain of custody so long as the hearing panel is satisfied that the item is what it is represented to be and that it is in substantially the same condition as it was at the time of the events under consideration.

(2) The hearing panel retains the discretion to exclude any evidence which it considers to be unreliable, incompetent, irrelevant, immaterial or unduly repetitious. Rulings on objections to evidence shall be made by the hearing officer but may be overridden by the unanimous vote of the board members of the panel.

Section 7. Recommendation by the Hearing Panel. (1) Upon the conclusion of the hearing the panel shall retire into closed session for purpose of deliberations. Each board member of the panel shall have one (1) vote. In case of a tie vote, the tie shall be broken by the hearing officer.

(2) At the conclusion of the panel's deliberations it shall propose an order based upon the evidence presented. The hearing officer shall draft a proposed decision including findings of fact and conclusions of law consistent with the panel's deliberations as well as a recommended order to be submitted to the full board. ~~[A copy of the proposed decision shall be sent to the licensee or applicant by certified mail and to all members of the board as well as the attorney for the board.]~~

~~Section 8. [Written Arguments or Exceptions to a Proposed Decision. The licensee or applicant shall have twenty (20) days from the date the proposed decision is mailed to file with the board written arguments or exceptions to any portion of the proposed decision. The twenty (20) day period may be extended at the discretion of the board president. The attorney for the board shall have ten (10) days from the expiration of the period allowed to the licensee or applicant to file responses on behalf of the board, which period may be extended at the discretion of the board president.]~~

~~Section 9.] Decision by the Board. The full board shall review the proposed decision and consider the evidence presented and, after consideration of any written arguments or exceptions which have~~

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been presented, shall make a final determination as follows:

- (1) Adopt the proposed decision as submitted; or
- (2) Modify the proposed decision as deemed necessary; or
- (3) Remand the case to the hearing panel for further evidence.

The hearing panel shall then schedule another hearing to obtain additional evidence. The board shall then consider the findings of fact and recommendations from the original hearing and any additional hearing as well as additional written arguments or exceptions as the parties have presented and shall render its final decision in the case.

Section 9. [10:] Record to be Maintained. A transcript of the testimony taken during the hearing shall be kept by the board. A copy of that transcript shall be available to the licensee or applicant from the court stenographer or, if the stenographer is unable to furnish a copy, from the board upon request and payment of the appropriate fee. A copy of the transcript of the hearing shall be available to all board members. Any documents or exhibits introduced into evidence shall be kept with the transcript or as ordered by the hearing officer.

Section 10. [11:] Continuances; Proceedings in Absentia. It shall be the policy of the board not to postpone cases which have been scheduled for hearings absent good cause. A request by a licensee or applicant for a continuance may be considered if communicated to the board reasonably in advance of the scheduled hearing date and based upon good cause. The decision whether to grant a continuance shall be made by the hearing officer. However, the burden is upon the licensee or applicant to be present at a scheduled hearing. Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing shall be held as scheduled.

Section 11. [12:] Hearing Fee. If the order of the board is adverse to a licensee or applicant, or if the hearing is scheduled at the request of a licensee or applicant, a hearing fee in an amount equal to the cost of stenographic services and the cost of the hearing officer shall be assessed against the licensee or applicant for relief from sanctions previously imposed by the board pursuant to the provisions of KRS Chapter 314. In cases of financial hardship, the board may waive all or part of the fee.

MARCIA STANHOPE, President  
NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: December 12, 1997

FILED WITH LRC: January 14, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on February 23, 1998 at 9 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 13, 1998, 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: All administrative hearings. Number varies.

(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: N/A

(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: N/A

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

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

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

N/A

(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: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation, or governmental policy which may be in conflict, overlapping or duplication: This regulation is being amended to conform to KRS Chapter 13B.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was not applied since the proposed amendments would apply to all affected parties equally.

## GENERAL GOVERNMENT CABINET Kentucky Board of Nursing (Amendment)

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

RELATES TO: KRS 314.041, 314.051, 314.071

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041, 314.051, and 314.071 require the board to review applications for licensure and licensees for conformity with KRS Chapter 314. KRS 314.091 requires the board to deny limit, revoke, probate, suspend, or take other action against an applicant or licensee who is guilty of the offenses or conduct specified in KRS 314.091. This administrative regulation establishes requirements and procedures for licensure and

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registration.

Section 1. To be eligible for licensure by examination, endorsement, renewal, reinstatement, or change of status, or for advanced registered nurse practitioner registration, renewal or reinstatement an applicant shall:

- (1) Submit completed application to board office on original form supplied by the board;
- (2) Submit current application fee, as applicable;
- (3) Submit official copy of court records of any misdemeanor and/or felony conviction with a letter of explanation;
- (4) Submit certified copies of any disciplinary action taken in other jurisdictions with a letter of explanation or report any disciplinary action pending on nurse licensure applications or license in other jurisdictions;
- (5) Have no disciplinary action pending by the board or an agreed order or decision presently in effect for violation of KRS Chapter 314;
- (6) Have paid all monies due to the board;
- (7) Submit copy of an official name change document (court order, marriage certificate, divorce decree), if applicable;
- (8) Submit additional information as requested by the board; and
- (9) Meet additional requirements for:
  - (a) Licensure by examination established by 201 KAR 20:070;
  - (b) Licensure by endorsement established by 201 KAR 20:110;
  - (c) Licensure by reinstatement established by 201 KAR 20:225;
  - (d) Licensure by renewal established by 201 KAR 20:230;
  - (e) Inactive licensure status established by 201 KAR 20:095; or
  - (f) Advanced registered nurse practitioner registration, renewal or reinstatement established by 201 KAR 20:056.

(10) If not a citizen of the United States, submit proof of legal permanent or temporary residency under the laws and regulations of the United States.

Section 2. A completed application form and all information needed to determine that an applicant meets requirements for licensure or registration shall be postmarked or received by the board no later than the last day for renewal of license or registration.

Section 3. Except as provided in 201 KAR 20:070, Section 1(12), 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 4. Beginning January 1, 1998, in addition to the requirements imposed by Section 1 of this administrative regulation, an applicant for licensure by examination or endorsement shall comply with the requirements of this section.

(1) An applicant shall not be eligible for the NCLEX examination or licensure, if the applicant has been convicted:

- (a) Of a felony under one (1) of the KRS chapters specified in subsection (2) of this section, within five (5) years of the date of filing an application; or
  - (b) ~~[Of a misdemeanor under one (1) of the KRS chapters specified in subsection (2) of this section, within two (2) years of the date of filing an application; or~~
  - (e) For violation of a comparable law in another jurisdiction.
- (2)(a) KRS Chapter 189A (driving under the influence);
  - (b) KRS Chapter 218A (controlled substances);
  - (c) KRS Chapter 507 (criminal homicide);
  - (d) KRS Chapter 508 (assault and related offenses);
  - (e) KRS Chapter 509 (kidnapping and related offenses);
  - (f) KRS Chapter 510 (sexual offenses);
  - (g) KRS Chapter 511 (burglary and related offenses);
  - (h) KRS Chapter 512 (criminal damage to property);
  - (i) KRS Chapter 513 (arson and related offenses);
  - (j) KRS Chapter 514 (theft and related offenses);
  - (k) KRS Chapter 515 (robbery);

- (l) KRS Chapter 516 (forgery and related offenses);
- (m) KRS Chapter 521 (bribery and corrupt influences);
- (n) KRS Chapter 523 (perjury and related offenses);
- (o) KRS Chapter 525 (riot, disorderly conduct and related offenses);
- (p) KRS Chapter 527 (offenses related to firearms and weapons);
- (q) KRS Chapter 528 (gambling);
- (r) KRS Chapter 529 (prostitution offenses);
- (s) KRS Chapter 531 (pornography); and
- (t) KRS Chapter 506 (offenses of attempts, conspiracy, or complicity to commit the offenses specified in this section).

(3)(a) A notice to deny licensure shall be issued to an applicant for licensure who has been convicted of an offense specified by subsection (1) or (2) of this section.

(b) An applicant who has been issued a notice to deny licensure may request a hearing before a hearing panel. The request shall be postmarked within thirty (30) days of receipt of the notice.

(4)(a) An applicant for licensure by examination or endorsement shall report:

1. Convictions for crimes specified in subsections (1) and (2) of this section for which the applicant was convicted prior to the time periods specified in subsection (1) of this section; and

2. Convictions for crimes that are not specified in subsection (1) or (2) of this section.

(b) The board shall review convictions reported pursuant to paragraph (a) of this subsection on an individual basis.

MARCIA STANHOPE, President

NATHAN GOLDMAN, General Counsel

APPROVED BY AGENCY: October 10, 1997

FILED WITH LRC: January 14, 1998 at 9 a.m.

PUBLIC HEARING: A public hearing on this regulation shall be held on February 23, 1998 at 9 a.m. in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 13, 1998, 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: All applicants for licensure as a nurse. 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: N/A

(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: N/A

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

1. First year following implementation: N/A



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2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Unknown

2. Continuing costs or savings: Unknown

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: None

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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General 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: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Misdemeanor convictions of applicants will be individually reviewed.

(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: 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? (Explain why tiering was or was not used) Tiering was not applied since the proposed amendments would apply to all affected parties equally.

### TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

#### 301 KAR 1:085. Mussel shell harvesting.

RELATES TO: KRS 150.025, 150.110, 150.170, 150.175, [150.190, 150.510,] 150.520

STATUTORY AUTHORITY: KRS 150.025(1), [150.170, 150.175,] 150.520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations governing the taking of wildlife. KRS 150.520 grants the department specific authority to regulate the taking, buying and selling of mussels and to require reporting of musseling operations. This administrative regulation establishes licensing requirements, seasons, size limits, waters open, and reporting requirements for musseling. [It is necessary to regulate the manner of taking mussels because of their value and their susceptibility to overharvest. This amendment is necessary to create mussel sanctuaries around Ohio River islands now part of a national wildlife refuge.]

Section 1. Definitions. (1) "Brail" means a wood or metal rod with attached hooks which is dragged across the bottom to take mussels.

(2) "East side" means the area in Kentucky Lake or Barkley Lake east of the line of red navigational buoys marking the main channel.

(3) "Mussel" means:

(a) An intact live or dead mussel;

(b) A mussel shell; or

(c) A part of a mussel shell.

(4) "To brail" means to take mussels using a brail.

(5) "To mussel" means to take mussels by means of commercial musseling gear.

(6) "West side" means the area in Kentucky Lake or Barkley Lake west of:

(a) The line of red navigational buoys marking the channel; or

(b) A water depth of fifty-five (55) feet.

Section 2. (1) Except as specified in subsection (2) of this section, a person shall possess a mussel license if he:

(a) Has more than six (6) mussels in his possession, unless he has a mussel buyer's license;

(b) Possesses commercial musseling equipment while on the water; or

(c) Sells or attempts to sell a mussel.

(2) A licensed musseler may be accompanied by one (1) unlicensed helper.

(3) An unlicensed helper shall not perform an act authorized by a mussel license unless he is in the presence of a licensed musseler. [All persons except helpers and those specified in Section 4 of this administrative regulation, who actively participate in the harvesting and sale of mussels or mussel shells, whether or not they own or possess the gear being used in the harvest of mussels or mussel shells, shall have an appropriate license. Each licensed musseler may employ one (1) helper to assist in the harvesting, transporting and sale of mussels. A licensed musseler shall accompany each helper when brailing, transporting or selling shells.]

Section 3. A person shall not:

(1) Sell a mussel unless he has a valid:

(a) Mussel license; or

(b) Mussel buyer's license.

(2) Buy a mussel:

(a) Unless he has a valid mussel buyer's license; and

(b) Except from a person holding a valid:

1. Mussel license; or

2. Mussel buyer's license.

[Section 2. Only persons having a valid musseling license or mussel buyers license may sell mussels or mussel shells. Mussel buyers shall purchase mussels or mussel shells only from individuals possessing a valid musseling license or mussel buyers license.]

Section 4. A musseler [3. All musselers] shall paint or affix his [their] department issued identification number to his [their] brail boat so it is [as to be] clearly visible to aerial observation. [Boats used in musseling operations shall have a licensed musseler in the boat.]

Section 4. A person shall not possess more than six (6) mussels without having an appropriate musseling license or mussel buyers license. Mussels shall be legal size according to Section 9 of this administrative regulation.]

Section 5. (1) To apply for a mussel license, a person shall:

(a) Complete a mussel license application Form;

(b) Submit the completed form to the department during the month of November; and

(c) Include the license fee as stipulated in 301 KAR 3:022.

(2) The department shall not issue more than 500 mussel licenses for a license year.

(a) [Mussel License Application Procedure. (1) The department shall not issue more than 500 mussel licenses per calendar year.

(2) Persons wishing to purchase musseling licenses shall apply during the November before the year they wish to mussel.

(3) Applicants shall complete a musseling license application provided by the department.

(4) If the number of applications exceeds 500, the department

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shall:

1. Issue [first-grant-new] licenses to current mussel license holders; and

2. Conduct [-then-select-the-remaining-applicants-by] a random drawing of the remaining applications until 500 licenses have been issued;

3. Return the license fee to a person not selected for a license.

(b) [(5)] If the number of applications is fewer [less] than 500, the department shall grant licenses to:

1. [all] Applicants who apply by November 30; and

2. [shall grant licenses to] Persons applying after November 31 on a first-come, first-served basis until 500 licenses have been issued.

[(6)] The appropriate resident or nonresident mussel license fee shall accompany each application. The department shall return the fees of those not drawn.]

Section 6. (1) A person shall not mussel:

(a) Within 200 yards below a dam; or

(b) Except in the waters specified in subsection (2) of this section.

(2) The following waters shall be open to musseling:

(a) [Except as specified in Sections 7 and 8 of this administrative regulation, the musseling season is open year around only on the following waters:

(1) Kentucky Lake, except embayments as defined by the Kentucky Lake Musseling Waters Map;

(b) [(2)] Barkley Lake, except embayments as defined by the Barkley Lake Musseling Waters Map;

(c) [(3)] Tennessee River downstream from river mile seventeen and eight-tenths (17.8); [from Kentucky Lake dam to the mouth;]

(d) [(4)] Cumberland River downstream from the U.S. Highway 62 bridge; [from Barkley Lake dam to the mouth;]

(e) [(5)] Ohio River, except between river miles:

1. 418 and 419;

2. 965.0 and 974.1;

3. 387.0 at Ruggles Run, Kentucky and 388.7 at Cummins Branch, Kentucky; and

4. 394.6 at Lindseys Creek, Ohio, and 397.1 at Old Ferry Landing, Manchester, Ohio;

(f) [(6)] Green River downstream from the western boundary of Mammoth Cave National Park, except from lock and dam #5 downstream four and eight-tenths (4.8) miles to the confluence of Ivy Creek; [from Green River Lake dam to the mouth;]

(g) [(7)] Barren River downstream from Barren River Lake dam, except from lock and dam #1 downstream three and five-tenths (3.5) miles to the confluence with Mortar Branch; [to the mouth;]

(h) [(8)] Kentucky River downstream from Beattyville [downstream to the mouth];

(i) [(9)] Rough River downstream from Rough River Lake dam [to the mouth]; and

(j) [(10)] Rolling Fork River.

[Section 7. Musseling is prohibited in the following designated areas which are established as mussel sanctuaries:

(1) The Tennessee River from Kentucky Dam downstream to river mile seventeen and eight-tenths (17.8).

(2) The stream segments 200 yards below any dam on any stream.

(3) The Cumberland River from Barkley Dam downstream to U.S Highway 62 bridge.

(4) All embayments on Barkley and Kentucky Lakes as defined by the Kentucky Lake Musseling Waters Map and the Lake Barkley Musseling Waters Map, both of which are hereby incorporated by reference. Maps shall be available for inspection or purchase by contacting the Division of Fiscal Control, Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m. on Monday through Friday, except holidays. The effective date of the maps shall be

August 15, 1993.

(5) The Ohio River:

(a) Between river mile 418 and river mile 419;

(b) Between river mile 965.0 and river mile 974.1;

(c) Between river mile 387.0 at Ruggles Run, Kentucky and river mile 388.7 at Cummins Branch, Kentucky; and

(d) Between river mile 394.6 at Lindseys Creek, Ohio, and river mile 397.1 at Old Ferry Landing, Manchester, Ohio.

(6) The Green River from lock and dam #5 downstream four and eight-tenths (4.8) miles to the confluence of Ivy Creek and from the eastern boundary of Mammoth Cave National Park upstream ninety-seven and six-tenths (97.6) miles to the Green River Lake dam.

(7) The Barren River from lock and dam #1 downstream three and five-tenths (3.5) miles to the confluence with Mortar Branch.]

Section 7. (1) Except as otherwise stipulated in this section, a person shall not mussel except between 6 a.m. and 6 p.m.

(2) Musseling hours shall be:

(a) 8:30 a.m. to 3:30 p.m. during December through February; and

(b) 8 a.m. to 6 p.m. during the remainder of the year on the following waters:

1. The west side of:

a. Kentucky Lake; or

b. Barkley Lake;

2. The canal connecting Kentucky and Barkley lakes; and

3. From Cumberland River mile thirty-six and two-tenths (36.2) at Big Horse Ford Light downstream to Barkley Lake Dam.

(3) Musseling hours shall be:

(a) 9:30 a.m. to 3 p.m. during December through February; and

(b) 9:30 a.m. to 5 p.m. during the remainder of the year on:

1. The east side of:

a. Kentucky Lake; or

b. Barkley Lake.

[Section 8. Musseling is permitted during the hours of 6 a.m. and 6 p.m. daily except in Barkley and Kentucky Lakes where the hours shall be as follows:

(1) West side of each lake as marked by the red navigation buoys or fifty-five (55) feet of water depth.

(a) December - February - 8:30 a.m. to 3:30 p.m.

(b) March - November - 8 a.m. to 6 p.m.

(2) East side of each lake as marked by the red navigation buoys on both lakes:

(a) December - February - 9:30 a.m. to 3 p.m.

(b) March - November - 9:30 a.m. to 5 p.m.

(3) Exception: The brailing hours for the entire canal area connecting Kentucky and Barkley lakes and all of Barkley Lake from Barkley Dam south to Cumberland River mile 36.2 (Big Horse Ford light and day marker) shall be as follows:

(a) December - February - 8:30 a.m. to 3:30 p.m.

(b) March - November - 8 a.m. to 6 p.m.

(4) Saturday and Sunday brailing on Kentucky Lake is prohibited during the month of March and during the period beginning on the Saturday preceding Memorial Day and extending through Labor Day.

(5) Saturday and Sunday brailing on Barkley Lake is prohibited beginning on the Saturday preceding Memorial Day and extending through the 30th day of September. Brailing is further prohibited on Kentucky and Barkley Lakes on Memorial Day, July 4th and Labor Day.]

Section 8. A person may mussel year-round, except:

(1) A person shall not mussel on Saturday or Sunday:

(a) On Kentucky Lake;

1. In March; or

2. From the Saturday before Memorial Day through Labor Day.

(b) On Barkley Lake, from the Saturday before Memorial Day

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through September 30.

(2) On Kentucky Lake or Barkley Lake, a person shall not mussel on:

- (a) Memorial Day;
- (b) Independence Day; or
- (c) Labor Day.

Section 9. (1) A person shall:

(a) Determine the size of a mussel by attempting to pass the mussel through a circular opening with an inside diameter equal to the specified size limit.

(b) Immediately return a mussel which passes through the circular openings to the mussel bed from which it was taken.

(2) The mussel size limit shall be two and one-half (2 1/2) inches except as specified in this section.

(3) There shall be no size limit on the Asiatic clam (*Corbicula* sp.)

(4) The size limit for the following species shall be:

(a) [Section 9. The statewide size limits for taking of mussels shall be as follows. All mussels smaller than these minimum sizes shall immediately be returned to the bed from which taken.

(1) Washboard mussel [mussels], *Megaloniais nervosa*:

1. 3 13/16 inches until February 28, 1999;

2. Three and seven-eighths (3 7/8) inches from March 1, 1999

through February 29, 2000;

3. 3 15/16 inches from March 1, 2000 through February 28, 2001;

and

4. Four (4) inches thereafter. [; shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of three and three-fourths (3 3/4) inches.]

(b) [(2)] Three (3) ridge mussel [mussels], *Amblema plicata*:

1. 2 11/16 inches through January 29, 2000; and

2. Two and three-fourth (2 3/4) inches thereafter. [; shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and three-fourths (2 3/4) inches.]

(c) Maple leaf mussel, *Quadrula quadrula*:

1. 2 11/16 inches through January 29, 2000; and

2. Two and three-quarters (2 3/4) inches thereafter.

(d) Ebony shell mussel, *Fusconaia ebena*: two and three-eighth (2 3/8) inches.

[(3)] All other mussels, except the Asiatic clam, *Corbicula* sp. shall be large enough so as not to be able to pass through a circular ring or opening having a diameter of two and one-half (2 1/2) inches:

(4) The Asiatic clam, *Corbicula* sp., may be taken at any size.]

Section 10. A person shall not:

(1) Mussel, except by brail.

(2) Use or possess:

(a) On the water:

1. A brail longer than sixteen (16) feet;

2. More than two (2) brails;

3. A brail hook;

a. Made of wire smaller than fourteen (14) gauge; or

b. With a prong larger than one and one-fourth (1 1/4) inch, measured from the tip of the point to where the prongs are joined.

(b) On a licensed brail boat:

1. A dredge; or

2. A compressed air tank. [Method of Harvest. (1) Mussel harvesting, except as provided in Section 11 of this administrative regulation, shall be by brail only.

(2) No more than two (2) brails each sixteen (16) feet or less in length shall be simultaneously operated from any boat.

(3) More than two (2) brails may be carried aboard the boat.

(4) Mussel brail hooks shall be constructed of wire of at least fourteen (14) gauge; smaller wire is prohibited.

(5) Prongs of hooks shall be no longer than one and one-fourth (1 1/4) inch as measured from the tip of point to place on hook where the prongs are joined.

(6) Persons shall not possess dredges or compressed air tanks while on a licensed brail boat.]

Section 11. (1) A mussel license holder [Mussel Harvesters' Reporting Requirements. (1) Mussel license holders] shall submit an annual written report [annual written reports] to the department;

(a) By December 31 of each year;

(b) On forms provided by the department.

(2) [Musselers shall provide the department with the following information:

(a) Name, address and mussel license number;

(b) Dates of brailing activity;

(c) Waters brailed;

(d) Name or category of mussels taken;

(e) Weight of each type or category;

(f) Price received per pound of each type or category;

(g) Total value of mussels sold;

(h) Name and license number of buyer who bought mussels.

[(3)] The department shall not renew the license of a person who does not submit a complete report. [musseler who fails to submit a report or does not provide the required information until the complete report is submitted.]

Section 12. (1) A mussel buyer [Mussel Buyers' Reporting Requirements. (1) Mussel buyers] shall:

(a) Complete a mussel transaction report form each time he acquires a mussel. [shells are acquired.]

[(2)(a) Mussel buyers shall use the Mussel Transaction Report form (July 1994) which is incorporated by reference; and

(b) copies of the form may be inspected, copied, or obtained from the offices of the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday except holidays.]

(b) [(3) Mussel buyers shall] Use forms in sequential order.

[(4) Mussel buyers shall submit voided forms to the department.]

(c) Write [They shall write "void," their license number, date and signature] on voided forms:

1. The word "void";

2. His mussel buyer's license number;

3. The current date; and

4. His signature.

(d) Mail completed forms, including voided forms:

1. To the department;

2. In time to arrive on the 15th of each month.

[(5) Mussel buyers shall submit reports on each month's activity. Reports are due by the 15th of the month following the reported transaction.]

(e) If a shell was not acquired during a month, [(6) Mussel buyers who do not acquire shells during a particular month shall] submit a report stating that no business was conducted.

(2) [(7)] The department shall not renew the license of a mussel buyer until:

(a) All monthly forms are received; and

(b) The information required on the form is provided. [who fails to submit monthly reports or who does not provide the required information until all completed reports for the year are received.]

Section 13. A mussel [14. No mussels] designated as endangered shall not be taken.

Section 14. The following are incorporated by reference. They may be obtained from or examined at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, from 8 a.m. until 4:30 p.m. eastern time during business days:

(1) Kentucky Lake Musseling Waters Map, 1993;

(2) Barkley Lake Musseling Waters Map, 1993;

(3) Mussel License Application Form, 1996;

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(4) Mussel Harvest Report Form, 1990;

(5) Mussel Buyer's Monthly Report Form, 1994. [~~13. The commissioner may designate as disaster areas waters in which all live mussels have been killed, and may issue a special permit allowing the use of various harvest methods.]~~

C. THOMAS BENNETT, Commissioner  
ANN R. LATTA, Secretary  
MIKE BOATWRIGHT, Chairman  
DOUGLAS SCOTT PORTER, Counsel

APPROVED BY AGENCY: December 5, 1997

FILED WITH LRC: January 13, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 27, 1998 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 20, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Assistant Director, Division of Public Affairs/Policy, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406 FAX (502) 564-6508.

### REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: There is a maximum of 500 licensed musselers in Kentucky who are governed by this administrative regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. The increased size limits provided for in the amendment to this administrative regulation will temporarily reduce legal harvest and sale of some mussel species. This could have a slight negative impact on cost of living.

(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. This administrative regulation imposes no new requirements which would impact 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: Existing requirements that musselers and mussel buyers report their activities are not changed by the amendments to this administrative regulation.

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: This administrative regulation will impose no additional costs nor create additional savings.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No new paperwork requirements are imposed by the amendments to this administrative regulation. Musselers and mussel buyers must report their activities,

and the department must make sure these reports are complete before issuing new licenses.

(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: Fish and Game Fund.

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

(a) Geographical area in which administrative regulation will be implemented: Increasing the size limits of mussels may decrease harvest and sales temporarily. However, increased size limits will improve the long-term health and sustainability of the mussel resource.

(b) Kentucky: Minimal impact, since musseling activities are concentrated in limited areas of the state.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The size limit changes imposed by this administrative regulation were developed with public input from musselers and mussel buyers. They also represent an attempt to create uniform size limits among the states with commercial musseling. Other alternatives were considered and rejected during the public involvement phase of developing these size limits.

(8) Assessment of expected benefits:

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

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Possible overharvest of some mussel species; inability to control interstate commerce in undersized mussels.

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

(a) Necessity of proposed regulation if in conflict: Not applicable.

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was used in creating varying size limits for different mussel species and implementing these size limits over a several year period. Otherwise, tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

#### 301 KAR 2:240. Special bobcat harvest season.

RELATES TO: KRS [~~150.010;~~] 150.025, 150.170, [~~150.180;~~ ~~150.183;~~ ~~150.300;~~ ~~150.305;~~ ~~150.330;~~ ~~150.340;~~] 150.360, [~~150.365;~~] 150.370, [~~150.390;~~] 150.399, 150.400, 150.410, 150.411 [~~150.415;~~ ~~150.416;~~ ~~150.417~~]

STATUTORY AUTHORITY: KRS [~~13A.350;~~] 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) gives the department the authority to open and close seasons, make seasons conditional, apply seasons to portions of the state, and promulgate other administrative regulations reasonably necessary to carry out the provisions of KRS Chapter 150. This administrative regulation opens a bobcat taking season in portions of Kentucky, establishes harvest quotas and stipulates tagging requirements. [This

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administrative regulation is necessary to reinstitute a bobcat harvest season in Kentucky for the continued protection of bobcats while insuring a permanent and continued supply of this wildlife resource for present and future residents of the state. The function of this administrative regulation is to provide for the prudent taking of bobcats within reasonable limits based upon an adequate supply.]

Section 1. Definitions. (1) "Eastern bobcat zone" means the portion of Kentucky east of a line formed by and including Lewis, Rowan, Menifee, Powell, Estill, Jackson, Rockcastle, Pulaski and Wayne Counties.

(2) "Processed" is defined by KRS 150.010(23).

(3) "Raw fur" is defined by KRS 150.010(28).

(4) "Tagging agent" means a conservation officer, wildlife biologist or other department employee authorized to inspect and tag bobcat carcasses.

(5) "Western bobcat zone" means the portion of Kentucky west of a line formed by and including Hancock, Ohio, Muhlenberg, and Logan Counties.

Section 2. A person shall not take:

(1) A bobcat except:

(a) During the open furbearer season as established in 301 KAR 2:251, unless the season closes earlier under the provisions of Section 2 of this administrative regulation;

(b) In the eastern or western bobcat zones;

(c) Using hunting or trapping methods authorized by 301 KAR 2:251; or

(d) During daylight hours by hunting.

(2) More than two (2) bobcats per season.

Section 3. The department shall:

(1) Close the bobcat season in a zone before the end of the furbearer season if:

(a) 400 bobcats have been harvested in the eastern bobcat zone; or

(b) 300 bobcats have been harvested in the western bobcat zone.

(2) Distribute public notice of early closure at least twenty-four (24) hours in advance of the day the season will close.

Section 4. (1) Within forty-eight (48) hours of taking a bobcat, a person shall take to a tagging agent for inspection and tagging:

(a) The complete unskinned carcass; or

(b) The skinned carcass and the raw fur.

(2) A person shall not:

(a) Remove the tag until the raw fur is processed; or

(b) Unless authorized by the department, possess an unused bobcat tag. [Bobcat Taking Season, Zone, Methods of Harvest, Limits and Zone Quota, and License Requirements. (1) Bobcat taking season. The day following closure of deer gun season through January 31 or until the season quota is attained, whichever comes first.

(2) Harvest zone. That portion of the state east of the line formed by and including Lewis, Rowan, Menifee, Powell, Estill, Jackson, Rockcastle, Pulaski and Wayne counties.

(3) Methods of harvest. Bobcats shall be taken by hunting or by calling during daylight hours only, or by trapping. Callers shall use only hand or mouth operated calls.

(4) Limits and zone quota:

(a) The limit is two (2) bobcats per person per season.

(b) The bobcat harvest quota is 400. Should it be determined that the quota of 400 bobcats will be filled prior to January 31, the season shall close. Notice shall be given a minimum of twenty-four (24) hours in advance of the time and date of closing. All participants in the special bobcat season may regularly contact department officials within the harvest zone, or call the wildlife division during business hours (8 a.m. - 4:30 p.m.) at (502) 564-4406 to determine the status

of the harvest. No bobcats shall be tagged later than four (4) days after the announced date of closing or no later than forty-eight (48) hours following the January 31 season ending date, whichever comes first.

(5) License requirements. Bobcat hunters or trappers shall have in their possession valid Kentucky licenses for the respective method of harvest, except as exempted by KRS 150.170.

Section 2. Requirements for Possession, Tagging of Bobcats, Untagged Pelts, Tagging Agents and Possession of Bobcat Tags. (1) No person shall possess an untagged bobcat outside the legal bobcat harvest zone. It is illegal to hold a live bobcat in Kentucky except those held for exhibition by public agencies or for temporary exhibition by individuals as permitted by the commissioner.

(2) Anyone harvesting a bobcat shall take it to a tagging agent (authorized personnel of the department) for tagging within forty-eight (48) hours of being harvested, except as specified in Section 1(4)(b) of this administrative regulation. Prior to tagging, the taker shall validate eligibility according to Section 1(5) of this administrative regulation and provide his/her social security number. At the time a bobcat is tagged, the taker shall provide the tagging agent with the entire skinned bobcat carcass suitably enclosed in a plastic bag unless the owner of the bobcat intends to have the animal mounted or otherwise processed. The tagging agent may refuse to tag any bobcat if the carcass is not suitably enclosed in plastic.

(3) The tagging agent shall not tag an illegally taken bobcat. Any untagged bobcat pelt for which there is no carcass or any bobcat taken illegally may be seized.

(4) It is illegal for anyone other than a department employee to possess an unused bobcat tag.

Section 3. Processing Requirements. (1) Taxidermists are required to report monthly the status of bobcats in their possession. Taxidermists receiving tagged bobcat pelts or entire bobcats shall leave the tag attached until after the pelt is tanned or until the pelt is to be mounted. All untanned or unmounted bobcat pelts without a tag are subject to seizure.

(2) The lower jaw from bobcat carcasses received by taxidermists or fur processors, and the removed bobcat tag or the tag number shall be provided to the department when the bobcat is skinned. Jaw mail-in envelopes shall be provided upon request to the wildlife division.

(3) Tags shall remain attached to all bobcat pelts until the furs are processed.]

C. THOMAS BENNETT, Commissioner  
ANN R. LATTA, Secretary  
MIKE BOATWRIGHT, Chairman  
DOUGLAS SCOTT PORTER, Counsel

APPROVED BY AGENCY: December 5, 1997

FILED WITH LRC: January 13, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 27, 1998 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 20, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Assistant

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Director, Division of Public Affairs/Policy, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406 FAX (502) 564-6508.

### REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 1,000 persons will hunt or trap bobcats annually.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comment received. This administrative regulation should have no impact on cost of living or employment.

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

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

1. First year following implementation: A person taking a bobcat must take the carcass to a department official for tagging.

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: A slight indirect cost of having employees inspect and tag bobcats.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department must track bobcat harvest and report to the U.S. Fish and Wildlife Service.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund.

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

(a) Geographical area in which administrative regulation will be implemented: Not enough bobcats are harvested in Kentucky to have any significant economic impact. Individual trappers or taxidermists will benefit.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment opens bobcat hunting and trapping in western Kentucky, where bobcat populations have increased to the point where a limited harvest is advisable. The alternative of keeping the bobcat season closed in this area of the state was rejected because doing so would not be in keeping with sound wildlife management practices.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Increased bobcat populations may be having a slight negative impact on turkey and other prey species. If not controlled by hunting and trapping, this predation will increase.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

(a) Necessity of proposed regulation if in conflict: not applicable.

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### DEPARTMENT OF AGRICULTURE Division of Regulation and Inspections (Amendment)

#### 302 KAR 10:070. Consumer grade quality standards.

RELATES TO: KRS 260.620

STATUTORY AUTHORITY: KRS 260.620

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation defines consumer grade quality standards for individual eggs.

Section 1. The following shall be consumer grade quality standards for individual eggs:

(1) AA: The shell must be clean, unbroken and practically normal. The air cell must not exceed one-eighth (1/8) inch in depth. The white must be clear and firm so that the yolk outline will be only slightly defined when the egg is twirled before the candling light. The yolk must be practically free from apparent defects and may show unlimited movement and may be free or bubbly.

(2) A: The shell must be clean, unbroken and practically normal. The air cell must not exceed three-sixteenths (3/16) inch in depth, and may show unlimited movement and may be free or bubbly. The white must be clear and reasonably firm, and the yolk outline only fairly well defined, when the egg is twirled before the candling light. The yolk must be practically free from apparent defects.

(3) B: The shell must be unbroken, may be slightly abnormal, and may show slight stains but no adhering dirt. Approximately one-thirty-second (1/32) of the shell surface may be slightly stained when the stains are localized, and one-sixteenth (1/16) of the shell surface may be stained, if the stains are scattered. The air cell must not exceed three-eighths (3/8) inch in depth, may show unlimited movement, and may be free and bubbly. The white must be clear and may be slightly weak so that the yolk outline may be well defined when the egg is twirled before the candling light. The yolk may appear slightly enlarged or slightly flattened and may show other definite, but not serious defects.

~~{(4) C: The shell must be unbroken, may be abnormal, and may show slight to moderate stained areas covering not more than one-fourth (1/4) of the shell surface. Prominent stains and adhering dirt are not permitted. The air cell may be over three-eighths (3/8) inch in depth and be free or bubbly. The white may be weak or watery so that the yolk may appear off center when the egg is twirled before the candling light, also the yolk may be plainly visible. The yolk may appear dark, enlarged, and flattened and may show clearly visible germ development, but no blood due to such development. It may show other serious defects that do not render the eggs inedible. Small blood clots or spots one-eighth (1/8) inch in diameter may be present. If larger than one-eighth (1/8) inch in diameter, it shall be a loss.}~~

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: January 15, 1998

FILED WITH LRC: January 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative

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regulation will be held on Monday, February 23, 1998, at 11:30 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Friday, February 13, 1998, 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 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 wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mark Farrow, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696, Fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS

Contact Person: Larry Hatfield

(1) Type and number of entities affected: Egg producers, processors and wholesalers.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: N/A

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

- 1. First year following implementation: N/A
2. Second and subsequent years: N/A
(3) Effects on the promulgating administrative body: N/A
(a) Direct and indirect costs or savings:
1. First year: N/A
2. Continuing costs or savings: N/A
3. Additional factors increasing or decreasing costs: N/A
(b) Reporting and paperwork requirements: None
(4) Assessment of anticipated effect on state and local revenues:

N/A

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing personnel will be used for implementation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: Same as (a).

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: N/A

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(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:

(10) Any additional information or comments: The specifications for Kentucky consumer grades for marketing shell eggs, as prescribed in KRS 260.620, will be brought into conformity with federal specifications in accordance with KRS 260.620.

(11) TIERING: Is tiering applied? No. All producers of eggs will be treated the same.

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

401 KAR 63:060. List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list. [Hazardous air pollutants and source categories.]

RELATES TO: KRS 224.10-100, 224.20-110, 40 CFR Part 70, 42 USC 7401-7671q

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-110, 224.20-120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation provides the list of hazardous air pollutants pursuant to 42 USC 7412(b) as amended in the Federal Register, 61 FR 30823, June 18, 1996 [(Section 112(b) of the Act)] and the list of source categories and sub-categories, as published in the Federal Register, 57 FR 31591, July 16, 1992.

Section 1. Definitions. As used in this administrative regulation, terms not defined in this section shall have the meaning given to them in 401 KAR 63:001 [57:005].

(1) "Act" means the Clean Air Act promulgated at 42 USC 7401-7671q, as amended by PL 101-549, November 15, 1990.

(2) "Area source" means a stationary source of hazardous air pollutants that is not a major source.

(3) "Hazardous air pollutant" means a substance listed in Section 2 of this administrative regulation.

(4) "Major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, ten (10) tons per year or more of a hazardous air pollutant or twenty-five (25) tons per year or more of any combination of hazardous air pollutants, or a lesser quantity which the cabinet may establish on the basis of the potency, persistence, potential for bioaccumulation, or other characteristics or relevant factors pertaining to the pollutant.

(5) "Stationary source" means a building, structure, facility, or installation which emits or may emit an air pollutant.

Section 2. List of Hazardous Air Pollutants. The following chemicals are hazardous air pollutants [as listed in 42 USC 7412(b) (Section 112(b) of the Act)]:

Table with 2 columns: CAS number and Chemical name. Rows include Acetaldehyde, Acetamide, Acetonitrile, Acetophenone, Acetylamino fluorene, Acrolein, Acrylamide, and Acrylic acid.

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107131	Acrylonitrile	140885	Ethyl acrylate
107051	Allyl chloride	100414	Ethyl benzene
92671	4-Aminobiphenyl	51796	Ethyl carbamate (Urethane)
62533	Aniline	75003	Ethyl chloride (Chloroethane)
90040	o-Anisidine	106934	Ethylene dibromide (Dibromoethane)
1332214	Asbestos	107062	Ethylene dichloride (1,2-Dichloroethane)
71432	Benzene (including benzene from gasoline)	107211	Ethylene glycol
92875	Benzidine	151564	Ethylene imine (Aziridine)
98077	Benzotrithloride	75218	Ethylene oxide
100447	Benzyl chloride	96457	Ethylene thiourea
92524	Biphenyl	75343	Ethylidene dichloride (1,1-Dichloroethane)
117817	Bis(2-ethylhexyl)phthalate (DEHP)	50000	Formaldehyde
542881	Bis(chloromethyl)ether	76448	Heptachlor
75252	Bromoform	118741	Hexachlorobenzene
106990	1,3-Butadiene	87683	Hexachlorobutadiene
156627	Calcium cyanamide	77474	Hexachlorocyclopentadiene
[405602	Caprolactam]	67721	Hexachloroethane
133062	Captan	822060	Hexamethylene-1,6-diisocyanate
63252	Carbaryl	680319	Hexamethylphosphoramide
75150	Carbon disulfide	110543	Hexane
56235	Carbon tetrachloride	302012	Hydrazine
463581	Carbonyl sulfide	7647010	Hydrochloric acid
120809	Catechol	7664393	Hydrogen fluoride (Hydrofluoric acid)
133904	Chloramben	123319	Hydroquinone
57749	Chlordane	78591	Isophorone
7782505	Chlorine	58899	Lindane (all isomers)
79118	Chloroacetic acid	108316	Maleic anhydride
532274	2-Chloroacetophenone	67561	Methanol
108907	Chlorobenzene	72435	Methoxychlor
510156	Chlorobenzilate	74839	Methyl bromide (Bromomethane)
67663	Chloroform	74873	Methyl chloride (Chloromethane)
107302	Chloromethyl methyl ether	71556	Methyl chloroform (1,1,1-Trichloroethane)
126998	Chloroprene	78933	Methyl ethyl ketone (2-Butanone)
1319773	Cresols/Cresylic acid (isomers and mixture)	60344	Methyl hydrazine
95487	o-Cresol	74884	Methyl iodide (Iodomethane)
108394	m-Cresol	108101	Methyl isobutyl ketone (Hexone)
106445	p-Cresol	624839	Methyl isocyanate
98828	Cumene	80626	Methyl methacrylate
94757	2,4-D, salts and esters	1634044	Methyl tert butyl ether
3547044	DDE	101144	4,4-Methylene bis(2-chloroaniline)
334883	Diazomethane	75092	Methylene chloride (Dichloromethane)
132649	Dibenzofurans	101688	Methylene diphenyl diisocyanate (MDI)
96128	1,2-Dibromo-3-chloropropane	101779	4,4'-Methylenedianiline
84742	Dibutylphthalate	91203	Naphthalene
106467	1,4-Dichlorobenzene(p)	98953	Nitrobenzene
91941	3,3-Dichlorobenzidene	92933	4-Nitrobiphenyl
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)	100027	4-Nitrophenol
542756	1,3-Dichloropropene	79469	2-Nitropropane
62737	Dichlorvos	684935	N-Nitroso-N-methylurea
111422	Diethanolamine	62759	N-Nitrosodimethylamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)	59892	N-Nitrosomorpholine
64675	Diethyl sulfate	56382	Parathion
119904	3,3-Dimethoxybenzidine	82688	Pentachloronitrobenzene (Quintobenzene)
60117	Dimethyl aminoazobenzene	87865	Pentachlorophenol
119937	3,3'-Dimethyl benzidine	108952	Phenol
79447	Dimethyl carbamoyl chloride	106503	p-Phenylenediamine
68122	Dimethyl formamide	75445	Phosgene
57147	1,1-Dimethyl hydrazine	7803512	Phosphine
131113	Dimethyl phthalate	7723140	Phosphorus
77781	Dimethyl sulfate	85449	Phthalic anhydride
534521	4,6-Dinitro-o-cresol, and salts	1336363	Polychlorinated biphenyls (Arochlors)
51285	2,4-Dinitrophenol	1120714	1,3-Propane sultone
121142	2,4-Dinitrotoluene	57578	beta-Propiolactone
123911	1,4-Dioxane (1,4-Diethyleneoxide)	123386	Propionaldehyde
122667	1,2-Diphenylhydrazine	114261	Propoxur (Baygon)
106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)	78875	Propylene dichloride (1,2-Dichloropropane)
106887	1,2-epoxybutane	75569	Propylene oxide



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75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds
0	Glycol ethers
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers
0	Nickel Compounds
0	Polycyclic Organic Matter
0	Radionuclides (including radon)
0	Selenium Compounds

Section 3. List of Categories and Subcategories of Hazardous Air Pollutants. The following are major and area source categories and subcategories [as listed in 42 USC 7412(c)(1) and Federal Register 57 FR 31576, July 16, 1992]:

(1) For major sources.

(a) Fuel combustion.

1. Engine test facilities;
2. Industrial boilers;
3. Institutional/commercial boilers;
4. Process heaters;
5. Stationary internal combustion engines; and
6. Stationary turbines.

(b) Nonferrous metals processing.

1. Primary aluminum production;
2. Secondary aluminum production;
3. Primary copper smelting;
4. Primary lead smelting;
5. Secondary lead smelting;
6. Lead acid battery manufacturing; and

7. Primary magnesium refining.
- (c) Ferrous metals processing.
  1. Coke by-product plants;
  2. Coke ovens: charging, top side, and door leaks;
  3. Coke ovens: pushing, quenching, and battery stacks;
  4. Ferroalloys production;
  5. Integrated iron and steel manufacturing;
  6. Nonstainless steel manufacturing-electric arc furnace (EAF) operation;
  7. Stainless steel manufacturing-electric arc furnace (EAF) operation;
  8. Iron foundries;
  9. Steel foundries; and
  10. Steel pickling-HC1 process.
- (d) Mineral products processing.
  1. Alumina processing;
  2. Asphalt/coal, tar application-metal pipes;
  3. Asphalt concrete manufacturing;
  4. Asphalt processing;
  5. Asphalt roofing manufacturing;
  6. Chromium refractories production;
  7. Clay products manufacturing;
  8. Lime manufacturing;
  9. Mineral wool production;
  10. Portland cement manufacturing;
  11. Taconite iron ore processing; and
  12. Wool fiberglass manufacturing.
- (e) Petroleum and natural gas production and refining.
  1. Oil and natural gas production;
  2. Petroleum refineries-catalytic cracking (fluid and other) units, catalytic reforming units, and sulfur plant units; and
  3. Petroleum refineries-other sources not distinctly listed.
- (f) Liquids distribution.
  1. Gasoline distribution (stage i); and
  2. Organic liquids distribution (nongasoline).
- (g) Surface coating processes.
  1. Aerospace industries;
  2. Auto and light duty truck (surface coating);
  3. Flat wood paneling (surface coating);
  4. Large appliance (surface coating);
  5. Magnetic tapes (surface coating);
  6. Manufacture of paints, coatings, and adhesives;
  7. Metal can (surface coating);
  8. Metal coil (surface coating);
  9. Metal furniture (surface coating);
  10. Miscellaneous metal parts and products (surface coating);
  11. Paper and other webs (surface coating);
  12. Plastic parts and products (surface coating);
  13. Printing, coating, and dyeing of fabrics;
  14. Printing/publishing (surface coating);
  15. Shipbuilding and ship repair (surface coating); and
  16. Wood furniture (surface coating).
- (h) Waste treatment and disposal.
  1. Hazardous waste incineration;
  2. Municipal landfills;
  3. Sewage sludge incineration;
  4. Site remediation;
  5. Solid waste treatment, storage and disposal facilities (tsdf); and
  6. Publicly owned treatment works (potw) emissions.
- (i) Agricultural chemicals production.
  1. 2,4-D salts and esters production;
  2. 4-Chloro-2- methylphenoxyacetic acid production;
  3. 4,6-Dinitro-o-cresol production;
  4. Captafol production;
  5. Captan production;
  6. Chloroneb production;
  7. Chlorothalonil production;

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8. Dacthal (tm) production;
9. Sodium pentachlorophenate production; and
10. Tordon (tm) acid production.
- (j) Fibers production processes.
  1. Acrylic fibers/modacrylic fibers production;
  2. Rayon production; and
  3. Spandex production.
- (k) Food and agriculture processes.
  1. Baker's yeast manufacturing;
  2. Cellulose food casing manufacturing; and
  3. Vegetable oil production.
- (l) Pharmaceutical production processes: Pharmaceuticals production.
  - (m) Polymers and resins production.
    1. Acetal resins production;
    2. Acrylonitrile-butadiene-styrene production;
    3. Alkyd resins production;
    4. Amino resins production;
    5. Boat manufacturing;
    6. Butadiene-furfural cotrimer (r-11);
    7. Butyl rubber production;
    8. Carboxymethylcellulose production;
    9. Cellophane production;
    10. Cellulose ethers production;
    11. Epichlorohydrin elastomers production;
    12. Epoxy resins production;
    13. Ethylene-propylene elastomers production;
    14. Flexible polyurethane foam production;
    15. Hypalon (tm) production;
    16. Maleic anhydride copolymers production;
    17. Methylcellulose production;
    18. Methyl methacrylate-acrylonitrile-butadiene-styrene production;
    19. Methyl methacrylate-butadiene-styrene terpolymers production;
    20. Neoprene production;
    21. Nitrile butadiene rubber production;
    22. Nonnylon polyamides production;
    23. Nylon 6 production;
    24. Phenolic resins production;
    25. Polybutadiene rubber production;
    26. Polycarbonates production;
    27. Polyester resins production;
    28. Polyethylene terephthalate production;
    29. Polymerized vinylidene chloride production;
    30. Polymethyl methacrylate resins production;
    31. Polystyrene production;
    32. Polysulfide rubber production;
    33. Polyvinyl acetate emulsions production;
    34. Polyvinyl alcohol production;
    35. Polyvinyl butyral production;
    36. Polyvinyl chloride and copolymers production;
    37. Reinforced plastic composites production;
    38. Styrene-acrylonitrile production; and
    39. Styrene-butadiene rubber and latex production.
  - (n) Production of inorganic chemicals.
    1. Ammonium sulfate production-caprolactam by-products plants;
    2. Antimony oxides manufacturing;
    3. Chlorine production;
    4. Chromium chemicals manufacturing;
    5. Cyanuric chloride production;
    6. Fume silica production;
    7. Hydrochloric acid production;
    8. Hydrogen cyanide production;
    9. Hydrogen fluoride production;
    10. Phosphate fertilizers production;
    11. Phosphoric acid manufacturing;
    12. Quaternary ammonium compounds production;
    13. Sodium cyanide production; and
    14. Uranium hexafluoride production.
- (o) Production of organic chemicals: Synthetic organic chemical manufacturing.
  - (p) Miscellaneous processes.
    1. Aerosol can-filling facilities;
    2. Benzyltrimethylammonium chloride production;
    3. Butadiene dimers production;
    4. Carbonyl sulfide production;
    5. Chelating agents production;
    6. Chlorinated paraffins production;
    7. Chromic acid anodizing;
    8. Commercial dry cleaning (perchloroethylene)-transfer machines;
    9. Commercial sterilization facilities;
    10. Decorative chromium electroplating;
    11. Dodocanedioic acid production;
    12. Dry cleaning (petroleum solvent);
    13. Ethylidene norbornene production;
    14. Explosives production;
    15. Halogenated solvent cleaners;
    16. Hard chromium electroplating;
    17. Hydrazine production;
    18. Industrial dry cleaning (perchloroethylene)-transfer machines;
    19. Industrial dry cleaning (perchloroethylene)-dry-to-dry machines;
    20. Industrial process cooling towers;
    21. Obpa/1,3-diisocyanate production;
    22. Paint stripper users;
    23. Photographic chemicals production;
    24. Phthalate plasticizers production;
    25. Plywood/particle board manufacturing;
    26. Polyether polyols production;
    27. Pulp and paper production;
    28. Rocket engine test firing;
    29. Rubber chemicals manufacturing;
    30. Semiconductor manufacturing;
    31. Symmetrical tetrachloropyridine production;
    32. Tire production; and
    33. Wood treatment.
  - (2) For area sources.
    - (a) Asbestos processing;
    - (b) Chromic acid anodizing;
    - (c) Commercial dry cleaning (perchloroethylene)-transfer machines;
    - (d) Commercial dry cleaning (perchloroethylene)-dry-to-dry machines;
    - (e) Commercial sterilization facilities;
    - (f) Decorative chromium electroplating;
    - (g) Halogenated solvent cleaners; and
    - (h) Hard chromium electroplating.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on February 23, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air

Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: The amendment to this administrative regulation deletes the chemical caprolactam (CAS #105602) from the list of hazardous air pollutants. This amendment will bring the state's administrative regulation in line with the federal revisions as published in the Federal Register, June 18, 1996 (61 FR 30823). Several other minor revisions have been made to the text of this administrative regulation to bring it into compliance with the drafting requirements of KRS Chapter 13A.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings resulting from this amendment beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. The amendment to this administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

(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 amendment may reduce the reporting requirements since caprolactam has been delisted.

2. Second and subsequent years: See (c)1 above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings caused by this amendment.

2. Continuing costs or savings: There are no continuing costs or savings caused by this amendment.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: This proposed amendment imposes no reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: There is no anticipated effects on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional funding is necessary to implement and enforce this amendment.

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

(a) Geographical area in which administrative regulation will be implemented: The amendment will have no economic impact beyond that described in the federal rulemaking.

(b) Kentucky: The amendment will have no known economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation, 40 CFR 63, Subpart C. This amendment is required in order for the Commonwealth to retain its existing delegation of

authority to enforce the federal NESHAP regulations, pursuant to its approved Title V permitting program.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate the amendment to this administrative regulation.

(a) Necessity of proposed regulation if in conflict: This amendment is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this amendment to revise its list of hazardous air pollutants to make the list equal the U.S. EPA's, so that Kentucky's air permitting program will conform with the federal program as required. This amendment will not impose any additional requirements on Kentucky industries.

(11) TIERING: Is tiering applied? No. Tiering is not applicable. There are no standards or requirements relating to this amendment.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for the amendment to this administrative regulation is found at 42 USC 7412(b), as amended by the Federal Register, 61 FR 30823, June 18, 1996. The U.S. EPA may grant states implementation and enforcement authority for federal NESHAP regulations pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found in KRS Chapters 224 and 13A.

3. Minimum or uniform standards contained in the federal mandate. The proposed amendment contains no minimum or uniform standards.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose standards, responsibilities, or requirements.

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. This amendment does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This amendment does not relate to any known aspect or service of local government.

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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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no other explanation.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (Amendment)

#### 401 KAR 63:100. General provisions.

RELATESTO: ~~KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.1-63.15, 42 USC 7401, 7412, 7414, 7416, 7601; Federal Register, 59 FR 12430-12459, March 16, 1994]~~

STATUTORY AUTHORITY: ~~KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.1-63.15; Federal Register 59 FR 12430-12459, March 16, 1994]~~, 42 USC 7401, 7412, 7414, 7416, 7601

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes general provisions for national emission standards source categories. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. As used in 40 CFR 63.1 to 63.15, the following terms shall be defined as provided in this section:

(1) "State" means the Commonwealth of Kentucky.

(2) "State permitting authority" means the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 63.1 to 63.15, (40 CFR 63 Subpart A), General provisions, as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, [~~Federal Register, 59 FR 12430-12459, March 16, 1994;~~] is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky, 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky, 41105, (606) 920-2067 [~~325-8569~~];

(c) Bowling Green Regional Office, 1508 Western Avenue, Bowling Green, Kentucky, 42104, (502) 746-7475 [~~843-5475~~];

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky, 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky, 41701, (606) 435-6022 [~~439-2391~~];

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606) 878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky, 42303, (502) 687-3704 [~~686-3304~~]; and

(h) [(g)] Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky, 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are

available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on February 23, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: The amendment to this administrative regulation incorporates by reference the revised federal National Emission Standards for Hazardous Air Pollutants (NESHAP), General Provisions, 40 CFR Part 63, Subpart A, as published in the Code of Federal Regulations, July 1, 1997. The provisions of the federal NESHAP regulation continue to apply to owners or operators of affected sources that are subject to standards, limitations, prohibitions, or other federally enforceable requirements established in 401 KAR Chapter 63, except when otherwise specified in a particular subpart or in a relevant standard.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings resulting from this amendment beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. The amendment to this administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in the federal regulation. The compliance, notification, and reporting requirements are in 40 CFR 63.6 through 63.10.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings caused by this amendment beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or

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savings caused by this amendment beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce the amendment to this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: The amendment to this administrative regulation will have no economic impact beyond that described in the federal rulemaking.

(b) Kentucky: The amendment will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation, 40 CFR 63, Subpart A. This amendment is required in order for the Commonwealth to retain its existing delegation of authority to enforce the federal NESHAP 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: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate the amendment to this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The amendment to this administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this amendment to incorporate by reference the amendments to the federal regulation, 40 CFR 63, Subpart A, so that Kentucky's air permitting program will conform with the federal program as required.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the provisions of the federal regulation without change. There is no tiering of requirements in the federal regulation and, therefore, no tiering of requirements by the state.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.1 to 63.15 (Subpart A). The U.S. EPA may grant states implementation and enforcement authority for federal NESHAP regulations pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards

are found in KRS Chapters 224 and 13A.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, (40 CFR Part 63, Subpart A), contains general procedures and criteria to implement emission standards for stationary sources that emit or have the potential to emit one or more of the substances listed in 401 KAR 63:060. Sources subject to 40 CFR Part 63 standards must also comply with the provisions of Subpart A, except when general provisions are overridden by source-specific standards.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

### LABOR CABINET

#### Department of Workers' Claims (Amendment)

#### 803 KAR 25:190. Utilization review and medical bill audit.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5), 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims, and the commissioner may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(5) also requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. This administrative regulation insures that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and audit program.

Section 1. Definitions. (1) "Carrier" is defined by KRS 342.011(6).

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(2) "Commissioner" is defined by KRS 342.0011(9).

(3) ~~{(2)}~~ "Denial" means a determination by the utilization reviewer that the medical treatment or service under review is not medically necessary or appropriate and, therefore, payment is not recommended.

(4) ~~{(3)}~~ "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.

(5) ~~{(4)}~~ "Preauthorization" means a process whereby payment for a medical service or course of treatment is assured in advance by a carrier. ~~[review by the utilization review program of the medical necessity and appropriateness of medical services prior to the service being rendered.]~~

(6) ~~{(5)}~~ "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments for a compensable injury or disease. Medical services which are rendered or requested for incidents which are noncompensable under KRS Chapter 342 shall not be subject to utilization review.

(7) ~~{(6)}~~ "Utilization review and medical bill audit plan" means the written plan submitted to the commissioner by each ~~[insurance] carrier, [individual self-insured employer, group self-insurer, or vendor]~~ describing the procedures governing utilization review and medical bill ~~[bills]~~ audit activities.

(8) ~~{(7)}~~ "Vendor" means a person or entity ~~[which is not required to implement a utilization review or medical bill audit program, but]~~ which implements a utilization review and medical bill audit program for purposes of offering those services to ~~[insurance] carriers; individual self-insured employers or group self-insurers.~~

Section 2. Utilization Review and Medical Bill Audit Program. (1) The utilization review program shall assure that:

- (a) A utilization reviewer is appropriately qualified;
- (b) Treatment rendered to an injured worker is medically necessary and appropriate; and
- (c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

- (a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy complies with KRS Chapter 342 and applicable administrative regulations;
- (b) A medical bill auditor is appropriately qualified; and
- (c) A statement for medical services is not disputed without reasonable grounds.

Section 3. Utilization Review and Medical Bill Audit Plan Approval.

(1) All carriers ~~[An insurance carrier, individual self-insured employer, and group self-insurer]~~ shall fully implement and maintain a utilization review and medical bill audit program.

(2) All carriers ~~[Each insurance carrier, individual self-insured employer and group self-insurer]~~ shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve [a] utilization review and medical bill audit plans which comply ~~[plan which complies]~~ with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. ~~[The utilization review and medical bill audit program described in the written plan shall comply with the requirements of this administrative regulation.]~~ Upon approval, the vendor shall receive written notice from the commissioner.

(4) Utilization review shall be performed by a private review agent certified by the Kentucky Cabinet for Health Services pursuant to KRS 211.461 to 211.466. A medical bill audit plan shall not require certification by the Kentucky Cabinet for Health Services.

(5) Carriers who contract ~~[An insurance carrier, individual self-insured employer, and group self-insurer which contracts]~~ with an

approved vendor for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(6) A plan shall be approved for a period of four (4) years, or until December 31, 2000, whichever is later. At least ninety (90) days prior to the expiration of the period of approval, ~~a [December 31, 2000, and every four (4) years thereafter, an insurance] carrier or its~~ ~~[-individual self-insured employer, group self-insurer, and]~~ approved vendor shall apply for renewal of the approval. During the term of an approved plan, the commissioner shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

Section 4. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include the following elements:

(1) A description of the process, policies and procedures whereby decisions shall be made.

(2) A description of the specific criteria utilized in the decision making process, including a description of the specific medical guidelines used as the resource to confirm the medical diagnosis and to provide consistent criteria and practice standards against which care quality and related costs are measured.

(3) A description of the criteria by which claims, medical services and medical bills shall be selected for review.

(4) A description of the qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit and the manner in which the personnel shall be involved in the review process.

(5) A description of the process to assure that treatment plans shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096.

(6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096.

(7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision.

(8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program.

(9) An assurance that a database shall be maintained recording the instances of utilization review, medical bill audit, the name of the reviewer, the extent of the review, the conclusions of the reviewer, and the action, if any, taken as the result of the review. Data shall be maintained for a period of no less than two (2) years and shall be subject to audit by the commissioner, or his agent pursuant to KRS 342.035(5)(b).

(10) An assurance that a toll free line shall be provided for an employee or medical provider to contact the utilization reviewer. The reviewer or a representative of the reviewer shall be reasonably accessible to interested parties at least five (5) days per week, forty (40) hours per week during normal business hours.

(11) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information.

(12) An assurance that the acute low back pain practice parameter adopted by the commissioner pursuant to KRS 342.035(8)(a) shall be incorporated in the plan as the standard for evaluating applicable low back claims. Additional medical guidelines which may be adopted by the commissioner pursuant to KRS 342.035(8)(a) shall be incorporated in a utilization review plan.

Section 5. Claim Selection Criteria. (1) Unless the carrier denies the claim [is denied] as noncompensable, medical services reasonably related to the [a] claim shall be subject to utilization review if:

- (a) A medical provider requests preauthorization of a medical

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treatment or procedure; or

(b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received; or

(c) The total medical costs cumulatively exceed \$3000; or

(d) The total lost work days cumulatively exceed thirty (30) days;

or

(e) An arbitrator or administrative law judge orders a review.

(2) If applicable, utilization review shall commence when the carrier has notice that ~~[begin no later than fifteen (15) days following the occurrence of]~~ a claims selection criteria has been met.

(a) When preauthorization has been requested, the initial utilization review decision shall be communicated to the medical provider and employee [rendered] within two (2) working [thirty (30)] days of the initiation of the utilization review process, unless additional information is required. Where additional information is required, tender of a single request shall be made within two (2) additional working days. The requested information shall be tendered by the medical provider within ten (10) working days. The initial utilization review decision then shall be rendered within two (2) working days following receipt of requested information.

(b) When retrospective utilization review occurs, the initial utilization review decision shall be communicated to the medical provider and employee within ten (10) days of the initiation of the utilization review process, unless additional information is required. Where additional information is required, tender of a single request shall be made within two (2) additional working days. The requested information shall be tendered by the medical provider within ten (10) working days. The initial utilization review decision then shall be rendered within two (2) working days following receipt of requested information.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be provided within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020. The thirty (30) day period shall commence on the date of the final utilization review decision.

(5) Each medical bill shall be initiated [audited] within seven (7) days of receipt to assure:

(a) Compliance with applicable fee schedules;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096.

(6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020.

Section 6. Utilization Review and Medical Bill Audit Personnel Qualifications. (1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. A licensed physician, registered nurse, licensed practical nurse, medical records technician or other personnel, who through training and experience is qualified to issue decisions on medical necessity or appropriateness, shall issue the initial utilization review approval.

(2) A licensed physician shall issue an initial utilization review denial. A licensed physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.

(3) Personnel conducting a medical bill audit, shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 7. Written Notice of Denial. (1) Following initial review, a

written notice of denial shall be issued to both the medical provider [treating physician] and the employee in a timely manner but no more than ten (10) [thirty (30)] days from the initiation of the utilization review process. The notice of denial shall be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL" and shall contain:

(a) A statement of the medical reasons for denial;

(b) The name, state of licensure and medical license number of the reviewer; and

(c) An explanation of utilization review reconsideration rights.

(2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 8. Reconsideration. (1) A reconsideration process to appeal an initial decision shall be provided within the structure of utilization review. An aggrieved party may request reconsideration of the initial utilization review decision within ten (10) days of receipt of a written notice of denial. Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer. A written reconsideration decision shall be rendered within ten (10) [twenty-one (21)] days of receipt of a request for reconsideration. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION". Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.

(2) If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area has not previously reviewed the matter, an aggrieved party may request further review by a board eligible or certified physician in the appropriate specialty or subspecialty. A written decision shall be rendered within ten (10) days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".

(3) A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit. An aggrieved party may request reconsideration of the medical bill audit decision within ten (10) days of receipt of that decision. Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer. A written decision shall be rendered within ten (10) [seven (7)] days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT - RECONSIDERATION DECISION". A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020.

WALTER W. TURNER, Commissioner

STEPHEN B. COX, General Counsel

APPROVED BY AGENCY: December 17, 1997

FILED WITH LRC: December 19, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on the administrative regulation shall be held on February 23, 1998, 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 February 13, 1998, 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

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comments on the proposed administrative regulation. Written comments must be received prior to 10 a.m. (ET), on February 23, 1998, 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: Donna Elsen Floyd, 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: Donna Elsen Floyd

(1) Type and number of entities affected: All injured workers in Kentucky; all carriers handling workers' compensation claims; all medical care providers that treat injured workers; and vendors providing utilization review and medical bill audit services.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. The department does not anticipate an effect on cost of living and employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments were received. 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 amendments further define the current utilization review process. The refinements in the process do not impact compliance, reporting, or paperwork requirements to cause an effect on costs associated with these functions.

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: It is anticipated that the amendment may indirectly decrease administrative costs of the department by decreasing the number of medical fee disputes filed and litigated through administrative proceedings.

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

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: No additional paperwork or reporting requirements.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Normal budget allocations. No additional source necessary.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. The department does not anticipate an economic impact in the geographical area.

(b) Kentucky: No public comments were received. The department does not anticipate an economic impact on Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The department has developed these amendments through thoughtful debate by an active advisory committee consisting of representatives from interested parties. This alternative emerged as the most viable.

(8) Assessment of expected benefits: Increased access to expedient, cost-effective medical care for injured workers and decreased fee disputes that arise after services have already been

delivered.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Increased accessibility to medical providers for injured workers.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Decreased accessibility to medical providers for injured workers.

(c) If detrimental effect would result, explain detrimental effect: The amendments provide an alternative for medical providers to be assured payment for medical services that are delivered. Without such assurance, medical providers may be less willing to treat injured workers.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) Tiering: Tiering is not applied because this regulation is applied equally to all injured workers, carriers handling workers' compensation claims, medical providers treating injured workers, and vendors providing utilization review and medical bill audit services.

### PUBLIC PROTECTION AND REGULATION CABINET Public Service Commission (Amendment)

**807 KAR 5:069. Filing requirements and procedures for federally-funded construction projects of water associations, commissions, or districts or combined water, gas or sewer districts. [~~Water district and water association construction cases.~~]**

RELATES TO: KRS 278.020(1), 278.023, 278.190, 278.300 [Chapter 278]

STATUTORY AUTHORITY: KRS 278.020(1), 278.023, 278.040(3), 278.190, 278.300

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.040(3) provides that the commission may promulgate reasonable administrative regulations to implement the provisions of KRS Chapter 278. KRS 278.020(1) authorizes the commission to issue certificates of public convenience and necessity for utility construction. KRS 278.300 authorizes the commission to approve the assumption of any obligation, liability, or evidence of indebtedness by a utility. KRS 278.190 authorizes the commission to approve proposed changes in rates. KRS 278.023 provides that the commission shall review, recommend modifications to, and issue orders necessary to implement an agreement regarding a federally-funded construction project, including those portions of the agreement relating to financing, construction, and rates. KRS 278.023(2) provides that the commission shall prescribe by administrative regulation the specific documents required to be filed for commission review of a construction project financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development and to be undertaken by a water association, commission or district or a combined water, gas, or sewer district formed under KRS Chapter 74 or 273. This administrative regulation prescribes [~~sets out minimum~~] filing requirements and procedures a water association, commission, or district, or a combined water, gas or sewer district formed under KRS Chapter 74 or 273 [~~water district or water association~~] shall follow when seeking commission approval of a construction project financed in whole or in part under the terms of an agreement with the U.S. Department of Agriculture [~~by Farmers-Home Administration~~] or the U.S. Department of Housing and Urban Development.



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~~Section 1. [Commission Responsibility. The commission shall approve an application within thirty (30) days from the time the utility meets minimum filing requirements. Approval shall be by order granting a certificate of public convenience and necessity to construct proposed systems and authorizing any financing or revisions in customer rates necessary to the proposal and which are set out in the financing documents.~~

~~Section 2. Utility Responsibility. The utility shall file its application in proper form and include discussion of minimum filing requirements set out herein. Any deviation to the minimum filing requirements shall be clearly identified in the application and supported by an appropriate motion to deviate. The thirty (30) day period for commission review shall not begin until the minimum filing requirements are met or an order granting the motion to deviate is entered.~~

~~Section 3. Minimum Filing Requirements. A utility proposing to construct a project financed in whole or in part by the U.S. Department of Agriculture or the U.S. Department of Housing and Urban Development shall file with the commission the following documents and information: [An application filed under this administrative regulation shall include the following:]~~

~~(1) All documents and information required by 807 KAR 5:001, Section 8. [A formal application, signed by a utility official and counsel, consistent with requirements of 807 KAR 5:001, Section 8. An original and ten (10) of the application, including all exhibits, shall be submitted. The application shall clearly state reasons for filing and statutes under which commission approval is needed.]~~

~~(2) [Minimum filing requirements shall be defined as the following detailed information and shall be included with the application:~~

~~(a) Copy of FmHA letter of conditions. For projects financed with HUD funds; A copy of the documents from the U.S. Department of Agriculture or U.S. Department of Housing and Urban Development, as appropriate, stating approval of the project and [appropriate agency approval letter,] including all terms and conditions to be met; [shall be included.]~~

~~(3) A [(b)] copy of the [FmHA] letter of concurrence in bid award;~~

~~(4) A [(c)] copy of the preliminary and final engineering reports;~~

~~(5) A [(d)] certified statement from an authorized utility official confirming:~~

~~(a) [(1)] That the proposed plans and specifications for the project have been designed to meet the minimum construction and operating requirements set out in 807 KAR 5:066, Section 4 [5] (3) and (4), Section 5 [6] (1), Sections 6 and 7 [and 8], Section 8 [9] (1) through (3), Section 9 [(10)] (1) and Section 10 [(11)];~~

~~(b) [(2)] That all other state approvals or permits have [already] been obtained;~~

~~(c) [(3)] That any proposed rates shall produce the total revenue requirements set out in the engineering reports; and~~

~~(d) The [(4)] dates upon which [when] construction will begin and end.~~

~~(6) If applicable, a statement [(e)] that notice meeting the requirements of Section 2 [to the customers has been given in conformance with Section 4] of this administrative regulation has been given, together with a copy of the notice; and~~

~~(7) If applicable, [shall be included in the application:~~

~~(f) If necessary, a motion requesting approval to deviate from any minimum construction standard or operating condition set out in subsection (5)(a) [(2)(d)] of this section, together with supporting evidence [The motion shall be sufficiently supported] to identify and explain the reasons that the minimum requirements cannot be met.~~

~~Section 2. [(4)] Notice to Customers of Rate Change. If a change in rates is required to finance the construction project, the [(A)] utility shall, before [give public notice to its customers of a proposed rate change made under this administrative regulation in the following manner:~~

~~(1) Prior to or at the same time] application is made, [(a one (1) time notice shall be given by either direct] mail to each customer, or publish in a newspaper of general circulation in the local service area, a [:~~

~~(2) The] notice that contains [shall contain] the current and proposed rates and a brief description of the construction project.~~

~~Section 3. [(5)] Additional Construction Activity. If [(In instances where] surplus project funds remain after the approved construction has been completed, the [(a) utility may construct additional plant facilities [as an ordinary extension of service] without prior commission approval if [it results in] no change in existing [customer's] rates will result. The utility shall notify the commission in writing of [(any) additional construction proposed under this section, and shall attach to the notice a statement of the federal lending agency authorizing the utility to use the remaining project funds in the manner proposed. [(include appropriate borrower authorization statements:]]~~

~~Section 4. [(6)] System Maps and Records. Within thirty (30) days after [(Following] completion of any construction authorized under this administrative regulation, the utility shall revise its [(maintain] system maps and records maintained pursuant to [(consistent with] 807 KAR 5:006, Section 22, to include all required information regarding the new construction. [(18:]]~~

B. J. HELTON, Chairman  
LAURA DOUGLAS, Secretary  
DEBORAH T. EVERSOLE, Attorney

APPROVED BY AGENCY: December 16, 1997

FILED WITH LRC: December 19, 1997 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 26, 1998 at 10 a.m. at the Public Service Commission's Office, Hearing Room No. 2, 677 Comanche Trail, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by February 19, 1998, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. 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: Deborah T. Eversole, Staff Attorney, Public Service Commission, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602, (502) 564-3490.

### REGULATORY IMPACT ANALYSIS

Contact person: Deborah Eversole, Staff Attorney

(1) Type and number of entities affected: According to current commission records, 135 water districts, 23 water associations, and 25 water commissions, and 30 combined water, gas, or sewer districts provide service in Kentucky and will be affected by the amendments to this regulation.

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

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

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

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

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competition) for the:

1. First year following implementation: No increase in paperwork or other requirements is required. The amendments are formal only.

2. Second and subsequent years: No long-term effect will result.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: See answer to (3)(a).

2. Continuing costs or savings: See answer to (3)(a).

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See answer to (3)(a).

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

None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No additional revenue is required to enforce or implement the amendments to this regulation.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. However, no economic effect on any geographical area is expected.

(b) Kentucky: No public comments were received. However, no economic effect on Kentucky is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There does not appear to be a reasonable alternative method to ensure that the commission has sufficient information to process a federally-funded water construction case.

(8) Assessment of expected benefits: The amendments will clarify requirements and ensure consistency with applicable statutes and regulations.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: N/A

(b) State whether a detrimental effect on environment and public health would result if not implemented: 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 exists.

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Neither the statute requiring expedited review of federally financed construction projects nor the filing requirements necessary to enable the commission to perform this expedited review vary based on the utility's size. The requirements are as minimal as possible while still enabling the commission adequately to assess the case.

### **PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)**

#### **810 KAR 1:018. Medication; testing procedures.**

RELATES TO: KRS 230.210 to 230.360

STATUTORY AUTHORITY: KRS 230.215(2)

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which thoroughbred racing shall be conducted in Kentucky. The function of this administrative regulation relates to the use of medication on the horses and requirements and controls in the administration of drugs or medications.

Section 1. Use of Medication. Full use of modern therapeutic measures and medication calculated to improve or protect the health

of a horse may be administered to a horse in training, under the direction of a licensed veterinarian. In the interest of protecting the racing public, health of the horse, safety of the participants in a race, nurturing formful racing, and improvement of the breed of thoroughbreds:

(1) While participating in a race, a horse shall not carry in its body any medication, drug, substance, or metabolic derivative, which:

(a) Is a narcotic;

(b) Could serve as a local anesthetic or tranquilizer; or

(c) Could stimulate or depress the circulatory, respiratory, or central nervous system of a horse, thereby effecting its speed.

(2) Drugs which may mask or screen the presence of prohibited drugs, or prevent or delay testing procedures shall be prohibited.

(3) Proof of detection by the commission chemist of a medication, drug, substance, or metabolic derivative, prohibited by subsection (1) of this section, in a saliva, urine, blood, or other specimen duly taken under the supervision of the commission veterinarian from a horse promptly after running in a race, shall be prima facie evidence that the horse was administered and carried prohibited medications, drugs, or substances, in its body while running in the race in violation of this administrative regulation.

Section 2. When Administration Prohibited. Only a licensed veterinarian shall administer, or cause to be administered, or participate, or attempt to participate, in any way in the administration to a horse registered for racing of any medication, drug, or substance on the day of a race for which the horse is entered and prior to the race. Medications, drugs, or substances shall not be administered less than four (4) hours prior to post time. The commission veterinarian or his designated representative may accompany any or all veterinarians.

Section 3. Responsibility for Prohibited Administration. (1) A person found to have administered a medication, drug, or substance which caused or could have caused a violation of Section 1 or 2 of this administrative regulation, or caused, or participated, or attempted to participate in any way in the administration, of medications, drugs, or substances, shall be subject to disciplinary action.

(2) The licensed trainer of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this administrative regulation shall bear the burden of proof showing freedom from negligence in the exercise of a high degree of care in safeguarding the horse from tampering. Failure to prove freedom from negligence or reliance on the professional ability of a licensed veterinarian shall be subject to disciplinary action.

(3) The assistant trainer, groom, stable watchman, or any other person having the immediate care and custody of a horse found to have been administered a medication, drug, or substance in violation of Sections 1 or 2 of this administrative regulation, if found negligent in guarding or protecting the horse from tampering shall be subject to disciplinary action.

Section 4. Record of Administration. Daily reports of any treatment of any horse registered for racing with any medication, drug, or substance shall be submitted by the licensed veterinarian administering or prescribing the treatment to the commission veterinarian. Detection of any unreported medication, drug, or substance by the commission chemist in a prerace or postrace test may be grounds for disciplinary action:

(1) Daily reports shall accurately reflect the identity of the horse treated, time of treatment, type and dosage of medication, drug, or substance, and method of administration.

(2) Daily reports shall be submitted on a timely basis to allow the commission veterinarian to verify designated medications, drugs, or substances which were prescribed, thereby insuring the accuracy of the published information. Designated medications, drugs, or substances prescribed in prerace treatment and submitted daily

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reports shall be in complete accord. A deviation in the treatment and reports shall result in the scratching of the particular horse, and may be grounds for disciplinary action.

Section 5. Commission Veterinarian List. As a guide to owners, trainers, and veterinarians, the commission veterinarian may from time to time publish a list of medications, shown by brand and generic names, specifically prohibited for racing. This list when published shall not be considered exclusive and medications shown thereon shall be considered only as among those, along with others not so listed, prohibited by general classification under Section 1 of this administrative regulation.

Section 6. Detention Area. Each licensed association shall provide and maintain on association grounds a fenced enclosure sufficient in size and facilities to accommodate stabling of horses temporarily detained for the taking of sample specimens for chemical testing. The detention area shall be under the supervision and control of the commission veterinarian.

Section 7. Horses to be Tested. (1) The stewards may at any time order the taking of a blood, urine, saliva or other specimen from any horse entered to be tested.

(2) Any owner or trainer may at any time request that a specimen be taken from a horse he owns or trains by the commission veterinarian and tested by the commission chemist.

(3) The costs of testing shall be borne by the owner or trainer requesting the test.

(4) In the absence of any order or request, the commission veterinarian shall take specimens from, and the commission chemist shall test, all horses which:

(a) Finish first in any race;

(b) ~~Finish first or second in any quinella or exacta race;~~

(c) ~~Finish first or second or third in any stakes; and~~

(d) Any horse whose performance in a race, in the opinion of the stewards, may require blood, urine, or saliva drug testing. ~~[have been altered by a prohibited substance.]~~

(c) Any horse randomly selected by the stewards.

Section 8. Procedure for Taking Specimens. (1) Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the commission veterinarian. Only the owner, trainer, groom, or hotwalker of a horse to be tested shall be admitted to the detention area without permission of the commission veterinarian.

(2) Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

(a) Buckets and water shall be furnished by the commission veterinarian.

(b) If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the commission veterinarian.

(c) A licensed veterinarian shall attend a horse in the detention area only in the presence of the commission veterinarian.

(3) One (1) of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

(a) The owner;

(b) The responsible trainer who, in the case of a claimed horse shall be the person in whose name the horse raced; or

(c) A stable representative designated by such owner or trainer.

(4) Containers previously used for specimens shall be thoroughly cleaned in the commission chemist laboratory and shall be sealed with the laboratory stamp which shall not be broken, except in the presence of the witness as provided by subsection (3) of this section.

(5) Samples taken from a horse, by the commission veterinarian or his assistant at the detention barn, shall be placed equally in double containers and designated as the "primary" and "secondary"

samples.

(a) These samples shall be sealed with tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness as provided by subsection (3) of this section.

(b) The commission veterinarian shall:

1. Identify the horse from which the specimen was taken;

2. Document the race and day, verified by the witness; and

3. Place the detached portions of the identification tags in a sealed envelope for delivery only to the stewards.

(c) After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the Racing Commission chemist's laboratory.

(d) The "secondary" sample shall remain in the custody of the commission veterinarian at the detention area and, as near as possible, shall be preserved in the same condition and temperature.

(e) The commission veterinarian shall take every precaution to ensure that neither the commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

(f) When the commission chemist has reported that the "primary" sample delivered to him contains no prohibited drug, the "secondary" sample shall be properly disposed.

(g) If after a horse remains a reasonable time in the detention area and a specimen may not be taken from the horse, the commission veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the commission veterinarian.

(h) If fifty (50) ml. or less of urine is obtained it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples. When the total urine collected consists of less than 100 ml., the "secondary" sample shall consist of the balance of urine collected over fifty (50) ml.

(i) Blood samples shall be initially taken in sufficient quantity to ensure that ample amounts are obtained for both the "primary" and "secondary" samples.

1. The "primary" and "secondary" blood samples shall be equal in quantity and consist of at least twenty (20) ml., for a total of forty (40) cc.

2. In the event of an initial finding of a prohibited drug or of a negative in violation of these administrative regulations, the commission chemist shall notify the commission, both orally and in writing, and an oral or written notice shall be issued by the commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt by the commission of the initial finding.

(j) Upon an initial finding of a prohibited drug or negative, the commission veterinarian shall immediately freeze the "secondary" urine sample.

1. The "secondary" samples shall be tested after notification of the owner, trainer or other responsible person, if requested.

2. Testing of the "secondary" samples shall be performed at a referee laboratory selected by representatives of the owner, trainer or other responsible persons from a list of not less than two (2) laboratories approved by the Kentucky Racing Commission.

(k) The commission shall bear the responsibility and cost of preparing and shipping the sample, but the cost of testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer or other person charged.

1. A commission representative and the owner, trainer or other responsible person or a representative of the persons notified under these administrative regulations may be present at the time of the opening, repacking, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

2. The referee laboratory shall be informed of the initial findings of the commission chemist prior to making the test.

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3. If the finding of the referee laboratory does not confirm the finding of the initial test performed by the commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

(1) The commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the commission chemist as soon as possible after sealing, but a manner so as not to reveal the identity of a horse from which the sample was taken.

Section 9. Procedure for Testing. (1) The commission chemist shall be responsible for safeguarding and testing each specimen delivered to his laboratory by the commission veterinarian. Each specimen shall be divided into portions so that one (1) portion shall be used for initial testing for unknown substances, and the second portion used for confirmation tests.

(2) The commission chemist shall conduct individual tests on each specimen capable of screening the specimen for prohibited substances, and other tests as necessary to detect and identify any suspected prohibited substance or metabolic derivative with specificity. Pooling of specimens shall be permitted only with the knowledge and approval of the commission veterinarian.

(3)(a) Upon the finding of a test negative for prohibited substances, the remaining portions of the specimen may be discarded.

(b) Upon the finding of tests suspicious or positive for prohibited substances, the tests shall be reconfirmed, and the remaining portions, if available, of the specimen shall be preserved and protected until such the stewards rule that the specimen shall be discarded.

(4) The commission chemist shall submit to the state steward a written report as to each specimen tested, indicating by specimen tag identification number, whether a specimen was tested negative or positive for prohibited substances. The commission chemist shall not report the test findings to persons other than the state steward or his designated representative.

(a) In the event the commission chemist should find a specimen suspicious for a prohibited medication, he may request additional time for test analysis and confirmation.

(b) The racing association shall not make distribution of any purses until it is given clearance of chemical tests by the stewards.

(5)(a) The commission chemist shall make a further report to the state steward on any substance which his tests reveal are not normal in a horse.

(b) These reports shall be confidential and are not evidence for disciplinary action.

(c) These reports may be used as a warning to the trainer or veterinarian, by the stewards, by the commission veterinarian to improve his surveillance and by the Equine Research Program at the University of Kentucky.

(d) The residue of specimen material from these tests shall be preserved by the commission chemist until released by the racing commission.

(6) In reporting to the stewards a finding of a test positive for a prohibited substance, the commission chemist shall present documentary or demonstrative evidence acceptable in the scientific community and admissible in court in support of a professional opinion as to a positive finding.

RICHARD "SMITTY" TAYLOR, Chairman

DICK CARROLL, Office of the Attorney General

APPROVED BY AGENCY: January 13, 1998

FILED WITH LRC: January 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 25, 1998, at 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Pike, Lexington,

Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 1998, 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: Bernie Hettel, Executive Director, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, (606) 246-2040 Phone, (606) 246-2039 Fax.

### REGULATORY IMPACT ANALYSIS

Contact Person: Calvert Bratton

(1) Type and number of entities affected: Only the horses with a questionable performance will be affected. The number of horses affected by this amendment would vary from race to race.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None

(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: None

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(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: 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? Tiering was not applied. These

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amended changes would allow the stewards to drug test any horse whose race performance is questionable.

### PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)

#### 810 KAR 1:026. Racing associations.

RELATES TO: KRS 230.215(2), 230.225(1), 230.260(3)  
STATUTORY AUTHORITY: KRS 230.215(2), 230.225(1), 230.260(3), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), 230.225(1), and 230.260(3) requires that the commission promulgate administrative regulations prescribing conditions governing all aspects of horse racing. This administrative regulation establishes the requirements for racing associations.

Section 1. Maintenance of Grounds, Facilities and Uniform Track. Each association shall at all times maintain its grounds and facilities so as to be neat and clean, painted and in good repair, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance; with special consideration for the health and safety of horses there stabled, exercising, or entered to race; and shall have available adequate and proper implements to maintain a uniform track, weather conditions permitting.

Section 2. Results Boards, Totalizers Required. Each association shall provide and maintain mechanically operated totalizers and electronic boards showing odds, results, and other race information located in plain view of patrons.

Section 3. Starting Gate. Each association shall provide and maintain a working starting gate on every day horses are permitted to exercise on its racing strip. Each association shall have in attendance one (1) or more persons qualified to keep the starting gates in good working order whenever the gates are in use, and each association shall provide for periodic inspections of the gates.

Section 4. Stabling. (1) All association barns and stalls shall be:  
(a) Constructed of fire-resistant materials;  
(b) Clean, sanitary and equipped for adequate drainage;  
(c) Maintained in good repair.  
(2) The racing commission shall submit to the racing secretary prior to the opening of each race meeting a list of locations of approved off-track stabling facilities from which horses may be permitted to race. The locations shall be considered for purposes of these administrative regulations "association grounds."

Section 5. Stands for Officials. Each association shall provide and maintain stands commanding an uninterrupted view of the entire racing strip for racing officials. The stands and location shall be approved by the commission. Patrol judge stands shall be constructed so the floor shall be at least six (6) feet higher than the track rail.

Section 6. Distance Pole Markings. Each association shall cause quarter poles to be painted red and white, eighth poles to be painted green and white, and 16th poles to be painted black and white.

Section 7. Lighting. Each association shall provide and maintain flood lights so as to insure adequate illumination in the stable area and parking area. Adequacy of track lighting for night racing shall be determined by the commission.

Section 8. Facilities for Stable Employees. Each association shall

provide and maintain in good repair adequate living quarters and conveniently located sanitary facilities, which shall include showers, toilets, and wash basins for stable employees. No personnel shall be permitted to sleep in any stall or barn loft.

Section 9. Facilities for Jockeys. Each association shall provide and maintain adequate facilities for jockeys scheduled to ride each day. The facilities shall include accommodations for rest and recreation of jockeys on racing days, showers, toilets, wash basins, mirrors, arrangements for safekeeping of apparel and personal effects, snack bar, and other accommodations as requested by the clerk of scales.

Section 10. Facilities for Commission. Each association shall provide adequate office space for the commission on association grounds and shall make available to the commission, and mark accordingly, a season box of six (6) to eight (8) seats and appropriate parking places for use of the commission throughout each racing day. Each association shall honor for access to preferred parking facilities and all other areas on association grounds any ring, lapel button, or automobile emblem issued or designated as approved at any time by the commission, or by the Association of Racing Commissioners International.

Section 11. Sanitary Facilities for Patrons. Each association shall, on every racing day, provide adequate and sanitary toilets and wash rooms, and furnish free drinking water for patrons and persons having business at the association.

Section 12. Manure Removal. Each association shall provide and maintain adequate manure pits of the size and construction to handle refuse from stalls. The contents of the manure pits shall be removed from the stable area as promptly as is possible.

Section 13. Photo Finish Cameras. Each association shall provide and maintain at the finish line two (2) photo finish cameras for photographing the finish of races; one (1) camera to be held in reserve. The photo finish photographer shall promptly furnish to the stewards and placing judges prints of all finishes as may be requested and in such number as may be required for public posting. The association shall maintain a one (1) year file of all photo finishes.

Section 14. Patrol Films or Video Tapes. Each association shall at all times during a race meeting provide and maintain personnel and equipment necessary to produce adequate motion pictures or video tapes and record each race from start to finish.

(1) Projection or viewing equipment shall be adequate to permit simultaneous showing of head-on and side-angle views of the running of each race.

(2) Films and video tapes, shall be retained and secured by the association for not less than one (1) year and shall be available at all times to the commission and stewards. Each visual record of a race involving any questions, dispute, or controversy shall be filed with the commission upon order of the stewards.

(3) Films, and video tapes, shall be made available for viewing at the track by licensees who owned, trained, or rode a horse in the race requested to be viewed, and to members of the press.

Section 15. Ambulances. Each association shall provide and maintain at least one (1) man-ambulance and at least one (1) horse-ambulance during times horses are permitted to exercise or race. The ambulances shall be equipped, manned, and ready for immediate duty, and shall be located at an entrance to the racing strip.

Section 16. First Aid Room. Each association shall equip and maintain adequate first aid facilities with not less than two (2) beds and attendance of a competent physician and registered nurse during

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race hours unless the association can transport injured individuals to a fully-equipped hospital emergency room in five (5) minutes or less in an ambulance manned by a certified paramedic and certified emergency medical technician. The ambulance shall be on standby on association premises during race hours. In the absence of a competent physician, paramedics shall be equipped, at a minimum, with the following equipment: heart monitor and defibrillator, cellular phone, and airways intubation equipment.

Section 17. Track Kitchen. Each association shall provide adequate eating facilities within the stable area, maintained in a clean and sanitary manner at all times horses are stabled on association grounds.

Section 18. Communication System. Each association shall install and maintain in good working service communication system between the stewards' stand and patrol judges, parimutuel department, starting gate, public address announcer, and clerk of the scales.

Section 19. Fire Prevention. Each association shall be responsible for maintaining an adequate program for fire prevention and fire suppression. Each association within fifteen (15) days before commencement of a race meeting shall be inspected by the state or local fire marshal whose certification that the association plant and stable area meet fire safety requirements is necessary for the commission to approve commencement of the race meeting. Each association shall maintain a firefighting unit of trained personnel equipped with high-expansion foam fire extinguishers and other equipment as may be recommended by the local fire inspection authority. Each association shall prohibit:

- (1) Smoking in stalls, under shed rows, and in feed rooms;
- (2) Open fires, oil or gas lamps in stable area; and
- (3) Locking of stalls occupied by horses.

Section 20. Association Police. Each association shall provide and maintain competent police and watchman services, night and day, in and about association grounds, and shall furnish daily to the commission a report on any disturbances, drunkenness, or disorderly conduct committed by any person on association grounds.

Section 21. Security. Each association shall cause to be excluded from association grounds all persons designated by order of the commission or stewards to be excluded. Each association shall take measures to maintain security of horses on association grounds so as to protect from injury due to frightening or tampering with horses. Each association shall exclude from the paddock area, race strip, and winner's entrance all persons who have no immediate connection with the horses entered except members of the commission, racing officials, and duly accredited members of the news media.

Section 22. Vendors and Suppliers. Each association shall supervise the practice and procedures of all vendors of food, horse feed, medication, and tack, who have entry to the stable area. No association by virtue of this section shall attempt to control or monopolize proper selling to owners, trainers, or stable employees, nor shall an association grant a concession to any vendor of feed, racing supplies, or racing services. Every vendor of horse feeds or medications shall file with the commission veterinarian a list of products which he proposes to sell, including any new preparation or medication. No association shall permit the sale of any alcoholic beverage, beer excepted, within the stable area.

Section 23. Ejection or Exclusion From Association Grounds. (1) An association shall for probable cause eject or exclude from association grounds all persons:

- (a) Believed to be engaged in a bookmaking activity or solicitation of bets or touting and promptly submit a report to the:

1. Commission;
2. Stewards; and
3. Police.

(b) Who as a business or for compensation, either directly or indirectly, accepts any thing of value to be wagered or to be transmitted or delivered for wager to any pari-mutuel wagering enterprise, or participate in the transaction; and

(c) Attempting to use tax exempt admissions credentials not issued to him by the association.

(2) Associations shall eject or exclude from the stable areas on association grounds all persons, except those whose presence in the stable area is authorized as:

- (a) Persons licensed to conduct an activity, the conduct of which requires the presence of the licensee in the stable area;
- (b) Duly accredited members of the news media;
- (c) Guests of licensed owner or licensed trainer physically in the company of the owner or trainer;
- (d) Persons physically in the company of and under the control and supervision of a racing official, association security guard, association public relations department representative.

(3) Reports of all ejections or exclusions from association grounds for any reason shall be made immediately to the commission and the stewards. The reports shall state the name of all persons and circumstances.

Section 24. Ownership of Associations. Each association shall file with the commission a revised list of persons whose identity is required by 810 KAR 1:025, Section 6(2), immediately upon transfer of any beneficial interest or control in the association as from time to time may occur.

Section 25. Plan of Association Grounds. Each association shall file with the commission existing maps and plans of association grounds, showing all structures, piping, fire hydrants, fixed equipment, racing strip, noting elevation as filled, drained, and gapped, and composition of track base and cushion. Each association shall file revised maps or plans of association grounds upon any material change as may occur from time to time.

Section 26. Attendance Report. (1) In addition to filing with the commission a copy of the report required by KRS 138.480 to be filed with the Department of Revenue on admission taxes, each association shall file with the commission daily attendance reports showing a turnstile count of all persons admitted to association grounds where pari-mutuel wagering is conducted. The attendance report shall indicate the daily number of paid admissions, taxed complimentary admissions, and tax exempt admissions.

(2) On request from the commission, each association shall file with the commission a current badge list showing the names of all persons issued tax exempt admission credentials.

- (3) Tax exempt admission credentials shall not be transferable.

Section 27. Financial Report. In addition to filing with the commission copies of reports required by KRS 137.180 and 138.530 to be filed with the Department of Revenue on pari-mutuel and license taxes, each association shall furnish to the commission within sixty (60) days after the close of its fiscal year three (3) copies of its balance sheet and operating statement for the fiscal year along with a comparison to the prior year, which shall be duly sworn to by the treasurer of the association and certified by a licensed certified public accountant. The financial report shall be in a form as may be prescribed from time to time by the commission.

Section 28. Horseman's Bookkeeper. (1) Each association shall maintain a separate bank account, to be known as the "horsemen's account", with at all times sufficient funds in the account to pay all money owing to horsemen in regard to purses, stakes, rewards,

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claims, and deposits. Withdrawals from this account shall at all times be subject to audit by the commission, and the horsemen's bookkeeper in charge of the account shall be bonded.

(2) All portions of purse money shall be made available to earners within forty-eight (48) hours, dark days excluded after the result of the race in which the money was earned has been declared official; except, when the stewards shall order money withheld until final adjudication of a dispute determining which persons are entitled to the money in dispute.

(3) No portion of purse money other than jockey fees shall be deducted by the association for itself or for another, unless so requested in writing by the person to whom the purse monies are payable, or his duly authorized representative. Irrespective of whether requested, the horsemen's bookkeeper shall mail to each owner a duplicate of each record of a deposit, withdrawal, or transfer of funds affecting such owner's racing account at the close of each race meeting.

Section 29. Outriders. Each thoroughbred association shall employ at least two (2) outriders to escort starters to the post and to assist in the returning of all horses to the unsaddling area. No outrider shall lead any horse that has not demonstrated unruliness, but shall assist in the control of any horse which might cause injury to a jockey or others. Each association shall provide traditional wearing apparel. Outriders shall be required to be present on the racing strip, mounted, and ready to assist in the control of any unruly horse or to recapture any loose horse, at all times horses are permitted on the racing strip for exercising or racing. All persons exercising horses during training hours, or accompanying horses to the starting gate during racing hours shall wear a protective helmet and safety vest which shall provide a minimum of shock protection to the upper body of a five (5) rating as defined by the British Equestrian Trade Association. The term "exercising" includes breezing, galloping, or ponying horses.

Section 30. Valets. Each thoroughbred association shall employ a sufficient number of persons licensed as valets to attend each individual rider on a day's racing program. The valets shall be under the immediate supervision and control of the clerk of scales. No rider shall employ a valet or be attended by any person other than the valet assigned to him by the clerk of scales. No valet shall be assigned to the same rider for more than two (2) consecutive racing days. Valets shall be responsible for the care and cleaning up of his assigned riders apparel and equipment; shall insure his rider has the proper equipment and colors for each race; shall present the proper equipment and attend the saddling of his rider's mount; and shall attend the weighing out of his rider. No valet or other jockey room attendant may place a wager for himself or another, directly or indirectly, on races run while he is serving as a valet. Each association shall provide uniform attire for valets who shall wear same at all times while performing their duties within public view.

Section 31. Minimum Purse and Stakes Values. No thoroughbred association shall program or run any race the purse for which is less than \$2,000 in cash without special permission of the commission. No thoroughbred association shall program or run any stakes race the added value of which is less than \$10,000 in cash added by the association to stakes fees paid by owners. The minimum cash amounts paid by the association shall be exclusive of nomination, eligibility, entrance, and starting fees, and exclusive of other cash awards, premiums, prizes, or objects of value.

Section 32. Maximum Number of Races. No association shall program or run more than nine (9) races on any single racing day without special permission of the commission.

Section 33. Two (2) Year Old Races. Beginning on March 1 of each year, each thoroughbred association shall program in the condi-

tions book at least four (4) two (2) year old races each week.

Section 34. (1) Exculpatory clauses. Effective January 1, 1997, agreements including but not limited to stall applications, entry forms and condition books between persons or entities licensed by the Kentucky Racing Commission regarding the stabling of horses, the racing of horses, the training of horses or other activities at tracks owned or operated by licensed associations, and conditions of racing established by licensed associations, shall not contain provisions which absolve or hold harmless a licensee from liability, or limit the liability of a licensee, for loss, loss of use, injury or damage caused or contributed to by the acts or omissions of any licensee or its agents or employees, except for:

(a) Ordinary negligence which causes or contributes to loss, injury or damage to horses while on the premises of a licensed association; and

(b) Ordinary negligence which causes or contributes to personal injury or property damage, including but not limited to loss, loss of use, injury or damage to horses arising from the use of grass fields or gallops owned or controlled by the licensed association. Subject to the above exceptions, all licensees participating in the stabling of horses, the racing of horses, the training of horses, and related activities at tracks owned or operated by licensed associations shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law. No licensee shall attempt to limit liability of any person or entity for gross negligence or intentional wrongdoing.

(2) Constructive notice to and consent of licensees. All persons licensed by the Kentucky Racing Commission shall be deemed, as a condition of licensure, to have notice of and to have consented to exculpatory provisions, which comply with the limitations set forth in this administrative regulation, included in agreements between licensees and in conditions of racing established by a licensed association. Exculpatory provisions which exceed the limitations set forth in this administrative regulation shall be void and unenforceable in their entirety.

(3) Model provision. The following provision shall be deemed to comply with the limitations set forth in this administrative regulation: All Kentucky Racing Commission licensees, including but not limited to the host association, owners, trainers, jockeys, and grooms ("licensees"), participating in stabling, racing, training, and related activities at (name of licensed association) recognize that hazards and risks inherent in such activities may cause the injury or death of horses. Therefore, in consideration of participating in stabling, racing, training, and related activities at (name of licensed association), all licensees assume the risks of, and release, hold harmless and covenant not to sue all other licensees so participating for:

(a) Ordinary negligence which causes or contributes to loss, loss of use, injury or damage to horses while on the premises of (name of licensed association); and

(b) Ordinary negligence which causes or contributes to personal injury or property damage, including but not limited to loss, loss of use, injury or damage to horses arising from the use of grass fields or gallops owned or controlled by (name of licensed association), whether arising from alleged acts or omissions of a licensee and its agents or employees, the condition of the premises of (name of licensed association) or any other cause. Except as provided above, all licensees participating in racing, training and related activities at (name of licensed association) shall be responsible for their own acts and omissions and those of their agents and employees to the same extent as provided by law.

RICHARD "SMITTY" TAYLOR, Chairman  
DICK CARROLL, Office of the Attorney General  
APPROVED BY AGENCY: January 13, 1998  
FILED WITH LRC: January 13, 1998 at 11 a.m.  
PUBLIC HEARING: A public hearing on this administrative regula-

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tion shall be held on February 25, 1998, at 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 1998, 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: Bernie Hettel, Executive Director, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, (606) 246-2040 Phone, (606) 246-2039 Fax.

### REGULATORY IMPACT ANALYSIS

Contact Person: Calvert Bratton

(1) Type and number of entities affected: The only individuals affected will be the exercise riders at the tracks and this group of individuals number about 200 at the most.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. None

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

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body: None

(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: None

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits: None

(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: 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? Tiering was not applied. This amendment is to help ensure the safety of all exercise riders by making it mandatory they wear safety vests along with the helmet when exercising horses on the track.

### PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)

#### 811 KAR 1:085. Conduct of racing.

RELATES TO: KRS 230.260, 230.310, 230.990 [230.630(1), (3), 230.640]

STATUTORY AUTHORITY: KRS 230.260, 230.310 [230.630(3), (4), (7)]

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions under which harness racing shall be conducted in Kentucky. The function of this administrative regulation is to regulate the conduct of racing.

Section 1. An owner, trainer, driver, attendant of a horse, or any other person shall not use improper language to an official or member or employee of the commission, or be guilty of any improper conduct toward such officers or judges, or persons serving under their orders.

Section 2. An owner, trainer, driver, attendant of a horse, or any other person shall not threaten, strike, insult, ridicule, annoy, embarrass, make unwelcome sexual advances toward, request sexual favors from, engage in verbal or physical conduct of a sexual nature with, use force or intimidation of any kind against, an owner, trainer, driver or attendant of a horse, or permit, force, aid or encourage another person to commit or engage in any of the foregoing prohibited offenses.

Section 3. An owner, trainer, or driver of a horse shall not threaten or join with others in threatening not to race, or not to declare in, because of the entry of a certain horse or a particular stable, thereby compelling or attempting to compel the race secretary to reject certain eligible entries. Such actions shall be immediately reported to the commission. Offending parties may be suspended pending a hearing and thereafter if such action was unjustified.

Section 4. An owner, agent, or driver, who has entered a horse shall not demand of the track a bonus of money or other special award or consideration as a condition for starting the horse.

Section 5. No driver shall place a wager, cause a wager to be placed on his behalf, or accept any ticket or winnings from a wager on any race except on his own mount, and except through the owner or trainer of the horse he is driving. The owner or trainer placing wagers for his rider shall maintain a precise and complete record of all such wagers, and the record shall be available for examination by the stewards at all times. [An owner, trainer or driver of a horse shall not:

(1) Bet or cause another person to bet on his behalf on a horse in a race in which a horse owned, trained or driven by him starts, or which he represents or handles in any manner or in which he has an interest; or

(2) Participate in exacta, quinella or other multiple pool wagering on a race in which such horse starts except the daily double.]

Section 6. Duty to Report Fraudulent Proposal. If a person is approached with an offer or promise of a bribe, or a wager, or with a request or suggestion for a bribe, or for an improper, corrupt or fraudulent act in relation to racing, or that a race shall be conducted



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otherwise than fairly and honestly, he shall report the details thereof immediately to the presiding judge.

Section 7. Misconduct on the part of a licensee, fraudulent in its nature or injurious to the character of the turf, is forbidden. A person who, individually or in concert with one another, shall fraudulently and corruptly, affect or attempt to affect the outcome of a race, or affect or attempt to affect a false registration or commit any other act injurious to the sport, shall be guilty of a violation.

Section 8. If two (2) or more persons combine and confederate together in any manner, regardless of where they may be located, for the purpose of violating any of these administrative regulations and commit an act in furtherance of said purpose and plan, it shall constitute a conspiracy and a violation.

Section 9. When an oath is administered by judges, representative of the commission, a notary public, or any other person legally authorized to administer oaths, and a party knowingly swears falsely or withholds information pertinent to the investigation, he shall be fined, suspended, or both, or expelled.

Section 10. Financial Responsibility. A participant who shall accumulate unpaid obligations, or default in obligations, or issue drafts or checks that are dishonored or payment refused, or otherwise display financial irresponsibility reflecting on the sport, may be denied a license or may be suspended by the commission.

Section 11. Nerved Horses. Horses that have been nerved shall be so designated on the United States Trotting Association registration certificate and the eligibility certificate and be certified by a practicing veterinarian. It is the responsibility of the owner of the horse at the time the horse is nerved to see that this information is placed on the registration certificate and the eligibility certificate. Horses that have been nerved prior to the adoption of this administrative regulation shall also be certified and it is the responsibility of the owner or trainer of the horse to see that such information is carried on the registration certificate. A trainer or owner shall not be permitted to enter or start a horse that is high nerved. Low nerved horses may be permitted to start providing this information is published on the bulletin board in the racing secretary's office.

Section 12. Spayed Mares. The fact that a mare has been spayed shall be noted on the registration certificate, the eligibility certificate and any program when the mare races. It is the owner's responsibility to report the fact that the mare has been spayed to the United States Trotting Association and return its papers for correction.

Section 13. A violation of any of the provisions of this administrative regulation shall be punishable by a fine, suspension or both, or by expulsion.

Section 14. An owner, trainer, driver, attendant or other person representing a horse which has previously tested positive for equine infectious anemia shall not knowingly cause it to be declared into any race. An owner, trainer, driver, attendant or other person shall not transfer, or attempt to transfer, such a horse without first notifying the prospective purchaser or transferee of the fact that the horse had previously tested positive for equine infectious anemia.

RICHARD "SMITTY" TAYLOR, Chairman

DICK CARROLL, Office of the Attorney General

APPROVED BY AGENCY: January 13, 1998

FILED WITH LRC: January 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 25, 1998, at 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Pike, Lexington,

Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 1998, 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: Bernie Hettel, Executive Director, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, (606) 246-2040 Phone, (606) 246-2039 Fax.

### REGULATORY IMPACT ANALYSIS

Contact Person: Calvert Bratton

(1) Type and number of entities affected: The standardbred owners and drivers will be affected. The drivers licensed annually total approximately 350 and the owners total approximately 950.

(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. The current harness racing regulation states that an owner, trainer, or driver of a horse shall not bet on his own horse in a race. Harness tracks said this was unfair since the thoroughbred tracks allowed owners to bet on their own horses.

(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:

The revenue brought in from allowing owners to bet on their own horses will not be a significant amount.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: N/A

(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

(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:

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- (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: This proposed change will update this regulation to read similar to the thoroughbred regulation.  
(11) Tiering: Is tiering applied? Tiering was not used.

### PUBLIC PROTECTION AND REGULATION CABINET Kentucky Racing Commission (Amendment)

#### 811 KAR 1:220. Harness racing at county fairs.

RELATES TO: KRS 230.260, 230.280, 230.290, 230.300, 230.310, 230.3771, 230.770, 230.990 [~~230.630, 230.640, 230.680, 230.690, 230.710~~]

STATUTORY AUTHORITY: KRS 230.260, 230.310 [~~230.630~~]

NECESSITY, FUNCTION, AND CONFORMITY: To regulate conditions, races, purses and payments in races conducted at fairs in which funds for purses are provided by the Kentucky [Harness] Racing Commission. The function of this administrative regulation is to regulate eligibility for participation in harness racing at county fairs.

Section 1. Definitions. "Persons domiciled in Kentucky" are those persons that have their true, fixed and permanent home in Kentucky and to which they have an intention of returning whenever they are absent and, those corporations wholly owned by a person domiciled in Kentucky. Factors which indicate domicile and intent include, but are not limited to:

- (1) The amount of time spent in Kentucky each year by the person in question as compared to the amount of time spent by him elsewhere;
- (2) Whether or not the person or corporation in question owns real estate in Kentucky;
- (3) Whether or not the person in question is registered to vote in Kentucky, or whether the corporation in question was organized under Kentucky law;
- (4) The "permanent residence" of the person in question as indicated by the records of the Kentucky [Harness] Racing Commission and the United States Trotting Association;
- (5) Whether or not the person in question has a Kentucky automobile driver's license.

Section 2. Fair Committee. (1) The "Eligibility Committee" of the Kentucky Colt Racing Association, Inc., shall determine all questions of "domicile". [Each county fair board shall appoint a committee composed of three (3) persons to determine questions of domicile.]

(2) The committee shall weigh the [all] factors set forth in Sections 1 and 3 [(1) to (5)] of this administrative regulation in determining questions of domicile.

(3) Any decision of the [a] fair committee may be appealed directly to the Kentucky [Harness] Racing Commission.

Section 3. Eligibility. The following horses are eligible to participate in stake races at county fairs:

(1) [~~Those~~] Two (2) and three (3) year olds that are [were] sired by a stallion that was registered with the Kentucky Standardbred Development Fund at the time of conception.

(2) Two (2) and three (3) year olds that are wholly owned by a "person domiciled in Kentucky," both at the time of nomination and at the time of the contest of the race.

(3) Two (2) and three (3) year olds whose dams were wholly owned by a person domiciled in Kentucky at the time of conception. [Foals of 1984 to race as two (2) year olds in 1986 and three (3) year olds in 1987; foals of 1985 to race as two (2) year olds in 1987 and

~~three (3) year olds in 1988 in accordance with subsection (1) or (2) of this section. Foals of 1986 and thereafter to race as two (2) and three (3) year olds in accordance with subsection (1) of this section.]~~

(4) Owner(s) of the participating horse must be a current member of the Kentucky Colt Racing Association, Inc.

(5) Owner(s) of the participating horse must hold a current license with the Kentucky Racing Commission.

Section 4. Each fair shall have a safe and adequate track with entire track, including start and finish lines, visible to judges and spectators. The track shall be inspected and approved by a representative of the Kentucky [Harness] Racing Commission.

Section 5. All tracks must have a hub rail or pylons [of some type to be] approved by the Kentucky [Harness] Racing Commission.

Section 6. Each fair shall have safe and adequate stalls for participating horses. If permanent stalls [barns] are not available, either on or off the fairgrounds, tents or other tie-in type stalls may be used. No county fair shall charge stall rent for horses racing at the county fairs with the exception of state-owned property. [This can be accomplished by knowing the number of "ship-in" horses and possibly by stabling some horses off the grounds in private barns.]

Section 7. Nomination fees shall be set by the Kentucky Colt Racing Association, Inc. [the same at all tracks and shall be set by the Kentucky Harness Racing Commission. (See Section 15 of this administrative regulation.)]

Section 8. All fairs shall use licensed United States Trotting Association [presiding] judges to preside over the racing. The judges shall review the ownership of each horse that is entered in order to insure that it is eligible to race. The judges may determine the validity for racing purposes of all leases, transfers, and agreements pertaining to ownership of a horse and may call for adequate evidence of ownership at any time. The judges may declare ineligible to race any horse, the ownership or control of which, is in question.

Section 9. All fairs shall use a licensed starter with adequate equipment.

Section 10. The entry fee shall be set by the Kentucky Colt Racing Association, Inc., [Harness Racing Commission (see Section 15 of this administrative regulation)] and shall be collected by each fair and used for paying racing officials, to provide purses for overnight racing events, and to promote fair racing as otherwise needed. Each fair shall, upon request, make a full accounting of the entry fees to the Kentucky Racing Commission. [purses for overnight racing events, paying starters, paying presiding judges, promoting fair racing or otherwise as needed in the discretion of the fair collecting the fee. Each fair shall be responsible for making a full accounting of the entry fees to the Kentucky Harness Racing Commission within sixty (60) days of the completion of the meet.]

Section 11. Each fair shall apply to the Kentucky [Harness] Racing Commission for a license to race and for approval of funds by December 15 of the year prior to the racing year. At the time of application, the request for pari-mutuel wagering shall be included.

Section 12. Each fair reserves the right to change the order of its program and to postpone or cancel any event due to bad weather or unavoidable cause. If a race is canceled because of lack of entries, all entry fees shall be refunded. [All fairs shall have a complete racing program to be eligible for funds from the Kentucky Harness Racing Commission which shall include overnight events for horses of all ages and classes. Purse distribution shall be determined by a majority of participating fair managers, subject to approval of the Kentucky

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Harness Racing Commission:]

Section 13. Each early closing event, and all divisions thereof, shall race a single heat at a distance of one (1) mile and shall be contested for a purse determined by the fair committee annually.

Section 14. There shall be no more than nine (9) starters in any race. If a race is divided into divisions the purse shall be divided so that each division races for an equal portion thereof. The purses shall be divided as follows:

(1) 5 starters	50%, 25%, 12%, 8%, and 5%
(2) 4 starters	50%, 25%, 15%, and 10%
(3) 3 starters	55%, 30%, and 15%
(4) 2 starters	65% and 35%
(5) 1 starter	100%

Section 15. Points shall be awarded in each early closing race, and any division thereof, as follows:

(1) 1st place finisher	50 points
(2) 2nd place finisher	25 points
(3) 3rd place finisher	12 points
(4) 4th place finisher	8 points
(5) 5th place finisher	5 points
(6) Each starter that finishes out of the money	1 point
(7) In the event two (2) horses dead-heat for any position, they shall each receive one-half (1/2) of the points awarded for said position and one-half (1/2) the points awarded for the next lower position. The same procedure shall be used for the allocation of points in the event of a dead-heat of three (3) or more horses.	

(8) Horses that are declared in and then are the subject of the judge's scratch shall be awarded one (1) point based upon the decision of the presiding judge. This decision will be final.

(9) Any horse that starts in a Kentucky Sires Stake race within three (3) days of a scheduled county fair race of the same class shall be awarded a fair start and one (1) point.

(10) In the event there is a tie among two (2) or more horses with the same number of points, said tie shall be resolved in favor of the horse with the higher earnings in the early closing fair events in which said horses have competed.

Section 16. Entry fees for both overnight and early closing races shall be set annually by the Kentucky Colt Racing Association, Inc. Fees for each early closing race shall consist of:

- (1) A nomination fee payable on or before February 15.
- (2) A sustaining fee payable on or before April 15.
- (3) An entry fee per fair, per horse.

Section 17. No horse shall be entitled to compete in more than one (1) race at any fair.

Section 18. In order to maintain eligibility to the county fairs after the payment of the nomination fee, the following payments are required for a horse to remain eligible when there is a transfer of ownership:

- (1) \$300 the first-time ownership is transferred from the owner at the time of nomination.
- (2) An additional \$600 each time thereafter when the same horse is transferred.

Section 19. At each fair the winning horse in every race shall be subjected to a drug test as set forth in 811 KAR 1:090.

Section 20. A current negative Coggins test shall be required on all horses racing at each fair.

Section 21. All drivers shall wear full colors, with white pants, and an approved helmet when on the track less than one (1) hour before

the start of any fair racing program.

Section 22. Each fair shall provide a trophy or blanket to the winner of each race. Where a race is contested in heats or divisions, the trophy shall be presented to the winner of the fastest heat or division.

Section 23. Each early closing race shall be contested regardless of the number of entries. However, each fair shall have the right to cancel any overnight race with less than five (5) entries.

Section 24. The deadline for entries at each fair shall be 10 a.m. (local time prevailing) on the third day before its first day's racing program, omitting Saturdays, Sundays, and holidays.

Section 25. Each county fair track where purses are raced for shall provide a printed program available to the public with the following information for:

- (1) Nonpari-mutuel tracks:
  - (a) Horse's name and sex;
  - (b) Color and age of horse;
  - (c) Sire and dam of horse;
  - (d) Owner's name and colors;
  - (e) Driver's name;
  - (f) Trainer's name; and
  - (g) Summary of starts in purse races, earnings, and the best win time for current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race.
- (2) Pari-mutuel tracks:
  - (a) Horse's name and sex;
  - (b) Color and age of horse;
  - (c) Sire and dam of horse;
  - (d) Owner's name;
  - (e) Driver's name and colors;
  - (f) Trainer's name;
  - (g) Summary of starts in purse races, earnings, and best win time for current and preceding year. A horse's best win time may be earned in either a purse or nonpurse race.
  - (h) At least the last six (6) performance and accurate chart lines. An accurate chart line shall include:

1. Date of race;
2. Location of race;
3. Size of track if other than a one-half (1/2) mile track;
4. Symbol for free-legged pacers;
5. Track condition;
6. Type of race;
7. Distance;
8. The fractional times of the leading horse including race times;
9. Post position;
10. Position of the one-quarter (1/4), the one-half (1/2), and the three-quarters (3/4);
11. Stretch with lengths behind leader;
12. Finish with lengths behind leader;
13. Individual time of the horse;
14. Closing dollar odds;
15. Name of the driver;
16. Names of the horses that placed first, second, and third by the judges; and
17. The standard symbols for breads and park-outs shall be used where applicable.
  - (i) Indicate drivers racing with a provisional license.
  - (j) Indicate pacers that are racing without hobbles.

Section 26. Payments. All nomination and sustaining payments are to be made to the Kentucky Colt Racing Association, Inc.. All entry fees are to be paid to the fair for which the entry is taken.

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Section 27. Unless otherwise provided herein, the rules and regulations of the Kentucky Racing Commission and the United States Trotting Association shall apply. In the event of a discrepancy in said rules and regulations, the rules and regulations of the Kentucky Racing Commission shall take precedence. [The Kentucky Harness Racing Commission shall award dates and approval of funds by January 15 of the applicable racing year.

Section 14. Each fair shall have a printed program, and, if there is pari-mutuel betting, the program shall show number of starts, number of firsts, seconds, and thirds, best winning time, and money earned.

Section 15. Payments. Nomination and sustaining fees are payable to the Fair Nominations Fund and mailed to the Kentucky Harness Racing Commission. Entry fees are payable to the individual fairs.

COUNTY FAIR PAYMENT SCHEDULE

February 15 Nomination Fee : : : : : \$30 per horse.
(makes horse eligible to all fairs)
April 15 Sustaining Fee each fair : : : : : \$20 per horse.
Entry Fee each fair : : : : : \$40 per horse.]

RICHARD "SMITTY" TAYLOR, Chairman

DICK CARROLL, Office of the Attorney General

APPROVED BY AGENCY: January 13, 1998

FILED WITH LRC: January 13, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 25, 1998, at 10 a.m. at the offices of the Kentucky Racing Commission, 4063 Iron Works Pike, Lexington, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by February 18, 1998, 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: Bernie Hettel, Executive Director, Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington, Kentucky 40511, (606) 246-2040 Phone, (606) 246-2039 Fax.

REGULATORY IMPACT ANALYSIS

Contact Person: Calvert Bratton

(1) Type and number of entities affected: The proposed changes will only affect individuals and horses that race at the county fairs harness racing. There will be less than 100 horses affected.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. None

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

- 1. First year following implementation: None
2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: No change.

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

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None

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

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: N/A

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: None

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

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

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

(10) Any additional information or comments: The County Fair Program is long overdue to be updated. Stronger and more defined rules need to be adopted in order to remedy several problems experienced in the past.

(11) Tiering: Is tiering applied? Tiering was not used.

CABINET FOR HEALTH SERVICES

Office of Inspector General

Division of Licensing and Regulation

(Amendment)

902 KAR 20:008. License procedures and fee schedule.

RELATES TO: KRS 216.2925, 216B.010 to 216B.130, 216B.990
STATUTORY AUTHORITY: KRS 216.530, 216B.042, 216B.105, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 mandate that the Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides requirements for obtaining a license to operate a health facility and establishes the fee schedule for a license. 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) "Cabinet" means the Cabinet for Health Services.

(2) "Inspecting agency" means the Division of Licensing and Regulation in the Office of the Inspector General, Cabinet for Health Services.

Section 2. Licenses. (1) No person shall operate any health facility in this Commonwealth without first obtaining the appropriate license therefor.

(2) The license shall be conspicuously posted in a public area of the facility.

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(3) All applications for licensure shall be filed with the Office of the Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621.

(4) All applicants for licenses shall, as a condition precedent to licensure or relicensure, be in compliance with the applicable administrative regulations relating to the particular health facility:

(a) Compliance with licensure administrative regulations shall be ascertained through on-site inspections of the health facility. Except for health facilities subject to KRS 216.530, licensure inspections may be unannounced.

(b) Representatives of the inspecting agency shall have access to the health facility during the hours that the facility operates.

(c) Any regulatory violation identified during such inspections will be transmitted in writing to the health facility by the inspecting agency.

(d) The health facility shall submit a written plan for the elimination or correction of the regulatory violations to the inspecting agency within ten (10) days.

1. Such plan shall specify the date(s) by which each of the violations will be corrected.

2. Following a review of the plan, the inspecting agency shall notify the health facility in writing of the acceptability of the plan.

3. In instances where a portion or all of the plan is unacceptable, the inspecting agency shall specify the reasons for the unacceptability.

4. In such cases, the health facility shall modify or amend the plan and resubmit it to the inspecting agency within ten (10) days.

(5) All licensees shall, as a condition of licensure or relicensure, be in compliance with the following reporting requirements unless otherwise exempted. All licensees shall have submitted completed annual reports and data submissions and any special reports required by the cabinet concerning health services provided, health manpower employed, or utilization of health services within forty-five (45) days of the date the request is mailed. Completed semiannual reports required by the cabinet shall be submitted within thirty (30) days of the date the request is mailed. Licensees shall be notified of reporting requirements no later than October 1 of the year preceding the report year.

(6) Unannounced inspections shall be conducted on complaint allegations. Such inspections shall be conducted utilizing the procedures outlined under subsection (4) of this section.

(7) All licenses shall remain in effect for one (1) year from the date of issuance unless otherwise expressly provided in the license certificate.

(8) Licenses may be renewed upon payment of the prescribed fee and compliance with the applicable provisions of the licensure administrative regulations.

(9) Each license to operate shall be issued only for the person or persons and premises, including the number of beds if applicable, named in the application and shall not be transferable.

(10) Only one (1) license shall be issued or renewed for a particular licensure category at a specific location and, if specified, a designated geographical area.

(11) A new application shall be filed in the event of change of ownership.

(a) A change of ownership for licenses shall be deemed to occur when more than fifty (50) percent of an existing facility or capital stock or voting rights of a corporation is purchased, leased or acquired by comparable arrangement by one (1) person from another.

(b) Upon the filing of a new application for a license because of change of ownership, the new license shall be automatically issued for the remainder of the current licensure period. No additional fee will be charged for the remainder of the licensure period.

(12) ~~(11)~~ There shall be full disclosure to the cabinet of the name and address and any changes of:

(a) Each person having a direct or indirect ownership interest of ten (10) percent or more in the facility;

(b) Each officer and director of the corporation, where a facility is

organized as a corporation; and

(c) Each partner, where a facility is organized as a partnership.

Section 3. Fee Schedule. (1) Fees for review of plans and specifications for construction of health facilities shall be as follows:

License Type	Rate
(a) Hospitals plans and specifications review (initial through final)	\$0.04 per sq. ft. \$2300 maximum
(b) All other health facilities plans and specifications review (initial through final)	\$0.04 per sq. ft. \$1200 maximum

(2) Annual fees. The annual licensure fee (including renewals) for health services shall be as follows:

License Type	Rate
(a) Alternative birth centers	\$155
(b) Alzheimer's nursing homes	\$8 per bed \$155/minimum \$1,545/maximum
(c) Ambulatory surgical center	\$155
(d) Chemical dependency treatment service	\$8 per bed \$155/minimum \$1,545/maximum
(e) Community mental health and mental retardation center	\$750
(f) Day health care	\$80
(g) Family care homes	\$40
(h) Group homes mentally retarded/developmentally disabled	\$80
(i) Health maintenance organizations	\$5 per 100 patients
(j) Home health agencies	\$80
(k) Homemaker	\$80
(l) Hospice	\$20
(m) Hospitals	
1. Accredited hospital	\$5 per bed \$155/minimum \$1,545/maximum
2. Nonaccredited hospital	\$8 per bed \$155/minimum \$1,545/maximum
(n) Intermediate care facilities	\$8 per bed \$155/minimum \$1,545/maximum
(o) ICF/MR facilities	\$8 per bed \$155/minimum \$1,545/maximum
(p) Medical detoxification services	No fee
(q) Networks	\$155
(r) Nursing facilities	\$8 per bed \$155/minimum \$1,545/maximum
(s) Nursing home	\$8 per bed \$155/minimum \$1,545/maximum
(t) Outpatient clinics and ambulatory care facilities	\$155
(u) Personal care home	\$4 per bed \$80/minimum \$800/maximum
(v) Primary care center	\$155
(w) Psychiatric hospitals	\$25 per satellite

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1. Accredited	\$5 per bed \$155/minimum \$1,545/maximum
2. Nonaccredited hospital	\$8 per bed \$155/minimum \$1,545/maximum
(x) Psychiatric residential treatment facilities	\$155
(y) Rehabilitation (outpatient)	\$80
(z) Renal dialysis	\$20 per station
(aa) Rural health clinics	\$80
(bb) Skilled nursing facilities	\$8 per bed \$155/minimum \$1,545/maximum
(cc) Special health clinics	\$155
(dd) Specialized medical technologies	\$155
(ee) Mobile health services	\$155
(ff) Comprehensive physical rehabilitation hospitals	
1. Accredited	\$5 per bed \$155/minimum \$1,545/maximum
2. Nonaccredited	\$8 per bed \$155/minimum \$1,545/maximum

TIMOTHY L. VENO, Inspector General  
JOHN MORSE, Secretary  
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: January 13, 1998

FILED WITH LRC: January 14, 1998 at 11 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on February 23, 1998, 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 February 13, 1998, 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, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: Health facilities and health services. There are presently 2,927 health facilities and health services licensed pursuant to KRS 216B.042 and 216B.105.

(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: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional paperwork.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

(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. No conflict.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

### CABINET FOR HEALTH SERVICES Office of Inspector General Division of Licensing and Regulation (Amendment)

**902 KAR 20:091. Facilities specifications, operation and services; community mental health-mental retardation center.**

RELATES TO: KRS 210.370 to 210.480, 216B.010 to 216B.130, 216B.990(+), (-)

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 314.011(8), 314.042(8), EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 mandate that the Kentucky Cabinet for Health Services [Human Resources] regulate health facilities and health services. This administrative regulation provides licensure requirements for the operation, services, and facility specifications of community mental health-mental retardation centers. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and

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places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Center" means the community mental health-mental retardation center.

(2) "Clinical psychologist" means a clinical psychologist certified or licensed pursuant to KRS Chapter 319.

[(2) "Licensee" means the governing body legally responsible for the community mental health center.]

(3) "Designated regional service area" means the geographical area to be served by the community mental health-mental retardation center as approved by the Secretary of the Cabinet for Health Services. ["Psychiatric nurse" means a registered nurse who:

(a) Has a master's of science degree in nursing with a specialty in psychiatric or mental health nursing; or

(b) Is a graduate of a four (4) year educational program with a bachelor of science degree in nursing and a minimum of one (1) year of experience in a mental health setting; or

(c) Is a graduate of a three (3) year program with two (2) years of experience in a mental health setting; or

(d) Is a graduate of a two (2) year educational program with an associate degree in nursing with three (3) years of experience in a mental health setting.]

(4) "Licensee" means the governing body legally responsible for the community mental health-mental retardation center. ["Qualified social worker" means a social worker with a master's degree from an accredited school of social work who is licensed or exempt from licensure pursuant to KRS Chapter 335.]

(5) "Psychiatric nurse" means a registered nurse who:

(a) Has a master's of science degree in nursing with a specialty in psychiatric or mental health nursing; or

(b) Is a graduate of a four (4) year educational program with a bachelor of science degree in nursing and a minimum of one (1) year of experience in a mental health setting; or

(c) Is a graduate of a three (3) year program with two (2) years of experience in a mental health setting; or

(d) Is a graduate of a two (2) year educational program with an associate degree in nursing with three (3) years of experience in a mental health setting. ["Center" means the community mental health-mental retardation center.]

(6) "Qualified social worker" means a social worker with a master's degree from an accredited school of social work who is licensed or exempt from licensure pursuant to KRS Chapter 335.

["Designated regional service area" means the geographical area to be served by the community mental health-mental retardation center as approved by the Secretary of the Cabinet for Human Resources.]

Section 2. Scope of Operation and Services. A community mental health-mental retardation center provides a comprehensive range of accessible and coordinated mental health-mental retardation services, including direct services and indirect mental health and mental retardation services, to the population of a designated regional service area as required by KRS 210.370 to 210.480.

Section 3. Administration and Operation. (1) Licensee.

(a) The licensee shall be legally responsible for the center, for the establishment of administrative policies, and for compliance with federal, state, and local laws and regulations pertaining to the operation of the center.

(b) In order to obtain a license or to renew a license to operate a center the licensee shall comply with the requirements of this administrative regulation and the requirements of all statutes and regulations applicable to the services and programs offered by the center [(e.g., alcohol and drug abuse programs licensed pursuant to 902 KAR 3:005 to 902 KAR 3:200)].

(2) Executive director. The licensee shall designate an executive director, qualified by training and experience, who shall be respon-

sible for the total program of the center and its affiliates in accordance with the center's written policies and for evaluation of the program as it relates to the client's needs.

(3) Policies. The licensee shall establish written policies for the administration and operation of the center which shall be available to staff and which shall include:

(a) A description of the organizational structure which describes responsibilities, functions and interrelations of all units and lines of administrative and clinical authority;

(b) Appropriate methods and procedures for the storage, dispensing and administering of drugs and biologicals;

(c) Grievance procedures for clients;

(d) Confidentiality and use of client records in accordance with federal, state, and local statutes and regulations; and

(e) Personnel policies including:

1. Job descriptions and qualifications for each type of personnel;

2. Wage scales, hours of work, vacation and sick leave;

3. Plans for orientation of all personnel to the policies and objectives of the center and for on-the-job training, where necessary; and

4. Periodic evaluation of employee performance.

(4) Medical records. A medical record shall be maintained for each individual receiving services.

(a) All entries shall be current, dated, signed, and indexed according to the service received.

(b) All medical records shall be retained for a minimum of five (5) years or, in the case of a minor, three (3) years after the client reaches the age of majority, whichever is longer.

(c) All client records shall be kept in locked files and treated as confidential. Information contained in client records shall be disclosed only to authorized persons.

(d) Each medical record shall contain: an identification sheet; information on the purpose for seeking service, a history of findings and treatments rendered, screening information pertaining to the problem, staff notes on services provided, pertinent medical, psychiatric and social information; disposition; assigned status; assigned therapists; and a termination study recapitulating findings and events during treatment, clinical impressions, and condition on termination.

(5) Personnel. Minimum staffing requirements for a community mental health center shall include the following full-time personnel:

(a) A program director who is a psychiatrist, certified or licensed psychologist, psychiatric nurse or a qualified social worker. The program director may also be the executive director;

(b) A board-certified or board-eligible psychiatrist who shall be responsible for treatment planning and provide psychiatric service as indicated by client needs, and shall supervise and coordinate the provisions of all psychiatric services by the center [all planning functions in the continual development and improvement of the psychiatric service elements] (may be more than one (1) psychiatrist if hours worked are equivalent to a full-time position);

(c) A clinical psychologist who shall provide evaluation and screening services for client as well as individual or group therapy;

(d) A psychiatric nurse who shall provide or supervise nursing service for psychiatric care;

(e) A qualified social worker who shall provide social services as required; and

(f) A person who shall assure that medical records are maintained and that information is immediately retrievable.

Section 4. Services. (1) The center shall provide services in the designated regional service area directly or through contract.

(2) Direct services. The center shall provide a sufficiently wide range of treatments to meet the clients' needs such as: individual, family, or group therapy, play therapy, behavior modification, or chemotherapy.

(3) Treatment plan. Each client receiving direct treatment under the auspices of a community mental health center shall have an

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individual treatment plan signed by a clinically licensed or certified professional provider of the treatment. Medical services, including changes of medications, diet restrictions, and restrictions on physical activities shall be ordered by a physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8). The treatment plan shall establish a diagnosis and indicate services required, as well as short-term and long-term goals.

(4) The center shall provide:

(a) A therapeutic program for those persons who require less than twenty-four (24) hour a day care, but more than outpatient care (i.e., partial hospitalization, or day care). A psychiatrist shall be present on a regularly scheduled basis to provide consultant services to staff.

(b) Inpatient services through affiliation with a licensed community hospital for persons requiring full-time inpatient care. Any center which does not have an affiliation contract in effect but documents a good faith effort to enter into such a contract shall be considered to be in compliance with this requirement.

(c) Outpatient services on a regularly scheduled basis with arrangements made for nonscheduled visits during times of increased stress or crisis. The outpatient services shall provide diagnosis and evaluation of psychiatric problems and referrals to other services or agencies as indicated by the client's needs.

(d) Emergency services for the immediate evaluation and care of persons in crisis situations on a twenty-four (24) hour a day, seven (7) day a week basis. All components of the emergency service shall be coordinated into a unified program so that clients receiving emergency services can be readily transferred to other services of the center as client needs dictate.

(e) Consultation and education services for individuals and various community agencies and groups to increase the visibility, identifiability, and accessibility of the center and to promote mental health through the distribution of relevant mental health knowledge.

(5) The center shall have a utilization and review plan for the evaluation of the service needs of each client. The need for continuing any service element for each individual shall be evaluated with sufficient frequency to ensure that proper arrangements have been made for discharge, for transfer to other elements of service, or referral to another service provider when appropriate.

(6) Medications. Treatments involving medications and chemotherapy shall be administered under the direction of a licensed physician and:

(a) Records of all medication and chemotherapy used in treatment shall be in the staff notes on a special medications chart in the medical record;

(b) A copy of the prescriptions, with a limit of no more than three (3) refills, shall be kept in the medical record;

(c) Blood and other laboratory tests and examinations shall be performed in accordance with accepted medical practice on all individuals receiving medications prescribed or administered by the center;

(d) Drug supplies shall be stored under proper sanitary, temperature, light and moisture conditions;

(e) All medications kept by the center shall be properly labeled;

(f) Medications shall be stored in originally received containers unless transferred to other containers by a pharmacist or other person licensed to do so; and

(g) All medications kept in the center shall be kept in a locked cabinet. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, dosage, balance remaining and method of administration of all controlled substances; the name of the prescribing physician or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8) (who prescribed the medications); and the name of the nurse who administered it, or staff who supervised the self-administration. Nursing medication cabinets shall be kept locked and access shall be restricted to designated medication nurses.

Section 5. Facility Specifications. (1) The facilities housing community mental health-mental retardation centers shall be general purpose buildings of safe and substantial construction and shall be in compliance with applicable state and local laws relating to zoning, construction, plumbing, safety, and sanitation. The following requirements shall apply where applicable and as adopted by the respective agency authority:

(a) Requirements for fire safety pursuant to 815 KAR 10:050 [40:020], as amended; and

(b) Requirements for making buildings and facilities accessible to and usable by individuals with disabilities [~~the physically handicapped~~], pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

(2) Prior to occupancy, the facility shall have final approval from appropriate agencies.

(3) All facilities shall be currently approved by the Department of Housing, Buildings and Construction [~~Fire Marshal's Office~~] in accordance with the Life Safety Code, before relicensure is granted by the licensure agency.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: January 13, 1998

FILED WITH LRC: January 14, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 1998, 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 February 13, 1998, 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, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street, 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Ralph Von Derau

(1) Type and number of entities affected: Community Mental Health-Mental Retardation Center. There are presently 14 licensed pursuant to KRS 216B.042 and 216B.105.

(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: No additional reporting requirements imposed.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: No direct or indirect costs



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should be associated with this program beyond printing this new regulation.

1. First year: \$500 for printing regulation.

2. Continuing costs or savings: No additional costs or savings, since reprinting of regulations is provided for in the continuing budget.

3. Additional factors increasing or decreasing costs: No additional factors.

(b) Reporting and paperwork requirements: No additional paperwork.

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

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

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

(a) Geographical area in which administrative regulation will be implemented: No public comments addressing this issue were received.

(b) Kentucky: No public comments addressing this issue were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: KRS Chapter 216B mandates that minimum standards be established for licensure.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: These are minimum health care standards intended to protect the public.

(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. No conflict.

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. This is a licensure program and, as such, applies to all licensed services.

### CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management and Development (Amendment)

#### 904 KAR 3:025. 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, sec. 5302, 5306, 5562, 5563

STATUTORY AUTHORITY: KRS 194.050(1), 7 CFR 271.4, 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 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

(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.

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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 (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

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(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. TURNER, Attorney

APPROVED BY AGENCY: December 29, 1997

FILED WITH LRC: January 9, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 1998 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 February 13, 1998, 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, Regulation Coordinator, Cabinet for Families and Children, Office of the Counsel, 275 East Main Street, 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: 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, sec. 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, sec. 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

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(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, sec. 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

NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JANUARY 15, 1998

DEPARTMENT OF AGRICULTURE  
(New Administrative Regulation)

**302 KAR 20:077. Repeal of 302 KAR 20:076, Identification of "farm fresh" cattle.**

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: 302 KAR 20:076 is no longer required as it has been found to be unenforceable.

Section 1. 302 KAR 20:076, Identification of farm fresh cattle, is hereby repealed.

BILLY RAY SMITH, Commissioner  
MARK FARROW, General Counsel

APPROVED BY AGENCY: September 30, 1997

FILED WITH LRC: January 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Monday, February 23, 1998, at 10 a.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Friday, February 13, 1998, 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 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 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 administration regulation to: Mark Farrow, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696, Fax (502) 564-2133.

REGULATORY IMPACT ANALYSIS

Contact Person: Dr. D. L. Notter, State Veterinarian

(1) Type and number of entities affected: Stockyard owners and sellers of cattle.

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

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

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

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

1. First year following implementation: This regulation is being repealed. Therefore, no increased reporting and paperwork requirements.

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: There will be no additional reporting and paperwork requirements.

(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: Enforcement will no longer be necessary.

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

(a) Geographical area in which administrative regulation will be implemented: This regulation is being repealed.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All sellers of cattle are treated the same.

DEPARTMENT OF AGRICULTURE  
Division of Animal Health  
(New Administrative Regulation)

**302 KAR 20:240. Mycobacterium paratuberculosis (Johne's).**

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.030, 257.110, 257.480

NECESSITY, FUNCTION, AND CONFORMITY: To provide a voluntary procedure to prevent, control and eradicate mycobacterium paratuberculosis (Johne's) for bovine and bison.

Section 1. Definitions. (1) "Bovine" and "bison" means a sexually intact male or female twelve (12) months of age or older designated to be used for breeding.

(2) "Johne's" means a contagious, infectious and communicable disease caused by mycobacterium paratuberculosis bacteria.

(3) "Official mycobacterium paratuberculosis epidemiologist" means a state of federal veterinarian that is designated by the state veterinarian and the federal veterinarian in charge to investigate, to diagnosis, and make recommendations concerning animals affected with mycobacterium paratuberculosis.

(4) "Official mycobacterium paratuberculosis test" means any serological test, fecal culture, DNA probe or any other test that is approved by the state veterinarian for the diagnosis of mycobacterium paratuberculosis and is licensed or approved by the United States Department of Agriculture and the Kentucky Department of Agriculture.

(5) "Positive animal" and "suspect animal" means an animal which has given a positive or suspect reaction to an official serology test or culture positive for the mycobacterium paratuberculosis organism or when the mycobacterium paratuberculosis organism has been found

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in the body of an animal or in the body discharge of an animal.

(6) "A management agreement plan (MAP)" means the herd owner, designated herd veterinarian and the Kentucky Department of Agriculture/State Veterinarian has agreed to participate in a voluntary herd management agreement plan (MAP) for the purpose of qualifying the herd as mycobacterium paratuberculosis free.

(7) "A negative animal" means any animal that is negative to an official Johne's disease test for the purpose of classifying animals in a herd that is participating in a management agreement plan (MAP) for the prevention, control and eradication of mycobacterium paratuberculosis (Johne's).

(8) "Known infected herd" means any herd in which bovine, bison or when other animals on the premises have been determined to be infected with mycobacterium paratuberculosis by an official mycobacterium paratuberculosis epidemiologist or state veterinarian.

(9) "Herd" shall mean all bovine and bison animals maintained for any purpose on common grounds under common ownership or supervision including animals which may be geographically segregated and have interchange or movement of animals without regard to health status.

(10) "Mycobacterium paratuberculosis vaccine" means a mycobacterium paratuberculosis vaccine licensed by the United States Department of Agriculture.

(11) "Test and slaughter" means a herd management agreement plan where positive animals are removed from the herd to slaughter and additional Johne's tests are performed on the herd.

(12) "Kentucky Johne's status herd" means a herd of cattle whose owner is voluntarily complying with the Kentucky Department of Agriculture guidelines which established the prevalence of Johne's in the herd.

Section 2. Voluntary Herd Participants. (1) The herd owner shall submit a written application requesting the herd be enrolled in a voluntary herd MAP for the control and eradication of mycobacterium paratuberculosis.

(2) The herd owner shall present all eligible animals for inspection and testing and shall provide adequate records to ensure implementation of the herd MAP.

(3) The herd owner shall officially identify all animals upon implementation of a voluntary herd MAP and shall officially identify all natural additions to the herd within seven (7) days following birth.

(4) The herd owner shall maintain adequate fencing to prevent contact with known infected animal or with animals with an unknown Johne's disease status.

(5) The herd owner shall within seven (7) days notify his veterinarian of all new additions to the herd.

(6) The herd owner shall follow all the guidelines and requirements of the herd MAP. The state veterinarian, the herd owner and the veterinarian in charge of the herd plan shall approve changes in the MAP.

(7) The herd veterinarian, herd owner, Johne's epidemiologist and state veterinarian shall develop a mycobacterium paratuberculosis MAP.

(8) The herd veterinarian shall advise the owner in implementing the herd MAP and shall submit to the Office of the State Veterinarian, Division of Animal Health, a copy of the herd MAP and shall keep the state veterinarian informed of all MAP changes.

(9) The herd veterinarian shall conduct each quarter an on-site evaluation of the MAP including all management procedures and facilities. These evaluations shall be reported to the State Veterinarian. One (1) of the quarterly inspections shall be conducted in the presence of a Board of Agriculture agent designated by the state veterinarian.

(10) The herd veterinarian shall collect samples or specimens that may be necessary to implement the herd MAP. A state or federal approved laboratory shall conduct the tests.

(11) The state veterinarian shall maintain a record of individual

animal identification, a record of all test results, a register of herds enrolled in MAP and the herd mycobacterium paratuberculosis herd status.

(12) In an agreement with the herd owner and the designated herd veterinarian, the state veterinarian may provide assistance in implementing a MAP and shall review and approve all mycobacterium paratuberculosis MAP.

(13) The state veterinarian shall conduct a minimum of one (1) annual herd inspection. NOTE: The register for herds enrolled in a voluntary Johne's program will be public information. Information regarding herd test history or current Johne's herd status shall not be public information.

Section 3. Test Requirements. (1) A herd not known to be infected with mycobacterium paratuberculosis within the last five (5) years shall be tested as follows:

(a) All animals twenty (20) months of age or older shall have blood collected and a fecal culture for an official Johne's disease test.

(b) A negative herd blood test and negative fecal culture may qualify the herd to be designated as a Phase III herd and the herd may then be classified as a mycobacterium paratuberculosis (Johne's) test negative herd.

(c) An annual herd test of all animals twenty (20) months of age or older shall be required to maintain a Johne's test negative herd. To maintain a Johne's test negative herd, the herd shall have a fecal culture conducted every third year.

(d) When a Johne's positive animal is classified the herd shall be tested following the requirements in Section 3(2) of this administrative regulation.

(2) A herd known to be infected with mycobacterium paratuberculosis within the last five (5) years shall be treated as follows:

(a) All animals twenty (20) months of age or older shall have blood collected for an official Johne's test.

(b) All animals twenty (20) months of age or older that are positive to an official serology test shall have a fecal culture for Johne's or shall immediately be removed from the herd and sent to slaughter.

(c) Johne's positive classified animals shall be permanently identified, isolated and sold to slaughter only. The herd shall be eligible for a second herd test six (6) months after the last known Johne's positive animal(s) has been removed from the herd. The Johne's epidemiologist and state veterinarian shall determine which tests shall be conducted based on the herd's Johne's prevalence and risk classification.

(d) A complete herd test of all animals twenty (20) months of age or older shall be conducted at six (6) month intervals until the herd is classified as a Johne's test negative herd.

(3) Johne's herd risk classification.

(a) A herd with a Johne's infection rate greater than five (5) percent shall be considered a "high risk" herd.

(b) The herd risk classification shall determine the types of test required to establish a Johne's test negative herd. The Johne's epidemiologist and the state veterinarian shall determine test requirements.

(4) Herd addition test requirements.

(a) Animal(s) twenty (20) months of age or older shall have a negative serology test within thirty (30) days prior to change of ownership.

(b) A fecal sample shall be submitted for mycobacterium paratuberculosis culture within fifteen (15) days following the animal(s) introduction to the premises. Animals shall be isolated until the fecal culture has been completed and reported by the laboratory.

(c) Six (6) months post introduction into the herd, the animals shall be tested for Johne's by serology.

(d) Twelve (12) months post introduction into the herd the animals shall be tested for Johne's by serology and fecal culture.

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Section 4. Procedures for Implementing a Mycobacterium Paratuberculosis MAP. The mycobacterium paratuberculosis MAP shall include:

(1) Phase I. Introductory to mycobacterium paratuberculosis MAP.

(a) A clean separate calving area shall be provided for each cow. The area is to be cleaned and disinfected following each calving.

(b) The udder shall be washed prior to calving and care shall be taken to remove all fecal material.

(c) The calf shall be removed from the dam immediately following calving and placed in a clean facility. Do not permit the calf to nurse dam.

(d) The udder shall be cleaned and disinfected prior to collecting colostrum for the initial feeding. It is recommended that the colostrum be pasteurized or originate from a cow that has had two (2) negative tests not less than six (6) month intervals. For older calves, use pasteurized milk or commercial milk replacement.

(e) Caution must be taken to prevent feed contamination. Use only clean feeding equipment.

(f) An individual hutch or pen is recommended for housing calves. All calf housing facilities should be separate and apart from adult cattle. Calves shall not have exposure to adult cattle fecal material.

(g) Only clean bedding shall be used. Caution shall be taken to prevent the introduction of manure into the calf housing facility via footwear, equipment, etc. All clothing should be changed and equipment cleaned and disinfected prior to entering the calf housing area.

(h) Calves shall be housed and pastured in designated Johne's disease free areas. All winter housing areas shall be separate and apart from the adult herd.

(i) Clean Johne's free water shall be provided. The water source should originate from developed tanks or from free flowing streams and all stagnant pools should be fenced to prevent livestock entry.

(j) When not practical to separate calves it is best to allow cows to calve in large clean open pasture areas. Do not bring cows together or restrict cows to a small-designated area when calving.

(k) These requirements shall have been implemented and approved by the Johne's epidemiologist and by the state veterinarian. The herd shall participate in Phase I for twelve (12) months.

(2) Phase II. Advanced mycobacterium paratuberculosis MAP.

(a) Mycobacterium paratuberculosis test protocol shall be implemented and all test eligible animals presented for test and culture.

(b) Classified Johne's positive animals shall be isolated and sold for slaughter only.

(c) All offspring from animals with clinical mycobacterium paratuberculosis symptoms shall be removed from the herd immediately or shall be removed from the herd prior to eighteen (18) months of age.

(d) Animals with symptoms of mycobacterium paratuberculosis shall be immediately isolated and tested. Requirements of Section 3(2)(a), (b) and (c) of this administrative regulation shall be completed.

(3) Phase III.

(a) A Phase III herd is a herd which has been a qualified Phase II herd for twenty-four (24) months or more and has had four (4) consecutive negative herd tests of all eligible animals at not less than six (6) month intervals.

(b) To maintain a Johne's test negative herd the herd shall have an annual negative herd test of all eligible animals between ten (10) and twelve (12) months of the herd Johne's test negative anniversary date.

Section 5. Loss of Herd Johne's Test Negative Status. (1) Detection of mycobacterium paratuberculosis by any laboratory procedure shall constitute a suspension of the mycobacterium paratuberculosis negative herd status. The herd shall be removed from the Johne's test negative herd registry.

(2) When there is a loss of Johne's test negative herd status reestablishment shall be granted when two (2) negative herd tests of all eligible animals have been conducted at six (6) months and twelve (12) months following loss of Johne's negative herd status.

(3) When a purchased addition causes a loss of Johne's negative herd test status, the state veterinarian, the mycobacterium paratuberculosis epidemiologist, the herd veterinarian and the owner shall amend the MAP for reinstatement of mycobacterium paratuberculosis Johne's test negative herd status.

Section 6. Proper Test and Culture Payment. When available the Kentucky Department of Agriculture will provide funds for laboratory mycobacterium paratuberculosis (Johne's) test culture when the herd is enrolled in a MAP. Enrollment in a MAP is required for payment of the initial test.

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: January 8, 1998

FILED WITH LRC: January 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on Monday, February 23, 1998, at 1 p.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by Friday, February 13, 1998, 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 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 wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mark Farrow, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696, Fax (502) 564-2133.

### REGULATORY IMPACT ANALYSIS

Contact Person: Dr. D. L. Notter, State Veterinarian

(1) Type and number of entities affected: Kentucky's agricultural statistics report that Kentucky has 54,000 beef and dairy herds. A total of 2.5 million animals populate the 54,000 herds and those herds will be eligible for enrollment into the Voluntary Mycobacterium Paratuberculosis (Johne's) Program.

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

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

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 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: Livestock owners shall have the responsibility of presenting animals for testing which shall include the collection of blood for serology testing and fecal collection for culture.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The promulgating body will have a direct cost associated with the program since the Department of Agriculture will

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pay all laboratory testing.

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

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: Additional cost will impact the department's budget since a data base record will be kept by the department on each individual herd enrolled in the program.

(4) Assessment of anticipated effect on state and local revenues: Since the department will implement the Voluntary Mycobacterium Paratuberculosis (Johne's) Program and maintain program compliance and pay the program test and culture cost, state revenue appropriation will be required to support the department's involvement.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department's current budget may support program implementation and record keeping. Additional revenue appropriation will be needed to pay the program test and culture expenditures.

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

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There are no alternative methods available that will provide a method for a producer to control and eradicate mycobacterium paratuberculosis (Johne's) in a herd.

(8) Assessment of expected benefits:

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

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

(c) If detrimental effect would result, explain detrimental effect: N/A

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

(a) Necessity of proposed regulation if in conflict: N/A

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All herds enrolled in a Voluntary Mycobacterium Paratuberculosis (Johne's) Program must meet all requirements as set forth in 302 KAR 20:240 for the purpose of qualifying as a mycobacterium paratuberculosis (Johne's) test negative herd.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division for Air Quality  
(New Administrative Regulation)**

**401 KAR 63:104. National emission standards for oil-water separators and organic-water separators.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.1040 to 63.1049, 42 USC 7401, 7412, 7414

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.1040 to 63.1049, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes standards for the control of air emissions from oil-water separators and organic-water separators. Delegation of implementation and enforcement

authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definition. As used in 40 CFR 63.1040 to 63.1049, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 63.1040 to 63.1049, (40 CFR 63, Subpart VV), National emission standards for oil-water separators and organic-water separators, as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on February 23, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal National Emission Standards for Oil-Water Separators and Organic-Water Separators,



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40 CFR Part 63, Subpart VV, as published in the Code of Federal Regulations, July 1, 1997. The provisions of the federal NESHAP regulation apply to owners and operators of facilities subject to subparts in 40 CFR Parts 60, 61, or 63 that reference the use of this subpart for air emissions control from oil-water and organic-water separators.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in the federal regulation. The recordkeeping and reporting requirements are in 40 CFR 63.1048 and 63.1049.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no impact beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal NESHAP regulation, 40 CFR Part 63, Subpart VV. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal 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: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky

are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal regulation, 40 CFR 63, Subpart VV, so that Kentucky's air permitting program will conform with the federal program as required.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the provisions of the federal regulation without change. There is no tiering of requirements in the federal regulation and, therefore, no tiering of requirements by the state.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.1040 to 63.1049. The U.S. EPA may grant states implementation and enforcement authority for federal NESHAP regulations pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found in KRS Chapters 13A and 224.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, (40 CFR Part 63, Subpart VV), contains standards applicable to sources subject to subparts of 40 CFR Parts 60, 61, or 63, and prevents repetition of these standards in each relevant subpart.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

## ADMINISTRATIVE REGISTER - 1800

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department for Environmental Protection  
Division for Air Quality  
(New Administrative Regulation)

**401 KAR 63:541. National emission standards for hazardous air pollutants from secondary lead smelting.**

RELATESTO:KRS224.10-100,224.20-100,224.20-110,224.20-120, 40 CFR 63.541 to 63.550, 42 USC 7401, 7412, 7414

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.541 to 63.550, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes emission standards for the control of hazardous air pollutants from secondary lead smelting. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. As used in 40 CFR 63.541 to 63.550, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 63.541 to 63.550, (40 CFR 63, Subpart X), National emission standards for hazardous air pollutants from secondary lead smelting, as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on February 23, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This

hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) from Secondary Lead Smelting, 40 CFR Part 63, Subpart X, as published in the Code of Federal Regulations, July 1, 1997. The provisions of the federal NESHAP regulation apply to the following affected sources at all secondary lead smelters: blast, reverberatory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources. The regulation does not apply to primary lead smelters, lead refiners, or lead remelters.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in the federal regulation. The notification, recordkeeping and reporting requirements are in 40 CFR 63.549 and 63.550.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the NESHAP federal regulation, 40 CFR 63, Subpart X. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal 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: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal regulation, 40 CFR 63, Subpart X, so that Kentucky's air permitting program will conform with the federal program as required.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the provisions of the federal regulation without change. There is no tiering of requirements in the federal regulation and, therefore, no tiering of requirements by the state.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.541 to 63.550. The U.S. EPA may grant states implementation and enforcement authority for federal NESHAP regulations pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found in KRS Chapters 13A and 224.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, (40 CFR Part 63, Subpart X), contains standards for process sources, process fugitive sources, and fugitive dust sources. These standards apply to the affected sources at all secondary lead smelters, as listed in (1) of this Regulatory Impact Analysis.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

#### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

**401 KAR 63:560. National emission standards for marine tank vessel loading operations.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.560 to 63.567, 42 USC 7401, 7412, 7414

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.560 to 63.567, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes standards for the control of emissions for marine tank vessel loading operations. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. As used in 40 CFR 63.560 to 63.567, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 63.560 to 63.567, (40 CFR 63, Subpart Y), National emission standards for marine tank vessel loading operations, as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard,

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Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on February 23, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal National Emission Standards (NESHAP) for Marine Tank Vessel Loading Operations, 40 CFR Part 63, Subpart Y, as published in the Code of Federal Regulations, July 1, 1997, and applies to sources which load gasoline or crude oil. The provisions of the federal NESHAP regulation apply Maximum achievable control technology (MACT) standards for new and existing sources with emissions of 10 or 25 tons, and new sources with emissions less than 10 and 25 tons. Exemptions apply to existing sources with emissions less than 10 and 25 tons. The provisions also apply Reasonably available control technology (RACT) standards for sources with a throughput of 10 M barrels or 200 M barrels. Exemptions apply to sources with a throughput less than 10 M barrels and 200 M barrels. The federal regulation details additional exemptions from the MACT and RACT standards.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

competition) for the:

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in the federal regulation. The recordkeeping and reporting requirements are in 40 CFR 63.567.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation, 40 CFR 63, Subpart Y. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal 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: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal regulation, 40 CFR 63, Subpart Y, so that Kentucky's air permitting program will conform with the federal program as required.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the provisions of the federal regulation without change. There is no tiering of requirements in the federal regulation and, therefore, no tiering of requirements by the state.

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### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.560 to 63.567. The U.S. EPA may grant states implementation and enforcement authority for federal NESHAP regulations pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found in KRS Chapters 13A and 224.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, (40 CFR Part 63, Subpart Y), contains MACT standards and RACT standards for marine tank vessels which load gasoline or crude oil. These standards are in 40 CFR 63.562.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

**401 KAR 63:640. National emission standards for hazardous air pollutants from petroleum refineries.**

RELATESTO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.640 to 63.654, 42 USC 7401, 7412, 7414

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.640 to 63.654, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes emissions standards for hazardous air pollutants from petroleum refineries. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Com-

monwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. As used in 40 CFR 63.640 to 63.654, the following terms shall be defined as provided in this section.

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 63.652(3) and (5)(ii), "administrator" means the Administrator of the U.S. EPA.

(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 63.640 to 63.654, (40 CFR 63, Subpart CC), National emission standards for hazardous air pollutants from petroleum refineries, as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on February 23, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

## ADMINISTRATIVE REGISTER - 1804

### REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) from Petroleum Refineries, 40 CFR Part 63, Subpart CC, as published in the Code of Federal Regulations, July 1, 1997. The federal NESHAP regulation applies to petroleum refining process units and related emission points that are located at a plant site that is a major source and which emit or have equipment emitting one or more of the hazardous air pollutants listed in Table 1 of the federal regulation.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in the federal regulation. The recordkeeping and reporting requirements are in 40 CFR 63.654.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of federal actions beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal NESHAP regulation, 40 CFR 63, Subpart CC. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal 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: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal regulation, 40 CFR 63, Subpart CC, so that Kentucky's air permitting program will conform with the federal program as required.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the provisions of the federal regulation without change. There is no tiering of requirements in the federal regulation and, therefore, no tiering of requirements by the state.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.640 to 63.654. The U.S. EPA may grant states implementation and enforcement authority for federal NESHAP regulations pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found in KRS Chapters 13A and 224.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, (40 CFR Part 63, Subpart CC), contains uniform standards for hazardous air pollutants from petroleum refineries. These general standards are in 40 CFR 63.642.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

## ADMINISTRATIVE REGISTER - 1805

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department for Environmental Protection  
Division for Air Quality  
(New Administrative Regulation)

**401 KAR 63:680. National emission standards for hazardous air pollutants from off-site waste and recovery operations.**

RELATESTO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.680 to 63.698, 42 USC 7401, 7412, 7414

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.680 to 63.698, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes emissions standards for hazardous air pollutants from off-site waste and recovery operations. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. As used in 40 CFR 63.680 to 63.698, the following terms shall be defined as provided in this section.

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 63.694(b)(3)(iv), "administrator" means the Administrator of the U.S. EPA.

Section 2. (1) 40 CFR 63.680 to 63.698, (40 CFR 63, Subpart DD), National emission standards for hazardous air pollutants from off-site waste and recovery operations, as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary  
GLENN A. JOHNSON, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on February 23, 1998, at

10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) from Off-Site Waste and Recovery Operations, 40 CFR Part 63, Subpart DD, as published in the Code of Federal Regulations, July 1, 1997. Sources subject to the federal NESHAP regulation are specified waste management or recovery operations at a major source for operations that receive specified off-site materials.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in the federal regulation. The recordkeeping and reporting requirements are in 40 CFR 63.698 and 63.697.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

(6) Economic impact, including effects of economic activities

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arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact in the geographical location of federal actions beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal NESHAP regulation, 40 CFR 63, Subpart DD. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal 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: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal regulation, 40 CFR 63, Subpart DD, so that Kentucky's air permitting program will conform with the federal program as required.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the provisions of the federal regulation without change. There is no tiering of requirements in the federal regulation and, therefore, no tiering of requirements by the state.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.680 to 63.698. The U.S. EPA may grant states implementation and enforcement authority for federal NESHAP regulations pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found in KRS Chapters 13A and 224.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, (40 CFR Part 63, Subpart DD), contains uniform standards for hazardous air pollutants from off-site waste and recovery operations at major sources of hazardous air pollutants. These general standards are in 40 CFR 63.683.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

**401 KAR 63:741. National emission standards for aerospace manufacturing and rework facilities.**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.741 to 63.753, 42 USC 7401, 7412, 7414

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.741 to 63.753, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes emissions standards for aerospace manufacturing and rework facilities. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. As used in 40 CFR 63.741 to 63.753, the following terms shall be defined as provided in this section.

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 63.744(b)(3), "administrator" means the Administrator of the U.S. EPA.

(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 63.741 to 63.753, (40 CFR 63, Subpart GG), National emission standards for aerospace manufacturing and rework facilities, as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;



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- (c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;
- (d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;
- (e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;
- (f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606)-878-0157;
- (g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and
- (h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.
- (3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary  
GLENN A. JOHNSON, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

**PUBLIC HEARING:** A public hearing on the proposed amendment to the administrative regulation will be held on February 23, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

**CONTACT PERSON:** Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal National Emission Standards for Aerospace Manufacturing and Rework Facilities, 40 CFR Part 63, Subpart GG, as published in the Code of Federal Regulations, July 1, 1997. The provisions of the federal regulation apply to major sources engaged in the manufacture or rework of commercial, civil, or military aerospace vehicles or components. This regulation does not apply to hazardous wastes under the Resource Conservation and Recovery Act of 1976, specialty coatings, and research and development.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

competition) for the:

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in the federal regulation.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no economic impact beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation, 40 CFR 63, Subpart GG. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal 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: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal regulation, 40 CFR 63, Subpart GG, so that Kentucky's air permitting program will conform with the federal program as required.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the provisions of the federal regulation without change. There is no tiering of requirements in the federal regulation and, therefore, no tiering of requirements by the state.

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## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.741 to 63.753. The U.S. EPA may grant states implementation and enforcement authority for federal NESHAP regulations pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found in KRS Chapters 13A and 224.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, (40 CFR Part 63, Subpart GG), contains uniform standards for hazardous air pollutants from aerospace manufacturing and rework facilities. These general standards are in 40 CFR 63.743.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

## FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

## NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

**401 KAR 63:780. National emission standards for shipbuilding and ship repair (surface coating).**

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.780 to 63.788, 42 USC 7401, 7412, 7414

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.780 to 63.788, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes emissions standards for shipbuilding and ship repair (surface coating). Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Commonwealth of

Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. As used in 40 CFR 63.780 to 63.788, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 63.780 to 63.788, (40 CFR 63, Subpart II), National emission standards for shipbuilding and ship repair (surface coating), as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on February 23, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

## REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal National Emission Standards for Shipbuilding and Ship Repair (Surface Coating), 40 CFR Part 63, Subpart II, as published in the Code of Federal Regulations, July 1, 1997. The federal NESHAP regulation applies to

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major sources which build, repair, repaint, convert, or alter any marine or fresh-water vessel, barge, or buoy used for military or commercial operations. This regulation does not apply to coatings used in volumes of less than 200 liters (52.8 gallons) per year, provided the total volume of coating exempt does not exceed 1,000 liters per year at any facility.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in the federal regulation.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no impact beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation, 40 CFR 63, Subpart II. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal 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: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal regulation, 40 CFR 63, Subpart II, so that Kentucky's air permitting program will conform with the federal program as required.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the provisions of the federal regulation without change. There is no tiering of requirements in the federal regulation and, therefore, no tiering of requirements by the state.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.780 to 63.788. The U.S. EPA may grant states implementation and enforcement authority for federal NESHAP regulations pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found in KRS Chapters 13A and 224.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, (40 CFR Part 63, Subpart II), contains uniform standards for hazardous air pollutants from ship-building and ship repair (surface coatings). These general standards are in 40 CFR 63.783.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

## ADMINISTRATIVE REGISTER - 1810

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET**  
Department for Environmental Protection  
Division for Air Quality  
(New Administrative Regulation)

**401 KAR 63:800. National emission standards for wood furniture manufacturing operations.**

RELATESTO:KRS224.10-100,224.20-100,224.20-110,224.20-120, 40 CFR 63.800 to 63.808, 42 USC 7401, 7412, 7414

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.800 to 63.808, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes emissions standards for wood furniture manufacturing operations. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. As used in 40 CFR 63.800 to 63.808, the following terms shall be defined as provided in this section.

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 63.804(f)(4)(d), 63.804(g)(iii)(c), 63.804(g)(4)(vi), 63.804(g)(6)(vi), 63.805(a), 63.805(d)(2)(v), and 63.805(e)(1), "administrator" means the Administrator of the U.S. EPA.

(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 63.800 to 63.808, (40 CFR 63, Subpart JJ), National emission standards for wood furniture manufacturing operations, as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

GLENN A. JOHNSON, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

**PUBLIC HEARING:** A public hearing on the proposed amendment to the administrative regulation will be held on February 23, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

**CONTACT PERSON:** Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal National Emission Standards for Wood Furniture Manufacturing Operations, 40 CFR Part 63, Subpart JJ, as published in the Code of Federal Regulations, July 1, 1997. The federal regulation applies to major sources which manufacture wood furniture or wood furniture components.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in the federal regulation.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

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(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation, 40 CFR 63, Subpart JJ. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal 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: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal regulation, 40 CFR 63, Subpart JJ, so that Kentucky's air permitting program will conform with the federal program as required.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the provisions of the federal regulation without change. There is no tiering of requirements in the federal regulation and, therefore, no tiering of requirements by the state.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for this administrative regulation is found at 40 CFR 63.800 to 63.808. The U.S. EPA may grant states implementation and enforcement authority for federal NESHAP regulations pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found in KRS Chapters 13A and 224.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, (40 CFR Part 63, Subpart JJ), contains uniform standards for hazardous air pollutants for wood furniture manufacturing operations. The emission limits are in 40 CFR 63.802 and the work practice standards are in 63.803.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

**401 KAR 63:820. National emission standards for the printing and publishing industry.**

RELATESTO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.820 to 63.831, 42 USC 7401, 7412, 7414

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.820 to 63.831, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes emissions standards for the printing and publishing industry. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. As used in 40 CFR 63.820 to 63.832, the following terms shall be defined as provided in this section:

(1) Except as provided in subsection (2) of this section, "administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

(2) As used in 40 CFR 63.827(b), 63.827(c), and 63.830(b), "administrator" means the Administrator of the U.S. EPA.

(3) "State" means the Commonwealth of Kentucky.

Section 2. (1) 40 CFR 63.820 to 63.831, (40 CFR 63, Subpart KK), National emission standards for the printing and publishing industry, as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

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(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

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CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal National Emission Standards for the Printing and Publishing Industry, 40 CFR Part 63, Subpart KK, as published in the Code of Federal Regulations, July 1, 1997. The federal regulation applies to major sources at which publication rotogravure, product and packaging rotogravure, or wide-web flexographic printing presses are operated.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the final federal rulemaking.

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

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in the federal

regulation.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation, 40 CFR 63, Subpart KK. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal 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: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal regulation, 40 CFR 63, Subpart KK, so that Kentucky's air permitting program will conform with the federal program as required.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the provisions of the federal regulation without change. There is no tiering of requirements in the federal regulation and, therefore, no tiering of requirements by the state.

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### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.820 to 63.831. The U.S. EPA may grant states implementation and enforcement authority for federal NESHAP regulations pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found at KRS Chapters 13A and 224.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, (40 CFR Part 63, Subpart KK), contains uniform standards for hazardous air pollutants for the printing and publishing industry at major sources of hazardous air pollutants. These standards are in 40 CFR 63.823 through 63.825.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

#### 401 KAR 63:900. National emission standards for tanks-Level 1.

RELATESTO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Parts 60, 61, 63, 63.900 to 63.907, 42 USC 7401, 7412, 7414

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.900 to 63.907, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes standards for the control of emissions from tanks. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S.

EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. 40 CFR 63.900 to 63.907, (40 CFR 63, Subpart OO), National emission standards for tanks - level 1, as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, is incorporated by reference.

Section 2. The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

GLENN A. JO CURRY, General Counsel

APPROVED BY AGENCY: December 19, 1997

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PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on February 23, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal National Emission Standards for Tanks - Level 1, 40 CFR Part 63, Subpart OO, as published in the Code of Federal Regulations, July 1, 1997. The provisions of the federal regulation apply to owners and operators of facilities subject to other subparts of 40 CFR Parts 60, 61, or 63, that reference this subpart for the control of emissions from tanks.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in the federal regulation.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continuing costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no impact beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation, 40 CFR 63, Subpart OO. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal 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: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal regulation, 40 CFR 63, Subpart OO, so that Kentucky's air permitting program will conform with the federal program as required.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the provisions of the federal regulation without change. There is no tiering of requirements in the federal regulation and, therefore, no tiering of requirements by the state.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.900 to 63.907. The U.S. EPA may grant states implementation and enforcement authority for federal NESHAP regulations pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found in KRS Chapters 13A and 224.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, (40 CFR Part 63, Subpart OO), contains uniform standards for hazardous air pollutants from tanks for which another subpart of 40 CFR Parts 60, 61, or 63 references the use of this subpart. The standards for tank fixed roof are in 40 CFR 63.902.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

401 KAR 63:920. National emission standards for containers.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Parts 60, 61, 63, 63.920 to 63.928, 42 USC 7401, 7412,



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STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.920 to 63.928, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes standards for the control of emissions from containers. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. 40 CFR 63.920 to 63.928, (40 CFR 63, Subpart PP), National emission standards for containers, as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, is incorporated by reference.

Section 2. The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on February 23, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal

opportunity to participate in all programs and activities.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal National Emission Standards for Containers, 40 CFR Part 63, Subpart PP, as published in the Code of Federal Regulations, July 1, 1997. The provisions of the federal regulation apply to owners and operators of facilities subject to other subparts of 40 CFR Parts 60, 61, or 63, that reference this subpart for the control of emissions from containers.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the final federal rulemaking.

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

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in the federal regulation.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no impact beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation, 40 CFR 63, Subpart PP. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal 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: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

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

result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal regulation, 40 CFR 63, Subpart PP, so that Kentucky's air permitting program will conform with the federal program as required.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the provisions of the federal regulation without change. There is no tiering of requirements in the federal regulation and, therefore, no tiering of requirements by the state.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.920 to 63.928. The U.S. EPA may grant states implementation and enforcement authority for federal NESHAP regulations pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found in KRS Chapters 13A and 224.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, (40 CFR Part 63, Subpart PP), contains uniform standards for hazardous air pollutants from containers for which another subpart of 40 CFR Parts 60, 61, or 63 references the use of this subpart. The standards for level 1 controls are in 40 CFR 63.922; level 2 controls are in 63.923; and level 3 controls are in 63.924.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

**NATURAL RESOURCES AND  
ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division for Air Quality  
(New Administrative Regulation)**

**401 KAR 63:940. National emission standards for surface impoundments.**

RELATESTO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Parts 60, 61, 63, 63.940 to 63.948, 42 USC 7401, 7412, 7414

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.940 to 63.948, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes standards for the control of emissions from surface impoundments. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. "Administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 63.940 to 63.948, (40 CFR 63, Subpart QQ), National emission standards for surface impoundments, as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on February 23, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in

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being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

**CONTACT PERSON:** Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal National Emission Standards for Surface Impoundments, 40 CFR Part 63, Subpart QQ, as published in the Code of Federal Regulations, July 1, 1997. The provisions of the federal regulation apply to owners and operators of facilities subject to other subparts of 40 CFR Parts 60, 61, or 63, that reference this subpart for the control of emissions from surface impoundments.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the final federal rulemaking.

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

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in the federal regulation.

2. Second and subsequent years: There are no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no impact

beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation, 40 CFR 63, Subpart QQ. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal 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: There will be no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal regulation, 40 CFR 63, Subpart QQ, so that Kentucky's air permitting program will conform with the federal program as required.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the provisions of the federal regulation without change. There is no tiering of requirements in the federal regulation and, therefore, no tiering of requirements by the state.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.940 to 63.948. The U.S. EPA may grant states implementation and enforcement authority for federal NESHAP regulations pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards are found in KRS Chapters 13A and 224.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, (40 CFR Part 63, Subpart QQ), contains uniform standards for hazardous air pollutants from surface impoundments for which another subpart of 40 CFR Parts 60, 61, or 63 references the use of this subpart. The standards for surface impoundment floating membrane cover are in 40 CFR 63.942 and the standards for surface impoundment vented to control device are in 63.943.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

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## 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. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

### NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET Department for Environmental Protection Division for Air Quality (New Administrative Regulation)

**401 KAR 63:960. National emission standards for individual drain systems.**

RELATESTO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR Parts 60, 61, 63, 63.960 to 63.966, 42 USC 7401, 7412, 7414

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120, 40 CFR 63.960 to 63.966, 42 USC 7401, 7412, 7414

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Natural Resources and Environmental Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. The federal regulation incorporated by reference in this administrative regulation establishes standards for the control of emissions from individual drain systems. Delegation of implementation and enforcement authority for the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) Source Categories from the U.S. EPA to the Commonwealth of Kentucky is provided under 42 USC 7412(l).

Section 1. Definitions. "Administrator" means the Secretary of the Natural Resources and Environmental Protection Cabinet.

Section 2. (1) 40 CFR 63.960 to 63.966, (40 CFR 63, Subpart RR), National emission standards for individual drain systems, as published in the Code of Federal Regulations, 40 CFR Part 63, July 1, 1997, is incorporated by reference.

(2) The material incorporated by reference may be obtained, inspected, or copied at the following offices of the Division for Air Quality, Monday through Friday, 8 a.m. to 4:30 p.m.:

(a) The Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382;

(b) Ashland Regional Office, 3700 Thirteenth Street, Ashland, Kentucky 41105, (606) 920-2067;

(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (502) 746-7475;

(d) Florence Regional Office, 7964 Kentucky Drive, Suite 8, Florence, Kentucky 41042, (606) 292-6411;

(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard,

Kentucky 41701, (606) 435-6022;

(f) London Regional Office, 85 State Police Road, London, Kentucky 40741, (606)-878-0157;

(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (502) 687-7304; and

(h) Paducah Regional Office, 4500 Clarks River Road, Paducah, Kentucky 42003, (502) 898-8468.

(3) Copies of the Code of Federal Regulations (CFR) are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

JAMES E. BICKFORD, Secretary

GLENNA JO CURRY, General Counsel

APPROVED BY AGENCY: December 19, 1997

FILED WITH LRC: December 19, 1997 at 11 a.m.

PUBLIC HEARING: A public hearing on the proposed amendment to the administrative regulation will be held on February 23, 1998, at 10 a.m. (ET) in the Conference Room of the Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing, at least five workdays prior to the hearing, of their intent to attend. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed amendment. Send written notification of intent to be heard at the public hearing or written comments on the regulation to the contact person.

CONTACT PERSON: Millie Ellis, Supervisor, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601, (502) 573-3382, and fax number (502) 573-3787.

To request appropriate accommodations for the public hearing (such as an interpreter), or alternate formats of the printed material, please call (502) 573-3382, ext 362. The cabinet does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services and provides, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with disabilities an equal opportunity to participate in all programs and activities.

## REGULATORY IMPACT ANALYSIS

Agency Contact: Millie Ellis, Supervisor

(1) Type and number of entities affected: This administrative regulation incorporates by reference the federal National Emission Standards for individual Drain Systems, 40 CFR Part 63, Subpart RR, as published in the Code of Federal Regulations, July 1, 1997. The provisions of the federal regulation apply to owners and operators of facilities subject to other subparts of 40 CFR Parts 60, 61, or 63, that reference this subpart for the control of emissions from individual drain systems.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented. There are no costs or savings beyond those which are described in the federal rulemaking.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented. This administrative regulation does not affect the cost of doing business in the geographical areas where it will be implemented beyond the costs described in the federal rulemaking.

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

1. First year following implementation: There are no reporting or paperwork requirements beyond those required in the federal regulation.

2. Second and subsequent years: There will be no requirements beyond those required in the federal regulation.

(3) Effects on the promulgating administrative body:

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(a) Direct and indirect costs or savings:

1. First year: There are no direct or indirect costs or savings beyond those described in the federal rulemaking.

2. Continuing costs or savings: There are no continued costs or savings beyond those described in the federal rulemaking.

3. Additional factors increasing or decreasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There are no reporting or paperwork requirements beyond those in the federal regulation.

(4) Assessment of anticipated effect on state and local revenues: There are no anticipated effects on local and state revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The division's operating budget will be used to implement and enforce this administrative regulation.

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

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation will have no impact beyond that described in the federal rulemaking.

(b) Kentucky: This administrative regulation will have no economic impact in any geographical location in Kentucky beyond that described in the federal rulemaking.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered because this administrative regulation contains the same provisions as the federal regulation, 40 CFR 63, Subpart RR. This administrative regulation is necessary for the Commonwealth to be granted delegation of authority to enforce the federal 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: There are no effects on public health and environmental welfare in Kentucky beyond those described in the federal rulemaking.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation, which will be implemented by the U.S. EPA if Kentucky fails to do so.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect would result because affected sources in Kentucky are already subject to the provisions of the federal regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no statutes, rules, regulations, or government policies which are in conflict, or which overlap or duplicate this administrative regulation.

(a) Necessity of proposed regulation if in conflict: The administrative regulation is not in conflict.

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

(10) Any additional information or comments: The cabinet is promulgating this administrative regulation to incorporate by reference the federal regulation, 40 CFR 63, Subpart RR, so that Kentucky's air permitting program will conform with the federal program as required.

(11) TIERING: Is tiering applied? No. The cabinet is incorporating by reference the provisions of the federal regulation without change. There is no tiering of requirements in the federal regulation and, therefore, no tiering of requirements by the state.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate is found at 40 CFR 63.960 to 63.966. The U.S. EPA may grant states implementation and enforcement authority for federal NESHAP regulations pursuant to 42 USC 7412(l).

2. State compliance standards. The state compliance standards

are found in KRS Chapters 13A and 224.

3. Minimum or uniform standards contained in the federal mandate. The federal regulation, (40 CFR Part 63, Subpart RR), contains uniform standards for hazardous air pollutants from individual drain systems for which another subpart of 40 CFR Parts 60, 61, or 63 references the use of this subpart. The standards are in 40 CFR 63.962.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter standards and requirements are not imposed.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State what unit, part or division of local government this administrative regulation will affect. This administrative regulation does not affect any known unit, part or division of local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation does not relate to any known aspect or service of local government.

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 (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.

### CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development (New Administrative Regulation)

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

RELATES TO: KRS 205.520, 42 CFR 44, Subpart G, 42 USC 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194.050, 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 the coverage provisions relating to home and community-based services provided to an individual with mental retardation or developmental disabilities as an alternative to intermediate care facility services for the mentally retarded.

Section 1. Definitions. "Supports for community living (SCL)" means community-based waiver services for an individual with mental retardation or developmental disabilities.

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Section 2. General Coverage Provisions. (1) Except as provided in subsection (2) of this section, SCL services shall be provided to an individual eligible for Medicaid:

(a) Who meets patient status criteria for intermediate care for the mentally retarded in accordance with 907 KAR 1:022;

(b) Who is in a community residence living situation; and

(c) For whom SCL services are an appropriate alternative to institutionalization.

(2) SCL services shall not be provided to an individual who:

(a) Is an inpatient of a hospital;

(b) Is a resident of a nursing facility; or

(c) Is an inpatient of a facility for the mentally retarded.

(3) The department may exclude from coverage an individual for whom the cost of SCL services exceeds the cost of the appropriate level of institutional care, as provided for in 42 USC 1396n(c)(3).

(4) The SCL service agency shall provide one (1) or more of the services as outlined in Section 4 of this administrative regulation.

(5) The federally designated Peer Review Organization (PRO) shall make the level of care determination as the agent of the department.

Section 3. Provider Participation. (1) A participating SCL service provider shall meet the applicable certification requirements for providing community-based waiver services in accordance with 907 KAR 1:671, 907 KAR 1:672 and 907 KAR 1:675.

(2) Group homes shall be licensed by the Commonwealth of Kentucky in accordance with 902 KAR 20:078.

Section 4. Covered Services. (1) The following shall be covered SCL services:

(a) Residential support services provided to an individual residing in an alternative living arrangement. The residential options are:

1. Group home;
2. Staffed residence; and
3. Family home.

(b) Support coordination as follows:

1. Initiation and ongoing monitoring of admission, assessment and eligibility processes;
2. Development and monitoring of an individual support plan;
3. Ensuring access to and freedom of choice of SCL providers;
4. Monitoring of the health, safety and welfare of the individual by a support coordinator;
5. Ensuring the availability of a waiver service;
6. Providing pertinent information to an individual, parent or legal representative;
7. Establishing and overseeing a human rights committee for the review of overall procedures and individual behavior plans;
8. Acting on behalf of the individual to assist in gaining access to and receiving services from qualified SCL providers; and
9. Providing assistance to the individual, his family or legal representative in accessing another service as needed.

(c) Community living supports provided to an individual in their own home to assist, train or support in activities including:

1. Laundry services;
2. Meal preparation;
3. Household care and maintenance;
4. Daily living skills;
5. Socialization;
6. Relationship building;
7. Leisure choices; and
8. Participation in community activities.

(d) Behavioral support;

(e) Psychological services;

(f) Occupational therapy;

(g) Physical therapy;

(h) Speech therapy;

(i) Community habilitation services to provide nonresidential

support training and intervention in activities that include:

1. Self care;
2. Daily living skills;
3. Communication;
4. Behavior support;
5. Community living;
6. Social skills;
7. Participation in community activities;
8. Utilization of community resources; and
9. Vocational training.

(j) Supported employment for a participating individual eligible under Health Care Financing Administration (HCFA) regulations. Services required under 29 USC 701 et. seq. shall not be covered by the Medicaid Program;

(k) Respite care provided for the temporary relief of the staff or family or for the safety of the individual;

(l) Wellness monitoring providing one (1) visit per month by a registered nurse to:

1. Evaluate the condition of an individual at risk of medical complications; and
  2. Refer the individual to the appropriate medical services.
- (m) Specialized medical equipment and supplies; and
- (n) Personal emergency response systems.

(2) Room and board shall be excluded from coverage.

(3) Special education and related services that are required to be provided by the public school system under 20 USC 1400 et seq. shall be excluded from coverage.

Section 5. Prior Authorization for Services. (1) The department shall prior authorize an SCL service to ensure that:

(a) Client status is met;

(b) There are adequate services for the needs of the individual; and

(c) The services do not exceed the cost of the appropriate level of institutional care.

(2) An individual who is eligible for SCL services shall be given the choice of SCL services or traditional intermediate care facility services for persons with mental retardation or developmental disabilities.

Section 6. SCL Waiting List. Using procedures described in the Department for Medicaid Services Supports for Community Living Manual, incorporated by reference, an individual may be placed on a waiting list maintained by the department. The main components of the SCL waiting list process are as follows:

(1) Application. An individual shall be placed on the SCL waiting list upon receipt of a completed application for supports for community living services.

(2) SCL waiting list placement.

(a) The order of placement on the SCL waiting list shall be determined chronologically by date of receipt of the application by the department, unless an emergency situation exists which meets specified criteria as follows:

1. Death or loss of the immediate care provider;
2. Emergency hospitalization of the immediate care provider; or
3. Other circumstances relating to the situation of the individual or caregiver to be considered by the department on a case-by-case basis.

(b) If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list.

(c) A written notification of the date and placement on the SCL waiting list shall be mailed to the individual or his legal representative and support coordination provider if identified.

(3) Maintenance of the SCL waiting list. The department shall, at least annually, update the SCL waiting list. The individual or his legal representative and the support coordination provider shall be contacted in writing to verify the accuracy of the data on the SCL

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waiting list and the continued desire to pursue placement in the SCL Program. The requested data shall be received by the department within thirty (30) days from the date of the letter, excluding holidays and weekends.

(4) Criteria for removal from the SCL waiting list. The removal from the waiting list shall not prevent the submittal of a new application at a later date for the individual.

(a) The criteria for removal from the waiting list shall be:

1. After a documented attempt, the department is unable to locate the individual or his legal representative;

2. SCL placement for services is offered and the individual or his legal representative refuses the offer of placement or does not, without good cause, complete the application process with the department within sixty (60) days of the placement allocation date; or

3. The individual is deceased.

(b) If the individual is removed from the SCL waiting list, written notification shall be mailed by the department to the individual or his legal representative and the SCL coordination provider.

Section 7. Appeal Rights. (1) An adverse action regarding a Medicaid beneficiary may be appealed in accordance with 907 KAR 1:560.

(2) No decision to terminate an individual or to reallocate placement subject to appeal shall be final until the hearing officer issues a decision.

Section 8. Incorporation by Reference. (1) "Supports for Community Living Manual", Department for Medicaid Services, March 1998 Edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY A. MCCARTHY, Deputy Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: January 13, 1998

FILED WITH LRC: January 15, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 1998 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 February 13, 1998 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: 1102 potential recipients are served by this program at any given time.

(2) Direct and indirect costs or savings on:

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

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

(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 (Number of individuals served at any given time will not exceed 1102 in the year.)

2. Second and subsequent years: None (Same as above).

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$3,041,000 (cost)

2. Continuing costs or savings: \$3,041,000 (cost)

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None. Given that this regulation is replacing the recently expired AIS/MR waiver, the reporting and paperwork requirements 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: Federal and state matching funds. \*Federal matching funds of 70.37% equaling \$2,139,952 and state matching funds of 29.63% equaling \$901,048. State revenues will come from funds previously designated for the expiring waiver.

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

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: It will allow individuals, who would otherwise be placed in an ICF-MR, to remain within the community and attain their highest possible level of functioning. It also will allow the individual to be cared for in a family setting.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients because the AIS/MR waiver expired on August 31, 1997. Failure to implement this regulation would result in the termination of services to the mentally retarded or developmentally disabled.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky

has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

**CABINET FOR HEALTH SERVICES  
Department for Medicaid Services  
Division of Administration and Development  
(New Administrative Regulation)**

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

RELATES TO: KRS 205.520, 42 CFR 441, Subpart G, 42 USC 1396a, b, d, n, EO 96-862

STATUTORY AUTHORITY: KRS 194.050, 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 Service. 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 the coverage provisions relating to home and community based waiver services provided to an individual with mental retardation or developmental disabilities as an alternative to intermediate care facility services for the mentally retarded.

Section 1. Definition. "Supports for community living (SCL)" means community-based waiver services for an individual with mental retardation or developmental disabilities.

Section 2. Coverage. (1) The cabinet shall reimburse a participating provider of SCL for a service to a Medicaid recipient who:

(a) Meets patient status criteria for intermediate care for the mentally retarded; and

(b) Is authorized for the SCL service by the department.

(2) In order to be covered, a service shall be described, defined, and provided in accordance with the terms and conditions specified in 907 KAR 1:145.

Section 3. Payment Amounts. (1) A participating in-state SCL provider certified in accordance with 907 KAR 1:145 shall be reimbursed at a prospective rate per unit of service during the first year of participation based on a budgeted cost report in accordance with the Department for Medicaid Services Supports for Community Living Payment Rate Determination Manual, incorporated by reference.

(2) Payment rate setting shall be as follows:

(a) Reimbursement shall be made using a projected rate per unit

of service based on an annual cost report; and

(b) Reimbursement shall be retroactively adjusted to incorporate adjustments to the annual cost report as a result of an audit or desk review.

(3) Reimbursement for medical services, dentures, eyeglasses, and hearing aids shall be paid at a reasonable cost, determined by the department, if prescribed for a recipient by a physician as necessary for an individual's habilitation and are not otherwise covered by the Medicaid Program. These services shall be paid apart from the services paid through the cost report, but limited to reasonable cost.

(4) Minor home adaptations shall be paid on the basis of reasonable cost not to exceed \$1500 per individual per patient year. The patient year for an individual begins on the first day of admittance of the individual to the SCL program, with a new patient year beginning for that individual on the same day in each succeeding calendar year.

(5) A payment and rate shall be subject to a test of reasonableness through an audit.

(6) Utilizing the formula described in 42 CFR 441.303(f)(1) as a guideline and applying accumulated statistical data, the department shall set, effective July 1 each year, an annualized upper limit, which is the aggregate amount reimbursed to the SCL providers not to be exceeded in a twelve (12) month calendar period, to be applied to the total payments for SCL services.

(7) The department may reduce established rates or limit new rates by a percentage amount which assures that the total payments to a provider are not in excess of the annualized upper limit. A reduction factor shall be applied in a manner as to ensure an even flow of reimbursement to an SCL provider through the year.

Section 4. Units of Service. The units of service shall be as follows:

(1) An SCL coordination services unit of service shall be one (1) month;

(2) A residential care services unit of service shall be twenty-four (24) hours;

(3) A community living SCL services unit of service shall be one (1) hour;

(4) A respite care services unit of service shall be one (1) hour; institutional respite unit of service shall be twenty-four (24) hours;

(5) A community habilitation services unit of service shall be one (1) hour;

(6) A physical therapy, occupational therapy, speech therapy, behavioral support, and psychological services unit of service shall be one-fourth (1/4) hour;

(7) A wellness monitoring unit of service shall be one (1) visit;

(8) A supported employment unit of service shall be one (1) hour;

(9) A Personal Emergency Response System (PERS) unit of service shall be one (1) month of initial installation and one (1) month of usage; and

(10) Specialized medical equipment and supplies unit of service shall be one (1) item.

Section 5. Payment Exclusions and Limitations. (1) Payment shall not include:

(a) The cost of room and board; or

(b) The cost of maintenance, upkeep and improvements to the residence when it is a group home or other licensed facility.

(2) A payment shall not be made to:

(a) A community living SCL provider who provides community living services for routine care and supervision and which duplicates homemaker and personal care services being provided by a family member; or

(b) A community habilitation provider for supported employment services for individuals not receiving payment according to 29 USC 794.



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Section 6. Auditing and Reporting. (1) A participating provider shall be required to maintain fiscal and service records for a period of not less than five (5) years and to provide, as requested, reports determined necessary by the department for the effective functioning and administration of the program.

(2) A provider shall be required to make available upon request service and financial records to a representative or designee of:

- (a) The Commonwealth of Kentucky, Cabinet for Health Services;
- (b) The United States Department of Health and Human Services, Comptroller General;
- (c) The Department of Health and Human Services, Health Care Financing Administration;
- (d) The General Accounting Office; or
- (e) The Commonwealth of Kentucky, Office of the Auditor of Public Accounts.

Section 7. Incorporation by Reference. (1) The Supports for Community Living Payment Rate Determination Manual, Department for Medicaid Services, March 1998 Edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky. 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

LARRY A. MCCARTHY, Deputy Commissioner  
JOHN H. MORSE, Secretary  
JOHN H. WALKER, Attorney

APPROVED BY AGENCY: January 13, 1998

FILED WITH LRC: January 15, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on February 23, 1998 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 February 13, 1998 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: 1102 potential recipients are served at any given time.

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

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

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

(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 (Number of individuals served at any given time will not exceed 1102 in the year).

2. Second and subsequent years: None (Same as above)

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$3,041,000 (cost)

2. Continuing costs or savings: \$3,041,000 (cost)

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None. Given that this regulation replaces the recently expired AIS/MR waiver, the reporting and paperwork requirements 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: Federal and state matching funds. \*Federal matching funds of 70.37% equaling \$2,139,952 and state matching funds of 29.63% equaling \$901,048. State revenues will come from funds previously designated for the expiring waiver.

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

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None

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

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: It will allow individuals, who would otherwise be placed in an ICF-MR, to remain within the community and attain their highest possible level of functioning. It will also allow the individual to be cared for in a family setting.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients because the AIS/MR waiver expired on August 31, 1997. Failure to implement this regulation would result in the termination of services to the mentally retarded or developmentally disabled.

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

(a) Necessity of proposed regulation if in conflict:

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et seq.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

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4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

### CABINET FOR HEALTH SERVICES

#### Department for Mental Health Mental Retardation Services (New Administrative Regulation)

#### 908 KAR 1:380. Licensing procedures and standards for the operation of alcohol and other drug abuse prevention programs.

RELATES TO: KRS 222.231

STATUTORY AUTHORITY: KRS 194.050, 222.231, EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194.050, 222.231, and Executive Order 96-862 authorize the cabinet to regulate alcohol and other drug abuse agencies and programs. Executive Order 96-862, effective 7/02/96, reorganizes the Cabinet for Human Resources and places the Department for Mental Health and Mental Retardation Services and its programs under the Cabinet for Health Services. This administrative regulation provides licensure requirements and minimum standards for the operation of agencies providing alcohol and other drug abuse prevention.

Section 1. Definitions. (1) "Agency" means as defined in KRS 222.005(2).

(2) "Alcohol and other drug abuse" means as defined in KRS 222.005(12).

(3) "Cabinet" means as defined in KRS 222.005(3).

(4) "Certified chemical dependency prevention professional" means an individual who is recognized by the Kentucky Certification Board of Chemical Dependency Professionals, Inc.

(5) "Consumer" means the recipient of prevention services.

(6) "Legal entity" means a unit other than a natural person with a separate and distinct independent existence, having lawful standing in the Commonwealth of Kentucky to function legally, to sue or be sued and make decisions through agents, by means of a partnership agreement, articles of incorporation, legislative act, or executive order.

(7) "Outcome evaluation" means an assessment of ways in which individuals, systems, and communities participating in prevention programs have changed as a result of that program.

(8) "Prevention" means as defined in KRS 222.211(4).

(9) "Preventionist" means any individual or certified prevention professional who receives remuneration for alcohol and other drug prevention programs.

(10) "Process evaluation" means describing and documenting what actually was done, how much, when, for whom and by whom during the course of the program.

(11) "Program" means as defined in KRS 222.005(10).

Section 2. Licensing Procedures. (1) No agency receiving remuneration for any program shall operate without first obtaining from the cabinet an alcohol and other drug abuse prevention license for each facility, unless the agency is exempted under KRS 222.003(1) and (2).

(2) Any agency operating a program without first obtaining a license shall be subject to the penalties as stated in KRS 222.990(2). An application for licensure or renewal of licensure shall be submitted in writing to the Cabinet for Health Services, Office of Inspector General, Division of Licensing and Regulation, 275 East Main Street, Frankfort, Kentucky 40621, and shall include at a minimum the agency name and mailing address.

(3) An application for licensure shall be accompanied by a fee of

\$155. The license shall remain in effect for one (1) year from the date of issue and may be renewed. An application for renewal shall be accompanied by a fee of eighty (80) dollars.

(4) The license shall be conspicuously posted in a public area of each separate facility operated by the agency and shall indicate the year the license was issued or renewed.

(5) An application for licensure and renewal shall be processed as follows:

(a) The cabinet may conduct an on-site inspection of each agency to determine compliance with licensure standards;

(b) The agency shall provide representatives of the cabinet access during normal hours of operation to any documents needed to complete the inspection;

(c) The cabinet shall notify the agency in writing of any violation of licensure standards identified during the inspection;

(d) The agency shall submit to the cabinet a written plan of correction within ten (10) days of receipt of the notice of violation. The plan of correction shall specify the corrective action to be taken and the date when each violation shall be corrected.

(6) Changes in agency status.

(a) Name change.

1. The agency shall notify the cabinet in writing within ten (10) calendar days of the effective date of change.

2. The cabinet may issue a new license for the remainder of the licensure period.

3. The agency shall submit a processing fee of twenty-five (25) dollars to the cabinet.

(b) Change of location. The agency shall not deliver services at a new location until an application for licensure accompanied by a fee of eighty (80) dollars is filed with the cabinet.

(c) Change of ownership. The new owner of the agency shall submit to the cabinet an application for licensure accompanied by a fee of eighty (80) dollars for each facility within ten (10) calendar days of the effective date of change.

(d) Discontinuing a program. The agency shall notify the cabinet in writing within ten (10) calendar days of the effective date of discontinuance.

(7) The certificate of licensure shall be the property of the cabinet and shall be returned by the agency to the cabinet upon closure or revocation of the license.

(8) The cabinet shall make available to the public a list of all licensed alcohol and other drug prevention agencies identifying each separate facility. The cabinet may issue revisions and corrections to this list as changes occur.

Section 3. Physical Plant. There shall be written housekeeping, sanitation and maintenance procedures which shall be followed at all times to ensure that the facility shall be clean and in good repair.

Section 4. Organization and Administration. (1) Governing body.

(a) An agency shall have a governing body with overall authority and responsibility for the agency's operation.

(b) The governing body shall have written documentation to show the agency is a legal entity in the Commonwealth of Kentucky by means of a partnership agreement, articles of incorporation, legislative act or executive order.

(c) The agency shall maintain written documentation to show that it has professional liability insurance in the minimum amount of \$100,000 per occurrence;

(d) The responsibilities of the governing body shall be specified in writing and shall include:

1. Adopting a mission statement that outlines the agency's purpose;

2. Adopting a conflict of interest policy to govern participation by a governing body member in decisions which may be influenced by a member's business interest;

3. Appointing an executive director who shall be principally

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responsible for the day-to-day operation of the agency;

4. Adopting an administrative structure and establishing lines of authority for all prevention programs operated by the agency;

5. Documenting administrative structure and lines of authority on an organizational chart, including names of current governing board members;

6. Adopting written policies and procedures to direct administrative and program functions of the agency to ensure that sufficient staff and resources are available for the successful delivery of programs;

7. Reviewing written prevention policies and procedures at least every two (2) years making needed revisions and incorporating relevant findings of the agency's quality assurance system;

8. Overseeing a system of financial management and accountability;

9. Obtaining agency professional liability insurance in the amount of \$100,000 per occurrence at a minimum;

10. Completing a minimum of two (2) hours of annual training on alcohol and other drug prevention for prevention agencies, and in multiservice agencies for that particular component of the board that provides oversight to the prevention program.

11. Meeting as a whole at least quarterly and keeping written records demonstrating the ongoing discharge of its responsibilities.

(2) Staffing and staff qualifications.

(a) A preventionist who is actively involved in the development and implementation of prevention programs shall be certified by the Kentucky Certification Board for Prevention Professionals as a prevention professional or become a Kentucky certified prevention professional within twenty-four (24) months of the effective date of this administrative regulation or within twenty-four (24) months of employment whichever is longer.

(b) The agency shall designate one (1) or more individuals as prevention supervisor.

(c) A prevention supervisor shall meet at least one (1) of the following sets of qualifications:

1. A bachelors degree plus five (5) years of work experience in prevention or the related fields of health, social science, marketing, communications or education. Two (2) years of the work experience shall be in administration; or

2. A masters degree, with two (2) years of work experience in prevention administration or the related fields of health, social sciences, marketing, communications or education.

(d) Staff responsible for providing prevention services within the agency shall be clearly designated.

(e) The agency shall designate an individual as an ombudsman.

Section 5. Quality Assurance. (1) Staff and community volunteer development.

(a) The prevention agency shall establish a system of on-going staff development to include training and supervision of all prevention staff and community volunteers which shall be outlined in the agency's policy and procedures manual and which shall support the attainment of the goals and objectives of the prevention program.

(b) The prevention agency shall make training available for administrative staff, all preventionists, and volunteers. The training shall be in areas that enable volunteers and staff to carry out their expected job duties.

(c) Completion of training shall be documented in the volunteer and staff development files and shall identify the name of the training, clock hours earned and dates attended.

(2) Program quality assurance. The agency shall have written policy and procedures for assuring the quality of each program operated by the agency which shall include the following:

(a) Designation of an individual responsible for monitoring and evaluating the quality assurance activities;

(b) Description of the range of activities and services provided in each program;

(c) A statement of intended program outcomes and indicators of

effectiveness; and

(d) Establishment of a mechanism and a schedule for the collection, organization and analysis of data to be used for the process evaluation and outcome evaluation of programs to determine quality of services.

Section 6. Personnel and Employment Practices. (1) The agency shall have written policies and procedures governing employment practices for agency employees and subcontractors which shall include:

(a) Protections against discrimination of any employee or prospective employee on the basis of gender, age, race, ethnicity, religious affiliation, and disability including prior history of alcohol or other drug abuse;

(b) Provisions for recruiting, selecting, promoting, disciplining and terminating staff;

(c) Procedures for confirming previous checks or conducting background checks from the Justice Cabinet for all agency staff and subcontract employees working with minors to assure that there is no previous record of conviction related to abuse or molestation of children;

(d) Provision for the maintenance of personnel records for each staff member containing the following:

1. Application for employment;

2. Job specifications;

3. Written references;

4. Results of background checks;

5. Documentation of all education, work experience, training and status of professional licensure, certification and registration;

6. Salary information;

7. Job performance appraisals;

8. Disciplinary actions;

9. Commendations; and

10. Employee incident reports.

(e) Written job specifications for all positions identifying the qualifications, duties, reporting supervisor and positions supervised;

(f) Explanation of employee benefits, training and staff development opportunities, safety and work related injury procedures, employee grievance procedures, rules of conduct and compensation plan;

(g) Information on equal employment opportunities and affirmative action policies;

(h) Provisions for ensuring an alcohol and drug free work place to include actions to be taken when an employee is involved in the unlawful manufacture, distribution, possession or use of alcohol and any controlled substance at the agency;

(i) A provision for yearly job appraisal which includes an evaluation, based on objective criteria of each employee's performance in relation to their expected job duties;

(j) Ethical standards identifying acceptable employee conduct regarding consumer's rights;

(k) Conflict of interest policies governing dual relationships with other legal entities;

(l) Provisions to assure the confidentiality of personnel records;

(m) Procedures for providing an employee with access to their personnel record; and

(n) Procedures for the storage and retention of personnel records.

(2) A staff member shall be given access to a copy of the agency's policies and procedures at the time of employment and shall be notified of revisions as they are made.

Section 7. Program Operation and Services. (1) Each program operated under the authority of the alcohol and other drug prevention license shall have a program operations manual containing the following:

(a) Philosophy;

(b) Mission statement;

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(c) Methods for determining the needs of the populations to be served and programs provided in response to these identified needs;

(d) Methods for tailoring programs to the characteristics of specific target audiences including age, gender, drug use patterns, racial, ethnic and cultural heritage;

(e) Methods to be used to review all activity plans, information, materials and curricula prior to use for accuracy, potential effectiveness and appropriateness in influencing the alcohol and drug use behavior of the target audience;

(f) Methods for soliciting input and involving the community or identified target audience in planning;

(g) Methods for making or receiving prevention consumer referrals within or outside the agency;

(h) Methods for referring or delivering services to consumers having special speech, language, visual or hearing needs;

(i) Methods for determining an individual's or agency's suitability for participation in the prevention program; and

(j) Policies and procedures for setting and collecting fees.

(2) The prevention agency shall maintain reports and records documenting the following:

(a) Results of needs assessments;

(b) Any collaboration with community or other agencies;

(c) Material and curricula reviewed;

(d) Program activities and services delivered;

(e) Case management information pertaining to early intervention and prevention programs directed at specific audiences including the following:

1. Screening and assessment results;

2. Prevention services provided;

3. research data showing effectiveness of prevention programs used for the specific target audiences;

(f) Background checks conducted on volunteers working with minors to assure that there is no previous record of conviction related to the abuse or molestation of minors;

(g) Identification of which of the following prevention strategies was employed:

1. Alternatives which provide for the participation of target populations in activities that exclude alcohol and other drug use. Methods shall include involving agency and community members in the design and provision of constructive and healthy activities that offset the attraction to or otherwise meets the needs usually filled by alcohol and other drugs;

2. Community-based process which aims to enhance the ability of community members to identify problems and resources and to appropriately select the prevention strategies that will more effectively impact behaviors relating to alcohol and other drug use. Methods shall include involving communities in planning, organizing, and implementing prevention programs through interagency collaboration, coalition building, and networking;

3. Consultation which involves an interaction and contractual relationship between two (2) or more people wherein one who has special skills or expertise in accomplishing a specific goal provides one who does not have the same skills or expertise, guidance in the mutual accomplishment of that goal;

4. Education which involves two (2) way communication and interaction between the educator or facilitator and the participants. Methods shall include direct training, training of trainers and training of impactors. This strategy consists of a well-defined, structured learning process which involves both knowledge and skill development. Educational programs seek to accomplish the following:

a. Motivate individuals to make healthy choices about alcohol and other drug use;

b. Help them develop the competencies needed to make those choices;

c. Prepare them to develop and implement prevention programs in particular settings.

5. Public and social policy change which establishes or changes

written or unwritten community standards, codes, and attitudes, thereby influencing incidence and prevalence of alcohol and other drug use problems in the general population and creating an environment more conducive to prevention. Methods shall include changing laws and community standards to restrict availability and access, price increases and community wide actions;

6. Information dissemination which is characterized by one (1) way communication of information from the source to the audience, with limited contact between the two (2). Methods shall include identification, collection and dissemination of resource materials, media communication, public speaking and networking activities. Information dissemination programs provide the following:

a. Awareness and knowledge of the nature and extent of alcohol and other drug use, abuse and addiction;

b. The effect of alcohol or other drugs on individuals, families and communities;

c. Information to increase perceptions of risk; and

d. Identification of available prevention programs and services.

7. Problem identification and referral which is designed to identify persons who are beginning to experience alcohol and other drug problems or those for whom the risk of developing problems is particularly high. Methods shall include screening, intensive preventive education, or referral for a clinical assessment;

(h) Documentation of consumer referrals made and sources used within or outside the agency;

(i) Process and outcome evaluation results;

(j) Follow-up plans; and

(k) Fees assessment and collection.

Section 8. Consumer Rights. An agency licensed to provide alcohol and other drug prevention programs shall have written policies and procedures for ensuring the rights of the consumer which shall include:

(1) Assurances that there shall be no unlawful discrimination in determining eligibility for admission to a prevention program;

(2) A statement of consumer rights posted in the facility with the name, address and telephone number of the agency's ombudsperson;

(3) Assurances of the confidentiality of consumer's alcohol, tobacco, and other drug issues; and

(4) Grievance procedures posted in the facility which shall include at a minimum:

(a) Time frames for reviewing and responding to consumer complaints;

(b) Requirements for the documentation of grievances in each consumer record and in a central agency incident file; and

(c) Requirements for referring to the appropriate authority any allegations of abuse or neglect in accordance with:

1. KRS 209.030 regarding the abuse or neglect of adults; and

2. KRS 620.030 regarding the abuse or neglect of minors.

Section 9. Complaints. (1) A suspected violation of a licensure standard shall be reported to the cabinet.

(2) The complainant and information related to a suspected violation shall be kept confidential and shall not be disclosed publicly during an investigation. Once the investigation is complete, disclosure of the information shall be subject to the provision of KRS 61.870 to 61.884.

(3) A complaint received by the cabinet shall be processed according to the following procedures:

(a) The cabinet may conduct an on-site inspection to determine if a violation of a licensure standard has occurred; and

(b) The cabinet may conduct an audit of the agency's financial records in accordance with generally accepted government auditing standards.

Section 10. Revocation. (1) Violations of licensure standards may result in the revocation of a license.

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(2) Conditions which shall result in the revocation of a license include the following:

- (a) Any violation creating an immediate danger to the prevention consumer;
- (b) Fraud in obtaining a license or in connection with services provided;
- (c) Gross negligence, misconduct or violation of the ethics code of the Kentucky chemical dependency certification board which results in revocation of the prevention professional credential;
- (d) Any conviction of an agency preventionist or volunteer of a crime related to the abuse, neglect or exploitation of a child or an adult.

Section 11. Penalties. (1) Denial or suspension of a license.

(a) Plan of correction. When an agency fails to submit an acceptable plan of correction within ten (10) calendar days from the date of a notice of violation, the cabinet shall notify the agency, in accordance with Section 12 of this administrative regulation, that the license may be denied thirty (30) calendar days after the date of the notice of denial or suspension unless:

1. The agency submits an acceptable plan of correction to the cabinet;
2. The agency requests a hearing in accordance with Section 12 of this administrative regulation; or
3. The agency notifies the cabinet in writing that the application for licensure is withdrawn.

(b) Denial of an application for licensure. When an application for licensure is denied, the legal entity named in the application may reapply for a license in accordance with Section 2 of this administrative regulation after a period of:

1. One (1) year from the date of denial; or
2. Thirty (30) days from the date of application for licensure was withdrawn by the agency.

(2) Reapplication. The legal entity named in the application may reapply for a license in accordance with Section 2 of this administrative regulation after a period of one (1) year from the date of revocation.

Section 12. Appeals. (1) If the cabinet takes action to deny or revoke an agency license, the cabinet shall notify the agency in writing stating the reasons for the adverse actions and the agency's right to appeal in accordance with KRS 222.231(6).

(2) If the agency believes an action by the cabinet is unfair, without reason, or unwarranted, the agency may appeal the action in writing to the Secretary, Cabinet for Health Services, 4th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) calendar days after receipt of the notice of action from the cabinet.

(3) Upon receipt of the appeal, the secretary, or his designee, shall issue a notice of hearing no later than twenty (20) days before the date of the hearing. The notice of hearing shall comply with KRS 13B.050. The secretary shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(4) The hearing officer shall issue a recommended decision in accordance with KRS 13B.110. Upon receipt of the recommended order and following consideration of any exceptions filed pursuant to KRS 13B.110(4), the secretary shall enter a final decision pursuant to KRS 13B.120.

(5) An agency that continues to operate after the closing date established by the secretary, or his designee, shall be subject to legal action by the cabinet as provided by law.

ELIZABETH R. WACHTEL, Commissioner,

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: January 13, 1998

FILED WITH LRC: January 15, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative

regulation has been scheduled for February 23, 1998 in the Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. This hearing will be canceled unless interested persons notify the following office in writing by Friday, February 13, 1998, of their desire to appear and testify at the hearing: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, Phone: (502) 564-7905, Fax: (502) 564-7573.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth R. Wachtel, Commissioner

(1) Type and number of entities affected: Currently there are 14 community mental health centers and 10 private programs providing alcohol and other drug prevention services in 32 different locations and 125 preventionists which are affected. These programs provide services to 300,000 consumers per year. All of the aforementioned programs and preventionists will be affected by the additional licensing and certification requirements.

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

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No hearing was requested as a result of the notice of intent being published and no comments were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No hearing was requested as a result of the notice of intent being published and no comments were received.

(c) Compliance, reporting, and paperwork requirements including factors increasing or decreasing costs (note any effects upon competition.) Direct and indirect costs or savings to those affected: There will be a direct cost to programs and preventionists providing prevention services. The amount for licensing agencies and certifying staff will be \$25,170. Of this amount, certification will cost \$20,210 which may be borne by the agency or may be considered as a professional expense for the individual preventionists. Since all of the prevention programs are funded by the Division of Substance Abuse or federal grants, and receive reimbursement for training expenses, the cost for the required training for certification is not reflected in the above amount. Due to requirements applicable to some supervisors, there will be an additional cost of \$3200 per year which will be borne either by the agency or the prevention supervisor. There will be no effects on competition since all entities are being effected equally.

1. First year: \$28,370

2. Continuing costs: \$28,370

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. There will be no additional costs to the promulgating agency. Costs of any training or technical assistance required by affected entities will be absorbed by existing resources.

2. Ongoing costs will be absorbed by existing resources.

3. Additional factors increasing costs: There are no additional factors increasing or decreasing costs.

(b) Reporting and paperwork requirements: There will be no additional paperwork or reporting for the promulgating agency.

(4) Assessment of anticipated effect on state and local revenues: Licensing fees of \$5,000.

(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:

(a) Geographical area in which administrative regulation will be implemented: No hearing was requested as a result of the Notice of

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Intent being published and no comments were received.

(b) Kentucky: No hearing was requested as a result of the Notice of Intent being published and no comments were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the methods chosen provide for the effective delivery of prevention services to the consumer.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: It will protect to protect the consumer and increase the quality of prevention services. The delivery of more effective services will result in a more positive health outcome for the consumer specifically as it relates to alcohol and other drug problems.

(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: Not in conflict.

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

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not used since the application of policy is required to be applied in a like manner for all affected entities.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Although the entities affected by this regulation receive federal monies from the Substance Abuse Prevention and Treatment Block Grant, there is no federal regulatory mandate to license prevention programs which this regulation governs.

2. State compliance standards. None

3. Minimum of 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 federal mandate? None

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

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### ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE Minutes of January 14, 1998

The January meeting of the Administrative Regulation Review Subcommittee was held on Wednesday, January 14, 1998 at 8:30 a.m. in Room 125 of the Capitol Annex. Representative John Arnold, Chairman, called the meeting to order, and the roll call was taken. The minutes of the December 9, 1997 meeting were approved.

#### **Present were:**

**Members:** Representative John Arnold, Chairman; Senators Joey Pendleton, Nick Kafoglis, and Dick Roeding; Representatives Jimmy Lee, and James Bruce.

**LRC Staff:** Greg Karambellas, Donna Little, Stephen Lynn, Susan Wunderlich, Angela Phillips, Donna Valencia, Veronica Power.

**Guests:** Charlotte Quarles, Larry O'Nan, Revenue Cabinet; Don Mullis, Dwight Price, Office of Financial Management; Bea Collins, Beverly A McCauley, Sharon Marks, Robert S. Welch, Rhonda Hurley Wharton, Carroll Roberts, Board of Hairdressers and Cosmetologists; Gary Munsie, Board of Dentistry; Mark Brengelman, Board of Dentistry and Board of Psychology; Dave Nicholas, Division of Occupations and Professions and Board of Psychology; Roy A. Grimes, John Wilson, Department of Fish and Wildlife Resources; Carl E. Campbell, Jim Villines, Ronald Mills, Brenda Gail Lowe, Mark Mangeot, Natural Resources and Environmental Protection Cabinet; Linda F. Frank, Barbara W. Jones, Justice Cabinet; Doug Sapp, Jack Damron, Tamela Biggs, Department of Corrections; Sandra Pullen Davis, Transportation Cabinet; Jeanette S. Downey, Workforce Development Cabinet; Judith G. Walden, Department for Housing, Buildings and Construction; Eric Friedlander, Cookie Whitehouse, Joyce Lea, Rosanne Barkley, Ruth Friedheim, Pat Lawrence, Ralph Von Derau, Cabinets for Health Services and Families and Children; David Wicker, Petroleum Fund; Alice Maddox, Robert L. Briley, Ruby Jo Cummins, Donna Brown, Kentucky Association of Health Care Facilities; John Brazel, Kentucky Chamber of Commerce; Jim Carlross, Charter; Robert L. Barnett, Kentucky Pharmacists Association; Ted Bradshaw, IIAK; Lori Arnold Boyd, Stephen Boyd, cosmetology school owners; Sam Crawford, Ronny Pryor, Kentucky Farm Bureau; Mary S. Caldwell, Marian Hayden, Cull & Hayden; Maria Price, Kentucky Fairness Alliance; Nancy Baldock, Betty Powell, Chant; Mimi Pickering, Sherri Barker, Kentuckians for the Commonwealth; Richard Tanner.

**The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:**

**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. Charlotte Quarles, Tax Consultant, represented the Cabinet.

In response to a question by Representative Bruce, Ms. Quarles stated that: (1) her title was tax consultant with the Revenue Cabinet; (2) because she had a farming background, she sympathized with Representative Bruce on the issue of the tax on liquefied petroleum (LP) gas; and (3) she was not involved in the decision to tax LP gas.

In response to a question by Senator Roeding, Ms. Quarles stated that the definition of manufacturing in this administrative regulation was: (1) amended to track the 1978 Supreme Court decision in the Allied Drums; (2) the definition used by the Revenue Cabinet for manufacturing; and (3) broad enough to address business changes in manufacturing during the 21st century.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to: (a) correct citations; and (b) insert citations of the statute that grants authority to the Cabinet to require documentation and bond; (2) the NECESSITY, FUNCTION, AND CONFORMITY

paragraph was amended to clearly state the necessity for and function of the administrative regulation, as required by KRS 14A.220(3)(f); (3) Sections 1(1),(3)(4); 2, 2(1) and (2), and 4 through 7, 9, 10(2), and 11 were amended to comply with the drafting and format requirements of KRS 13A.220(4) and 13A.222; (4) pursuant to KRS 13A.222(2)(e)1. through 3. and (f), Section 1, Definitions, was amended to: (a) delete the establishment of requirements for eligibility for Direct Pay Authorization and the criteria for manufacturing from the Definitions section; and (b) clearly establish them in Section 2 of this administrative regulation; (5) Section 3(2) was amended to establish specific information required of applicants; (6) Section 5 was amended to provide a cross reference to the Sales and Use Tax form; (7) Section 7 was amended to provide a cross reference to the applicable statute; and (8) Section 12 was amended to incorporate the "Sales And Use Tax Return" form.

#### **Finance and Administration Cabinet: State Investment Commission**

200 KAR 14:011 & E. General rules. Don Mullis, Executive Director, Office of Financial Management, and Secretary, State Investment Commission; and Dwight Price, Portfolio Manager, Office of Financial Management, represented the Cabinet.

Subcommittee staff stated that the: (1) issues raised by the initial review: (a) related to the drafting and format requirements of KRS Chapter 13A; and (b) were addressed in the amendment suggested by Subcommittee staff; and (2) amendments were extensive because the: (a) Commission wanted the administrative regulations to comply with KRS Chapter 13A; and (b) administrative regulations had not been amended recently.

In response to questions by Representative Bruce, Mr. Mullis stated that this administrative regulation and 200 KAR 14:081 would assist the agency: (1) in its management of investments; and (2) in making additional money on the investments.

In response to a question by Senator Roeding, Mr. Mullis stated that the emergency administrative regulation was promulgated to comply with laws enacted during the 1997 First Extraordinary Session of the General Assembly.

This administrative regulation was amended as follows: (1) the TITLE was amended to: (a) delete "rules", pursuant to KRS 13A.120(5) which prohibits an executive agency from issuing rules; and (b) clearly state the subject matter of this administrative regulation, "qualified investments"; (2) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs were amended to correct statutory citations; (3) Section 1 was amended to place definitions in alphabetical order, pursuant to KRS 13A.222(4)(e); (4) various sections were amended to comply with the: (a) formatting requirements of KRS 13A.220; and (b) drafting requirements of KRS 13A.222; (5) various sections were amended or deleted to delete language that repeats or summarizes statutes, pursuant to KRS 13A.120; (6) various sections were amended to clearly establish conditions and requirements relating to: (a) types of investments; (b) standards for investments; (c) approval of broker-dealers and financial institutions; (d) required forms; (e) prohibited investments; and (f) investment criteria; and (7) various sections were amended to: (a) establish and specify types of investment pools; (b) clarify the requirements for the: 1. placement of state funds in the pools; and b. types of investments for the pools; and (c) specify and incorporate required forms, pursuant to KRS 13A.224 to 13A.2255.

200 KAR 14:081 & E. Repurchase agreement. Subcommittee staff stated that: (1) the issues raised by the initial staff review related to: (a) the drafting and format requirements of KRS Chapter 13A; and (b) conflicts in the administrative regulation in: 1. the definition and use of the term, "eligible financial institution"; and 2. the effect of the term

"public depository" used in KRS 425.520, which required the assignment of public funds to public depositories; (2) the drafting and formatting issues raised by the initial staff review were addressed in the amendments suggested by Subcommittee staff; and (3) this administrative regulation implemented the authority granted by KRS 42.500(9) to (14) to invest excess state cash as provided by KRS 42.500.

This administrative regulation was amended as follows: (1) the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and other sections were amended to correct statutory citations; (2) Section 1 was amended to place the definitions in alphabetical order, pursuant to KRS 13A.222(4)(e); (3) various sections were amended to comply with the: (a) formatting requirements of KRS 13A.220; and (b) drafting requirements of KRS 13A.222; (4) various sections were amended or deleted to delete language that repeats or summarizes statutes, pursuant to KRS 13A.120; and (5) various sections were amended to: (a) clearly establish the conditions and requirements for: 1. repurchase agreements; and 2. reporting; (b) clarify language relating to: 1. Commission rights; and 2. actions taken on: a. default; or b. a Commission determination of the likelihood of default; and (c) clearly establish rating services.

200 KAR 14:200 & E. Linked Deposit Investment Program. Subcommittee staff stated that: (1) the initial staff review appeared to state that KRS 41.606 was not statutory authority for the promulgation of this administrative regulation; (2) KRS 41.600 to 41.620 related to the: (a) Linked Deposit Investment Program; and (b) the program, as it related to: 1. agricultural production; 2. small business expansion; or 3. development through investment moneys derived from the state's unclaimed and abandoned property program; (3) KRS 41.600 to 41.620 were now correctly cited as authority; (4) the citation of KRS 42.525 recommended by the initial staff review had been made; (5) the main amendment clearly established that the statute required that the funds for this program was the cash in the unclaimed property fund; and (6) the General Assembly may need to amend applicable statutes to provide further guidance to the Commission.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs and other sections were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to delete definitions, pursuant to KRS 13A.222(4)(e); (3) Section 1 was amended to clearly establish that the funds available for agricultural production or for small business expansion or development through investment moneys derived from the state's unclaimed and abandoned property program meant the cash available in the state's unclaimed and abandoned property program; and (4) Section 4 was amended to cross reference Section 8 of 200 KAR 14:081.

#### Board of Dentistry

201 KAR 8:390. General anesthesia, deep sedation, and conscious sedation by dentists. Gary Munsie, Executive Director, and Mark Bringleman, Assistant Attorney General, represented the Board.

In response to a question by Chairman Arnold, Mr. Munsie stated that: (1) the dentist and his assistants were required to be present during anesthesia; and (2) they have been trained in emergency Basic Life Support.

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 this administrative regulation, pursuant to KRS 13A.220(3)(f); (3) Section 2(2)(a), and (4) were amended to incorporate by reference the American Dental Association guidelines, as required by KRS Chapter 13A; (4) pursuant to KRS 13A.222(4)(a), Section 2(8) was amended to clearly establish that Basic Life Support courses must be certified by the: (a) American Heart Association; or (b) American Red Cross; (5) Sections 4, 5, 9,

and 13(1)(b), relating to provisional permits, the delayed implementation date for using general anesthesia and conscious sedation, and the experience requirement for use of nitrous oxide were: (a) no longer applicable because the passage of time had made the delayed implementation dates redundant; and (b) deleted pursuant to KRS 13A.222(4)(a); (6) Section 7 was amended to clearly establish the personnel required during administration of anesthesia, pursuant to KRS 13A.222(4)(a); and (7) Sections 1, 2, 3, 6, 7, 8, 12, and 13 were amended to comply with the: (a) drafting requirements of KRS 13A.222(4); and (b) formatting requirements of KRS 13A.220(4).

#### Board of Hairdressers and Cosmetologists

201 KAR 12:200. Requirements for continuing education for renewal of license. Carroll Roberts, Administrator, represented the Board.

In response to a question by Senator Pendleton, Ms. Roberts stated that: (1) she did not expect the members to receive negative comments from their constituents regarding the Board administrative regulations considered by the Subcommittee at this meeting because the amendments were proposed at the request of hairdressers that the Board had received at public meetings held throughout the state; and (2) the Board had received over 125 letters thanking Board members for: (a) listening to the concerns of hairdressers; and (b) creating an inactive license.

The Subcommittee approved a motion by Senator Kafoglis, seconded by Senator Roeding, to request LRC to refer the issues raised by this administrative regulation to the appropriate standing committees of the 1998 General Assembly for legislative action.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 2, 3, 5, 6, 7, 8, 9, and 10 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (2) Section 1(1) was amended to specify the information that is required on the application form for approval of a continuing education program; (3) Section 2(1) was amended to clarify that the board shall approve or deny a request within 30 days of receipt of the application by the board; and (4) Sections 6(7) and 7 were amended to clarify that successful completion of one three (3) hour course shall satisfy the continuing education requirement.

201 KAR 12:210. Requirements for continuing education; active and inactive license and temporary waiver of requirements. The Subcommittee approved a motion by Senator Kafoglis, seconded by Senator Roeding, to request LRC to refer the issues raised by this administrative regulation to the appropriate standing committees of the 1998 General Assembly for legislative action.

This administrative regulation was amended as follows: (1) the TITLE was amended to correct a misspelled word; (2) the RELATES TO paragraph was amended to correct a statutory citation; (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (4) Sections 1, 2, 4, and 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (5) Section 5(7) was amended to clarify the requirements for changing a license from inactive to active status.

#### Board of Examiners of Psychologists

201 KAR 26:145. Code of conduct. Dave Nicholas, Director, Division of Occupations and Professions; Dr. Donald Ralph, Chairman, Board of Examiners of Psychologists; and Mark Brengelman, Assistant Attorney General, represented the Board.

Mr. Nicholas stated that: (1) he was the Director of the Division of Occupations and Professions; and (2) the Division provided administrative services to 17 licensure boards or commissions, including the Board of Examiners of Psychology.

In response to a question by Senator Roeding, Subcommittee staff stated that the amendments: (1) addressed the issues raised in the initial staff review; and (2) were extensive in order to bring the administrative regulation into compliance with the drafting and



formatting requirements established by KRS Chapter 13A.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 through 9, and 11 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Sections 1(1) and (2) were amended to clarify: (a) the definition of client; and (b) that a person identified as a client shall be deemed to be a client for a period of two (2) years following the last date of service rendered to that person; (5) Section 6(3) was amended to clarify the confidentiality requirements that apply if the client is a corporation or other organization; and (6) Sections 8(2), 10, and 11(1) were amended to delete language that repeated or summarized statute, as required by KRS 13A.120(2)(e) and (f).

201 KAR 26:155. Application procedures and temporary license or certificate. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct a statutory citation; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 2, 3, and 4 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Sections 1, 2, and 4 were amended to delete language that repeated or summarized statute, as required by KRS 13A.120(2)(e) and (f); (5) Section 3 was amended to clearly establish the requirements for the postdoctoral supervisory experience; and (6) Sections 1 and 4 were amended to incorporate by reference the required application form.

201 KAR 26:160. Fee schedule. In response to questions by Representative Allen, Mr. Nicholas stated that: (1) the 2 examination fees would be increased by \$100, effective April 1, 1999, because: (a) the service that provided the examinations would increase the examination costs by \$100 effective April 1, 1999; and (b) the Board charged applicants the amount the Board was charged for the examination; (2) the Board did not: (a) make money from the examination; and (b) have a surplus; (3) this examination was: (a) the only examination available in the field of psychology; and (b) required for all applicants, whether at the master's or doctorate level; (3) if the Board did not increase the examination fee, the Board would lose \$100 per examination; and (4) the administrative regulation did not increase other fees.

In response to a question by Senator Roeding, Mr. Nicholas stated that: (1) the Kentucky Psychological Association: (a) was aware of the increased examination fee; and (b) supported 201 KAR 26:145 through 26:250; (2) the Board was not able to identify future applicants for advanced notification of the increased examination fees; and (3) this administrative regulation did not affect a currently licensed or certified practitioner.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

201 KAR 26:171. Requirements for supervision. In response to a question by Senator Roeding, Dr. Ralph stated that this administrative regulation: (1) authorized the use of telesupervision because new technology permitted two-way interactive video supervision of clinical activities; and (2) required individual Board approval for the use of this technology.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs and

Sections 5, 10, 13, and 14 were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 through 14 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) Section 4 was amended to: (a) delete a requirement that expired December 30, 1996, since it was no longer applicable; and (b) delete language that repeated the provisions of 201 KAR 26:175.

201 KAR 26:175. Continuing education. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 through 7 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

201 KAR 26:180. Requirements for granting licensure or certification in psychology by reciprocity. Subcommittee staff stated that: (1) the initial staff review stated that the Board did not have statutory authority to impose the requirement that a person have five years full-time practice experience in order to be granted a license or certificate; (2) KRS 319.032(1)(i) required the Board to promulgate administrative regulations entering into reciprocal agreements with boards from other states; (3) the national association, the Association of State and Provincial Psychology Boards (ASPPB), required that an applicant practice continuously for five years in an ASPPB member jurisdiction to qualify for a license or certificate by reciprocity; (4) for the reasons cited, the Board was authorized to: (a) establish requirements for licensure or certification by reciprocity; and (b) require five years of practice for issuance of a license or certificate by reciprocity; and (5) a person without five years experience was: (a) not eligible for a license or certificate by reciprocity; and (b) eligible for a regular license or certificate.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1, 2, and 5 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) Section 4 was amended to delete language that repeated or summarized KRS 319.050(7), as required by KRS 13A.120(2)(e) and (f).

201 KAR 26:185. Requirements for granting licensure or certification in psychology to an applicant licensed or certified in another state. Subcommittee staff stated that this administrative regulation: (1) contained a five-year practice requirement similar to the requirement established in 201 KAR 26:180; and (2) enabled a person from a jurisdiction without a reciprocity agreement to practice in Kentucky under the same requirements established for a license or certificate by reciprocity.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) Sections 2 and 3 were amended to delete language that repeated or summarized statute, as required by KRS 13A.120(2)(e) and (f).

201 KAR 26:215. Nonresident status. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct

statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Sections 1 and 4 were amended to clarify: (a) the requirements for nonresident temporary practice as authorized by KRS 319.015(8); and (b) that KRS 319.015(8) applied to a nonresident psychologist temporarily employed in Kentucky for a period of less than thirty (30) days every two years.

201 KAR 26:230. Examinations. Subcommittee staff stated that: (1) although the initial staff review stated that the administrative regulation did not comply with the requirement established by KRS 319.050(7) that the Board issue a license to practice psychology after examination in a specialty area, this administrative regulation actually deleted the requirement that the two licensed psychologists who give the specialty examination be in the candidate's specialty area; and (2) while KRS 319.050(7) required a specialty examination, KRS 13A.120(2)(e) and (f) prohibited repeating that requirement in an 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 clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1, 2, and 3 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) Section 1 was amended to cross-reference the applicable administrative regulations.

201 KAR 26:250. Employment of a psychological associate. Subcommittee staff stated that: (1) the initial review did not state that the agency did not have statutory authority to promulgate this administrative regulation; and (2) the initial staff review appeared to so state, because the wrong box was checked on the initial review form.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1, 2, 3 and 6 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (4) Section 3 was amended to clarify the requirements for a special application letter.

**Tourism Development Cabinet: Department of Fish and Wildlife Resources: Fish**

301 KAR 1:192. Closing Lake Chumbley. Mr. Grimes stated that Commissioner Tom Bennett sent his apologies that he was unable to attend the Subcommittee meeting because he was attending the funeral of a commission member's wife.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; and (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f).

**Game**

301 KAR 2:225 & E. Dove, wood duck, teal and other migratory game bird hunting. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (2) Sections 1 through 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

**Justice Cabinet: Department of Corrections: Office of the Secretary**

501 KAR 6:060. Northpoint Training Center. Jack Damron and Tamela Biggs, Staff Attorneys, represented the Department.

Chairman Arnold asked Mr. Damron to: (1) explain the requirements relating to the registration of sex offenders; and (2) state the reasons: (a) inmates were provided with cable television; and (b) the state picked up a good part of the cost. Mr. Damron stated that: (1) the requirement that a sex offender register with State Police is required by statute; (2) Sex offenders register: (a) by form provided by the State Police; and (b) prior to their release; (3) parolees convicted of other crimes have 45 days to register so that crime victims can be notified by the authorities; (4) most institutions have cable television; (5) the inmates have to pay a share of the cost of cable television; and (6) idle inmates often cause trouble. Chairman Arnold stated that, while he understood that idle hands were the devil's workshop, citizens have to pay the cost of cable television, and he objected to state payment of such costs.

In response to a question by Senator Roeding, Mr. Damron stated: (1) most of the prisons were not in metropolitan areas; (2) the only way to receive television reception was to use rabbit ears antenna; (3) rabbit ears antenna could be used as a weapon; and (4) the Department did not want the inmates to have rabbit ears.

Senator Roeding stated that he: (1) agreed with the concerns expressed over the use of rabbit ear antenna; (2) did not agree with the provision of cable service to inmates; (3) objected to the expenditure of public funds to provide inmates cable television; and (4) believed the inmates should have to bear the entire cost.

Chairman Arnold stated that: (1) from the objections raised by the members of the Subcommittee, it appeared that all the members of the Subcommittee objected to the provision of cable television for inmates at state expense; (2) he believed that: (a) inmates should not be given advantages not available to people on the outside; and (b) like people on the outside, inmates should pay for their cable television; (3) inmates work in prisons, are paid something for their work, and should pay for cable television; (4) the requirement of this administrative regulation that inmates convicted of sex offenses register with the state police prior to their release was a good requirement; (5) while he supported the registry requirement, he objected to the provision of cable television at state cost; and (6) the Department should address the provision of cable television in light of the Subcommittee's objection.

Mr. Damron asked what effect the objections raised by the members of the Subcommittee had on the status of this administrative regulation.

Pursuant to Chairman Arnold's instructions, Subcommittee staff stated that the members of the Subcommittee: (1) did not object to the provisions of this administrative regulation that, prior to release, required registry of inmates who had committed sex offenses; (2) objected to the provisions of this administrative regulation that provided cable television to inmates at state expense; (3) wanted their objections: (a) noted on the record; and (b) communicated to the Commissioner for consideration and further action by the Commissioner.

Mr. Damron stated that the: (1) objections of the Subcommittee would be communicated to the Commissioner; and (2) Department would review the issue of provision of cable television at public expense and determine what action could be taken.

In response to Chairman Arnold's request for a statement of the effect of the Subcommittee's action, Subcommittee staff stated that the Subcommittee: (1) had objected to the provision of cable television to inmates at public expense; (2) wanted the objections of Subcommittee members: (a) noted for the record; and (b) communicated to the Commissioner; and (3) because the Subcommittee approved the provisions of this administrative regulation relating to registry of sex offenders, had determined not to make a motion to find this administrative regulation deficient.

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In response to Chairman Arnold's request for a copy of the Department's decision relating to Department action on this administrative regulation in response to Subcommittee objections and suggestions, Mr. Damron stated that he: (1) did not have the authority to change Department policy; and (2) would meet with the Commissioner to determine what the Department could do.

In response to Chairman Arnold's question relating to action the Subcommittee could take, if it was not satisfied with the decision of the Department after it had reviewed the Subcommittee's objections, Subcommittee staff stated that the Subcommittee could review this administrative regulation as an existing administrative regulation and determine whether to find it deficient.

Mr. Damron was informed that the written response to the Subcommittee should be transmitted to the Subcommittee members and staff.

This administrative regulation was amended as follows: (1) NTC 02-08-01, B.1. was amended to cross reference the preset spending limits in CPP 2.1, pursuant to KRS 13A.222(4)(a); (2) NTC 02-12-01, B.2.d. was amended to clearly establish that inmate accounts shall not be permitted to accept cash or personal checks, pursuant to KRS 13A.222(4)(a); (3) NTC 02-12-01, Attachment IX, was amended to delete the requirement charging inmates for three months advance cable service; and (4) Pursuant to KRS 17.510, NTC 25-03-01 was amended pursuant to KRS Chapter 13A, to: (a) provide a reference to KRS 17.510; and (b) pursuant to KRS 17.510, instruct Department employees to require an inmate who had been convicted of a sex offender to register with the Kentucky State Police prior to his release.

**Transportation Cabinet: Department of Highways: Division of Transportation Planning: Department of Vehicle Regulation: Division of Motor Carriers: Division of Motor Vehicle Enforcement: Traffic**

603 KAR 5:070 & E. Motor vehicle dimension limits. Sandra Pullen Davis, Staff Assistant, represented the Cabinet.

In response to a question by Senator Roeding, Ms. Davis stated that this administrative regulation: (1) established the same size limits established by the federal government; (2) limited a semi-trailer to a: (a) width of 102 inches; and (b) length of 53 feet; (3) authorized the use of a double trailer, if the two trailers were 28.5 feet long; and (4) was not more stringent than the federal requirements.

In response to questions by Representative Lee, Ms. Davis stated that: (1) while this administrative regulation would assist in one or two areas in which 103 inch vehicles were cited for using certain roads, the problem had not been solved in most areas; (2) the roads that were added to the state primary road system had been re-constructed to permit safe operation of 102 inch wide trailers; (3) even though the Cabinet had worked until three or four months ago with the industry to reach a compromise, discussions were no longer under way to determine a better way to serve those areas in which 102 inch wide trailers were not permitted; (4) while the industry needed access to those areas, liability and safety problems would exist if the Cabinet permitted those vehicles to be operated on highways that were not designed for 102 inch wide trailers; (5) she agreed it was a problem that trucks delivering products to superstores or industry, in an area served by highways inadequate for the 103 inch wide trailers, were being cited by the Department of Transportation or state police; (6) a problem existed when Congress: (a) established the increased size limits; and (b) said the increased trucks should break down their loads to smaller trucks after exiting the interstate; (7) even though a 96 inch trailer can no longer be purchased, the 96 inch trailer was the standard size when Congress passed the increased size limits; (8) authorizing a 103 inch wide trailer to use a road intended for a 96 inch wide trailer would lead to liability issues for: (a) the engineer who approved the increase; and (b) the Cabinet through the Board of Claims; (9) the Board of Claims had repeatedly asked the Department why narrow roads had not been widened to accommodate the 96 inch wide trailers; (10) while the trucking industry was able to change its

fleet of trailers quickly, the Cabinet did not have: (a) enough money to redo the entire infrastructure; or (b) the ability to make the changes that quickly; and (11) while the Cabinet had spent the last two years unsuccessfully trying to find a solution, the trucks were still bigger than the highways.

Representative Lee stated that: (1) he thought this issue should be looked at by the General Assembly or some other appropriate body; (2) while he understood that engineers did not want to increase their liability, something needed to change to permit access to those areas; (3) he was disappointed that: (a) the discussions to find a solution were not continuing; and (b) some trucks were being cited on each trip down certain roads; and (4) the state infrastructure was not able to handle the large trucks required by the growing industry.

In response to a question by Senator Roeding, Ms. Davis stated that: (1) because Congress was considering permitting even larger trucks, the Transportation Committee had heard evidence relating to the problems that would arise if larger trucks were permitted; and (2) because Congress mandated the 102 inch wide trailers, the United States Department of Transportation did not have the discretion to allow Kentucky to prohibit 102 inch wide vehicles on interstates, parkways, and newly constructed roads.

Chairman Arnold and Representative Lee stated that: (1) counties without an interstate close by were at a disadvantage; (2) counties that were 50 miles from an interstate suffer commercially; and (3) overzealous enforcement resulted in citations on every truck trip that was made in those areas.

In response to questions by Chairman Arnold, Ms. Davis stated that: (1) the Transportation Cabinet had: (a) not forgotten about this problem; (b) reached an impasse in the recent discussions; (c) spent the last two or three months addressing other problems; and (d) not been able to find a solution; and (2) larger trucks were now permitted in certain additional areas because: (a) an interstate was near; and (b) the county fell within the 10 mile exemption established by KRS 189.2225.

Senator Roeding stated that even though people complained about the number of existing laws that were not enforced, this law was unenforceable because it compromised people, business, and the state.

Ms. Davis stated that Kentucky was required to: (1) enforce the size and weight laws established by Congress; or (2) forfeit ten percent of its federal highway construction dollars, which was: (a) \$36 million; and (b) used to help correct the problem.

In response to questions by Representative Allen, Ms. Davis stated that: (1) Congress was: (a) considering increasing the size limitations for length; and (b) not currently considering increasing the limitations for: 1. width; or 2. weight; (2) if Congress passed an increase, Kentucky would be required to conform: (a) its interstate system; and (b) the designated state system, which consisted of about half of the roads included in this administrative regulation; and (3) Kentucky allowed the operation of the current standard 102 inch wide trailer on twice as many roads as the federal government required, including: (a) newly completed roads; and (b) roads that had a problem, such as a bad curve, corrected.

Representative Lee stated that the issue that should be considered was the width rather than the weight because the problems have arisen because the trucks were considered too wide, rather than too heavy.

Chairman Arnold stated that: (1) he wanted the Subcommittee to write a letter to the Transportation Cabinet requesting it look at the isolated counties of Kentucky to determine if a solution can be reached to the problem of access; (2) at least one route in and out of a county to an interstate should be established; and (3) the Subcommittee: (a) approved the amendment to the administrative regulation; (b) while it wanted its objections to this administrative regulation, and the reasons for its objections, noted for the record, it had not made or approved a motion to find this administrative regulation deficient.

This administrative regulation was amended as follows: (1) the

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RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 through 8 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (3) Section 5(1) was amended to correct the name of the William H. Natcher Parkway, which was formerly the Green River Parkway.

603 KAR 5:230. The extended weight coal or coal by-products haul road system and associated bridge weight limits. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1, 4, 9, and 10 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (2) Sections 4 and 5 were amended to cross-reference appropriate sections of the administrative regulation; and (3) Section 5, relating to the extended weight coal and coal by-products haul system, was amended to: (a) add road segments; (b) delete a road segment; and (c) amend the weight limits on specified bridges.

### **Workforce Development Cabinet: State Board for Adult and Technical Education: Management of the Kentucky TECH System**

780 KAR 2:131. Repeal of State Board for Adult and Technical Education regulation 780 KAR 2:130. Jeanette Downey, Director of School Management, represented the Cabinet.

This administrative regulation was considered simultaneously with 780 KAR 2:130.

Subcommittee staff stated that: (1) KRS 13A.010(2)(e) was amended to exempt rules, regulations, and policies of the governing boards of institutions of higher education pertaining to students attending or applicants to the institutions; and (2) 780 KAR 2:131 was promulgated to repeal 780 KAR 2:130, which: (a) established minimum standards of admission for postsecondary students; and (b) concerned a subject matter excluded from the definition of an administrative regulation.

In response to questions by Senator Roeding, Ms. Downey stated that: (1) 780 KAR 2:130 governed postsecondary students and schools, who would: (a) be joining the Kentucky Community and Technical College System (KCTCS); and (b) not be under the authority of the Workforce Development Cabinet; (2) secondary vocational education would: (a) remain under the authority of the Workforce Development Cabinet; and (b) not be joining the KCTCS at this time; (3) an area technology center would: (a) continue to serve postsecondary students currently being served by the area technology center; and (b) be tied back to a postsecondary school through a Memorandum of Agreement; (4) while she did not know the value of the Memorandum of Agreement, the Memorandum of Agreement: (a) did not involve a transfer or increase of funds; (b) would retain the current supervision of the regional technology centers; and (c) had not been finalized; (5) their accrediting body established the programs to be offered off-campus; (6) tuition collected from students would go to the regional technology center that supervised the postsecondary programs; and (7) if the final Memorandum of Agreement involved money, she would let him know.

This administrative regulation was amended as follows: (1) the TITLE and Section 1 were amended to comply with the requirements established by KRS 13A.310(3)(a)1. for the repeal of an administrative regulation; and (2) the RELATES TO paragraph was amended to correct a statutory citation.

### **Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Building Code**

815 KAR 7:014. Repealer administrative regulation. Judith Walden, General Counsel, and Rod Raby, State Fire Marshal's Office, represented the Department.

This administrative regulation was amended as follows: (1) the TITLE and Section 1 were amended to comply with the requirements established in KRS 13A.310(3)(a)1. for the repeal of an administrative

regulation; (2) the RELATES TO paragraph was amended to correct a statutory citation; and (3) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to delete a phrase that was repeated in the sentence.

### **Office of State Fire Marshal: Hazardous Materials**

815 KAR 30:060. Certification of underground petroleum storage tank contractors. In response to a question by Representative Allen, Ms. Walden stated that the amendment did not change the fees established by this administrative regulation.

In response to a question by Senator Roeding, Ms. Walden stated that this administrative regulation: (1) should make it easier to address underground petroleum storage tank problems; (2) created an additional category of certification; and (3) would increase the number of people available to make corrections to underground petroleum storage tanks.

In response to a question by Senator Roeding, Mr. Raby stated that: (1) the length of time involved in obtaining a permit was under the jurisdiction of the Natural Resources and Environmental Protection Cabinet, rather than the Department of Housing, Buildings, and Construction; and (2) the Department: (a) handled the installation, remodeling and repair of underground storage tanks; and (b) took great pride in its ability to turn plans around within one week.

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 through 3, and 5 through 11 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (3) Section 6(2) was amended to clarify the requirements for an applicant requesting installer or remover certification.

### **Cabinet for Families and Children: Department for Social Insurance: Division of Management and Development: Public Assistance**

904 KAR 2:040 & E. Procedures for determining initial and continuing eligibility. Ruth Friedham, Branch Manager, Pat Lawrence, Staff Attorney, and Joyce Lea, Internal Policy Analyst, represented the Department.

This administrative regulation was amended as follows: (1) pursuant to KRS 13A.222(4), Section 1(1) was amended to clearly establish that an applicant shall not receive benefits prior to application; (2) Section 3 was amended to incorporate by reference the KIM-100 form and supplements, as required by KRS 13A.225(1); (3) Section 1 was amended to comply with the formatting requirements of KRS 13A.220(4); and (4) Sections 1 and 2 were amended to comply with the drafting requirements of KRS 13A.222(4).

904 KAR 2:046 & E. Adverse action; conditions. In response to a question by Senator Roeding, Ms. Friedham stated that: (1) this administrative regulation was filed as an emergency because the Welfare Reform Personal Responsibility and Work Opportunity Reconciliation Act required the Department to have a new state plan for Temporary Assistance to Needy Families (TANF) Benefits; (2) these administrative regulations were associated with the administrative regulations that implement the program; and (3) the obsolete term, "AFDC", was replaced with the new term, "K-TAP".

This administrative regulation was amended as follows: (1) pursuant to KRS 13A.222(4)(a), Sections 3, 4, and 5 were amended to clarify that written notice be provided to a recipient or applicant by a "KIM-105, General Notice of Action" form; and (2) Section 6 was amended to comply with the formatting requirements of KRS 13A.220(4).

904 KAR 2:055 & E. Hearings and appeals. Daisy Johnson, Kentuckians for the Commonwealth, stated that: (1) prior to learning that this administrative regulation had been amended to provide a hearing and appeal right for Kentucky Works program participants, she had been prepared to speak against this administrative regulation; and (2) she wanted to thank Chairman Arnold and the Cabinet

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for amending this administrative regulation to provide a hearing and appeal rights for Works program participants.

This administrative regulation was amended as follows: (1) The RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) Sections 10(1) and 11(3) were amended to delete language that repeated or summarized provisions of KRS Chapter 13B, as required by KRS 13A.120(2)(e) and (f); (3) Section 18 was amended to provide a Kentucky Works program participant the right to request a hearing for a complaint regarding: (a) a working condition; or (b) the wage rate; and (4) Sections 4, 16, and 17 were amended to comply with the drafting requirements of KRS 13A.222(4).

### **Cabinet for Health Services: Division of Licensing and Regulation: Office of Inspector General**

906 KAR 1:120 & E. Informal dispute resolution. Jenny Mitchell, Assistant Director, and Ralph von Derau, Health Planner; represented the Division.

Representative Lee stated that he wanted to know where due process existed, or where due process was afforded, in the situation in which a provider was required to file a corrective plan of action that covered eight cited deficiencies, when the provider: (1) agreed with three of the deficiencies; and (2) did not agree to the other five deficiencies.

Ms. Mitchell stated that: (1) a facility had the opportunity to: (a) disagree with a plan of correction at that time; and (b) request an informal dispute resolution; (2) in an informal dispute resolution: (a) the provider submitted information: 1. to the agency; 2. in writing; and 3. in support of his position that the cited practice was not deficient; and (b) the agency would meet with the provider to discuss his position.

Representative Lee stated that: (1) due process did not exist because: (a) the Cabinet: 1. met with the provider; and 2. made the original judgment of deficiency; and (b) a third party or a neutral party did not determine if a: 1. deficiency existed; or 2. corrective plan was necessary; (2) to have his license renewed, a provider was required to write and post a corrective plan of action: (a) before he could complete the administrative appeals process; and (b) on an item that might later be determined not to be a deficiency; (3) informal dispute resolution should include a process to determine whether: (a) all of the cited items were deficiencies; or (b) some of the cited items were not deficiencies; (4) a corrective plan of action should be filed without forcing a provider to admit guilt to an item that was not a deficiency; (5) during the current session of the General Assembly, he intended to initiate: (a) by statute or an administrative regulation; (b) a due process procedure for inclusion in the informal dispute resolution to have a hearing officer or third party: 1. hear a complaint; and 2. determine whether a: a. deficiency existed; and b. corrective plan of action was required; (6) a provider did not receive due process until after completing: (a) an administrative hearing; or (b) circuit court proceedings; and (7) the Cabinet did not renew a license if the corrective plan of action was not filed even though the provider denied the deficiency.

Mr. von Derau stated that: (1) at some point, due process was provided to those people; (2) informal dispute resolution: (a) involved federal certification; and (b) did not involve licensure; and (3) the federal government established the requirements for: (a) the due date of the corrective plan of action; and (b) informal dispute resolution.

Representative Lee asked if the Department would have a problem with an amendment that: (1) guaranteed a face-to-face meeting between the provider and the survey agency; (2) included in the informal dispute resolution process an individual who had successfully completed surveyor training and testing, but who was not: (a) a part of the original survey; or (b) involved in the decision to cite a deficiency; and (3) established a timetable for completion of the informal dispute resolution process.

Mr. von Derau stated that: (1) he understood the concerns

expressed by Representative Lee; and (2) while he was familiar with the request for a face-to-face meeting, some situations: (a) required an informal dispute resolution; and (b) did not require a face-to-face meeting.

Representative Lee: (1) stated that the Cabinet would not have a face-to-face meeting in that situation; and (2) asked what was wrong with allowing a provider to have due process by having a face-to-face meeting with someone who was not actually involved: (a) in the survey; or (b) in citing the deficiencies.

Ms. Mitchell stated that: (1) the Cabinet currently provided and encouraged face-to-face meetings during informal dispute resolution with someone who did not issue the deficiency but was a part of the Division of Licensing and Regulation; and (2) under the Cabinet's interpretation of this administrative regulation, the regional program manager was: (a) a supervisor in the field; and (b) made the decision on the informal dispute resolution.

Representative Lee stated that he was: (1) not interested in the Cabinet's interpretation; and (2) was interested in the language of the administrative regulation that established the procedure available when a citation was issued.

Subcommittee staff stated that: (1) an administrative regulation was required if the agency had established: (a) an alternative procedure; (b) standards governing the use of discretion; and (c) a procedure that was not clearly established in the administrative regulation or statute; and (2) KRS Chapter 13A prohibited the agency from interpreting an administrative regulation to determine whether it granted a regulated entity a meeting or hearing.

Ms. Mitchell stated that even though the Cabinet was conducting face-to-face meetings, the Cabinet did not require the meetings in its policies.

Representative Lee asked why this was not established by administrative regulation.

Senator Pendleton stated that he: (1) agreed with Representative Lee; (2) did not understand why the person who prepared the survey would be the person to be faced at a meeting; (3) wanted to make a motion that: (a) Representative Lee's amendment be incorporated into this administrative regulation; or (b) this administrative regulation be deferred to give the Subcommittee a chance to take care of the problems it raised.

Chairman Arnold stated that the Subcommittee would support Senator Pendleton's motion that, if the Cabinet did not agree to conform to the amendment suggested by Representative Lee, this administrative regulation be: (1) amended; or (2) deferred.

Mr. von Derau stated that the Cabinet would agree to the amendment.

The Subcommittee approved a motion by Senator Pendleton, seconded by Representative Lee, to amend this administrative regulation as stated by Representative Lee.

In response to questions by Senator Roeding, Ms. Mitchell stated that: (1) informal dispute resolution: (a) was an opportunity for the provider to: 1. present his position in an informal manner; and 2. discuss the specifics; (b) included the people who actually provided care; and (c) was not a formal structured procedure in which an attorney was present; and (2) all providers knew: (a) where to write or call to request informal dispute resolution; and (b) that informal dispute resolution was available.

Mr. von Derau stated that when a federal deficiency was issued, a letter was sent from the federal regional office in Atlanta that contained: (1) notice of the opportunities for informal dispute resolution; and (2) information on who to contact to request informal dispute resolution.

Subcommittee staff stated that: (1) the need for an administrative regulation was not determined by whether a procedure was: (a) mandated; or (b) permissive; and (2) an administrative regulation was required to contain provisions that implemented mandatory or permitted procedures.

Representative Lee stated that he wanted to thank the Cabinet for

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agreeing to the amendment because it would ensure due process.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 and 2 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); (4) Section 2(3) was amended to specify that, if desired by the provider, a provider shall include in the request for informal dispute resolution a request for a face-to-face meeting between the provider and the survey agency; and (5) Section 3 was amended to: (a) specify that the survey agency review team shall: 1. make the determination regarding the resolution of the dispute; and 2. include: a. the regional program manager, or his designee; and b. a certified surveyor who did not participate in the original survey or the decision to issue the disputed deficiency; (b) require the survey agency to conduct a face-to-face meeting if requested by the provider; and (c) specify that the determination regarding a dispute resolution shall be made within thirty days of receipt of the request for informal dispute resolution.

**The Subcommittee determined that the following administrative regulations complied with statutory requirements:**

**Cabinet for Workforce Development: State Board for Adult and Technical Education: Management of the Kentucky TECH System**  
780 KAR 2:130E. Minimum standards of admission for postsecondary students. Jeanette Downey, Director of School Management, represented the Cabinet. Comments relating to this administrative regulation are included in the comments relating to 780 KAR 2:131.

**The following administrative regulations were deferred to the next Subcommittee meeting upon agreement by the Subcommittee and the promulgating agency:**

### **Board of Pharmacy**

201 KAR 2:030. License transfer.

### **Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game**

301 KAR 2:221E. Waterfowl seasons and limits.

301 KAR 2:222E. Waterfowl hunting requirements.

### **Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality**

401 KAR 5:008E. Swine feeding operations.

### **Department for Surface Mining Reclamation and Enforcement: Permits**

Carl Campbell, Commissioner; Ron Mills, Counsel; and Jim Villines, Branch Manager, represented the Department.

In response to a request by Chairman Arnold, Mr. Campbell stated that his agency would agree to defer 405 KAR 8:001 through 405 KAR 18:120 to the February meeting of the Subcommittee.

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**

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.

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

### **Performance Standards for Underground Mining Activities**

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: Office of the Secretary**

501 KAR 6:020. Corrections policies and procedures.

501 KAR 6:030. Kentucky State Reformatory.

501 KAR 6:040. Kentucky State Penitentiary.

501 KAR 6:090. Frankfort Career Development Center.

501 KAR 6:110. Roederer Correctional Complex.

501 KAR 6:120. Blackburn Correctional Complex.

501 KAR 6:170. Green River Correctional Complex.

501 KAR 6:180E. Infectious diseases.

501 KAR 6:999. Corrections secured policies and procedures.

### **Department of Juvenile Justice: Child Welfare**

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

### **Transportation Cabinet: Department of Vehicle Regulation: Division of Motor Vehicle Enforcement: Division of Motor Carriers**

601 KAR 1:146. Fair market rental or lease value of vehicles operated pursuant to a U-drive-It permit.

601 KAR 1:147. Auditing of U-Drive-It permit holders.

### **Public Protection and Regulation Cabinet: Department of Insurance: Assets and Liabilities**

806 KAR 6:100E. Actuarial opinion and memorandum.

### **Cabinet for Families and Children: Department for Social Insurance: Division of Management and Development: Public Assistance**

904 KAR 2:050 & E. Time and manner of payments.

904 KAR 2:410E. Child support collection and distribution.

### **Food Stamp Program**

904 KAR 3:025E. Technical requirements.

### **Department for Social Services: Child Welfare**

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

### **Day Care**

905 KAR 2:150E. Child day care assistance program.

### **Cabinet for Health Services: Department for Medicaid Services: Division of Administration and Development**

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 1:145E. 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 1:725E. Medicaid appropriations for a long term nursing facility.

907 KAR 1:755E. Preadmission Screening and Annual Resident Review Program.

907 KAR 1:765E. Repeal of 907 KAR 1:460.

### **OTHER BUSINESS**

Chairman Arnold introduced Veronica Power, the Subcommittee's legislative intern for the 1998 Regular Session of the General Assembly.

**Justice Cabinet: Department of Corrections: Kentucky Parole**

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### Board

501 KAR 1:030. Determining parole eligibility.

### Department of Corrections: Division of Adult Institutions

501 KAR 6:020. Corrections Policies and Procedures.

501 KAR 6:080. Department of Corrections manuals.

Doug Sapp, Commissioner, Department of Corrections, Linda Frank, Chair, Parole Board, and Barbara Jones, General Counsel, Justice Cabinet appeared before the Subcommittee. Subcommittee staff stated that: (1) pursuant to the agreement reached with the Subcommittee at its December, 1997, meeting, subsequent to Subcommittee staff meeting with Commissioner Sapp, Chairwoman Frank and Cabinet Counsel Jones, amendments implementing the agreement were filed in emergency administrative regulations; (2) the amendments prohibit early parole, participation in the Boot Camp program, and Community Custody, for inmates who have committed crimes that resulted in serious physical injury; (3) the amendments relating to parole differed from the agreement by restricting early parole to inmates who: (a) had not committed crimes that resulted in serious physical injury; and (b) were eligible for and successfully completed the Boot Camp program; (4) these administrative regulations would be reviewed by: (a) committee staff, (b) Subcommittee staff; and (c) the Subcommittee; and (5) during this review: (a) other issues that might be raised by these administrative regulations would be considered at the March meeting of the Subcommittee; and (b) if required, amendments can be made to resolve issues raised. Chairman Arnold stated that the agencies had complied with the agreement with the Subcommittee. Representative Bruce stated that the agencies were to be commended for their cooperation in resolving the issues raised by the Subcommittee. The Subcommittee approved a motion that the agencies had complied with the December, 1997 agreement.

**The Subcommittee adjourned at 10:00 a.m. until February 11, 1998, at 8:30 a.m. in Room 125 of the Capitol Annex.**





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**CUMULATIVE SUPPLEMENT**

**Locator Index - Effective Dates ..... H2**

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 ..... H9**

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 ..... H17**

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 - H2

### 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
Expired		10-17-97
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
Expired		10-17-97
907 KAR 1:170E	3739	4-15-97
Expired		10-17-97
907 KAR 1:720E	3741	3-18-97
Expired		10-17-97
908 KAR 2:200E	3742	3-18-97
Expired		10-17-97

**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	11-14-97
780 KAR 3:070		
Amended	3096	
Amended	3588	(See Volume 24)
780 KAR 3:080		
Amended	3102	
Amended	3594	(See Volume 24)
780 KAR 6:060		
Amended	3104	(See Volume 24)
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

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## LOCATOR INDEX - EFFECTIVE DATES

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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
Replaced	1055	10-22-97
201 KAR 20:370E	1481	12-9-97
301 KAR 2:221E	1219	10-15-97
301 KAR 2:222E	1221	10-15-97
301 KAR 2:225E	842	8-21-97
301 KAR 2:290E	1482	12-5-97
401 KAR 5:008E	1029	9-18-97
501 KAR 1:030E	1625	1-8-98
501 KAR 6:020E	1631	1-8-98
501 KAR 6:080E	1633	1-8-98
501 KAR 6:180E	1225	11-13-97
502 KAR 45:145E	26	6-3-97
Replaced	1076	11-14-97
505 KAR 1:040E	844	9-15-97
603 KAR 5:070E	27	5-19-97
704 KAR 20:015E	1484	12-12-97
704 KAR 20:021E	1486	12-12-97
704 KAR 20:022E	1487	12-12-97
704 KAR 20:045E	1489	12-12-97
704 KAR 20:060E	1490	12-12-97
704 KAR 20:305E	491	8-11-97
Replaced	1508	1-12-98
780 KAR 2:130E	308	7-14-97
787 KAR 1:200E	310	6-27-97
Replaced	1510	1-12-98
803 KAR 2:301E	493	8-14-97
Replaced	1148	1-12-98
803 KAR 2:320E	495	8-14-97
Replaced	1512	1-12-98
803 KAR 2:403E	501	8-14-97
Replaced	1156	1-12-98
803 KAR 2:411E	503	8-14-97
803 KAR 2:425E	504	8-14-97
Replaced	1159	1-12-98
803 KAR 2:500E	506	8-14-97
Replaced	1161	1-12-98
806 KAR 6:100E	1227	10-24-97
806 KAR 17:110E	1492	12-12-97
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
Replaced	1268	11-19-97
902 KAR 55:095E	41	6-12-97
Expired		12-18-97
904 KAR 2:006E	518	8-14-97
904 KAR 2:015	1634	1-12-98
904 KAR 2:016E	528	8-14-97
904 KAR 2:017E	311	7-14-97
904 KAR 2:035E	42	5-30-97
Expired		12-18-97

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
Expired		12-18-97
904 KAR 2:370E	320	7-11-97
904 KAR 2:410E	1233	10-31-97
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 1:725E	1238	11-14-97
907 KAR 1:755E	554	8-14-97
907 KAR 1:765E	557	8-14-97
907 KAR 3:030E	1639	12-19-97

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11 KAR 5:130		
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11 KAR 6:010		
Amended	914	
As Amended	1241	12-4-97
13 KAR 2:060		
Amended	916	
Amended	1291	
As Amended	1498	1-12-98
31 KAR 4:020		
Amended	128	
As Amended	559	9-15-97
101 KAR 1:325		
Amended	1749	
101 KAR 1:335		
Amended	1751	
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	
Amended	1522	
As Amended	1643	
106 KAR 2:010		
Recodified as 201-37:010		10-20-97
200 KAR 2:006		
Amended	922	11-11-97

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
200 KAR 5:021			201 KAR 18:162	1581	
Amended	926		201 KAR 20:070		
Amended	1294	1-12-98	Amended	1752	
200 KAR 5:302			201 KAR 20:110		
Amended	927	11-11-97	Amended	1754	
200 KAR 5:306			201 KAR 20:162		
Amended	929	11-11-97	Amended	1755	
200 KAR 14:011			201 KAR 20:240		
Amended	1353		Amended	391	
As Amended	1645		As Amended	1057	11-14-97
200 KAR 14:081			201 KAR 20:370		
Amended	1355		Amended	1757	
As Amended	1647		201 KAR 20:390		
200 KAR 14:200	1422		Amended	1116	
As Amended	1649		As Amended	1502	1-12-98
200 KAR 17:070			201 KAR 20:411	425	
As Amended	855	9-25-97	As Amended	859	
200 KAR 22:040			201 KAR 23:010		
Repealed	789	11-14-97	Repealed		10-13-97
200 KAR 22:041	789	11-14-97	201 KAR 23:030		
200 KAR 23:010	790		Repealed		10-13-97
As Amended	1055	10-22-97	201 KAR 23:040		
201 KAR 2:030			Repealed		10-13-97
Amended	1115		201 KAR 23:060		
201 KAR 8:390			As Amended	860	10-13-97
Amended	931		201 KAR 23:070		
As Amended	1650		As Amended	861	10-13-97
201 KAR 8:400			201 KAR 23:080		
Amended	934		As Amended	864	10-13-97
As Amended	1243		201 KAR 23:100		
Withdrawn		12-3-97	Repealed	10-13-97	
201 KAR 8:410			201 KAR 23:110		
Repealed	991	11-19-97	Repealed		10-13-97
201 KAR 8:411	991	11-19-97	201 KAR 23:140		
201 KAR 10:010			As Amended	866	10-13-97
Amended	131		201 KAR 26:145		
As Amended	561	11-14-97	Amended	1117	
201 KAR 10:040			As Amended	1655	
Amended	132		201 KAR 26:155		
As Amended	561	11-14-97	Amended	1121	
201 KAR 10:070			As Amended	1658	
Amended	133		201 KAR 26:160		
As Amended	563	11-14-97	Amended	1123	
201 KAR 10:080			As Amended	1660	
Amended	134		201 KAR 26:171		
As Amended	563	11-14-97	Amended	1124	
201 KAR 11:011			As Amended	1661	
Amended	1539		201 KAR 26:175		
201 KAR 12:200			Amended	1127	
Amended	1357		As Amended	1664	
As Amended	1653		201 KAR 26:180		
201 KAR 12:210	1423		Amended	1129	
As Amended	1654		As Amended	1666	
201 KAR 13:080			201 KAR 26:185		
As Amended	858	10-13-97	Amended	1130	
201 KAR 16:060			As Amended	1666	
Amended	641		201 KAR 26:215		
As Amended	1055	11-14-97	Amended	1131	
201 KAR 16:070			As Amended	1667	
Repealed	791	11-14-97	201 KAR 26:230		
201 KAR 16:071	791	11-14-97	Amended	1132	
201 KAR 18:132	1581		As Amended	1667	
201 KAR 18:150			201 KAR 26:250	1182	
Amended	1540		As Amended	1669	

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Regulation Number	24 Ky.R Page No.	Effective Date	Regulation Number	24 Ky.R Page No.	Effective Date
201 KAR 26:260	1582		401 KAR 46:050	234	
201 KAR 32:030			Died*		9-12-97
Amended	642		401 KAR 46:060		
As Amended	1132	11-14-97	Amended	142	
201 KAR 37:010			Died*		9-12-97
Recodified from 106-2:010		10-20-97	401 KAR 46:070		
Amended	1544		Amended	145	
301 KAR 1:085			Died*		9-12-97
Amended	1759		401 KAR 47:150		
301 KAR 1:192	1424		Amended	149	
As Amended	1669		Died*		9-12-97
301 KAR 1:201			401 KAR 50:012		
Amended	392		Amended	648	11-12-97
As Amended	866	10-8-97	401 KAR 50:032	1425	
301 KAR 1:300	1583		401 KAR 50:066	800	
301 KAR 1:310	1584		As Amended	1244	11-12-97
301 KAR 2:082	427		401 KAR 51:010		
As Amended	869	10-8-97	Amended	650	11-12-97
301 KAR 2:111			401 KAR 59:174	802	
Amended	138		Amended	1295	
As Amended	567	9-10-97	As Amended	1503	1-12-98
301 KAR 2:125			401 KAR 60:750	1427	
Amended	140		401 KAR 61:036	1429	
As Amended	568	9-10-97	401 KAR 63:005		
301 KAR 2:140			Amended	654	
Amended	643		Amended	1299	1-12-98
As Amended	1058	11-12-97	401 KAR 63:060		
301 KAR 2:142	792		Amended	1765	
As Amended	1060	11-12-97	401 KAR 63:100		
301 KAR 2:144	794		Amended	1770	
As Amended	1061	11-12-97	401 KAR 63:104	1798	
301 KAR 2:225			401 KAR 63:541	1800	
Amended	1359		401 KAR 63:560	1801	
As Amended	1670		401 KAR 63:640	1803	
301 KAR 2:240			401 KAR 63:680	1805	
Amended	1762		401 KAR 63:741	1806	
301 KAR 3:022			401 KAR 63:780	1808	
Amended	646	11-12-97	401 KAR 63:800	1810	
302 KAR 10:060			401 KAR 63:820	1811	
Amended	1546		401 KAR 63:900	1813	
302 KAR 10:070			401 KAR 63:920	1814	
Amended	1764		401 KAR 63:940	1816	
302 KAR 20:077	1795		401 KAR 63:960	1818	
302 KAR 20:240	1795		401 KAR 65:010		
302 KAR 31:040	795		Amended	656	
Withdrawn		11-19-97	Amended	1302	1-12-98
302 KAR 40:010			405 KAR 8:001		
As Amended	1062	11-12-97	Amended	667	
401 KAR 5:001			405 KAR 8:030		
Amended	1547		Amended	675	
401 KAR 5:008	1585		Amended	1313	
401 KAR 8:030			405 KAR 8:040		
As Amended	70		Amended	687	
As Amended	332		Amended	1325	
401 KAR 46:005	221		405 KAR 16:001		
Died*		9-12-97	Amended	704	
401 KAR 46:010	223		405 KAR 16:060		
Died*		9-12-97	Amended	710	
401 KAR 46:020	225		Amended	1341	
Died*		9-12-97	405 KAR 16:090		
401 KAR 46:030	228		Amended	716	
Died*		9-12-97	405 KAR 16:100		
401 KAR 46:040	230		Amended	719	
Died*		9-12-97			

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Amended	723		Amended	1559	
405 KAR 18:001			600 KAR 6:010		
Amended	725		Amended	1373	
405 KAR 18:060			Amended	1689	
Amended	732		600 KAR 6:040		
Amended	1347		Amended	1375	
405 KAR 18:090			Amended	1691	
Amended	738		600 KAR 6:070		
405 KAR 18:100			Amended	1378	
Amended	741		Amended	1693	
405 KAR 18:160			601 KAR 1:025		
Amended	745		Amended	1384	
405 KAR 18:210			Amended	1699	
Amended	747		601 KAR 1:146		
500 KAR 11:001			Amended	1183	
Amended	151		Amended	1524	
As Amended	871	9-12-97	601 KAR 1:147		
500 KAR 11:025			Amended	1185	
Amended	152		Amended	1525	
As Amended	873	9-12-97	601 KAR 9:135		
500 KAR 11:080			Amended	398	
Amended	154		Amended	909	11-4-97
As Amended	874	9-12-97	601 KAR 11:040		
500 KAR 11:090			Amended	1387	
Amended	155		Amended	1702	
As Amended	874		603 KAR 3:080		
501 KAR 6:020			Amended	157	
As Amended	569	9-15-97	Amended	612	
Amended	755		As Amended	875	
Withdrawn		11-10-97	As Amended	1076	10-7-97
Amended	1361		603 KAR 5:050		
501 KAR 6:030			Amended	403	10-2-97
Amended	1364		603 KAR 5:070		
501 KAR 6:040			Amended	1390	
Amended	935		As Amended	1671	
Amended	1366	12-15-97	603 KAR 5:230		
501 KAR 6:050			Amended	1137	
Amended	156	9-15-97	Amended	1527	
501 KAR 6:060			As Amended	1675	
Amended	1134		702 KAR 3:110		
501 KAR 6:090			Amended	1565	
Amended	757		702 KAR 7:065		
Amended	1367	12-15-97	Amended	174	
501 KAR 6:110			As Amended	573	9-4-97
Amended	396	9-16-97	703 KAR 3:060		
Amended	1368		Amended	1566	
501 KAR 6:120			703 KAR 4:110		
Amended	1370		Amended	1570	
501 KAR 6:170			704 KAR 3:455		
Amended	1136		Amended	760	
As Amended	1506	1-12-98	As Amended	1093	11-6-97
Amended	1372		704 KAR 7:130		
501 KAR 6:180			Amended	238	9-4-97
501 KAR 6:999			704 KAR 20:084		
502 KAR 31:010			Amended	937	
Withdrawn		10-13-97	As Amended	1245	12-4-97
502 KAR 45:145			704 KAR 20:165		
Amended	759		Amended	176	
As Amended	1076	11-14-97	As Amended	574	9-4-97
505 KAR 1:020			704 KAR 20:210		
As Amended	572	9-15-97	Amended	1140	
505 KAR 1:040			As Amended	1507	1-12-98
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			Amended	1141	
			As Amended	1508	1-12-98

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Amended	404		As Amended	92	
As Amended	892	10-2-97	As Amended	1263	11-12-97
704 KAR 20:710			806 KAR 13:130	431	
Amended	177		As Amended	895	10-13-97
As Amended	575	9-4-97	806 KAR 13:140	432	
750 KAR 2:010			As Amended	896	10-13-97
Amended	179		806 KAR 38:090	239	9-15-97
As Amended	576	9-4-97	806 KAR 39:070		
780 KAR 2:131	1432		Amended	764	
As Amended	1678		As Amended	1264	12-15-97
780 KAR 3:070			806 KAR 40:020	433	10-13-97
As Amended	1237		807 KAR 5:063		
Withdrawn		12-2-97	As Amended	367	
780 KAR 3:080			As Amended	896	8-27-97
As Amended	1253		807 KAR 5:069		
Withdrawn		12-2-97	Amended	1774	
780 KAR 6:060			810 KAR 1:018		
As Amended	1255	12-4-97	Amended	1776	
785 KAR 1:010			810 KAR 1:026		
Amended	407		Amended	1779	
As Amended	894	10-2-97	811 KAR 1:085		
785 KAR 1:020			Amended	1782	
Amended	409		811 KAR 1:090		
As Amended	895	10-2-97	Amended	180	
787 KAR 1:200			As Amended	577	9-12-97
Amended	1144		811 KAR 1:220		
As Amended	1510	1-12-98	Amended	1784	
803 KAR 2:060			815 KAR 7:014	1433	
Amended	1145		As Amended	1679	
As Amended	1510	1-12-98	815 KAR 7:070		
803 KAR 2:301			Amended	945	12-15-97
Amended	1148	1-12-98	815 KAR 7:105		
803 KAR 2:320			Amended	949	
Amended	1150		As Amended	1267	12-15-97
As Amended	1512	1-12-98	815 KAR 8:010		
803 KAR 2:403			Amended	950	12-15-97
Amended	1156	1-12-98	815 KAR 8:020		
803 KAR 2:411			Amended	952	12-15-97
Amended	1158		815 KAR 15:027		
As Amended	1518		Amended	954	12-15-97
803 KAR 2:425			815 KAR 15:080		
Amended	1159	1-12-98	Amended	956	12-15-97
803 KAR 2:500			815 KAR 20:020		
Amended	1161	1-12-98	Amended	957	12-15-97
803 KAR 25:012			815 KAR 20:030		
Amended	939		Amended	960	
As Amended	1260	12-15-97	Withdrawn		12-9-97
803 KAR 25:015			815 KAR 20:130		
Amended	1571		Amended	962	12-15-97
803 KAR 25:096			815 KAR 30:060		
Amended	942	12-15-97	Amended	1397	
803 KAR 25:120			As Amended	1679	
Amended	1395		815 KAR 35:015		
Amended	1705		Amended	767	
803 KAR 25:130	1187		As Amended	1097	11-5-97
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803 KAR 25:175	807		Amended	1706	
Amended	1113		902 KAR 13:120		
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803 KAR 25:190			902 KAR 14:084	435	
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			As Amended	903	10-13-97

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902 KAR 20:008			As Amended	594	8-20-97
Amended	1786		904 KAR 3:025		
902 KAR 20:016			Amended	1791	
Amended	969		904 KAR 3:042		
As Amended	1268	11-19-97	Amended	215	
902 KAR 20:036			As Amended	600	8-20-97
Amended	190	8-20-97	904 KAR 3:060		
902 KAR 20:048			Amended	774	11-14-97
Amended	410		905 KAR 1:180		
Died*		9-5-97	Amended	777	11-14-97
902 KAR 20:051			906 KAR 1:120	1196	
Amended	418		As Amended	1687	
Died*		9-5-97	907 KAR 1:003	247	8-20-97
902 KAR 20:091			907 KAR 1:004		
Amended	1788		Repealed	247	8-20-97
902 KAR 50:031			907 KAR 1:140		
Amended	1573		Repealed		9-11-97
902 KAR 50:032			907 KAR 1:145	1819	
Amended	1575		907 KAR 1:150		
902 KAR 55:033			Repealed	848	9-11-97
Amended	1578		907 KAR 1:155	1822	
902 KAR 55:095			907 KAR 1:160		
Amended	1165	1-12-98	Amended	779	
902 KAR 100:073			As Amended	1101	11-14-97
Amended	195		907 KAR 1:170		
As Amended	580	8-20-97	Amended	782	
902 KAR 100:165			As Amended	1103	11-14-97
Amended	771	11-14-97	907 KAR 1:428		
904 KAR 2:006			Repealed	808	11-14-97
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Amended	1715		907 KAR 1:432		
904 KAR 2:016			Repealed	808	11-14-97
Amended	1409		907 KAR 1:560		
Amended	1724		Amended	784	
904 KAR 2:017			As Amended	1104	11-14-97
Amended	1166		907 KAR 1:645		
Amended	1733		As Amended	605	8-20-97
904 KAR 2:035			907 KAR 1:655		
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As Amended	1519	1-12-98	907 KAR 1:665		
904 KAR 2:040			As Amended	610	8-20-97
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Amended	1529		Amended	629	
As Amended	1682		As Amended	1276	11-19-97
904 KAR 2:046			907 KAR 1:720	809	
Amended	983		As Amended	1108	11-14-97
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904 KAR 2:055					
Amended	985				
Amended	1533				
As Amended	1684				
904 KAR 2:060					
Amended	988				
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Amended	1175				
Amended	1742				



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18A.430	200 KAR 22:041	150.170	301 KAR 1:085
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148.029	301 KAR 2:290E		301 KAR 2:142
150.010	301 KAR 2:082		301 KAR 2:144
	301 KAR 2:125		301 KAR 2:290E
	301 KAR 2:221E	150.399	301 KAR 2:240
	301 KAR 2:222E	150.400	301 KAR 2:240

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<b>KRS SECTION</b>	<b>REGULATION</b>	<b>KRS SECTION</b>	<b>REGULATION</b>
150.410	301 KAR 2:240		703 KAR 4:110
150.4111	301 KAR 2:240	158.6455	703 KAR 3:060
150.470	301 KAR 1:201		703 KAR 4:110
150.485	301 KAR 3:022	160.160	703 KAR 3:060
150.520	301 KAR 1:085	160.345	704 KAR 3:455
150.525	301 KAR 3:022	160.380	704 KAR 7:130
150.600	301 KAR 2:221E	161.010	704 KAR 20:015E
	301 KAR 2:222E	161.020	704 KAR 20:021E
150.603	301 KAR 2:225		704 KAR 20:045E
	301 KAR 3:022		704 KAR 20:060E
150.620	301 KAR 1:192		704 KAR 20:084
	301 KAR 2:225		704 KAR 20:165
	301 KAR 3:022		704 KAR 20:210
150.640	301 KAR 2:290E		704 KAR 20:670
150.660	301 KAR 3:022		704 KAR 20:710
150.680	301 KAR 2:125	161.027	704 KAR 20:710
150.710	301 KAR 2:290E	161.028	704 KAR 20:021E
150.890	301 KAR 1:201		704 KAR 20:045E
	301 KAR 2:125		704 KAR 20:060E
	301 KAR 2:140		704 KAR 20:165
	301 KAR 2:142		704 KAR 20:210
	301 KAR 2:144		704 KAR 20:305
	301 KAR 2:221E		704 KAR 20:670
	301 KAR 2:222E		704 KAR 20:710
151.100	405 KAR 16:090	161.030	704 KAR 20:021E
	405 KAR 16:100		704 KAR 20:045E
	405 KAR 16:160		704 KAR 20:060E
	405 KAR 18:090		704 KAR 20:084
	405 KAR 18:100		704 KAR 20:165
	405 KAR 18:160		704 KAR 20:210
151.250	405 KAR 16:090		704 KAR 20:305
	405 KAR 16:100		704 KAR 20:670
	405 KAR 16:160		704 KAR 20:710
	405 KAR 18:090	161.095	704 KAR 20:015E
	405 KAR 18:100		704 KAR 20:022E
	405 KAR 18:160	161.100	704 KAR 20:210
151B.023	785 KAR 1:010	161.430	102 KAR 1:175
	785 KAR 1:020	164.001	13 KAR 2:060
151B.025	780 KAR 2:130E	164.020	13 KAR 2:060
	780 KAR 2:131	164.744	11 KAR 6:010
151B.035	780 KAR 6:060	164.744-164.753	11 KAR 5:130
151B.040	780 KAR 6:060	164.748	11 KAR 6:010
151B.085	780 KAR 6:060	164.753	11 KAR 6:010
151B.110	780 KAR 2:130E	164.7535	11 KAR 5:130
	780 KAR 2:131	164.780	11 KAR 5:130
	785 KAR 1:010	164.785	11 KAR 5:130
	785 KAR 1:020	Chapter 174	600 KAR 4:010
151B.125	785 KAR 1:010	174.400-174.425	601 KAR 1:025
	785 KAR 1:020	Chapter 176	600 KAR 4:010
151B.150	780 KAR 2:130E	Chapter 177	600 KAR 4:010
	780 KAR 2:131	177.830-177.890	603 KAR 3:080
156.070	702 KAR 7:065	177.0771	603 KAR 5:230
156.160	702 KAR 3:110	Chapter 183	600 KAR 4:010
156.400-156.476	704 KAR 3:455	186.005	601 KAR 1:147
Chapter 157	750 KAR 2:010	186.020	601 KAR 9:135
157.060	702 KAR 3:110	186.021	806 KAR 39:070
157.100-157.190	704 KAR 3:455	186.050	601 KAR 9:135
157.3175	704 KAR 20:084		603 KAR 5:070
157.390	704 KAR 20:015E	186.281	601 KAR 1:147
	704 KAR 20:021E	186.655	603 KAR 5:070
	704 KAR 20:022E	186A.040	806 KAR 39:070
158.645	703 KAR 3:060	186A.095	806 KAR 39:070
	703 KAR 4:110	189.222	603 KAR 5:070
158.6451	703 KAR 3:060	189.230	603 KAR 5:230
	703 KAR 4:110	189.337	603 KAR 5:050
158.6453	703 KAR 3:060	194.050	904 KAR 3:020

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KRS SECTION	REGULATION	KRS SECTION	REGULATION
	904 KAR 3:042		904 KAR 2:046
194.060	505 KAR 1:040	205.201-205.204	505 KAR 1:040
	904 KAR 2:035		905 KAR 1:180
	905 KAR 1:180	205.210	904 KAR 2:016
Chapter 196	501 KAR 6:020	205.211	904 KAR 2:016
	501 KAR 6:030		904 KAR 2:017
	501 KAR 6:040	205.220	904 KAR 2:050
	501 KAR 6:050	205.231	904 KAR 2:055
	501 KAR 6:060		907 KAR 1:560
	501 KAR 6:080	205.237	904 KAR 2:055
	501 KAR 6:090		907 KAR 1:560
	501 KAR 6:110	205.245	904 KAR 2:015
	501 KAR 6:120		904 KAR 2:035
	501 KAR 6:170		904 KAR 2:040
	501 KAR 6:180		904 KAR 2:046
	501 KAR 6:999	205.275	904 KAR 2:035E
Chapter 197	501 KAR 6:020	205.277	904 KAR 2:035E
	501 KAR 6:030	205.455-205.465	505 KAR 1:040
	501 KAR 6:040		905 KAR 1:180
	501 KAR 6:050	205.520	907 KAR 1:003
	501 KAR 6:060		907 KAR 1:022E
	501 KAR 6:080		907 KAR 1:025E
	501 KAR 6:090		907 KAR 1:145
	501 KAR 6:110		907 KAR 1:151E
	501 KAR 6:120		907 KAR 1:155
	501 KAR 6:170		907 KAR 1:160
	501 KAR 6:180		907 KAR 1:170
	501 KAR 6:999		907 KAR 1:429
198B.010	815 KAR 7:105		907 KAR 1:560
198B.040	815 KAR 7:070		907 KAR 1:710
	815 KAR 7:105		907 KAR 1:720
198B.050	815 KAR 7:070		907 KAR 1:725
	815 KAR 7:105		907 KAR 1:755
198B.060	815 KAR 7:014		907 KAR 1:765E
	815 KAR 7:105		907 KAR 3:030
198B.080	815 KAR 7:105	205.6334	907 KAR 1:710
198B.090	815 KAR 7:070	205.710-205.800	904 KAR 2:410E
198B.110	815 KAR 7:105	205.8451	907 KAR 1:710
198B.260	815 KAR 7:105	205.8453	907 KAR 1:710
198B.650-198B.689	815 KAR 8:010	Chapter 208	505 KAR 1:040
	815 KAR 8:020		905 KAR 1:180
198B.990	815 KAR 7:105	Chapter 209	505 KAR 1:040
199.420-199.990	505 KAR 1:040		905 KAR 1:180
	905 KAR 1:180	209.010	907 KAR 1:710
199.640-199.670	905 KAR 1:360E	210.005	907 KAR 1:710
199.892-199.896	905 KAR 2:150E	210.290	907 KAR 1:710
200.020	907 KAR 1:710	210.370-210.460	907 KAR 1:710
200.080-200.120	505 KAR 1:040	210.370-210.480	902 KAR 20:091
	905 KAR 1:180	211.463	907 KAR 1:710
200.503	907 KAR 1:710	211.842-211.852	902 KAR 100:073
200.509	907 KAR 1:710		902 KAR 100:165
200.650-200.676	907 KAR 1:720	211.950-211.956	902 KAR 14:084
202A.011	907 KAR 1:710	211.960-211.968	902 KAR 13:120
202A.028	907 KAR 1:710	211.990	902 KAR 13:120
202A.041	907 KAR 1:710		902 KAR 100:073
202A.051	907 KAR 1:710		902 KAR 100:165
202A.061	907 KAR 1:710	211.990-211.956	902 KAR 14:100
205.010	904 KAR 2:006	214.175	902 KAR 20:016
205.170	904 KAR 2:060	216.2925	902 KAR 20:008
205.175	904 KAR 2:035	216B.010-216B.130	900 KAR 6:050
205.177	904 KAR 2:035		902 KAR 17:041
205.200	904 KAR 2:006		902 KAR 20:008
	904 KAR 2:016		902 KAR 20:016
	904 KAR 2:017		902 KAR 20:036
	904 KAR 2:035		902 KAR 20:051
	904 KAR 2:040		902 KAR 20:091

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<b>KRS SECTION</b>	<b>REGULATION</b>	<b>KRS SECTION</b>	<b>REGULATION</b>
216B.010-216B.131	902 KAR 20:026		401 KAR 63:741
216B.015	902 KAR 14:084		401 KAR 63:780
216B.105	902 KAR 14:084		401 KAR 63:800
216B.410	902 KAR 14:084		401 KAR 63:820
216B.455	900 KAR 6:050		401 KAR 63:900
216B.990	900 KAR 6:050		401 KAR 63:920
	902 KAR 14:084		401 KAR 63:940
	902 KAR 20:008		401 KAR 63:960
	902 KAR 20:016		401 KAR 65:010
	902 KAR 20:026	224.20-110	401 KAR 50:032
	902 KAR 20:036		401 KAR 50:066
	902 KAR 20:048		401 KAR 51:010
	902 KAR 20:051		401 KAR 59:174
	902 KAR 20:091		401 KAR 60:750
217.005-217.215	902 KAR 50:031		401 KAR 61:036
	902 KAR 50:032		401 KAR 63:005
	902 KAR 50:033		401 KAR 63:060
217C.010-217C.990	902 KAR 50:031		401 KAR 63:100
	902 KAR 50:032		401 KAR 63:104
	902 KAR 50:033		401 KAR 63:541
218A.070	902 KAR 55:095		401 KAR 63:560
218A.180	902 KAR 55:095		401 KAR 63:640
218A.200	902 KAR 55:095		401 KAR 63:680
222.231	908 KAR 1:380		401 KAR 63:741
224.01-010	401 KAR 5:001		401 KAR 63:780
	401 KAR 59:174		401 KAR 63:800
224.10	401 KAR 5:008		401 KAR 63:820
224.10-100	401 KAR 5:001		401 KAR 63:900
	401 KAR 50:012		401 KAR 63:920
	401 KAR 50:032		401 KAR 63:940
	401 KAR 50:066		401 KAR 63:960
	401 KAR 59:174		401 KAR 65:010
	401 KAR 60:750	224.20-120	401 KAR 50:012
	401 KAR 61:036		401 KAR 50:032
	401 KAR 63:005		401 KAR 51:010
	401 KAR 63:060		401 KAR 59:174
	401 KAR 63:100		401 KAR 60:750
	401 KAR 63:104		401 KAR 61:036
	401 KAR 63:541		401 KAR 63:005
	401 KAR 63:560		401 KAR 63:100
	401 KAR 63:640		401 KAR 63:104
	401 KAR 63:680		401 KAR 63:541
	401 KAR 63:741		401 KAR 63:560
	401 KAR 63:780		401 KAR 63:640
	401 KAR 63:800		401 KAR 63:680
	401 KAR 63:820		401 KAR 63:741
	401 KAR 63:900		401 KAR 63:780
	401 KAR 63:920		401 KAR 63:800
	401 KAR 63:940		401 KAR 63:820
	401 KAR 63:960		401 KAR 63:900
	401 KAR 65:010		401 KAR 63:920
224.10-110	401 KAR 5:001		401 KAR 63:940
224.16-050	401 KAR 5:001		401 KAR 63:960
224.16-060	401 KAR 5:001		401 KAR 65:010
224.20-100	401 KAR 50:066	224.20-710-224.20-765	401 KAR 65:010
	401 KAR 51:010	224.70	401 KAR 5:008
	401 KAR 59:174	224.70-100	401 KAR 5:001
	401 KAR 60:750	224.70-110	401 KAR 5:001
	401 KAR 61:036	224.73	401 KAR 5:008
	401 KAR 63:005	227.450	815 KAR 35:015
	401 KAR 63:100	227.489	815 KAR 35:015
	401 KAR 63:104	227.490	815 KAR 35:015
	401 KAR 63:541	227.4901	815 KAR 35:015
	401 KAR 63:560	230.210-230.360	810 KAR 1:018
	401 KAR 63:640	230.215	810 KAR 1:026
	401 KAR 63:680	230.225	810 KAR 1:026

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KRS SECTION	REGULATION	KRS SECTION	REGULATION
230.260	810 KAR 1:026	304.38-080	806 KAR 38:090
	811 KAR 1:085	304.39-080	806 KAR 39:070
	811 KAR 1:220	304.39-083	806 KAR 39:070
230.280	811 KAR 1:220	304.39-085	806 KAR 39:070
230.290	811 KAR 1:220	304.39-090	806 KAR 39:070
230.300	811 KAR 1:220	304.39-117	806 KAR 39:070
230.310	811 KAR 1:085	304.40-075	806 KAR 40:020
	811 KAR 1:220	Chapter 310	902 KAR 20:016
230.3771	811 KAR 1:220	311.241-311.247	902 KAR 20:016
230.630	811 KAR 1:090	311.623	907 KAR 1:710
230.640	811 KAR 1:090	311.625	907 KAR 1:710
230.700	811 KAR 1:090	311.627	907 KAR 1:170
230.770	811 KAR 1:220	311.629	907 KAR 1:170
230.990	811 KAR 1:220	311.631	907 KAR 1:170
Chapter 236	815 KAR 15:027	311.990	902 KAR 20:016
	815 KAR 15:080	313.150	201 KAR 8:400
238.500-238.995	500 KAR 11:001	313.160	201 KAR 8:411
238.505	500 KAR 11:080	313.220	201 KAR 8:390
	500 KAR 11:090	314.011	201 KAR 20:162
	500 KAR 11:025		201 KAR 20:390
238.550	500 KAR 11:025	314.025	201 KAR 20:390
238.570	904 KAR 2:055	314.026	201 KAR 20:390
255.2	302 KAR 20:077	314.027	201 KAR 20:390
Chapter 257	302 KAR 20:240	314.031	201 KAR 20:162
	302 KAR 40:010	314.041	201 KAR 20:070
260.036	302 KAR 10:060		201 KAR 20:110
260.620	302 KAR 10:070		201 KAR 20:240
	807 KAR 5:069		201 KAR 20:370
278.020	807 KAR 5:069	314.042	201 KAR 20:240
278.023	807 KAR 5:069	314.051	201 KAR 20:070
278.190	807 KAR 5:069		201 KAR 20:110
278.300	601 KAR 11:040		201 KAR 20:240
Chapter 281A	601 KAR 11:040		201 KAR 20:370
281.600	907 KAR 1:710	314.071	201 KAR 20:162
281.607-281.760	601 KAR 1:146		201 KAR 20:240
281.615-281.670	601 KAR 1:147		201 KAR 20:370
	907 KAR 1:710	314.073	201 KAR 20:240
287.011	907 KAR 1:710	314.091	201 KAR 20:162
289.021	907 KAR 1:710	314.142	201 KAR 20:411
290.015	907 KAR 1:710	314.161	201 KAR 20:162
291.030	907 KAR 1:710		201 KAR 20:240
294.032	907 KAR 1:710		201 KAR 20:162
304.05-130	907 KAR 1:710	314.991	201 KAR 20:162
304.05-140	907 KAR 1:710	315.210	201 KAR 2:030
304.1-010-304.1-070	907 KAR 1:710	317A.050	201 KAR 12:200
304.3-120	806 KAR 3:190		201 KAR 12:210
304.3-140	806 KAR 3:190	318.010	815 KAR 20:020
304.6	806 KAR 3:190		815 KAR 20:130
304.6-171	806 KAR 6:100E	318.015	815 KAR 20:020
304.7	806 KAR 3:190		815 KAR 20:130
304.13-011	806 KAR 13:130	318.130	815 KAR 20:020
304.13-057	806 KAR 13:130		815 KAR 20:130
	806 KAR 13:140	318.150	815 KAR 20:020
	806 KAR 13:130		815 KAR 20:130
304.13-091	806 KAR 13:140	318.200	815 KAR 20:020
304.13-161	806 KAR 13:130		815 KAR 20:130
304.13-415	806 KAR 13:140	319.010	201 KAR 26:260
	907 KAR 1:710	319.015	201 KAR 26:215
304.17A-110	806 KAR 17:110E	319.032	201 KAR 26:145
304.17A-130	806 KAR 38:090		201 KAR 26:171
304.17A-160	907 KAR 1:710		201 KAR 26:175
304.17A-300	907 KAR 1:710		201 KAR 26:180
304.17A.310	806 KAR 3:190		201 KAR 26:185
304.24-350	806 KAR 3:190		201 KAR 26:230
304.33	907 KAR 1:710		201 KAR 26:250
304.38-030	907 KAR 1:710	319.050	201 KAR 26:155
304.38-035	907 KAR 1:710		201 KAR 26:160
304.38-060	907 KAR 1:710		

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KRS SECTION	REGULATION	KRS SECTION	REGULATION
	201 KAR 26:171	342.040	803 KAR 25:120
	201 KAR 26:175	342.125	803 KAR 25:012
	201 KAR 26:230	342.260	803 KAR 25:012
	201 KAR 26:260	342.325	803 KAR 25:012
319.056	201 KAR 26:260	342.340	803 KAR 25:175
	201 KAR 26:171	342.395	803 KAR 25:130
319.064	201 KAR 26:155	342.732	803 KAR 25:120
	201 KAR 26:160	342.735	803 KAR 25:012
	201 KAR 26:171	342.990	803 KAR 25:015
	201 KAR 26:175	Chapter 350	405 KAR 8:001
	201 KAR 26:230		405 KAR 16:001
	201 KAR 26:250		405 KAR 18:001
	201 KAR 26:260	350.020	405 KAR 16:090
319.071	201 KAR 26:160		405 KAR 18:090
319.082	201 KAR 26:145		405 KAR 18:210
	201 KAR 26:171	350.028	405 KAR 18:210
319.092	201 KAR 26:171	350.060	405 KAR 8:030
319.118	201 KAR 26:171		405 KAR 8:040
321.235	201 KAR 16:060	350.100	405 KAR 16:060
	201 KAR 16:071		405 KAR 16:090
321.240	201 KAR 16:071		405 KAR 16:100
321.351	201 KAR 16:060		405 KAR 18:060
321.360	201 KAR 16:060		405 KAR 18:090
322.020	201 KAR 18:162		405 KAR 18:100
322.180	201 KAR 18:132	350.151	405 KAR 8:040
322.190	201 KAR 18:132		405 KAR 18:060
322.200	201 KAR 18:132		405 KAR 18:090
322.210	201 KAR 18:132		405 KAR 18:100
322.220	201 KAR 18:132		405 KAR 18:160
322.250	201 KAR 18:132		405 KAR 18:210
322.290	201 KAR 18:150	350.410	405 KAR 16:060
	201 KAR 18:162	350.420	405 KAR 16:060
322.320	201 KAR 18:132		405 KAR 16:090
323A.040	201 KAR 10:040		405 KAR 16:100
323A.050	201 KAR 10:040		405 KAR 18:060
323A.060	201 KAR 10:040		405 KAR 18:090
323A.070	201 KAR 10:040		405 KAR 18:100
323A.080	201 KAR 10:070	350.421	405 KAR 16:060
323A.210	201 KAR 10:010		405 KAR 18:060
	201 KAR 10:080	350.425	405 KAR 16:160
324.160	201 KAR 11:011		405 KAR 18:160
324.400	201 KAR 11:011	350.440	405 KAR 16:060
324.410	201 KAR 11:011		405 KAR 18:060
324.420	201 KAR 11:011	350.455	405 KAR 16:100
335.330	201 KAR 32:030		405 KAR 18:100
335.340	201 KAR 32:030	350.465	405 KAR 8:030
338.051	803 KAR 2:060		405 KAR 16:060
	803 KAR 2:301		405 KAR 16:090
	803 KAR 2:320		405 KAR 16:100
	803 KAR 2:403		405 KAR 18:060
	803 KAR 2:411		405 KAR 18:090
	803 KAR 2:425		405 KAR 18:100
	803 KAR 2:500		405 KAR 18:210
338.061	803 KAR 2:301	387.510	907 KAR 1:710
	803 KAR 2:320	387.530	907 KAR 1:710
	803 KAR 2:403	387.540	907 KAR 1:170
	803 KAR 2:411	387.570	907 KAR 1:710
	803 KAR 2:425	387.580	907 KAR 1:710
	803 KAR 2:500	387.600	907 KAR 1:710
341.380	787 KAR 1:200	403.215	904 KAR 2:410E
Chapter 342	803 KAR 25:096	405.450	904 KAR 2:410E
	803 KAR 25:190	405.465	904 KAR 2:410E
	806 KAR 13:140	405.467	904 KAR 2:410E
342.0011	803 KAR 25:175	405.490	904 KAR 2:410E
342.020	803 KAR 25:012	405.520	904 KAR 2:410E
342.035	803 KAR 25:012	422.317	907 KAR 1:710

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KRS SECTION	REGULATION	KRS SECTION	REGULATION
Chapter 439	501 KAR 6:020		401 KAR 51:010
	501 KAR 6:030		401 KAR 60:750
	501 KAR 6:040		401 KAR 61:036
	501 KAR 6:050		401 KAR 63:060
	501 KAR 6:060		401 KAR 63:100
	501 KAR 6:080		401 KAR 63:104
	501 KAR 6:090		401 KAR 63:541
	501 KAR 6:110		401 KAR 63:560
	501 KAR 6:120		401 KAR 63:640
	501 KAR 6:170		401 KAR 63:680
	501 KAR 6:180		401 KAR 63:741
	501 KAR 6:999		401 KAR 63:780
	501 KAR 1:030E		401 KAR 63:800
	505 KAR 1:040		401 KAR 63:820
	905 KAR 1:180		401 KAR 63:900
	907 KAR 1:710		401 KAR 63:920
	905 KAR 1:360E		401 KAR 63:940
	505 KAR 1:020		401 KAR 63:960
	505 KAR 1:020		401 KAR 65:010
	905 KAR 1:360E		405 KAR 8:030
	907 KAR 1:710		405 KAR 8:040
	907 KAR 1:710		902 KAR 20:016
	301 KAR 2:140		904 KAR 2:016
	405 KAR 8:001		906 KAR 1:120
	405 KAR 8:030		907 KAR 1:022
405 KAR 8:040	907 KAR 1:025		
405 KAR 16:001	907 KAR 1:145		
405 KAR 18:001	907 KAR 1:155		
904 KAR 3:020	907 KAR 1:160		
904 KAR 3:025	907 KAR 1:560		
904 KAR 3:042	907 KAR 1:710		
904 KAR 3:060	907 KAR 1:720		
902 KAR 100:073	907 KAR 1:725		
600 KAR 4:010	907 KAR 1:755		
904 KAR 2:015	907 KAR 3:030		
902 KAR 55:095	904 KAR 2:006		
401 KAR 50:066	904 KAR 2:016		
600 KAR 6:010	904 KAR 2:035		
600 KAR 6:040	904 KAR 2:046		
600 KAR 6:070	904 KAR 2:050		
603 KAR 3:080	904 KAR 2:055		
603 KAR 5:070	904 KAR 2:060		
803 KAR 2:060	904 KAR 2:410E		
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803 KAR 2:320	600 KAR 6:010		
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